

LORD M. MARAPAO, PETITIONER, VS. THE HONORABLE RAFAEL T. MENDOZA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH VI OF THE COURT OF FIRST INSTANCE OF CEBU AND GEMMA B. CASTILLO, R...

G.R. No. 61468. December 08, 1982

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Respondent Judge's Order, denying the Motion to Dismiss Civil Case No. R-21428, entitled "Gemma Castillo vs. Lord M. Marapao" for Damages, is sought to be reversed in this Petition for Certiorari.

Petitioner Lord M. Marapao is a practising lawyer residing in Tagbilaran City. Respondent Gemma Castillo is the desk clerk of Hotel de Mercedes at Cebu City.

From September 3 to 5, 1981, petitioner attended a convention of the Kiwanis International in Cebu City. Like most of the delegates, petitioner was billeted at the Hotel de Mercedes.

On September 5, 1981, when petitioner checked out of the hotel, private respondent allegedly informed him, in front of other delegates, that included in his bill was the value of one (1) ash tray reported missing from his room by the chambermaid. Later, said ash tray was recovered, according to information of the chambermaid subsequently relayed to private respondent.

As a result of said incident, and for the malicious accusation against him, petitioner filed, on September 15, 1981, a Complaint for Damages against Hotel de Mercedes with the Court of First Instance, Branch IV, Tagbilaran City (CC No. 3488) (Bohol Case). Respondent employee was not impleaded therein.

On February 15, 1982, private respondent, upon the above general facts, filed the instant Complaint for Damages against petitioner with respondent Court of First Instance, Branch VI, Cebu (Cebu Case), con-tending, among others, that petitioner, taking advantage of his profession, wilfully imputed to her the commission of malicious acts.

Petitioner moved to dismiss the Cebu Case pre-mised principally on the pendency of another action between the same parties for the same cause as provided in section 1(e), Rule 16 of the Rules of Court.

On March 25, 1982, respondent Court issued the challenged Order denying the Motion to Dismiss "after a careful perusal of the grounds relied upon in the motion". Reconsideration prayed for by petitioner met the same fate.

Hence, this Petition for Review on Certiorari alleging grave abuse of discretion tantamount to lack of jurisdiction by respondent Judge, which petition we find meritorious.

The criteria for dismissal on the ground of pendency of another action are present in this case, namely, 1) identity of parties or at least such as representing the same interest in both cases; 2) identity of rights asserted and reliefs

prayed for, the reliefs being founded on the same facts; and 3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to res judicata in the action under consideration (Quimpo vs. de la Victoria, 46 SCRA 139 [1972]; Surigao Development Bank, et al vs. Buslon, et al., 48 SCRA 308 [1972]).

While respondent Castillo has not been im-pleaded in the Bohol Case, she has similar interest as Hotel de Mercedes, the defendant therein which is her employer. Petitioner and private respondent both claim damages based on the same incident. A decision, whether in favor of petitioner or private respondent in the Bohol Case would amount to res judicata in the Cebu Case. Damages in favor of one party would preclude damages in favor of the other.

There is an additional reason for dismissal, and that is, to avoid multiplicity of suits. (Ago Timber Co. vs. Hon. Ruiz, et al., 21 SCRA 1381 [196]; Erlanger vs. Villamor, 98 Phil. 1003 [1956]; Teodoro, Jr. vs. Mirasol, 99 Phil. 150 [1956]).

To protect the interests of respondent employee, she may intervene as a party in the Bohol Case and file a counterclaim for damages against petitioner.

ACCORDINGLY, the Order dated March 25, 1982 issued by respondent Judge of the Court of First Instance of Cebu, Branch VI, is hereby SET ASIDE, and he is hereby directed to dismiss Civil Case No. R-21428, entitled "Gemma Castillo vs. Lord M. Marapao". This is without prejudice to the intervention by private respondent, Gemma B. Castillo, in Civil Case No. 3488 of the Court of First Instance, Branch IV, Tagbilaran City, entitled "Lord M. Marapao vs. Hotel de Mercedes represented by its Manager and/or Owner."

No costs.

SO ORDERED.

Teehankee, (Chairman), Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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