

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
CARMEN PLANAS, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-21224. September 27, 1966*

Ponente: BARRERA, J.

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This is the third time the subject matter involved in this appeal has been brought to the attention of this Court. This concerns the tax on war profits allegedly due from appellee Carmen Planas. The decision appealed from dismissing the case on the ground that there was no cause of action or that the same was barred by a former judgment, was based on a stipulation of facts which establish the following:

On February 2, 1950, appellee Carmen Planas was assessed by the Collector or Internal Revenue, war profit tax, including surcharges, in the amount of P81,722.00. After two reinvestigations by the revenue office, made at the request of the taxpayer, the assessment was reduced, on May 16, 1951, to P47,847.15. Not satisfied with this decision of the Collector, the taxpayer brought the case on review, first to the Secretary of Finance and subsequently, to the Board of Tax Appeals [1] (BTA Case No. 13), which rendered judgment on May 29, 1952, modifying the decision of the Collector. The taxpayer elevated the case on appeal to the Supreme Court (G.R. No. L-5866), wherein, on March 30, 1954, the appeal was dismissed "without prejudice", in view of the ruling of the Court rendered in the case of *U.S.T. v. Board of Tax Appeals*, [2] that the decisions of the Board of Tax Appeals are null and void for lack of judicial authority to decide cases of this nature which come within the jurisdiction of the regular courts.

On September 9, 1958, the Republic of the Philippines filed in the newly-created Court of Tax Appeals a motion for execution of the judgment rendered by the defunct Board of Tax Appeals in BTA Case No. 13. As this motion was granted despite objections of the taxpayer, and the Court of Tax Appeals ordered the execution of such decision, Carmen Planas filed a petition for review by certiorari in this Court, which was docketed as G.R. No. L-15934. On October 31, 1961, this Court rendered a decision in the case, annulling the disputed order of the Court of Tax Appeals, on the ground that, having been previously held in G.R. No. L-5866 (*Planas v. Collector of Internal Revenue*) that the decision of the defunct Board of Tax Appeals was null and void, said decision could not be executed.

On January 6, 1962, the Republic of the Philippines filed Civil Case No. 49206 in the Court of First Instance of Manila, entitled *Republic of the Philippines versus Carmen Planas*, "to enforce the collection of the same war profits tax in the amount of P83,179.43". However, sustaining defendant's contention that the complaint states no cause of action and the cause of action, if any, has already prescribed, the court dismissed the case on April 13, 1962, on the ground of prescription. The Republic did not appeal from this order of dismissal, and the same became final.

Then, on July 28, 1962, the Republic of the Philippines instituted the present action, also in the Court of First Instance of Manila, this time against Carmen Planas, as principal, and the Alto Surety & Insurance Co., Inc., as

surety (Civil Case No. 51090), alleging:

"2. That in an investigation conducted by agents of the Bureau of Internal Revenue, it was ascertained that the defendant Carmen Planas is liable to the Republic of the Philippines in the total amount of P83,179.43, inclusive of surcharges and interests as of March 31, 1954, representing war profits tax computed as follows:

x x x

"3. That the said amount has been the subject of the decision of the defunct Board of Tax Appeals in BTA Case No. 13, entitled 'Carmen Planas vs. The Collector of Internal Revenue, et al.', which affirmed the findings of the Bureau of Internal Revenue;

"4. That as a result of said decision of the defunct Board of Tax Appeals, defendant Carmen Planas appealed to the Supreme Court in G.R. No. L-5866;

"5. That in order to guarantee the payment of the aforementioned tax liability, defendants Carmen Planas, as principal, and Alto Surety & Insurance Co., Inc., as surety, executed Alto Bond No. IR-7093, dated March 15, 1954, whereby they bound themselves, jointly and severally to pay the amount of P41,547.45, as war profits tax plus 15% surcharge amounting to P5,232.12, 1% monthly interest from March 31, 1947 to March 31, 1954, amounting to P34,899.85, and compromise of P500.00 for violation of the war profits tax law or a total of P83,179.43, as of March 31, 1954, unto the Republic of the Philippines; x x x;

"6. That it is the condition of the bond that the principal and Surety hereby obligate themselves to pay the amount of the war profits tax, surcharge, interest and compromise, if and when the decision of the Supreme Court (in G.R. No. L-5866) will be adverse to the principal and upon, demand of the Collector of Internal Revenue';

"7. That on March 30, 1954, the Supreme Court dismissed her appeal;

"8. That as a result of the dismissal of the appeal by the Supreme Court, plaintiff, thru the Bureau of Internal Revenue, demanded of the herein defendants payments of the sum of P41,547.45, exclusive of surcharges, interests, and compromise penalties;

"9. That notwithstanding repeated demands, defendants failed and refused and still fail and refuse to pay the said tax liability alleged in paragraph 8 hereof;"

Thus, it was prayed that the surety bond be declared forfeited in favor of plaintiff, and defendants be ordered, jointly and severally, to pay the total amount of P83,179.43, representing war profits taxes, surcharges, compromise penalties and interests as of March 31, 1954, due from the principal, and to pay the interests that had accrued from April 1, 1954. Defendants answered the complaint averring (a) the action was barred by a prior judgment, and (b) assuming that the complaint is based on the surety bond, plaintiff had no cause of action. As stated in the beginning of this opinion, the trial court sustained the contentions of the defendants and dismissed the complaint.

In contesting the correctness of the decision now on appeal, that the order of dismissal of Civil Case No. 49206 constitutes *res judicata* to the present action, appellant claims lack of identity of parties and of cause of action in the two cases. The first case, Civil Case No. 49206, it is argued, was instituted by the Republic of the Philippines against Carmen Planas alone, whereas in Civil Case No. 51080, Carmen Planas and the Alto Surety were named defendants. Also, it is contended that when a taxpayer posts a bond to guarantee the payment of his tax liability, he assumes another obligation separate and distinct from his primary duty to pay the tax. In short, according to appellant, when a bond is executed, as in this case, the government can avail of two courses of action, to enforce the tax assessment, viz., by instituting judicial or summary administrative proceeding against the taxpayer, and by going against the bond. Appellant, therefore, argues that since Civil Case No. 49206 was for the enforcement of

the taxpayer's obligation to pay the tax, whereas Civil Case No. 51080 was for foreclosure of the bond due to the taxpayer's failure to comply with her obligation thereunder, the final order of dismissal, issued in the former case, does not operate to bar the cause of action in the latter case. In support of this contention, appellant cites several cases. [3]

Appellant's argument cannot be sustained. In the case of *Republic of the Philippines v. Araneta, supra.*, the condition of the bond was as follows:

"WHEREAS, the Bureau of Internal Revenue has required the above-bounden Principal (the taxpayer) to pay the amount of P11,814.00, corresponding to the two (2%) per cent common carrier's tax and compensating tax on the aforementioned vessel, FS-158, for the year 1958;

"WHEREAS, the above-bounden Principal has requested the Collector of Internal Revenue that it be allowed to pay the above-stated amount of P11,814.00 in six (6) equal monthly installments, commencing April 15, 1949;

"WHEREAS, the Collector of Internal Revenue is willing to grant the request of the above-bounden Principal, provided that it files a bond in the amount of ELEVEN THOUSAND EIGHT HUNDRED FOURTEEN (P11,814.00) PESOS, Philippine Currency, to guarantee payment of said common carrier's tax and compensating tax;

"NOW, THEREFORE, the condition of this obligation is such that if the above-bounden Principal truly and faithfully make a prompt and complete payment of the 2% common carrier's tax and compensating tax due on the above-mentioned vessel for the year 1948, in six (6) equal monthly installments commencing on April 15, 1949, as well as all fines and penalties imposed in accordance with the National Internal Revenue Code, then the obligation shall be null and void, x x x."

In the case of *Republic v. Xavier Gun Trading, supra.*, the principal and surety bound themselves to pay the assessment tax due the Republic of the Philippines from the principal for the period from 1948-1951, in the sum of P312.70 within six months from the execution of the bond. This is also true in the case of *Republic v. Dorego, supra.*, where the principal and the sureties bound themselves to "pay unto the Republic of the Philippines, the full sum of TWO THOUSAND SIX HUNDRED PESOS (P2,600.00), being the deficiency tax and penalties due the Republic from the principal", said principal and sureties promising to pay the tax obligation at the rate of P260.00 monthly, beginning July 16, 1951, until the whole amount is fully paid. In other words, in all of these cases, there was no question as to the taxpayer's liability to pay the tax. The amount thereof has been determined, the assessment already accepted by the taxpayer. The bonds were merely posted to guarantee the payment of the tax already due from and acknowledged by the principals. The obligation of the principals and the sureties to pay the amounts stated in the surety bonds was absolute and subject to no condition. Hence, the ruling of this Court that the parties to the bond assumed an obligation separate and distinct from that to pay the tax itself which, in effect, was extinguished and substituted by the bond.

Differently in the present case, the bond recognized in express terms that there was a pending controversy in the Supreme Court with respect to the liability of the taxpayer and that in the very words of the bond, the "Principal and the Surety Company hereby obligate themselves to pay the amount of war profits tax, surcharge, interest and compromise, if and when the decision of the Supreme Court will be adverse to the Principal and upon demand of the Collector of Internal Revenue." As heretofore stated, the appeal (G.R. No. L-5866) was dismissed by the Supreme Court "without prejudice" and without this Court making a declaration or finding on the liability of herein appellee Planas for such war profits tax. In fact, as also already mentioned, this Court, in G.R. No. L-15934, categorically ruled that the decision of the Board of Tax Appeals finding Planas liable to pay war profits tax, was null and void. It is clear, therefore, that the condition of the bond was never fulfilled and the obligation

assumed by the Principal and the Surety did not attach. It was perhaps because of this resulting situation that the Republic later filed again another action in the Court of First Instance of Manila (Civil Case No. 49206) for the collection of the same tax, but which, as heretofore stated, was dismissed on the ground of prescription, from which the Republic did not appeal.

From what has been stated, it is clear that the herein appellees did not assume a separate and different obligation from that of the direct liability of the taxpayer when they executed the bond herein sued upon. In fact, the complaint in this case has been filed, admittedly, for the purpose of enforcing the "collection of the same alleged war profits tax of defendant Carmen Planas in the amount of P83,179.43". (No. 19, Stipulation of Facts). But, as we have seen, the right of the government to collect those war profits tax, surcharges, penalties, and interests was already declared to have been lost by prescription, by final order in Civil Case No. 49206. And yet, this is the very same purpose for which this Civil Case No. 51080 was instituted. Certainly, this procedure cannot be allowed under the doctrine of bar by prior judgment.

The fact that the forms of the two actions, as well as the relief prayed for may not be the same, does not preclude the operation of the principle of *res judicata*, where it clearly appears, as it is in this case, that the parties are actually litigating the same thing. A party cannot, by varying the form of action or making a different presentation of his case, be allowed to escape the application of the rule that one and the same cause of action shall not be twice litigated. [4]

The inclusion of the surety as party defendant in Civil Case No. 51080, where it is not so named in Civil Case No. 49206, cannot be invoked to nullify the effect on the former case of the dismissal-order issued in the latter proceeding. It has been ruled that where the one who is offering a judgment as an estoppel and the party against whom it is being offered were both parties to the action, in which such judgment was rendered, it is no objection that the action included some additional parties who are joined in the second case. [5] Conversely, the operation of the final judgment or order in a previous case is not altered by the fact that somebody who was not a party in that first action has been impleaded in the second case. Otherwise, litigants can always renew any litigation by the mere expediency of including new parties. [6]

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed, without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Regala, J., on leave, no part.

[1] Created by Executive Order No. 401-A, and organized on February 7, 1951.

[2] G.R. No. L-5701, June 23, 1953.

[3] Republic of the Philippines v. Xavier Gun Trading, G.R. No. L-17325, April 26, 1962; Republic of the Philippines v. Dorego, G.R. No. L-16594, April 26, 1962; Republic of the Philippines v. Araneta, G.R. No. L-14142, May 30, 1961.

[4] Francisco v. Blas, G.R. No. L-5078, May 4, 1953; Valenzuela v. Court of Appeals, G.R. No. L-12645, Sept. 15, 1960; Lewin v. Galang, G.R. No. L-15253, Oct. 31, 1960; Ipekdjian Merchandising Co., Inc. v. Court of Tax Appeals, G.R. No. L-15430, Sept. 30, 1963.

[5] Aquino v. Sanvictores, G.R. No. L-3397, July 27, 1951.

[6] *Alsua v. Johnson*, 21 Phil. 308; *Aquino v. Sanvictores*, *supra.*; *Samahang Magsasaka v. Chua Guan*, G.R. No. L-7252, Feb. 25, 1955; *Suarez v. Giok Hong Que*, G.R. No. L-7927, Nov. 18, 1955.

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