ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS AND MONARK EQUIPMENT CORPORATION, RESPONDENTS.

G.R. NO. 160242. May 17, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On March 13, 2001, Monark Equipment Corporation (MEC) filed a Complaint[1] for a sum of money with damages against the Asian Construction and Development Corporation (ACDC) with the Regional Trial Court (RTC) of Quezon City. The complaint alleged the following: ACDC leased Caterpillar generator sets and Amida mobile floodlighting systems from MEC during the period of March 13 to July 15, 1998 but failed, despite demands, to pay the rentals therefor in the total amount of P4,313,935.00; from July 14 to August 25, 1998, various equipments from MEC were, likewise, leased by ACDC for the latter's power plant in Mauban, Quezon, and that there was still a balance of P456,666.67; and ACDC also purchased and took custody of various equipment parts from MEC for the agreed price of P237,336.20 which, despite demands, ACDC failed to pay.

MEC prayed that judgment be rendered in its favor, thus:

> - Ordering defendant to pay the plaintiff the total amount of FIVE MILLION SEVENTY-ONE THOUSAND THREE HUNDRED THIRTY-FIVE [PESOS] & 86/100 (P5,071,335.86);
>
> - Ordering defendant to pay the plaintiff legal interest of 12% per annum on the principal obligations in the total amount of FIVE MILLION SEVENTY-ONE THOUSAND THREE HUNDRED THIRTY-FIVE [PESOS] & 86/100 (P5,071,335.86) computed from the date the obligations became due until fully paid;
>
> - Ordering defendant to pay attorney's fees in the amount equivalent to 15% of the amount of claim;
>
> - Ordering defendant to pay all costs of litigation.
>
> Plaintiff prays for such other reliefs as may be just and equitable under the premises.[2]

ACDC filed a motion to file and admit answer with third-party complaint against Becthel Overseas Corporation (Becthel). In its answer, ACDC admitted its indebtedness to MEC in the amount of P5,071,335.86 but alleged the following special and affirmative defenses:

> - Defendant has incurred an obligation with plaintiff, in the amount of P5,071,335.86. But third-party defendant fails and refuses to pay its overdue obligation in connection with the leased equipment used by defendant to comply with its contracted services;
>
> - The equipment covered by the lease were all used in the construction project of Becthel in Mauban, Quezon, and Expo in Pampanga and defendant was not yet paid of its services that resulted to the non-payment of rentals on the leased equipment.[3]

And by way of third-party complaint against Becthel as third-party defendant, ACDC alleged that:

- Third-party plaintiff repleads the foregoing allegations in the preceding paragraphs as may be material and pertinent hereto;

- Third-party BECTHEL OVERSEAS CORPORATION (herein called "Becthel") is a corporation duly organized and existing under the laws of the United States of America but may be served with summons at Barangay Cagsiay I, Mauban, Quezon 4330, Philippines;

- Third-party defendant Becthel contracted the services of third-party plaintiff to do construction work at its Mauban, Quezon project using the leased equipment of plaintiff Monark;

- With the contracted work, third-party plaintiff rented the equipment of the plaintiff Monark;

- Third-party plaintiff rendered and complied with its contracted works with third-party defendant using plaintiff's (Monark) rented equipment. But, third-party defendant BECTHEL did not pay for the services of third-party plaintiff ASIAKONSTRUKT that resulted to the non-payment of plaintiff Monark's claim;

- 12. Despite repeated demands, third-party defendant failed and refused to pay its overdue obligation to third-party plaintiff ASIAKONSTRUKT, and third-party defendant needs to be impleaded in this case for contribution, indemnity, subrogation or other reliefs to off-set or to pay the amount of money claim of plaintiff Monark on the leased equipment used in the Mauban, Quezon project in the total amount of P456,666.67;

- By reason thereof, third-party plaintiff was compelled to prosecute its claim against third-party defendant and hired the services of undersigned counsel for an attorney's fees of P500,000.00.[4]

ACDC prayed that judgment be rendered in its favor dismissing the complaint and ordering the third-party defendant (Becthel) to pay P456,666.67 plus interest thereon and attorney's fees.[5]

MEC opposed the motion of ACDC to file a third-party complaint against Becthel on the ground that the defendant had already admitted its principal obligation to MEC in the amount of P5,071,335.86; the transaction between it and ACDC, on the one hand, and between ACDC and Becthel, on the other, were independent transactions. Furthermore, the allowance of the third-party complaint would result in undue delays in the disposition of the case.[6]

MEC then filed a motion for summary judgment, alleging therein that there was no genuine issue as to the obligation of ACDC to MEC in the total amount of P5,071,335.86, the only issue for the trial court's resolution being the amount of attorney's fees and costs of litigation.[7]

ACDC opposed the motion for summary judgment, alleging that there was a genuine issue with respect to the amount of P5,071,335.86 being claimed by MEC, and that it had a third-party complaint against Becthel in connection with the reliefs sought against it which had to be litigated.[8]

In its reply, MEC alleged that the demand of ACDC in its special and affirmative defenses partook of the nature of a negative pregnant, and that there was a need for a hearing on its claim for damages.

On August 2, 2001, the trial court issued a Resolution denying the motion of ACDC for leave to file a third-party complaint and granting the motion of MEC, which the trial court considered as a motion for a judgment on the pleadings. The fallo of the resolution reads:

ACCORDINGLY, this Court finds defendant Asian Construction and Development Corporation liable to pay plaintiff Monark Equipment Corporation and is hereby ordered to pay plaintiff the amount of FIVE MILLION SEVENTY-ONE THOUSAND AND THREE HUNDRED THIRTY-FIVE & 86/100 PESOS (P5,071,335.86) plus 12% interest from the filing of the complaint until fully paid.

SO ORDERED.[9]

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ACDC appealed the resolution to the Court of Appeals (CA), alleging that –

> - THE LOWER COURT ERRED IN DENYING THE MOTION TO FILE AND ADMIT ANSWER WITH THIRD-PARTY COMPLAINT;
>
> - THE LOWER COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT;
>
> - THE LOWER COURT ERRED WHEN IT DENIED THE THIRD-PARTY COMPLAINT AND ORDERED DEFENDANT TO PAY THE AMOUNT OF P5,071,335.86 PLUS INTEREST OF 12% PER ANNUM.[10]

On July 18, 2001, the CA rendered judgment dismissing the appeal and affirming the assailed decision. The appellate court ruled that since MEC had prayed for judgment on the pleadings, it thereby waived its claim for damages other than the amount of P5,071,335.86; hence, there was no longer a genuine issue to be resolved by the court which necessitated trial. The appellate court sustained the disallowance of the third-party complaint of ACDC against Becthel on the ground that the transaction between the said parties did not arise out of the same transaction on which MEC's claim was based.

Its motion for reconsideration of the decision having been denied, ACDC, now the petitioner, filed the present petition for review on certiorari, and raises the following issues:

> - WHETHER OR NOT A THIRD-PARTY COMPLAINT IS PROPER; AND
>
> - WHETHER OR NOT JUDGMENT ON THE PLEADINGS IS PROPER.[11]

Citing the rulings of this Court in Allied Banking Corporation v. Court of Appeals[12] and British Airways v. Court of Appeals,[13] the petitioner avers that the CA erred in ruling that in denying its motion for leave to file a third-party complaint, the RTC acted in accordance with the Rules of Court and case law. The petitioner maintains that it raised genuine issues in its answer; hence, it was improper for the trial court to render judgment on the pleadings:

> With due respect, the judgment on the pleadings affirmed by the Court of Appeals is not, likewise, proper considering that the Answer with Third-Party Complaint, although it admitted the obligation to respondent, tendered an issue of whether the respondent's claim is connected with the third-party claim.
>
> As alleged in the Answer with Third-Party Complaint, it is admitted then by respondent, for purposes of judgment on the pleadings, that failure to pay respondent was in connection of Becthel Overseas Corporation's failure to pay its obligation to petitioner and that the equipment leased was used in connection with the Becthel Overseas Corporation project.
>
> This tendered issue could not just be disregarded in the light of the third-party complaint filed by herein petitioner and third-party plaintiff which, as argued in the first discussion/argument, is proper and should have been given due course.[14]

The petition is denied for lack of merit.

Section 11, Rule 6 of the Rules of Court provides:

> Sec. 11. Third (fourth, etc.)-party complaint. – A third (fourth, etc.) – party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.) – party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

Furthermore, Section 1, Rule 34 of the Rules of Court provides that the Court may render judgment on the pleadings, as follows:

> Section 1. Judgment on the pleadings. – Where an answer fails to tender an issue, or, otherwise, admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

The purpose of Section 11, Rule 6 of the Rules of Court is to permit a defendant to assert an independent claim against a third-party which he, otherwise, would assert in another action, thus preventing multiplicity of suits. All the rights of the parties concerned would then be adjudicated in one proceeding. This is a rule of procedure and does not create a substantial right. Neither does it abridge, enlarge, or nullify the substantial rights of any litigant.[15] This right to file a third-party complaint against a third-party rests in the discretion of the trial court. The third-party complaint is actually independent of, separate and distinct from the plaintiff's complaint, such that were it not for the rule, it would have to be filed separately from the original complaint.[16]

A prerequisite to the exercise of such right is that some substantive basis for a third-party claim be found to exist, whether the basis be one of indemnity, subrogation, contribution or other substantive right.[17] The bringing of a third-party defendant is proper if he would be liable to the plaintiff or to the defendant or both for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction.[18] The defendant may implead another as third-party defendant (a) on an allegation of liability of the latter to the defendant for contribution, indemnity, subrogation or any other relief; (b) on the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant.[19] There must be a causal connection between the claim of the plaintiff in his complaint and a claim for contribution, indemnity or other relief of the defendant against the third-party defendant. In Capayas v. Court of First Instance,[20] the Court made out the following tests: (1) whether it arises out of the same transaction on which the plaintiff's claim is based; or whether the third-party claim, although arising out of another or different contract or transaction, is connected with the plaintiff's claim; (2) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiff's claim against the original defendant, although the third-party defendant's liability arises out of another transaction; and (3) whether the third-party defendant may assert any defenses which the third-party plaintiff has or may have to the plaintiff's claim.

The third-party complaint does not have to show with certainty that there will be recovery against the third-party defendant, and it is sufficient that pleadings show possibility of recovery.[21] In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined.[22] A third-party complaint must allege facts which prima facie show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.[23]

It bears stressing that common liability is the very essence for contribution. Contribution is a payment made by each, or by any of several having a common liability of his share in the damage suffered or in the money necessarily paid by one of the parties in behalf of the other or others.[24] The rule on common liability is fundamental in the action for contribution.[25] The test to determine whether the claim for indemnity in a third-party complaint is, whether it arises out of the same transaction on which the plaintiff's claim is based, or the third-party plaintiff's claim, although arising out of another or different contract or transaction, is connected with the plaintiff's claim.[26]

In this case, the claims of the respondent, as plaintiff in the RTC, against the petitioner as defendant therein, arose out of the contracts of lease and sale; such transactions are different and separate from those between Becthel and the petitioner as third-party plaintiff for the construction of the latter's project in Mauban, Quezon, where the equipment leased from the respondent was used by the petitioner. The controversy between the respondent and

the petitioner, on one hand, and that between the petitioner and Becthel, on the other, are thus entirely distinct from each other. There is no showing in the proposed third-party complaint that the respondent knew or approved the use of the leased equipment by the petitioner for the said project in Quezon. Becthel cannot invoke any defense the petitioner had or may have against the claims of the respondent in its complaint, because the petitioner admitted its liabilities to the respondent for the amount of P5,075,335.86. The barefaced fact that the petitioner used the equipment it leased from the respondent in connection with its project with Becthel does not provide a substantive basis for the filing of a third-party complaint against the latter. There is no causal connection between the claim of the respondent for the rental and the balance of the purchase price of the equipment and parts sold and leased to the petitioner, and the failure of Becthel to pay the balance of its account to the petitioner after the completion of the project in Quezon.[27]

We note that in its third-party complaint, the petitioner alleged that Becthel should be ordered to pay the balance of its account of P456,666.67, so that the petitioner could pay the same to the respondent. However, contrary to its earlier plea for the admission of its third-party complaint against Becthel, the petitioner also sought the dismissal of the respondent's complaint. The amount of P456,666.67 it sought to collect from Becthel would not be remitted to the respondent after all.

The rulings of this Court in Allied Banking Corporation and British Airways are not applicable in this case since the factual backdrops in the said cases are different.

In Allied Banking Corporation, Joselito Yujuico obtained a loan from General Bank and Trust Company. The Central Bank of the Philippines ordered the liquidation of the Bank. In a Memorandum Agreement between the liquidation of the Bank and Allied Banking Corporation, the latter acquired the receivables from Yujuico. Allied Banking Corporation then sued Yujuico for the collection of his loan, and the latter filed a third-party complaint against the Central Bank, alleging that by reason of its tortious interference with the affairs of the General Bank and Trust Company, he was prevented from performing his obligation under the loan. This Court allowed the third-party complaint based on the claim of the defendant therein, thus:

> ... In the words of private respondent, he "[s]eeks to transfer liability for the default imputed against him by the petitioner to the proposed third-party defendants because of their tortious acts which prevented him from performing his obligations." Thus, if at the outset the issue appeared to be a simple maker's liability on a promissory note, it became complex by the rendition of the aforestated decision.[28]

In British Airways, the Court allowed the third-party complaint of British Airways against its agent, the Philippine Airlines, on the plaintiff's complaint regarding his luggage, considering that a contract of carriage was involved. The Court ruled, thus:

> Undeniably, for the loss of his luggage, Mahtani is entitled to damages from BA, in view of their contract of carriage. Yet, BA adamantly disclaimed its liability and instead imputed it to PAL which the latter naturally denies. In other words, BA and PAL are blaming each other for the incident.
>
> In resolving this issue, it is worth observing that the contract of air transportation was exclusively between Mahtani and BA, the latter merely endorsing the Manila to Hongkong leg of the former's journey to PAL, as its subcontractor or agent. In fact, the fourth paragraph of the "Conditions of Contracts" of the ticket issued by BA to Mahtani confirms that the contract was one of continuous air transportation from Manila to Bombay.
> "4. xxx carriage to be performed hereunder by several successive carriers is regarded as a single operation."

Prescinding from the above discussion, it is undisputed that PAL, in transporting Mahtani from Manila to Hongkong acted as the agent of BA.

Parenthetically, the Court of Appeals should have been cognizant of the well-settled rule that an agent is also

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responsible for any negligence in the performance of its function and is liable for damages which the principal may suffer by reason of its negligent act. Hence, the Court of Appeals erred when it opined that BA, being the principal, had no cause of action against PAL, its agent or sub-contractor.

Also, it is worth mentioning that both BA and PAL are members of the International Air Transport Association (IATA), wherein member airlines are regarded as agents of each other in the issuance of the tickets and other matters pertaining to their relationship. Therefore, in the instant case, the contractual relationship between BA and PAL is one of agency, the former being the principal, since it was the one which issued the confirmed ticket, and the latter the agent.[29]

It goes without saying that the denial of the petitioner's motion with leave to file a third-party complaint against Becthel is without prejudice to its right to file a separate complaint against the latter.

Considering that the petitioner admitted its liability for the principal claim of the respondent in its Answer with Third-Party Complaint, the trial court did not err in rendering judgment on the pleadings against it.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 26-30.

[2] Rollo, p. 29.

[3] id. at 44.

[4] Rollo, p. 45.

[5] Ibid.

[6] Records, pp. 39-40.

[7] id. at 34.

[8] id. at 36-37.

[9] Records, p. 48.

[10] CA Rollo, p. 15.

[11] Rollo, p. 12.

[12] G.R. No. 85868, 13 October 1989, 178 SCRA 526.

[13] G.R. No. 121824, 29 January 1998, 285 SCRA 450.

[14] Rollo, p. 16.

[15] Koenigs v. Travis, 75 N.W.2d 478 (1956).

[16] Allied Banking Corporation v. Court of Appeals, supra.

[17] Allied Banking Corporation v. Court of Appeals, supra.

[18] Capayas v. Court of First Instance of Albay, 77 Phil. 181 (1946).

[19] Atlantic Coast Line R. Company v. United States Fidelity & Guaranty Co., 52 F.Supp. 177 (1943).

[20] Supra.

[21] Blaszak v. Union Tank Car. Co., 184 N.E.2d 808 (1962).

[22] Goswami v. H & D Construction Company, 355 N.Y.S.2d 922 (1974).

[23] Capayas v. Court of First Instance of Albay, supra.

[24] Koenigs v. Travis, supra.

[25] United States v. Consolidated Elevator Company, 141 F.2d 791 (1944).

[26] Capayas v. Court of First Instance of Albay, supra.

[27] See Bourree v. A. K. Roy, Inc., 94 So.2d 13 (1957).

[28] Allied Banking Corporation v. Court of Appeals, supra.

[29] British Airways v. Court of Appeals, supra.

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