

EDILIO L. BALUYOT, PETITIONERS, VS. COURT OF APPEALS, ET AL., RESPONDENTS.

G. R. No. 13273. December 29, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Simeon Salvador filed on May 18, 1954 an action in the Court of First Instance of Rizal to recover from Oscar Pajares, among others, the sum of P2,500.00, plus interest, representing the value of extra labor and materials Salvador had used in the construction of the house of Pajares. Salvador claimed that he had to furnish extra labor and materials because of the changes and alterations in the original plan and specifications which Pajares ordered in the course of construction.

Pajares admitted that the construction had deviated from the original plan and specifications but claimed that the changes were effected at the instance of Edilio L. Baluyot whom defendant claimed to be the real contractor. Alleging that Pajares could not demand full remedy from Baluyot unless joined in the case, Pajares filed a third party complaint against Baluyot, which was in due time admitted over the opposition of plaintiff Salvador.

On August 5, 1955, the trial court rendered decision the dispositive part of which reads:

"IN VIEW THEREOF, the Court renders judgment one in favor of the defendant and third party plaintiff, Oscar Pajares as against the plaintiff Simeon Salvador and the third-party defendant, Edilio L. Baluyot, for them to pay the former, jointly and severally, the following amounts: P700.00 representing Pajares' expenses on the cement foundation; P1,390.00 as reasonable expenses to complete the construction; P2,000.00 for attorney's fees of Atty. Victoriano Yamson; P5.00 daily for failure to finish the house within the required period of time from July 28, 1953, until the house is completed and a building certificate is issued by the City Engineer's office of Quezon City; and P2,000.00 for both moral and exemplary damages. The complaint and the counterclaim of plaintiff and third-party defendant, respectively, are hereby ordered. DISMISSED, with costs against both plaintiff and third-party defendant."

On appeal, the Court of Appeals affirmed in toto the decision of the trial court. Baluyot filed a petition for review which was favorably entertained by this Court attributing several errors to the decision of the Court of Appeals.

Petitioner assigns several errors as committed by the Court of Appeals but those which deserve consideration for the purposes of this appeal may be reduced to the following: (a) in holding that the admission of the third party complaint was proper; (b) in not holding that petitioner was unduly deprived of his full day in court due to the unwarranted and improper admission of the third party complaint; (c) in sustaining the trial court's judgment ordering petitioner to pay respondent the sum of P700.00 representing Pajares' alleged expenses on the cement foundation and the sum of P1,390.00 as reasonable expenses to complete the construction; and (d) in sustaining the trial court's award to respondent of the attorney's fee in the sum of P2,000.00, exemplary and moral damages in the sum of P2,000.00, and the penalty of P5.00 a day for the contractor's failure to complete the job within the stipulated period of time.

The first error cannot be entertained. When Simeon Salvador filed a complaint against Oscar Pajares to recover certain amount allegedly for extra labor and materials used by him in the construction of Pajares' house and Pajares alleged in his answer that the real contractor was Baluyot and not Salvador who merely acted as his dummy or alter ego, Pajares found it necessary to include Baluyot as party defendant in order that he could press for trial all the claims he may have against both Salvador and Baluyot since Salvador deemed it wise to bring the action in his own name without including Baluyot as co-plaintiff. Since there was only one contract involving the construction of Pajares' house, it is evident that whatever claim Salvador may have against Pajares or the latter against Baluyot will have to necessarily refer to the same contract which makes it convenient that it be threshed out in one and the same case. Pajares' moved to have Baluyot brought into the case as party defendant was therefore proper for its main purpose is to avoid multiplicity of actions. Consequently, the trial court did not but act correctly when it admitted the third party complaint filed by Pajares for only in that way could all the questions pertaining to the construction of Pajares' house be threshed out jointly and not separately.

While under Section 1, Rule 12, of the Rules of Court a defendant who has a claim against a person not party to an action which has relation to plaintiff's claim may file with leave of court against such person a pleading called a third party complaint, and that the test for determining the propriety of the admission of a third party complaint is that there must be a showing that such third party is or might be liable to the defendant or to the plaintiff for all or part of the plaintiff's claim against the defendant, otherwise the remedy is not through a third party complaint but to file a separate and independent action, this test is not exclusive when its effect would result in multiplicity of actions. Cases there are where even if the action that may be taken against a third party defendant is unrelated to plaintiff's claim against the third party plaintiff or defendant, if it appears that the third party is a necessary party to the case or one without whose intervention the real issue involved cannot be fully determined, a third party complaint has been allowed. As a matter of fact, our rules require that parties in interest without whom no final determination can be had in an action be joined either as plaintiffs or defendants in order that all the issues pertaining to the controversy may be threshed out in a single action with the end in view of avoiding multiplicity of suits (Sections 7 and 8, Rule 3, of the Rules of Court). And in line with this premordial purpose, former Chief Justice Moran cites many instances where a third party complaint was allowed against the third party defendant and the original plaintiff even if the third party defendant's liability is based on a contract unrelated to plaintiff's claim, for it has been aptly said that the question whether a third party complaint should be admitted or not is a matter that rests within the sound discretion of the court (See, I Moran, Comments on the Rules of Court, 1957 ed., pp. 192-197). We therefore find no error either on the part of the trial court or on the part of the Court of Appeals in bringing Baluyot as party to this case it appearing that he is the real contractor with whom Pajares dealt with regard to the construction of his house.

There is also no merit in petitioner's contention that he was deprived of his day in court during the trial of this case on the merits before the trial court. The incident invoked arose as follows: When Pa j ares' counsel was cross-examining Salvador in connection with his direct examination, his questions were objected to by Baluyot's counsel to which Pa j ares' counsel objected and the objection sustained by the trial court. Such ruling which prevented Baluyot's counsel from objecting to the questions propounded by Pa j ares' counsel is now regarded by petitioner as having the effect of depriving him of his day in court. In our opinion, the ruling was not entirely improper considering that it was the turn of Salvador to present his evidence against defendant Pa j ares and in line with the procedure that should be followed in the trial of a case, it was Salvador's counsel who was called upon to object if he so desired to the questions of Pa j ares' counsel although Baluyot's counsel may also intervene if so allowed by the court in the use of its discretion, but such ruling cannot be considered as having impaired the right of a party to his day in court. Much less can be said with regard to Baluyot as a litigant because the record shows that when Pajares offered his evidence, both oral and documentary as against Baluyot, the latter or his

counsel, was given the widest latitude in formulating objections to questions propounded to him during his examination and cross-examination. The claim of counsel of Baluyot that he was deprived of his day in court is therefore untenable.

With regard to the claim that the Court of Appeals erred in sustaining the trial court's judgment ordering petitioner to pay respondent the sum of P700.00 representing Pajares alleged expenses on the cement foundation and the sum of P1,390.00 as reasonable expenses to complete the construction, suffice it to quote what the Court of Appeals says on this point:

"In going over the evidence of record, we entertain no doubt that third party plaintiff Oscar Pajares is entitled to indemnity or some sort of relief from third party defendant Edilio L. Baluyot who was the real contractor of the house of the former. It had been determined upon investigation conducted by Benjamin L. Abrantes, building inspector of the office of the city engineer of Quezon City, on request of plaintiff, that "the quality of workmanship is poor in general judging by standard construction methods and engineering practice. Connections and joints are not properly constructed. Some bolts connecting the posts to the straps have not been tightened in place with nuts, windows cannot be closed with ease and falsity because sashes are warped, indicating the use of unseasoned lumber. Glazed tiles were used for the flooring of the toilet and bath, which is unusual because unglazed type is more proper. Cabinets are unfinished and the finishing of the building proper is roughly done.' And it has further been determined by the commissioner who heard the parties that—

"To complete the construction of the aforesaid house of Pajares, the following amounts have to be spent: P30.00 for the socale, it being only 80% complete; P100.00 to smooth the exposed woodwork, 50 work, 50% of the same not being smoothed; P200.00 to put the posts on bearing and the framings in order; P500.00 to replace the 2" x 4" joints with those 2" x 5" as called for in the plan (Exh. 41-3—Pajares); P50.00 for the three-quarter moulding on the partitions: P30.00 to repair the sagging ceiling; P100.00 to replace twisted windows and doors; P80.00 to repair leading roof and gutters; and P300.00 to finish the painting of the house which is only half-done. All the foregoing expenses total P1,390.00 to which Pajares is entitled against Baluyot."

Since the questions involved in this assignment of error are of fact which involve an evaluation of the evidence, they cannot be entertained by this Court in this appeal. The trial court's award of attorney's fee in the sum of P2,000.00 and the penalty of P5.00 a day for the contractor's failure to complete the job within the stipulated period, we find correct. Because of petitioner's failure to complete the job he bound himself to do through Salvador without any justifiable reason, Pajares was forced to bring this action and engage the services of a lawyer and it is but fair that he be indemnified for such expenses. For the same reason, the penalty of P5.00 a day is proper because the same is expressly stipulated in the contract.

We believe, however, that the award regarding exemplary and moral damages in the sum of P2,000.00 is unjustified. There is no clear evidence to show that petitioner has acted in bad faith or in "any wanton, fraudulent, reckless, oppressive or malevolent manner" (Articles 2220, 2232, new Civil Code). For petitioner's failure to do his job either personally or through his alter ego, the award for attorney's fees and for the penalty agreed upon in the contract is more than sufficient as a retribution. In this respect, the decision appealed from should be modified.

Wherefore, with the modification that petitioner should not be made to pay moral and exemplary damages in the amount of P2,000.00, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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