

AMADO L. MENDOZA, PLAINTIFF-APPELLANT, VS. RODRIGUEZ & COMPANY, DOING BUSINESS UNDER THE STYLE AND TRADE NAME OF JOSEPH ENTERPRISES, DEFENDANT-APPELLEE.

G.R. No. L-24564. May 27, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal from an order of the Court of First Instance of Quezon dismissing the above-entitled case, without costs.

The record shows that, on October 16, 1963, Joseph's Enterprises - claiming to be a partnership existing by virtue of the Philippine Laws - and Carmen G. Rodriguez-Arguelles, Gregorio G. Rodriguez, Exaltacion G. Rodriguez-Abadilla, Alberto G. Rodriguez, and the Heirs of Pablo G. Rodriguez: namely, the minors Domiciano and Celestino Rodriguez and Luz Rodriguez, as co-heir and guardian ad litem of said minors, instituted Civil Case No. 6642 of the Court of First Instance of Quezon, against Amado A. Mendoza. It was alleged in the complaint therein that plaintiffs signatures on a given document - purport - to be an agreement between said plaintiffs and Mendoza, granting the latter, as manager of the Sariaya Electric and Ice Plant, belonging to said partnership and the other plaintiffs, as the constituent members of the partnership, the right "to certain onerous per-centage of the gross income of plaintiffs' business" - had been either forged by Mendoza or secured by him through fraud or deceit. Plaintiffs prayed, therefore, that the supposed contract incorporated in said document be declared "inexistent and null and void", and that Mendoza be sentenced to pay actual and moral damages.

In his answer[1] to said complaint, Mendoza denied the personality to sue of Joseph's Enterprises, upon the ground that the same is merely a trade name of Rodriguez & Co., which "is the owner and operator of Sariaya Electric and Ice Plant". He, likewise, denied the forgery or fraud imputed to him, and alleged that the Rodrigueces had knowingly given their approval to and signed the questioned document, copy of which was attached to said answer as Annex 1, and that the complaint had been filed for no other purpose than to harass him. Mendoza prayed, therefore, that the complaint be dismissed and that he be awarded moral, exemplary and temperate damages, in addition to attorney's fees.

Months later, or on May 15, 1964, Mendoza commenced the present action, Civil Case No. 6705 of the same court, against said Rodriguez & Co., for the recovery of P3,360.59, alleged balance of the compensation that Mendoza claimed to be due to him under the document sought to be annulled by Joseph's Enterprises and the Rodrigueces in case No. 6642, "from April 14, 1948 up to November 30, 1963, when he resigned", according to his complaint, Copy of said document was, also, attached to Mendoza's complaint in case No. 6705, as Annex A thereof.

In its answer to such complaint, the defendant alleged, inter alia, that "Joseph's Enterprises is the partnership organized under the laws of the Philippines, the name Rodriguez & Co. being another name given the said partnership", that having "prepared the articles of co-partnership of the partnership known as Joseph Enterprises",

and acting maliciously, surreptitiously and fraudulently, Mendoza presented Annex A, together with said Articles of Co-partnership to the Rodriguezes, as if the former were part of the latter; that the Rodriguezes signed both instruments in such erroneous belief; and that they owe nothing to Mendoza, who had never demanded payment of the balance alleged to be due to him in his complaint. Said defendant prayed, therefore that the latter be dismissed, and that Mendoza be sentenced to pay damages and attorney's fees, as well as to render an accounting.

On motion of counsel for Joseph's Enterprises, dated July 25, 1964, based upon the allegation that said cases Nos. 6642 and 6705 "involve the same parties, subject matter and issues", and "without objection" on the part of Mendoza's counsel", on July 28, 1964, the lower court ordered the consolidation of the hearing of the two (2) cases, "in view of the fact that they involve the same parties, the same questions of fact and the same question of law".

At said consolidated hearing, plaintiffs in case No. 6642 (Joseph's Enterprises, et al.), and the defendant in case No. 6705 (Rodriguez & Co.), verbally moved, in open court, for the dismissal of the latter case, alleging that the claim of plaintiff therein (Mendoza) is based upon the very contract relied upon in his answer in case No. 6642, and impugned by the plaintiffs therein; that, accordingly, the balance of the compensation allegedly due to Mendoza under said contract, should have been set up by him by way of compulsory counterclaim in case No. 6642; and that, not having done so, he is barred from claiming it in case No. 6705.

After due hearing and the submission of Memoranda by both parties, said court issued the order appealed from, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, and taking into consideration the reason behind Rule 9, Section 4, of the Rules of Court, the court finds that the motion to dismiss filed by counsel for Joseph Enterprises is tenable and meritorious, hence, Civil Case No. 6705 is hereby dismissed without pronouncement as to costs."

A reconsideration of this order having been denied, Mendoza interposed the present appeal by filing his record on appeal in case No. 6705. In his brief, Mendoza alleges that the lower court erred:

1. In holding that plaintiffs in Civil Case No. 6642 have legal capacity to sue
2. In holding that the act of filing an answer by defendant (plaintiff-appellant) in Civil Case No. 6642 is a recognition of plaintiffs' "personality and right" to sue.
3. In holding that plaintiff-appellant's claim for unpaid compensation in Civil Case No. 6705 should be pleaded as compulsory counterclaim in his answer in Civil Case No. 6642.
4. In holding that plaintiff-appellant entered into a contract of services with Joseph Enterprises.
5. In dismissing Civil Case No. 6705.

The first assignment of error is clearly devoid of merit, for the legal capacity of Joseph Enterprises to sue in Case No. 6642 is not in issue in the present Case No. 6705. Moreover, the very document on which Mendoza's alleged cause of action and complaint therein are based and on which he signed after the words: "accepted and to be enforced to the letter as agreed upon" - states that said instrument had been executed by "Pablo G. Rodriguez, Managing Partner of the JOSEPH'S ENTERPRISES, a Partnership duly organized and existing under the laws of the Philippines, x x x, by virtue of the powers vested in me by the 'Indenture of the Articles of General Partnership.'" Pursuant to the terms of this agreement, Mendoza's aforementioned contract had been made with Joseph's Enterprises, "a partnership duly organized and existing under the Laws of the Philippines." Hence, he is now in estoppel to question the juridical personality of Joseph's Enterprises or its right to sue him. It is worthy of not notice in this connection that, according to defendant's answer in this case, said instrument was prepared by

none other than Mendoza himself, and that Mendoza has not made a specific denial of such allegation.

As regards the second assignment of error, suffice it to say that, even if his answer in Case No. 6642 had not implied an acknowledgment of Joseph's Enterprises as a duly registered partnership, with juridical personality to sue, the fact is that by his acts - in drafting the document in question and signing the same, as well in taking advantage of the benefits derived therefrom and filing the complaint herein based thereon - he had recognized said personality and profited therefrom, and is, accordingly, in estoppel to deny the same.

The third and fourth assignments of error are predicated upon the theory that Mendoza's contract was entered into with Rodriguez & Co., not with Joseph's Enterprises. This pretense is refuted, however, by the language of the instrument of incorporation of said alleged contract. More significant still is the fact that, whereas Joseph's Enterprises and the Rodriguezes alleged that their signature thereon had been fraudulently obtained and that they had no intention of binding themselves to pay Mendoza the compensation therein set forth; Mendoza maintains that the document reflects the true intent of the parties thereto. How can he now take, therefore, a position inconsistent with the provisions hereof?

In any event, the question whether or not Joseph's Enterprise is merely a trade name of the partnership, Rodriguez & Co., is not important in this appeal, for even if Mendoza's contention were hypothetically true his claim in the case at bar for unpaid compensation allegedly due under the contract in question would still be and is necessarily connected with the transaction that is the subject-matter of Case No. 6642, and, not having been set up in that case it is barred from enforcement in the present subsequent case, pursuant to Rule 9, Section 4, of the Rules of Court.^[2]

We need not discuss the last assignment of error, it being a mere corollary to the assignments of error already disposed of.

WHEREFORE, the order appealed from is hereby affirmed, with the costs of this instance against plaintiff-appellant Amado L. Mendoza.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Filed on January 24, 1964.

[2] "SEC. 4. Counterclaim or Cross-Claim Not Set Up Barred. - A counterclaim or cross-claim no set up shall be barred if it arises out of or is necessarily connected with, the transaction or occurrence that is the subject-matter of the opposing party's or co-party's claim and does not require for its adjudication the presence of third parties or whom the court cannot acquire jurisdiction."

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