

OTTO GMUR, INC., PETITIONER, VS. EULOGIO P. REVILLA, JUDGE OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.*G. R. No. 34782. February 13, 1931*

Ponente: STREET, J.

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We have before us in these cases two separate applications for the writ of mandamus to compel the respondent judge of the Court of First Instance of Manila to permit the petitioners, Otto Gmur, Inc., and F. E. Zuellig, Inc., to intervene in certain cases now in their final stages in the Court of First Instance of Manila, for the purpose of being heard upon the question of the fees earned by the respondent Jose P. Laurel, as attorney, in said cases. The two applications are now before us for resolution upon the petitions and answers of the several respondents, with the corresponding exhibits.

The facts are fully stated in the dissenting opinion; and the cases involve in the main the simple question of the right of a person who has acquired the subject of litigation prior to the rendition of the judgment to intervene for the purpose of being heard in the supplemental proceedings for fixing the fees of the attorneys for the successful plaintiffs. The pertinent facts are briefly these: After Lim Cuan Sy & Co. had taken out several policies of insurance on a certain stock of goods in different insurance companies, a fire occurred which destroyed the insured merchandise. The insurance companies concerned refused to pay the policies on the ground of fraud on the part of the insured in submitting its claims of loss, whereupon the insured instituted six separate actions to recover upon as many different policies, and inasmuch as the issues in all the actions were identical, only one of the cases was tried, while the others were left pending under a stipulation that these actions should be disposed of in the end in conformity with the final judgment entered in the litigated case. The case thus tried was fought to a finish in the Supreme Court, where the judgment of the Court of First Instance favorable to the plaintiff was finally affirmed on November 13, 1930.[1] At the conclusion of this litigation the attorney for the plaintiff filed a motion in the Supreme Court, asking that his fees as attorney in the case be noted as a lien of record. This motion was granted. When the record was finally returned to the lower court, the money due to the insured under all of the policies was paid into court by the insurers; and in natural course it became incumbent upon the court to fix the fees of the attorney for the successful plaintiff. At this stage the present petitioners sought to intervene, and the respondent judge having refused to accede to the motion of intervention, the present applications for the writ of mandamus were filed in this court. The only other fact of importance pertinent to the case is that Lim Cuan Sy & Co. had, in the mean- while, been forced into insolvency, Trinidad Jurado Te Kim Juan having been appointed assignee.

In the light of these facts certain propositions present themselves to the mind which do not permit of the slightest doubt. The first is that one who renders service as an attorney in a litigated controversy is entitled to be paid for his services, in conformity with the stipulations of any reasonable written contract which he may make with his client. The second is that, where several actions are brought involving identical questions, and one case is litigated as a test case while the others are left pending under a stipulation making the issue in those actions dependent

upon the issue in the test case, the value in controversy in such actions should bear its appropriate proportion of the amount due as fees to the attorney. It is a matter of common observation that where large sums in litigation are made to depend upon the result of a test case, such case is contested with an energy and diligence proportionate to the total interests involved. In such case it would be highly unjust to compel the parties interested in the test case to bear the entire expense of the professional talent engaged in the contest; and it would be no less unjust to the attorneys conducting the litigation to limit their compensation to a reasonable proportion of the amount involved in the test case. A tax case or an insurance case based upon a single policy of insurance may involve enormous value to the person or persons interested in the litigation, and the professional labor expended upon it may, as in the test case lately before us in this insurance controversy, out of all proportion to the amount technically involved.

Upon the point whether the petitioners should be permitted to intervene in the matter of the determination of the fee to be paid to the attorney who successfully prosecuted the insurance claims in this case, it is clear upon fundamental principles governing procedure that such intervention should be permitted. In this connection it is enough to point out that when the insurance policies now held by these petitioners were assigned to them, they became the real parties in interest, and it is a statutory rule of procedure in this jurisdiction that litigation must be conducted in the name of the real party in interest. At common law, when an interest in litigation was transferred to a stranger, the action abated upon proof of this fact; and now certainly the assignee in such case has a right to be substituted in the place of the original plaintiff. In such a case as this, the assignee, upon making his rights known and applying to the court to be allowed to intervene or to be substituted, is not in the position of an intervenor as he usually presents himself in litigation between others. The true intervenor is a stranger to the litigation, and he usually asserts rights adverse to the actual litigants; while a person substituted in the place of the original parties by assignment to him of the interest in litigation is not adverse to his predecessor. He is a true successor in interest and as such has a right to be substituted in the record in place of the original party from whom or from which his interest is derived. Where such an assignment is asserted in court, there can be no question as to the right of intervention or substitution.

But even if the rights of the petitioners in this case should be considered in relation to the ordinary rules governing intervention by adverse parties, their right of intervention would be no less evident; for intervention is here absolutely necessary to protection of their supposed rights. It is true that, as a general rule, the right of a stranger to intervene in an action as an active litigant is dependent upon the discretion of the court, but it is an abuse of judicial discretion to refuse to allow the intervention when the intervenor shows an interest in the subject matter of the litigation of such character that intervention is necessary for the reasonable protection thereof. (Joaquin vs. Herrera, 37 Phil., 705.) In the case before us, if the fee of the attorney representing the insured were to be fixed at an excessive amount, the petitioners, if not permitted to controvert the right to such fee in the proceeding to determine the amount due to the attorney, would have no remedy whatever. But they are entitled to their day in court, and they have a right to be heard upon the question of the amount of the fee. And what could be more reasonable than to declare, as we now do, that the person who must pay a fee has a right to be heard upon the question of its amount?

It is suggested that the right to intervene should be denied to the petitioners because their motion to intervene was not presented until after the test case was decided and the money recovered upon the insurance policies had been paid into court. This suggestion loses its force when it is considered that an attorney's fee cannot be determined until after the main litigation has been decided and the subject of the recovery is at the disposition of the court. The issue over the attorney's fee only arises when something has been recovered from which the fee is to be paid.

For the reasons stated the writs of mandamus will be granted and the respondent judge is directed to permit the

petitioners, as assignees of the insurance policies held by them, to intervene, with leave to the assignee and Jose P. Laurel, as interested party, to answer the complaints in intervention.[1]

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

[1]Lim Cuan Sy vs. Northern Assurance Co., p. 248, ante.

[1] As modified by resolution of February 28, 1931. Avancena, C. J., Malcolm, and Villa-Real, JJ., dissented from order denying motion for reconsideration.

DISSENTING

MALCOLM, J., with whom concur AVANCEÑA, C. J., and VILLA-REAL, J., :

These are original actions commenced by F. E. Zuellig, Inc., and Otto Gmur, Inc., in which it is asked that writs of mandamus issue directed to the respondent judge, commanding him to permit F. E. Zuellig, Inc., to intervene in cases Nos. 31735 and 31745 of the Court of First Instance of Manila, and to permit Otto Gmur, Inc., to Intervene in cases Nos. 31775, 31785, and 31765 of the Court of First Instance of Manila. The defendants have interposed various special defenses.

The material facts do not appear to be in dispute, and may accordingly be briefly stated as follows: In November, 1926, Lim Cuan Sy & Co., doing business in the City of Manila under the name of Lim Cuan Sy, took out six insurance policies in the aggregate sum of P70,000, covering its stock of merchandise at No. 62 Calle Urbiztondo, Manila. On December 26, 1926, while the policies were in full force and effect, the merchandise covered by the policies was destroyed by fire. Thereafter, six civil actions, under the Nos. 31715, 31735, 31745, 31765, 31775, and 31785, were begun in the Court of First Instance of Manila against the insurance companies, to recover the loss suffered under the policies of insurance. On September 28, 1927, the parties to the actions, through their respective attorneys, entered into and filed in the record of cases Nos. 31735, 31745, 31765, 31775, and 31785, the following stipulation:

"It is hereby stipulated and agreed that all proceedings in the above entitled action shall be suspended until the final determination of the case entitled 'Lim Cuan Sy, plaintiff, vs. The Northern Assurance Company, Limited, defendant,' civil case No. 31715 now pending in the Court of First Instance of Manila, and that the decision of the present case shall abide the result of the final decision in said civil case No. 31715 of the Court of First Instance of Manila, that is to say, if final judgment be rendered in said civil case No. 31715 in favor of the plaintiff, then the defendant in the present case shall be condemned to pay plaintiff its pro rata share of the total loss found in the final decision of said civil case No. 31715 to have been suffered by the plaintiff, and which pro rata share shall be determined by calculating the ratio which the amount of the policy issued by the defendant in the present case bears to the total amount of insurance covering the property lost, to which shall be added interest at 6 per cent from the time of the filing of the complaint herein and costs, and if final judgment be rendered in favor of the defendant in said civil case No. 31715, then final judgment shall likewise be entered in the present case in favor of the defendant, with costs.

"Manila, P. I., September 28, 1927."

Civil case No. 31715, entitled Lim Cuan Sy vs. The Northern Insurance Co., Ltd., particularly mentioned in the stipulation proceeded to trial. On May 7, 1929, judgment was entered therein in the lower court in favor of the plaintiff and against the defendant insurance company, for the sum of P10,000, with interest and costs. On appeal to the Supreme Court under record No. 31952, the judgment was affirmed on November 13, 1930.[1] After the record had been returned to the lower court, the parties, as of date December 15, 1930, entered into an agreement

for the deposit in court of the amounts due in the six cases, totalling, we understand, P84,062.14.

Cases Nos. 31735, 31745, 31785, 31775, and 31765 were set down for hearing on December 18, 1930. The respondent judge had announced his intention of entering judgments in said cases in favor of the assignee, but was stopped from doing so through the restraining order which issued out of this court.

The attorney for Lim Cuan Sy in the actions against the insurance companies was Jose P. Laurel. Apparently the attorney conducted the cases on the contingent basis and was expecting to receive 25 per cent of the amount of the judgments, and expenses. At least, the attorney filed his lien on the judgments for such amounts. This was done on November 13, 1930.

To turn to another feature of the matter, it is admitted that on June 19, 1930, a petition for the involuntary insolvency of the partnership Lim Cuan Sy & Co. was filed in the Court of First Instance of Manila. On October 17, 1930, the partnership was declared insolvent and Trinidad Jurado Te Kim Juan was appointed the assignee.

Finally, coming to the facts which more exclusively concern the alleged claim of the petitioners at bar, we are told that on December 22, 1926, Lim Cuan Sy & Co. assigned to F. E. Zuellig, Inc., the policy of fire insurance upon which case No. 31735 was based. The indorsement on the policy evidencing the transfer read:

"Loss, if any, is payable to Messrs. F. E. Zuellig, Inc., as their interest may appear.

"Manila, P. I., December 22, 1926.

(Sgd.) "FINDLAY MILLAR TIMBER CO.

"Agents"

This fire insurance policy was thereupon delivered to F. E. Zuellig, Inc. Further, on December 27, 1929, Lim Cuan Sy & Co. assigned by means of a public document to F. E. Zuellig, Inc., the insurance policy upon which case No. 31745 was based. Further, on August 5, 1929, Lim Cuan Sy & Co. assigned by means of a public document to Otto Gmur, Inc., the policies of fire insurance upon which cases Nos. 31775 and 31785 were based. Finally, on December 27, 1929, Lim Cuan Sy & Co., assigned to Otto Gmur, Inc., by means of a public document the fire insurance policy upon which civil case No. 3176& was based.

On November 19, 1930, F. E. Zuellig, Inc., and Otto Gmur, Inc., through their attorneys, prepared and filed with the Court of First Instance of Manila, in cases Nos. 31735, 31745, 31775, 31785, and 31765, verified motions requesting permission to intervene in the actions. Oppositions were entered by Jose P. Laurel and the assignee of the insolvent estate of Lim Cuan Sy & Co. The respondent judge entered an order denying the motions of intervention. Thereafter, the assignee was permitted to substitute the plaintiff in the insurance cases.

The question to be decided is, if mandamus will lie to compel a trial court to allow motions to intervene in actions which, by stipulation of the parties, were to abide the result of the action in another case after judgment in this test case had been rendered.

Respondents defend on the ground that the movants have available concurrent remedies. But the rule, on this point is that the right to intervene will be sustained although the intervenor may have another remedy. (Walker vs. Sanders [1908], 103 Minn., 124.) Respondents further defend on the more specific ground that the movants have a remedy by appeal. Technically and legally speaking, the respondents are right in thus contending. (Stich vs. Goldner [1869], 38 Cal., 608.) But practically speaking, there is before the court everything which would be before it if the record should be brought here on appeal. We prefer, therefore, to face the issues squarely and to judge the pending cases on their strictly legal merits. Section 121 of the Code of Civil Procedure deals with the subject of intervention and reads as follows:

"SEC. 121. Intervention.—A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant. Such intervention, if permitted by the court, shall be made by complaint in regular form, filed in court, and may be answered or demurred to as if it were an original complaint. Notice of motion for such intervention shall be given to all parties to the action, and notice may be given by publication, in accordance with the provisions of this Code relating to publication, in cases where other notice is impracticable."

It will not escape attention that the statute is phrased in permissive language. It says, "a person may * * * upon motion, be permitted by the court to intervene." It says further, "such intervention, if permitted by the court." In other words, leave of court is a condition precedent to intervention in an action. This can signify nothing else than that the Legislature lodged discretionary power in this respect in the trial courts. But this discretion must not be abused.

Of course, where, as in the Philippines, the right of intervention is expressly granted by statute, the courts should allow the application if the matter alleged entitles the applicant to intervene. The question then to be determined by the trial courts is, if the applicants have brought themselves within the terms of the statute. In deciding this question, it goes without saying that the intervenors must be shown to have been diligent and not guilty of laches.

Directing attention again to the provisions of section 121, it will be noted that it refers to "any period of a trial." We understand by this expression, any time before rendition of judgment. (*Felismino vs. Gloria* [1924], 47 Phil., 967.) In this instance it is conceded by both parties that the period of trial had expired in the test case, but there is flat disagreement between the parties as to whether or not the period of trial had expired in the other five cases. Our view is, although this point is not necessarily decisive of the proceedings, that when the parties stipulated that the decisions in the five cases shall abide the result of the decision in the test case, and that if judgment be rendered in the test case in favor of the plaintiff, then the defendants in the other five cases shall be condemned to pay the plaintiff its pro rata share of the total loss found in the decision in the test case to have been suffered by the plaintiff, this had the effect of a judgment by consent. The agreement so providing, the judgments in the five cases could be entered immediately upon the happening of a contingency which was the result in the test case. The lower court could no longer conduct any trial in these five cases because the trial was considered terminated.

We would invite attention to corroborative decisions coming from the Supreme Courts of Iowa and California. In the Iowa case of *Henry, Lee & Co. vs. Cass County Mill and Elevator Company* ([1875], 42 Iowa, 33), it was said that, "when a verdict has been returned, or the parties have agreed upon the judgment to be entered, then the action has been decided, and it is too late to entertain the claim or determine the rights of an intervenor." It was held in the cited case that when such an agreement has been made a third party, claiming an interest in the subject of the litigation cannot intervene. In the California case of *Gilmore vs. American Cent! Ins. Co.* ([1884], 65 Gal., 63), it appears that a party brought suit against two insurance companies, and that it was stipulated by the respective attorneys that upon a final determination of the first case a similar judgment should be entered in the second. It was held that a motion for judgment pursuant to the stipulation is not a trial on the merits; if a party is entitled to judgment it is upon the stipulation and not on the merits. It was further held that a motion for a new trial is irregular, and should be dismissed.

There would appear no good reason why the elementary principle which governs special proceedings should not apply here. The granting or refusal of a motion to intervene is a matter of judicial discretion which, as in similar cases, will not be controlled by mandamus. That, at least, is the rule in the two courts the decisions of which should act as guides for the Supreme Court of the Philippines. We refer to the United States Supreme Court and

the Supreme Court of California. In the case of *In Be Engelhard* ([1914], 231 U. S., 646), the United States Supreme Court reached the conclusion that the court below having acted within its discretion in refusing a petition for leave to intervene, mandamus to compel it to grant the petition will be refused. In *People vs. Sexton* ([1869], 37 Cal., 532), and in this connection it should be remarked that the Philippine law is derived from California, it was the holding of the Supreme Court of California that a motion for leave to intervene in an action, made at any stage of the proceedings, presents a judicial question, the decision of which cannot be reviewed or controlled by the higher court by mandamus, however erroneous it may be. These cases are in principle exactly the cases before us.

The denial of the writs of mandamus in this court will not leave any of the parties unprotected. In the insolvency proceedings, every debatable question can be resolved after hearing. For instance, the allegation that F. E. Zuellig Inc., and Otto Gmur, Inc., are the holders of valid assignments, and should, accordingly, receive the proceeds of those assignments, contested as to amounts and as to validity, can there be settled. It would be preferable thus to proceed rather than for this court to substitute its discretion for that of the trial court and to force the trial court to permit interventions so tardily interposed.

For all the foregoing, our view is that the writs prayed for should be denied.

[1]*Lim Cuan Sy vs. Northern Assurance Co.*, p. 248, ante.

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