

ARCADIO G. MATELA, PLAINTIFF AND APPELLANT, VS. CHUA TAY, DEFENDANT AND APPELLEE.

G. R. No. L-16407. May 30, 1962

Ponente: PAREDES, J.

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PAREDES, J.:

On January 13, 1959, Chua Tay, engaged in the manufacture of furniture, filed with the Court of First Instance of Manila, an amended petition for injunction with damages, docketed as Civil Case No. 38862, entitled "Chua Tay vs. Arcadio Matela, et al." At the time, Arcadio Matela was one of the members of the Board of Directors of the Central Cooperative Exchange, Inc. (CCI). In said amended petition, Chua Tay, made the following allegations, to wit—

* * * * *

"5. That while the Award Committee was processing and evaluating the bidders, the members of the Board of Directors of the Central Cooperative Exchange, Inc. as above-mentioned named, together with ACCFA Administrator Capt. Ernesto Jimenez, called your petitioner for an interview which in reality was a feeler of how much each prospective bidder can afford to give as kickback to the members of the Board of Directors of the Central Cooperative Exchange, Inc., made respondents herein, * * * such questions were never called for in the invitation to Bid and were a gauge to bidder's abilities to offer kickback of some forms of benefits either to the Central Cooperative Exchange, Inc. or to the members of the Board of Directors of the Central Cooperative Exchange Management. * * *

"6. That on December 2, 1958, ACCFA Governors Arcadio Matela, Arturo V. Miranda, Jr., and Nicolas Enciso, respondent's members of the Board of Directors of the Central Cooperative Exchange, called your petitioner and the representatives of the New Camarines and Metro Sawmill to another interview, this time at the office of the ACCFA at Taft Avenue, in front of the De La Salle College, and while there were asked if they have no objection to increasing the height by five (5) inches more without additional cost to the Central Cooperative Exchange, Inc., and after your petitioner requested the ACCFA Governors Matela, Miranda Jr., and Enciso to roughly sketch the projected increase by five (5) inches and after they compelled same, your petitioner answered 'Yes' to their proposal to increase the height by five (5) inches without additional cost and after the same was rejected by the representatives of the New Camarines and Metro Sawmill. That in said second interview, your petitioner had already an inkling that ACCFA Gov. Arturo V. Miranda, Jr., respondent member of the Central Cooperative Exchange, Inc., Board of Directors was working for respondent Carried Lumber Company or butting for her on the trend of his questioning.* * *

"12. That the joint acts of respondents Eliseo Aspillaga, Go vs. de Pedro, Matela, Miranda, Jr., Enciso of the ACCFA, Sanvicente, Eamos, Ostrea, Maddela, Tibe, Sr., Banez, Ignacio, all members of the CCE Board of Directors, in giving the award to its correspondent Carried Lumber Company, show a grave abuse of their discretion and authority, smacks of favoritism, and detrimental to funds of the government which finance the undertakings of the Central Cooperative Exchange * * *",

The motion to dismiss the petition was denied, so with the two motions for reconsideration.

An Answer to the petition was presented by Arcadio Matela on February 19, 1959, and after the admissions and denials, he alleged as counterclaim, the following—

"* * * As a counterclaim, respondent, by virtue of the unwarranted, unjustifiable and unlawful act of the petitioner, was damaged immeasurably not only in the form of attorney's fees which had been contracted at Five Thousand Pesos (P5,000.00), but likewise suffered moral damages for wounded feelings, besmirched reputation, social and public humiliation, which is conservatively assessed at One Hundred Thousand Pesos (P100,000.00). Furthermore, respondent has been damaged in the form of another attorney's fees in order to protect his interest for having been damaged and libelously attacked in the petition of petitioner, which likewise is conservatively assessed at Twenty Thousand Pesos (P20,000.00)."

In the collective Answer of all the respondents, dated March 2, 1959, prepared by the lawyers of the CCE, the following counterclaim likewise appears, to wit—

"2, That because of the aforesaid imputations against the respondents found in paragraphs 5, 6 and 12 of the Amended Petition, which are not only false but malicious and libelous per se, the answering respondents, who are men of integrity, of high standing in the business, civic, social and political circles, and are respected and trusted leaders in their respective community have suffered damages in the amount of no less than P200,000.00 each. (See par. 2, of Counter-claim, pages 6-7, Answer to Amended Petition dated Jan. 10, 1959, Annex '2-A')".

While the above civil case No. 38862, was pending with the Manila CFI, Arcadia Matela on February 25, 1959, instituted with the Rizal CFI, Quezon City Branch, the present action, which was docketed as Civil Case No. Q-4019, entitled "Arcadio G. Matela vs. Chua Tay". The first cause of action is anchored on allegations contained in the amended petition (Civ. Case No. 38862), reproduced earlier (pars. 5, 6 and 12 thereof). Matela avers that the allegations in said paragraphs are highly defamatory, absolutely libelous and has absolute tendency to dishonor, discredit and humiliate him; that by reason of the unjustifiable filing of the amended petition, he (Matela), has suffered by way of moral damages in the amount of P100,000.00; that to defend himself against the petition for injunction, he engaged the services of counsel and bound himself to pay the amount of P5,000.00, and to prosecute this instant case (Civ. Case No. 4019), he likewise engaged the services of counsel to an agreed amount of P20,000.00. In the same complaint, Matela asked the issuance of a writ of preliminary attachment and sequestration of any and all known properties owned by Chua Tay in the total amount of P125,000.00, plus the costs; to answer for damages, it appearing that defendant being a Chinese citizen engaged only in the manufacture of furniture, there is no security whatsoever for the collection of any amount that may be awarded.

On March 18, 1959, Chua Tay filed his answer, with Opposition to Petition for Issuance of Writ of Preliminary Attachment. Affirmative and special defenses were interposed, to wit: that the supposed malicious or libelous imputations were set forth in the petition as pertinent and material allegations, made in good faith, and are merely expressions of opinion; that there is pending before the FiscaPs Office of Manila, a libel charge, based upon the above allegations, filed by Matela and others against him (Chua Tay), entitled "Ernesto Jimenez, et al. vs. Chua Tay, et al" (I.S. No. 2962); that same allegations were made in Matela's counterclaim in Civ. Case No. 33862, pending before the Manila CFI; that there is a pending case (lis pendens) between the same parties for the same cause; that the complaint states no cause of action, and the court has no jurisdiction. Chua Tay set up a counterclaim.

On March 31, 1959, the Quezon City Branch of the Rizal CFI approved the application for the issuance of the Writ of Preliminary Attachment upon Matela's posting of a P50,000.00 bond. A Motion to Lift the Order of Preliminary Attachment was presented by Chua Tay on April 21, 1959. On the same date, he also filed a Motion to Dismiss the complaint (Q-4019), on three grounds, viz: (1) pendency of another action between the same

parties and for the same cause; (2) lack of jurisdiction of the court; and (3) complaint states no cause of action. Attached to the motion to dismiss was the Amended Petition in Civil Case No. 38862, where the malicious and libelous imputations were made; the Answer of Matela; the collective Answer of all the respondents in civ. case No. 38862, except Carried Lumber Co., prepared by lawyers of the GCE. Matela opposed both the motions. After due hearing, the lower court on May 27, 1959, rendered judgment, the pertinent portions of which read—

* * * * *

From a careful reading of the pleadings presented by the parties in Civil Case No. 38862, the Court has arrived at the conclusion that as between Arcadio G. Matela, plaintiff, against Chua Tay, defendant in the present case, there is already a pending action between the same parties for the same cause of action. * * *.

The cause of action of the complaint of plaintiff Matela against Chua Tay, defendant in the present case, is but a mere reproduction and substantially the same as those alleged by Arcadio G. Matela in his counterclaim embodied in the Answer to the Petition and Amended Petition.

In view of the foregoing, as prayed for by the defendant, the above-entitled case is ordered dismissed with costs against the plaintiff."

A citation of authorities in support of the opposition to the Motion to Dismiss was filed two (2) days after the rendition of the above judgment. The motion for reconsideration presented on June 1, 1959, was denied on June 22, 1959. In the second motion for reconsideration filed on July 3, 1959, plaintiff Matela pointed out that the motion to dismiss was not opportunely presented because defendant Chua Tay had already Answered the complaint, and consequently waived the ground for the dismissal of the action (pendency of another case) since such ground is a "plea in abatement" which is waivable. In denying the second motion, the lower court said:

"* * *. Apparently, the contention of plaintiff seems to be meritorious, but upon a careful perusal of the allegations contained in the answer filed by the defendant, it is shown as affirmative and special defenses there is a pending case between the same parties for the same cause and that the filing of the instant case amounts to a multiplicity of suits, which allegations are the very same grounds relied upon by the defendant in his motion to dismiss. Therefore, the procedure taken by the defendant is permissible and allowed by the Rules (Rule 8, Sec. 5), and that the preliminary hearing held by this Court covered not only the Motion to Dismiss but also the affirmative and special defenses contained in the Answer of defendant."

The Order of Dismissal and orders denying the Motions for Reconsideration are now before Us on four (4) assignments of errors, all of which raise the propriety or correctness of presenting a Motion to Dismiss after Answer has been filed and the validity of the dismissal of the complaint, on grounds stated in the Motion to Dismiss.

That there is a pending case between the same parties and for the same cause is clear from the pleadings in said cases (Civ. Case No. 38862, entitled "Chua Tay vs. Arcadio Matela, et al." CFI, Manila, and Civ. Case No. Q-4019, entitled "Arcadio Matela vs. Chua Tay", CFI, Rizal, Quezon City Branch). Of course, in the former case the claim of Matela against Chua Tay is contained in a counterclaim, while in the latter case, his claim is in a formal complaint. Withal, the basis for both claims are the allegations in Case No. 38862, which Matela contends to be libelous and malicious. A counterclaim partakes of the nature of a complaint and/or a cause of action against the plaintiff in a case (Pomeroy's Code Remedies, 868, cited in Francisco's Rules of Court, Vol. I, Part I, p. 544). To interpose a cause of action in a counterclaim and again invoke it in a complaint against the same person or party would be splitting a cause of action not sanctioned by the rules (Berses vs. Villamera, 25 Phil. 473; Ledesma vs. Morales, 87 Phil., 199; 47 Off. Gaz. Supp. Dec. 1951, p. 382). Moreover, it has been said: "When the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest; there must be the same rights asserted, and the same relief prayed for.

This relief must be grounded on the same facts, and the title or essential basis of the relief sought must be the same. The identity of these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties" (Manuel vs. Wiggett, 14 Phil. 9; Hongkong and Shanghai Bank vs. Aldecoa and Co. 30 Phil. 255, *italics supplied*). In other words, the ground of pendency of another suit between the same parties, has the following requisites, to wit: (1) identity of parties, or at least such as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for; the relief being founded on the same facts; and (3) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res adjudicata in the other (Olayvar vs. Olayvar 98 Phil., 52; 51 Off. Gaz., 6219). The facts and circumstances of the case at bar fly in the teeth of the requirements just enunciated.

Anent the observation of appellant that the dismissal was not proper since the motion to dismiss was presented after Answer was already filed, suffice it to state that both the Answer (which was filed earlier) and the Motion to Dismiss, contained the defense' and/or ground of "pendency of another action".

Conformably with all the foregoing, the Orders, subject of the instant appeal, should be, as they are hereby, affirmed, with costs against Arcadio G. Matela, in both instances.

Padilla, Bautista Angelo, Concepcion. Reyes, J. B. L., Barrera and Dizon, JJ., concur.

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