

THE WORLD WIDE INSURANCE & SURETY CO., INC., PLAINTIFF AND APPELLANT, VS. BENITO MACROHON, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 12365. February 28, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action to recover the amount of P1,800 as damages and the amount of P200 as attorney's fees filed before the Municipal Court of the City of Manila. Defendants are Benito Macrohon, Sheriff of Quezon City, and two corporations organized under the laws of the Philippines. To the complaint are attached copies of two annexes on which the action is based and which contain the alleged conditional sale in favor of plaintiff of the properties mentioned in the complaint.

The complaint alleges that plaintiff is entitled to the possession and ownership of certain personal properties listed therein by virtue of a conditional sale executed by Catalina de Leon and Leuterio Limcaco, copies of which are Annexes A and A-1; that on August 23, 1956, defendants, conspiring together, levied upon said properties and sold them at public auction in spite of the third-party complaint filed by plaintiff with sheriff Macrohon; that the sale was carried out in view of an indemnity bond executed in behalf of said sheriff by his co-defendants binding themselves to indemnify him for the damages he may suffer as a consequence of the sale; that because of the sale of the properties as (above-mentioned, plaintiff suffered damages in the amount of P1,800.

One of the defendants filed a motion to dismiss on the ground that the complaint fails to state a cause of action, and despite the opposition of plaintiff, the same was granted, the court dismissing the complaint without costs. When the case was taken to the court of first instance on appeal, the same motion to dismiss was reiterated by defendants. Plaintiff again opposed this motion, but despite its opposition, the lower court again dismissed the case for the same reason that it fails to state a cause of action against defendants. This appeal was taken to us for the reason that only questions of law are involved.

We find no merit in the appeal. The complaint alleges that plaintiff is the owner of certain personal properties listed therein by virtue of certain conditional sale executed by Catalina de Leon and Leuterio Limcaco in its favor, and in reliance thereon it invokes two agreement which are embodied in Annexes A and A-1. And because said properties were levied upon and sold at public auction by defendants despite the third-party complaint it had filed with the sheriff, plaintiff claims that it suffered damages in the amount of P1,800. It now seeks to collect said damages under the indemnity bond executed in favor of the sheriff by his co-defendants. It turned out however, as found by the trial court, that said agreements do not represent any conditional sale of the properties claimed by the plaintiff but merely refer to a chattel mortgage or pledge coving properties which are distinct and different from those listed in the complaint. If from the very fact of the complaint, as supplemented by its annexes, plaintiff is not the owner, nor entitled to the properties it claims to have been levied upon and sold at public auction by the defendants and for which it now seeks indemnity, it is evident that the complaint does not give plaintiff any right

of action against defendants. The trial court therefore acted properly in dismissing the complaint.

But it is claimed that the trial court erred in considering the annexes in acting on the motion to dismiss for it could have merely confined its scrutiny to the allegations of the complaint for if the latter were considered independently of those annexes we would find that the plaintiff has a good cause of action because it is alleged therein that it is the owner of the articles which were improvidently sold by defendants to its prejudice. This pretense is untenable for one cannot separate the complaint from its annexes since it clearly appears in said complaint that the claim of plaintiff to be the owner of the properties in question is predicated on said annexes which are alleged to contain agreements of conditional sale. However, such claim was found to be untrue for as already stated said annexes merely embody a contract of chattel mortgage or pledge of properties distinct and different from those listed in the complaint.

It is likewise claimed that the lower court erred in dismissing the complaint outright for it could have merely ordered plaintiff to amend the same to make it conform to the contents of the annexes or otherwise reconcile the discrepancies, if any, and require defendants to answer the complaint as held by the Supreme Court in the case of *World Wide Insurance & Surety Co., Inc. vs. Gonzalo L. Manuel*, 98 Phil., 46; 51 Off. Gaz., [12] 6214. This claim is also untenable for it would be futile to make the complaint conform to what appears in the annexes because the latter embody merely certain contracts of chattel mortgage or pledge which would at most give plaintiff a lien on the properties in question. But the great flaw we find in this claim lies in the fact that said annexes refer to properties which are different from those listed in the complaint. The case above alluded to is inapplicable for if in that case the complaint and the document annexed thereto were reconciled it was because the alleged discrepancy appears explained in the very body of the complaint.

Wherefore, the order appealed from is affirmed, with costs against appellant.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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