

GAN TION, PETITIONER, VS. HON. COURT OF APPEALS, HON. JUDGE AGUSTIN P. MONTESA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, ONG WAN SIENG AND THE SHERIFF OF MANILA, RESPO...

G.R. No. L-22490. May 21, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The sole issue here is whether or not there has been legal compensation between petitioner Gan Tion and respondent Ong Wan Sieng.

Ong Wan Sieng was a tenant in certain premises owned by Gan Tion. In 1961 the latter filed an ejectment case against the former, alleging non-payment of rents for August and September of that year, at P180 a month, or P360 altogether. The defendant denied the allegation and said that the agreed monthly rental was only P160, which he had offered to but was refused by the plaintiff. The plaintiff obtained a favorable judgment in the municipal court (of Manila), but upon appeal the Court of First Instance, on July 2, 1962, reversed the judgment and dismissed the complaint, and ordered the plaintiff to pay the defendant the sum of P500 as attorney's fees. That judgment became final.

On October 10, 1963 Gan Tion served notice on Ong Wan Sieng that he was increasing the rent to P180 a month, effective November 1st, and at the same time demanded the rents in arrears at the old rate in the aggregate amount of P4,320.00, corresponding to a period from August 1961 to October 1963.

In the meantime, over Gan Tion's opposition, Ong Wan Sieng was able to obtain a writ of execution of the judgment for attorney's fees in his favor. Gan Tion went on certiorari to the Court of Appeals, where he pleaded legal compensation, claiming that Ong Wan Sieng was indebted to him in the sum of P4,320 for unpaid rents. The appellate court accepted the petition but eventually decided for the respondent, holding that although "respondent Ong is indebted to the petitioner for unpaid rentals in an amount of more than P4,000.00" the sum of P500 could not be the subject of legal compensation, it being a "trust fund for the benefit of the lawyer, which would have to be turned over by the client to his counsel." In the opinion of said Court, the requisites of legal compensation, namely, that the parties must be creditors and debtors of each other in their own right (Art. 1278, Civil Code) and that each one of them must be bound principally and at the same time be a principal creditor of the other (Art. 1279), are not present in the instant case, since the real creditor with respect to the sum of P500 was the defendant's counsel.

This is not an accurate statement of the nature of an award for attorney's fees. The award is made in favor of the litigant, not of his counsel, and is justified by way of indemnity for damages recoverable by the former in the cases enumerated in Article 2208 of the Civil Code.[1] It is the litigant, not his counsel, who is the judgment creditor and who may enforce the judgment by execution. Such credit, therefore, may properly be the subject of legal compensation. Quite obviously it would be unjust to compel petitioner to pay his debt for P500 when

admittedly his creditor is indebted to him for more than P4,000.

Wherefore, the judgment of the Court of Appeals is reversed, and the writ of execution issued by the Court of First Instance of Manila in its Civil Case No. 49535 is set aside. Costs against respondent.

Reyes, J.B.L. (Acting C.J.), Dizon, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Teehankee and Barredo, JJ., took no part.

Concepcion, C.J., and Castro, J., on leave.

[1] *Fores vs. Miranda*, 105 PHIL. 268, 272; *Necesito et al. vs. Paras et al.*, 104 PHIL. 75, 86.

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