

**VICTORIANO BORLASA ET AL., PLAINTIFFS AND APPELLANTS, VS.
VICENTE POLISTICO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 22909. January 28, 1925*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Laguna on July 25, 1917, by Victoriano Borlasa and others against Vicente Polistico and others, chiefly for the purpose of securing the dissolution of a voluntary association named Turnuhan Polistico & Co., and to compel the defendants to account for and surrender the money and property of the association in order that its affairs may be liquidated and its assets applied according to law. The trial judge having sustained a demurrer for defect of parties and the plaintiffs electing not to amend, the cause was dismissed, and from this order an appeal was taken by the plaintiffs to this court.

The material allegations of the complaint, so far as affects the present appeal, are to the following effect: In the month of April, 1911, the plaintiffs and defendants, together with several hundred other persons, formed an association under the name of Turnuhan Polistico & Co. Vicente Polistico, the principal defendant herein, was elected president and treasurer of the association, and his house in Lilio, Laguna, was made its principal place of business. The life of the association was fixed at fifteen years, and under the by-laws each member obligated himself to pay to Vicente Polistico, as president-treasurer, before 3 o'clock in the afternoon of every Sunday the sum of 50 centavos, except that on every fifth Sunday the amount was P1, if the president elected to call this amount, as he always did. It is alleged that from April, 1911, until April, 1917, the sums of money mentioned above were paid weekly by all of the members of the society with few irregularities. The inducement to these weekly contributions was found in provisions of the by-laws to the effect that a lottery should be conducted weekly among the members of the association and that the successful member should be paid the amount collected each week, from which, however, the president-treasurer of the society was to receive the sum of P200, to be held by him as funds of the society.

It is further alleged that by virtue of these weekly lotteries Vicente Polistico, as president-treasurer of the association, received sums of money amounting to P74,000, more or less, in the period stated, which he still retains in his power or has applied to the purchase of real property largely in his own name and partly in the names of others. The defendants in the complaint are the members of the board of directors of the association, including Vicente Polistico, as president-treasurer, Alfonso Noble, secretary, Felix Garcia and Vivencio Zulaybar, as promoters (propagandistas), and Afroniano de la Peña and Tomas Orenca, as members (vocales) of the board.

In an amended answer the defendants raised the question of lack of parties and set out a list of some hundreds of persons whom they alleged should be brought in as parties defendant on the ground, among others, that they were in default in the payment of their dues to the association. On November 28, 1922, the court made an order requiring the plaintiffs to amend their complaint within a stated period so as to include all of the members of the Turnuhan Polistico & Co. either as plaintiffs or defendants. The plaintiffs excepted to this order, but acquiesced to the extent of amending their complaint by adding as additional parties plaintiff some hundreds of persons,

residents of Lilio, said to be members of the association and desirous of being joined as plaintiffs. Some of these new plaintiffs had not been named in the list submitted by the defendants with their amended answer; and on the other hand many names in said list were here omitted, it being claimed by the plaintiffs that the persons omitted were not residents of Lilio but residents of other places and that their relation to the society, so far as the plaintiffs could discover, was fictitious. The defendants demurred to the amended complaint on the ground that it showed on its face a lack of necessary parties and this demurrer was sustained, with the ultimate result of, the dismissal of the action, as stated in the first paragraph of this opinion.

The trial judge appears to have supposed that all the members of the Turnuhan Polistico & Co. should be brought in either plaintiffs or defendants. This notion is entirely mistaken. The situation involved is precisely the one contemplated in section 118 of the Code of Civil Procedure, where one or more may sue for the benefit of all. It is evident from the showing made in the complaint, and from the proceedings in the court below, that it would be impossible to make all of the persons in interest parties to the case and to require all of the members of the association to be joined as parties would be tantamount to a denial of justice.

The general rule with reference to the making of parties in a civil action requires, of course, the joinder of all necessary parties wherever possible, and the joinder of all indispensable parties under any and all conditions, the presence of those latter being a sine qua non of the exercise of judicial power. The class suit contemplates an exceptional situation where there are numerous persons all in the same plight and all together constituting a constituency whose presence in the litigation is absolutely indispensable to the administration of justice. Here the strict application of the rule as to indispensable parties would require that each and every individual in the class should be present. But at this point the practice is so far relaxed as to permit the suit to proceed, when the class is sufficiently represented to enable the court to deal properly and justly with that interest and with all other interests involved in the suit. In the class suit, then, representation of a class interest which will be affected by the judgment is indispensable; but it is not indispensable to make each member of the class an actual party.

A common illustration in American procedure of the situation justifying a class suit is that presented by the creditors' bill, which is filed by one party interested in the estate of an insolvent, to secure the distribution of the assets distributable among all the creditors. In such cases the common practice is for one creditor to sue as plaintiff in behalf of himself and other creditors. (*Johnson vs. Waters*, 111 U. S., 640; 28 Law. ed., 547.) Another illustration is found in the case of *Smith vs. Swormstedt* (16 How., 288; 14 Law. ed., 942), where a limited number of individuals interested in a trust for the benefit of superannuated preachers were permitted to maintain an action in their own names and as representatives of all other persons in the same right.

His Honor, the trial judge, in sustaining this demurrer was possibly influenced to some extent by the case of *Rallonza vs. Evangelista* (15 Phil., 531) ; but we do not consider that case controlling, inasmuch as that was an action for the recovery of real property and the different parties in interest had determinable, though undivided interests, in the property there in question. In the present case, the controversy involves an indivisible right affecting many individuals whose particular interest is of indeterminate extent and is incapable of separation.

The addition of some hundreds of persons to the number of the plaintiffs, made in the amendment to the complaint of December 13, 1922, was unnecessary, and as the presence of so many parties is bound to prove embarrassing to the litigation from death or removal, it is suggested that upon the return of this record to the lower court for further proceedings, the plaintiff shall again amend their complaint by dismissing as to unnecessary parties plaintiffs, but retaining a sufficient number of responsible persons to secure liability for costs and fairly to represent all the members of the association.

There is another feature of the complaint which makes a slight amendment desirable, which is, that the complaint

should be made to show on its face that the action is intended to be litigated as a class suit. We accordingly recommend that the plaintiffs further amend by adding after the names of the parties plaintiffs the words, "in their own behalf and in behalf of other members of Turnuhan Polistico & Co."

The order appealed from is reversed, the demurrer of the defendants based upon supposed lack of parties is overruled, and the defendants are required to answer to the amended complaint within the time allowed by law and the rules of the court. The costs of this appeal will be paid by the defendants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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