

FRANCISCO L. LAZATIN, PLAINTIFF AND APPELLANT, VS. ANGEL C. TWAÑO AND GREGORIO T. CASTRO, DEFENDANTS AND APPELLEES.*G.R. No. 12736. July 31, 1961*

Ponente: PAREDES, J.

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The case at bar had its genesis in Civil Case No. 213, CFI, Manila entitled "Angel C. Twaño and Gregorio T. Castro, plaintiffs, versus F. L. Lazatin, et al., defendants, Dionisio P. Tanglao, Intervenor", for the recovery of P35,000.00, plus interest, realized in connection with the purchase by them (plaintiffs and defendants) from the U.S. government, and the subsequent sale, of some 225 auto-trucks. After trial, the CFI of Manila dismissed the complaint as well as the intervention. The order of dismissal was taken to the Court of Appeals (CA-G.R. No. 4533-R), which, on November 3, 1950, rendered judgment reversing the said order and declaring that plaintiffs and defendants were co-owners in the business of buying and selling surplus auto-trucks, and ordered the defendants (one of them Lazatin) to pay to the plaintiffs therein, the sum of P10,000.00, with legal interest from the filing of the complaint. The said decision became final; it was executed, with the levy of the properties of defendant Lazatin and their subsequent sale at public auction, wherein the plaintiffs Twaño and Castro were the purchasers. Before the expiration of the redemption period, on August 2, 1952, defendant Lazatin, deposited with the Sheriff of Pampanga, the sum of P13,849.88, redemption price.

On August 9, 1952, the same Francisco Lazatin, filed the present action, to recover from the same Twaño and Castro, the sum of P19,676.09, supposedly a balance of the proceeds of auto-trucks, sold directly to purchasers by said defendants. On the same date, plaintiff Lazatin, alleging that "there is no security whatsoever for the payment of the amount claimed in the complaint and that the defendants are moving or are about to remove or dispose of their property with intent to defraud their creditors, particularly the plaintiff", secured a writ of attachment in the amount he deposited, and pursuant thereto, the Sheriff of Pampanga refused to deliver the sum of P13,849.88 which should have been paid to the herein defendants.

On August 12, 1952, the herein defendants filed an Urgent Motion to Dissolve the Writ of Preliminary Attachment, on the following grounds:

- That the plaintiff has no cause of action because (a) the right of action, if any, has prescribed, and (b) the cause of action is barred by a prior judgment; and
- That the allegations in the petition for the issuance of the writ and in the affidavit in support thereof are false.

On September 10, 1952, the lower court, after due hearing, dissolved the writ.

Subsequently, the defendants filed their answer and after the customary admissions and denials, interposed as special defenses, the same ground averred in the motion to lift the writ and counterclaimed:

- That the plaintiff herein has filed a clearly unfounded civil action against the herein defendants as a result of which the latter had suffered actual or compensatory damages by way of attorney's fees in the sum of P3,000.00.

- That as a result of the wrongful attachment and the false statements made by the plaintiffs, under oath, in support of his Ex-Parte Petition for the Writ the herein defendants have suffered moral damages to the amount of P10,000.00.

- That the wrongful attachment against the properties and the sum of P13,849.88 had caused actual damages to the herein defendants, represented by the legal interest on such amount.

On May 9, 1953, plaintiff Lazatin died and on March 10, 1954, Gil Gotiangco was appointed and qualified as administrator of plaintiff's estate.

On the date set for hearing, the defendants herein were granted, a preliminary hearing on their special defenses (Sec. 5, Rule 8). The lower court on November 12, 1954, entered an order, dismissing the complaint on the ground that it was barred by a prior judgment and by the statute of limitations. At the same time, the Court set the case for hearing on defendants' counterclaim. On October 28, 1955, the trial court rendered judgment, ordering the estate of Lazatin to pay the defendants therein the following sums:—

"(1) P3,000.00 for the fees of Attorney Manuel O. Chan;

(2) P2,500.00 for moral damages to each of the defendants;

(3) Six percent (6%) interest on the amount of P13,849.88 from August 6, 1952 until said amount is actually delivered to and receipted by the defendants; and

(4) To pay the costs.

Judgment is also rendered against the Central Surety and Insurance Co., which is solidarily liable with the Estate of the deceased plaintiff Francisco L. Lazatin on its bond for the sum of P20,000.00, filed by said Company for the issuance of the writ of attachment for the amounts mentioned in Nos. (2) and (3) of the dispositive part of the decision".

Upon appellant's request, the appeal was certified by the Court of Appeals to this Court, as the issues involved therein are purely legal in character.

The law on damages is found on Title XVII of the Civil Code (Arts. 2195 to 2235). The rules governing damages laid down in other laws, and the principles of the general law on damages are adopted in so far as they are not inconsistent with the Code (Arts. 2196 and 2198). Article 2197 mentions the kind of damages recoverable, among which are (1) actual or compensatory and (2) moral. Article 2219 provides that moral damages may be recovered in the following and analogous cases * * * (8) malicious prosecution. There is an abundance of cases holding that the action to recover damages from the attachment plaintiff, for the wrongful issuance and levy of an attachment (malicious attachment) is identical or is analogous to the ordinary action for malicious prosecution (*Easten vs. Bank of Stockton*, 66 Cal. 123, 56 Am. Rep. 77, 4 Pac. 1106; *Robinson vs. Kellum* 6 Cal. 399; *Grant vs. Moore*, 29 Cal. 644; *King vs. Montgomery* 50 Cal. 115; *Gonzales vs. Cobliner* 68 Cal. 151, 8 Pac. 697; *Asevado vs. Orr*, 100 Cal. 293, 34 Pac. 777). It may logically be inferred, therefore, that in order that moral damages may be recovered in connection with the writ of attachment under consideration, malice is an essential ingredient thereof. In *Songco vs. Sellner*, 37 Phil., 254, where the evidence showed that defendant suffered damages to his credit, as a result of a writ of attachment wrongfully issued, the Court declared that such damages were remote and speculative and that there was no finding that the attachment was maliciously sued out. In *Aboitiz vs. Da Silva*, 45 Phil., 883, the Court refused to grant damages for loss of reputation by reason of an improper attachment, on the ground that there was no evidence from which malice on the part of the plaintiff or loss of credit to the defendant, may be inferred or presumed. In *Masterson vs. Smith Navigation*, 60 Phil., 366, damages to good name, allegedly suffered by the defendant as a result of a writ of attachment wrongfully issued, were disallowed on the ground that

such damages were very problematical. In American jurisdictions, where the principles of the general laws on damages in common law (adopted by Art. 2198 of the new Civil Code), are in force, only actual or compensatory damages are recoverable for wrongful but not malicious attachment. An allowance may be made for injury to feeling if the attachment was sued out maliciously and without probable cause; but in the absence of this element there can be no recovery. (6 C.J., 533-534; 541). "The authorities are quite uniform in holding that, in the absence of malice, injuries to credit, reputation and business, are too remote and speculative to be recovered" (Union Nat. Bank vs. Cross, 100 Wis. 174, 75 NW 992). Where there is no issue of malice, damages must be compensatory merely, and confined to the actual loss from deprivation of the property attached or injury to it, or in case of closing business, to the probable profits of the business, during the time of its stoppage (Holiday Bros. vs. Cohen 34 Ark. 707). All of which go to show that the attachment defendant is not entitled to moral damages, unless it is alleged and established that the writ was maliciously sued out.

This notwithstanding, the defendants-appellees invoke the following rule, in support of their thesis.

"SEC. 4. Bond required from plaintiff.—The party applying for the order must give a bond executed to the defendant in an amount to be fixed by the judge not exceeding the plaintiff's claim, that the plaintiff will pay all the costs which may be adjudged to the defendant and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff was not entitled thereto." (Rule 59, R.C.)

They claim that under the above section, malice and want of probable cause are not essential (II Moran's Rules of Court, 2nd Ed. pp. 19-20); that the language used therein is clear and its intent and purpose are obvious; its provision cannot be given a broader scope than what it imports: and the element of malice cannot be implied from the terms thereof. It is finally argued that as the attachment-plaintiff, according to the rule, should pay "all the damages" which the attachment defendant might sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff was not entitled thereto, the ruling of the trial court that the appellant should pay the appellees moral damages, is correct. We do not share this view. It should be observed that Sec. 4 of Rule 59, does not prescribe the remedies available to the attachment defendant in case of a wrongful attachment, but merely provides an action for recovery upon the bond, based on the undertaking therein made and not upon the liability arising from a tortious act, like the malicious suing out of an attachment. Under the first, where malice is not essential, the attachment defendant, is entitled to recover only the actual damages sustained by him, by reason of the attachment. Under the second, where the attachment is maliciously sued out, the damages recoverable may include a compensation for every injury to his credit, business or feeling (Tyler vs. Mahoney 168 NC 237, 84 SE 362; Pittsburg etc. 5 Wakefield etc. 135 NC 73, 47 SE 234). And considering the fact that the Rules of Court are of older vintage than the new Civil Code, the matter of damages in the said rules should be encompassed within the framework of the Civil Code (Art. 2196 Civil Code). It is quite true that said section 4 employs the expression "all damages", but this should be understood to refer to the damages resulting from the undertaking itself, the recovery of which is subject to "the principles of the general law on damages", earlier discussed. (Art. 2198, Civil Code, *supra*).

A cursory perusal of the decision would show that the trial court did not make any express ruling that the writ of attachment was maliciously sued out by the plaintiff or any finding of facts or circumstances from which it may be necessarily inferred that the attachment was thus obtained. The decision does not make any finding that the defendants-appellees did in fact suffer mental anguish or injury to their credit or reputation. The decision simply states: "Coming now to the moral damages which defendants have suffered consisting of mental anguish, serious anxiety and besmirched reputation, it is believed that being businessmen of good commercial standing and reputation, each of them should be awarded at least P2,500.00." Moreover, the dissolution of the writ was due to a technicality. No moral damages can be inferred from the mere fact that the redemption price to which defendants were entitled, had been retained by the provincial sheriff for a period of 38 days. The trial court held that the

present action was already investigated and adjudged in CA-G. R. No. 4533-R and the right of action was barred by the statute of limitations, and that since the writ of attachment was only a remedy adjunct to the main suit, plaintiff-appellant was not entitled to the writ. While the lower court declared that the defendants-appellees had an outstanding balance of P171,947.80 in the bank and that they were not disposing their property in fraud of creditors or of the plaintiff, as alleged in the petition for the issuance of the writ, still the said court did not make any finding that the said petition was maliciously sued out. We are, therefore, of the opinion that the defendants-appellees are not entitled to moral damages.

"In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: * * *

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff.

* * * * *

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered." (Art. 2208, Civil Code).

Defendants' counterclaim for the recovery of attorney's fees is based on paragraph 4 of the cited provision, for legal services rendered in defending the main suit. There is no showing in the decision appealed from that plaintiffs' action is "clearly unfounded". Plaintiffs-appellants' complaint was not dismissed because the facts alleged therein were found untrue, but on purely technical grounds the special defenses of prescription of the action and res adjudicata. While it may be hard to believe that plaintiff had labored under the impression that the matters involved in his complaint had not been adjudicated in the previous litigation between the same parties (Civil Case No. 213 CFI Manila), because plaintiff himself was a lawyer, such error of judgment on his part would not justify the inference that the action was "clearly unfounded". As aptly observed by appellants' counsel, defenses as the one interposed by appellee in their counterclaim "raise questions of law not always of obvious and easy solution". While it may appear also that the move was a scheme to prevent the defendants-appellees from reaping the benefits of the final judgment rendered in their favor in said case CA-G. R. No. 5433-R, still one cannot nullify, without cause, the good and honest motive, which should be presumed, when a litigant goes to court for the determination of his alleged right.

Withal, and considering the fact that defendants-appellees were drawn into this litigation by plaintiff-appellant and were compelled to hire an attorney to protect and defend them, and taking into account the work done by said attorney, as reflected in the record, throughout the proceedings, we deem it just and equitable to award attorney's fees for defendants-appellees. The sum of P3,000.00 adjudicated by the trial court, is reasonable under the circumstances (par. 11, Art. 2208, Civil Code).

It appears that plaintiffs-appellants have abandoned their appeal with respect to the payment of 6% interest in the amount of P13,849.88.

Modified, with the elimination of moral damages, the decision appealed from is affirmed in all other respects. Costs against plaintiff-appellant.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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