

U.S. COMMERCIAL CO., PLAINTIFF AND APPELLEE, VS. MACARIO GUEVARA ET AL., DEFENDANTS, ALBERTO ZAMORA, DEFENDANT-APPELLANT.

G.R. No. L-2575. October 23, 1950

Ponente: FERIA, J.

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FERIA, J.:

In an action instituted by the plaintiff against the defendants, the Court of first Instance of Davao denied the defendant's motion presented one month after the filing of this answer, to be allowed to file a third-party complaint against one Anastacio Pancho, and rendered judgment sentencing the defendants to pay jointly and severally to the plaintiff the amount stated in the judgment.

Of the four defendants only Alberto Zamora appealed from the lower court's judgment, and made the following assignments of error in his brief: (I) that the lower court erred in denying the motion for the admission of the third party complaint filed by the defendants against Anastacio Pancho, and (II) that the lower court erred in sentencing the defendants to pay jointly and solidarily their obligation to the plaintiff. The appellee did not file any brief or memorandum in this appeal.

- Under Sections 1 and 2, Rule 12, of the Rules of Court, whether a party to an action shall be allowed to implead an additional party or file a third-party complaint rests in the discretion of the court, (*Capayas vs. The Court of First Instance of Albay*, 43 Off. Gaz. 2071, 2074; 77 Phil., 181). In the present case, the defendants could have properly filed a third-party complaint against Anastacio Pancho, who entered into a contract with the defendants assuming the latter's obligation to the plaintiff, although said Pancho did not take part in the execution of the contract on which the plaintiff's claim is based, because a third-party complaint may also be based on a transaction other than that on which the plaintiff's action is based, provided it is connected with the plaintiff's claim (*Capayas vs. The Court of First Instance of Albay*, supra.) But in view of the fact admitted or not denied by the defendants, that on April 15, 1946, the defendants rescinded said contract entered into by them with Anastacio Pancho because the latter has not complied with terms thereof, the lower court did not commit any error or abuse its discretion in denying the defendants' motion to file a third-party complaint against said Pancho.

- The defendant-appellant's second assignment of error is well taken. Although, in paragraph 5 of the complaint, first cause of action, it is alleged that the defendants "assumed jointly and severally not only the assets but also all obligations and liabilities incurred and contracted for and in the name of the said Fil-American Company," the defendants in their answer denied the fact alleged in said paragraph 4; and in the agreed statement of facts (p. 48, Record on Appeal) invited the attention of the lower court to the allegation or admission of the plaintiff in paragraph 3 first cause of action of the complaint, that the above named defendants acting as Board of Directors of said Fil-American Company unanimously approved on March 26, 1946, the following resolution:

"Resolved that the Fil-American Company, the articles of incorporation of which are as yet not registered in the Bureau of Commerce and Industry (should, read securities and Exchange Commission), and as such the

said company is and has heretofore been acting only as an ordinary partnership under the joint responsibility of the original incorporators, namely, J. V. Vincent, Macario Guevara, Trilby Guevara, Alberto Zamora, Esteban Geballos, Servando Quidato and Harry Powers (absent in the U. S.) and Esteban Ceballos (deceased) were eliminated as such partners for having failed to comply in whole or part of their obligations to the company, be dissolved as it is hereby dissolved. * * *"

As the defendants have been acting as an ordinary partnership under the joint responsibility of the original incorporators of the Fil-American Company, they are not jointly and severally liable to the plaintiff (art. 1698, Civil Code).

Wherefore, the lower court's judgment is reversed in so far as it sentences the appellant to pay, jointly and severally with the other defendants, to the plaintiff the sum of P1,192.31 with interest of 6 per cent from the filing of the complaint, plus the sum of P119.23 as attorneys' fees and costs, and the appellant is sentenced to pay jointly or a pro-rata the said amounts to the plaintiff, with costs against the plaintiff-appellee. So ordered.

Moran, C.J., Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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