

REHABILITATION FINANCE CORPORATION, PLAINTIFF AND APPELLANT, VS. FRANCISCO T. KOH, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-15512. February 28, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal by plaintiff, Rehabilitation Finance Corporation, hereafter referred to as appellant, from a decision of the Court of First Instance of Manila sentencing it to pay defendant Francisco T. Koh—hereafter referred to as appellee—P114,000, as actual damages, P290,000, as moral damages, P50,000, as exemplary damages, and P25,000 as attorney's fees, or the aggregate sum of P479,000, apart from the costs.

On December 5, 1954, appellant instituted the present action, against said appellee and Villanueva Steamship Co., Inc.—hereafter referred to as the Company—Vicente Villanueva, Eloy T. Koh, Jose Uy Villanueva—hereafter referred to as Uy—his wife, Dolores Siy Hai Pin, Lino J. Castillejo, Procopio Eleazar and Vicente Alunan. Two alternative causes of action are set forth in the complaint. Under the first alternative cause of action it is alleged that, as Vice-President and Treasurer of the Company, appellee had filed with appellant, on May 7, 1953, a sworn application for a P1,300,000 loan for the avowed purpose of paying off the balance of the purchase price of the vessel "SS Jolly", which he represented to be \$1,148,000, when in fact it was not more than \$266,000; that appellee had, also, misrepresented to appellant the financial structure and situation of the Company, as well as that the same was then already incorporated and had a paid up capital of P1,700,000, although it was incorporated only on June 3, 1953 and did not have said sum; that thru fraud, deceit, misrepresentation, undue influence and unlawful and improper means, appellee had induced his co-defendants Castillejo, Eleazar and Alunan—who were, the first, member brothers, the eldest age 10 and the next age 8, witness Governor of its Industrial Department, and the last two, Manager and Assistant Manager, respectively, of said Department—to appraise the value of said "SS Jolly", which was being offered as security for the aforementioned loan, at a much higher amount than its true and real value; that said officers of appellant, thru fraud, negligence and actual connivance, had made possible the granting of said loan, although they knew or ought to have known that the value of the security offered was insufficient to secure the loan applied for; that on August 22, 1953, appellant transferred to his co-defendants, Villanueva, Llorca and Eloy T. Koh, P450,000 worth of his (appellant's) shares in the Company, and retained for himself only P50,000 worth of said shares; that on September 14, 1953, appellee caused the Company and his aforementioned co-defendants (Villanueva, Llorca and Eloy T. Koh), as well as defendants Uy and Dolores Siy Hai Pin, aside from one Alberto Abeleda, now deceased, to sign a promissory note in appellant's favor, for the sum of P1,000,000, payable in amortizations of P58,245.74, every three (3) months, beginning from January 1, 1954, until fully paid; that appellee did not sign said promissory note in line with a preconceived plan to defraud appellant, well knowing that, with the exception of Villanueva, the other makers of said promissory note did not have the necessary funds or properties to answer therefor; that, thru undue influence and other unlawful and improper means, appellee induced certain high officials and employees of appellant to release, to him and his

co-defendants, P500,000, on September 26, 1953, and P500,000.00, on October 1, 1953, notwithstanding the fact that several conditions precedent to the granting of said loan had not as yet been complied with; that defendants Castillejo, Eleazar and Alunan authorized the release of said amounts despite non-compliance with said conditions, in clear violation of their duties; and that, in consequence of the foregoing acts, appellant had suffered damages in the sum of P1,000,000.00, plus interest and unearned profits.

By way of second alternative cause of action, it is averred that the defendants, except appellee, Castillejo, Eleazar and Alunan had executed the promissory note adverted to above; that to secure payment of said note, on September 14, 1953, the Company had mortgaged the former "SS Jolly"—re-named "SS Lourdes"—to appellant herein; that the Company and defendants Villanueva, Eloy T. Koh, Llorca and Siy Hai Pin had defaulted in the payment of four (4) amortizations due on the aforementioned promissory note, after paying the first installment on September 1, 1954; that, as a consequence, the full balance of said promissory note, aggregating P1,001,461.07, as of October 1, 1954, including interest; thereby became due and payable; and that the defendants were disposing or about to dispose of their properties in fraud of creditors.

Appellant prayed, therefore, that the defendants be sentenced, under the first alternative cause of action, to jointly and severally pay it P1,000,000, with interest thereon; that said defendants, excluding appellee, Castillejo, Eleazar and Alunan, be sentenced, under the second alternative cause of action, to jointly and severally pay appellant P1,001,461.07 with interest thereon; aside from P100,146.11, as attorney's fees; that the vessel "SS Lourdes" ("SS Jolly") be ordered seized and sold and the proceeds turned over to appellant, to be applied to the partial satisfaction of the latter's credit against the defendants; and that, meanwhile, a writ of preliminary attachment be issued against their property. The last part of the prayer was forthwith granted.

Appellee moved to dismiss the complaint and to discharge the attachment, but both motions were denied. Defendants Alunan and Eleazar filed their respective answers, with counterclaims for damages. The Company and defendant Villanueva filed similar answers with counter-claims for damages. Villanueva, likewise, set up a cross-claim, against appellee, for P160,000, upon the ground that thru deceit and abuse of confidence, he (Villanueva) being 71 years of age and almost totally blind, appellee had made him sign several documents without explaining to him the true nature and contents thereof, and that he had affixed his signature on the promissory note sued upon thru mistake.

After securing several extensions of time to answer the complaint, upon the ground that a transaction for the sale of "SS Lourdes", which had been "agreed upon by the parties to have sufficient amounts to settle the case extra-judicially", was then "in progress", on March 16, 1955, appellee moved to suspend indefinitely all proceedings because the vessel had already been sold in Hongkong for P1,600,000.00, of which, P1,000,000, he said, would be turned over to appellant. The motion having been denied, appellee filed an answer, with a counterclaim for damages in the total sum of P2,100,000. Soon thereafter, the other defendants filed their respective answers, with counter-claims.

On December 5, 1956, appellant filed a motion stating that the parties had come and agreed to an amicable settlement and, therefore, prayed that the complaint and the counterclaims be dismissed with prejudice and without costs. The motion was, also, signed by counsel for the Company, and defendants Llorca, Uy, Siy Hai Pin, and Castillejo. The names of counsel for appellee, Eloy T. Koh, Villanueva, Alunan and Eleazar were, likewise, typewritten at the foot of the motion, evidently for their signature, which, however, was not affixed thereon. Appellant alleges that it had been unable to obtain the signature of these defendants, because the motion had to be prepared and filed hurriedly, owing to an order of the court setting the case for hearing at an early date. In any event, said defendants objected to said motion to dismiss, insofar as their respective counterclaims were concerned, in view of which the court issued an order dated December 8, 1956, dismissing the case as regards all

defendants, except as to the aforementioned counterclaims of appellee, Eleazar and Alunan, and the cross-claim of Villanueva against herein appellee. Presently, those of Eleazar and Alunan were, likewise, dismissed, on motion of these defendants. As a consequence, the only matters left for adjudication were the counterclaims of appellee and Villanueva against appellant, and the cross-claim of Villanueva against appellee. Subsequently, Villanueva died. The records before us do not show the status of his aforementioned counterclaim and cross-claim. In due course, the lower court rendered judgment on appellee's counterclaim, as stated at the beginning of this decision. Hence this appeal.

The main issue for our determination is whether the circumstances under which appellee had been sued in the case at bar are such as to constitute a malicious prosecution, rendering appellant liable for damages.

It has been held that:

"To support an action for malicious prosecution under American law the plaintiff must prove, in the first place, the fact of the prosecution and the fact that the defendant was himself the prosecutor, or that he instigated its commencement, and that it finally terminated in his acquittal; that, in bringing it, the prosecutor had acted without probable cause, and that he was actuated by legal malice, i.e., by improper or sinister motives. These three elements must concur; and there is no distinction between actions for criminal prosecutions and civil suits. Both classes require substantially the same essentials. Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harrasing and injuring his adversary. In other words, malice and want of probable cause must both exist in order to justify the action." (Buchanan vs. Vda. de Esteban, 32 Phil. 363.)

The appeal hinges on whether appellant had no "probable cause" and had acted with malice when it filed the complaint against appellee herein. Upon a review of the record we are fully satisfied that the question must be decided in the negative.

Among other circumstances, the following sufficiently show that appellant had probable cause to believe that it had against appellee the first alternative cause of action set forth in the complaint, to wit:

1. On May 7, 1953, appellee filed, on behalf of the Company, a loan application (Exhibit PP) for P300,000, subscribed and sworn to by him, as Vice-President and Treasurer of the Company, stating that it had a paid up capital of P300,000. On June 9, 1953, appellee, acting in the same capacity, filed an amended application (Exhibit QQ), verified before the same notary public, and bearing, not only the same date (May 7, 1953), but, also, the same entry number in the notarial registrar of said officer as the original application (Doc. No. 26, Page No. 83, Book No. VI, Series of 1953). Moreover, the amended application stated that the loan applied for was P1,300,000, and that the paid up capital of the Company was P1,700,000; but the paid up capital, according to the Articles of Incorporation of the Company, dated April 28, 1953, was only P500,000.00.

Again, the original application stated that the shares of stock held by the organizers of the corporation were in the following sums:

"Vicente Villanueva

P200,000.00

Francisco T. Koh

100,000.00

Santos Llorca

100,000.00

Alberto Abeleda

20,000.00

Ramon Fabella

15,000.00

Eloy T. Koh

15,000.00

Jose Eng Cui

10,000.00"

whereas the figures given in the amended application were:

"Vicente Villanueva

P500,000.00

Francisco T. Koh

400,000.00

Santos Llorca

300,000.00

Alberto Abeleda

40,000.00

Eloy T. Koh

30,000.00

Ramon Fabella

30,000.00

Jose Uy Eng Cui

250,000.00

Dolores Siy Hai Pin

150,000.00"

2. Appellee stated in said loan applications that the purpose thereof was to raise the amount necessary to pay the balance of the purchase price of the vessel "SS Jolly" later re-named "SS Lourdes". In support thereof, he submitted to appellant a document (Exhibit 23-Koh), purporting to be a memorandum agreement to purchase said vessel from Kiau Hing Shipping Co., of Hongkong, for \$1,148,000.00 in US dollars. However, appellant later obtained possession of official documents, both of the Philippine Government and the British Government in Hongkong, showing that the seller was Concordia Shipping Co. and that the price actually paid was US \$266,000.00.

3. The aforementioned loan application was approved by appellant for P1,000,000, subject to, among others, the following conditions:

"(a) That no portion of the loan shall be released unless authorization from the British Ministry of Transport for the sale and transfer of the flag of the vessel to Philippine Registry was first submitted to the plaintiff RFC;

"(b) Condition No. 2, that the insurance policy for the vessel be submitted (Exhibit WW)."

Although these conditions had never been complied with, the release of said sum of P1,000,000 was illegally authorized—in two (2) installments of P500,000 each, on September 25 and October 1, 1953—by defendant Eleazar, "per instructions" of his co-defendant Alunan.

4. It was appellant's practice, in connection with big loans to corporations, to require, in addition to the latter's signature, that of its main stockholders, as solidary debtors. On August 22, 1953, immediately before appellant's Board of Governors had approved the loan, appellee transferred the bulk of his stocks in the Company to his brother Eloy T. Koh and resigned as Treasurer of the Company. Thus he became a minor stockholder thereof and evaded signing the promissory note in favor of appellant. Several months after the approval of the loan and the release of its amount by appellant, appellee reacquired his aforementioned shares of stock.

As regards the question whether appellant acted with malice in suing the herein appellee, it appears that, in view of a report filed by a committee that had investigated the business transactions and activities of the Company the President of the Philippines referred the matter to the Secretary of Justice, who, in turn, ordered that appropriate action be taken thereon. Thereupon a committee, consisting of appellant's counsel and now Judges Hilarión Jarencio and Felix Antonio, decided to prepare and file said complaint, considering, not only the pertinent papers and the circumstances adverted to above, but, also, the fact that the Company was already in arrears in the payment of four (4) installments, aggregating almost P250,000, and that the "SS Lourdes" (or former "SS Jolly") had never been in the Philippines and was then in Hongkong, damaged by a typhoon that had lashed that port. It is thus obvious that the filing of the complaint herein was not tainted with malice or bad faith on the part of appellant herein.

"It is the general rule, in the absence of any statutory provision to the contrary, that advice of counsel is a complete defense to an action for malicious prosecution where it appears that the prosecution was instituted in reliance in good faith on such advice, given after a full and fair statement of all the facts to the attorney. This is true whether the advice was sought in respect of a civil action or a criminal prosecution. Moreover, it is immaterial that the attorney's advice was unsound or erroneous; if the defense is worth anything to a party it must be available when through error of law, as well as of fact, his action has failed; the lawyer's error will not deprive his client of the defense." (34 Am. Jur. pp. 747-748.)

Wherefore, the decision appealed from is hereby reversed, and the counterclaim of appellee Francisco T. Koh against appellant Rehabilitation Finance Corporation, accordingly, dismissed, with the costs of this instance against said appellee. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and De León, JJ., concur.

Judgment reversed.

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