

JOSE DE LA PEÑA Y DE RAMON, ADMINISTRATOR OF THE ESTATE OF THE DECEASED JOSE DE LA PEÑA Y GOMIZ; F. GARFIELD WAITE ET AL., INTERVENERS AND APPELLANTS, VS. FEDERICO HIDALGO, DEFE...

G.R. No. 6626. October 06, 1911

Ponente: TORRES, J.

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TORRES, J.:

This decision concerns the appeals entered under respective bills of exception by counsel for Jose de la Peña y de Ramon, the administrator of the estate of the deceased Jose de la Peña y Gomiz, from the order of October 14, 1910, and by counsel for Federico Hidalgo, from the mandate contained in the last paragraph of the order of the 18th of the same month, directing that the amount deposited as bond, less the sum of P8,500, be returned to the defendant, and also by counsel for the intervening attorneys, Chicote & Miranda, Frederick G. Waite, and C. W. O'Brien, from the said order of October 18, in so far as it declares that the counterclaim by the said Hidalgo against Pena was presented in his capacity as administrator of the aforementioned estate and that the interveners' lien could not avail to prevent the set-off decreed in the said first order appealed from.

After a regular trial in the Court of First Instance of this city of the case of Jose de la Peña y de Ramon, as administrator of the estate of his deceased father, Jose de la Peña y Gomiz, vs. Federico Hidalgo, for the payment of a sum of money, the record of the proceedings was forwarded to this court on appeal. By the decision rendered on August 17, 1910,[1] this court sentenced the defendant Hidalgo to pay to Jose de la Pena y de Ramon, as administrator, the sum of P6,774.50 with legal interest from May 23, 1906, and, likewise, sentenced the said Jose de la Pena y de Ramon to pay to Federico Hidalgo, as a counterclaim, the sum of P9,000, with legal interest thereon from May 21, 1907, the date of the counterclaim; and affirmed the judgment appealed from in so far as it was in agreement with the said decision, and reversed it in so far as it was not in accordance therewith. That decision became final.

The record of proceedings having been remanded for execution to the Court of First Instance whence it originated, the judge, by order of October 14, 1910, decreed that both amounts for which the defendant Hidalgo and the administrator Pena were mutually liable in concurrent sums, should off-set each other, and that, consequently, the plaintiff, Peña y de Ramon, in conformity with the final decision of this court, was liable for the payment of the difference between such amounts, or P2,274.93, together with the interest at 6 per cent from the said date.

At this stage of the proceedings for the execution of the judgment that had become final, the attorneys for the said plaintiff, Messrs. Chicote & Miranda, Frederick Garfield Waite, and C. W. O'Brien represented by C. A. DeWitt, asked that they be permitted to intervene in the proceedings, as they held a lien upon the amount awarded in the said decision of this court, rendered in favor of the plaintiff and against the defendant, and alleged that the lien which they held was upon the judgment entered in favor of the plaintiff in his capacity as administrator, against the defendant; that the defendant could not set off his judgment against that of the plaintiff, and that,

notwithstanding that the defendant was entitled to the judgment awarded him by virtue of his counterclaim, yet, in consideration of the fact that their lien affected the judgment of the lower court, which was in no wise reversed, the said lien was valid with respect to any judgment that the plaintiff had obtained against the defendant, notwithstanding such counterclaim. In spite of the defendant's opposition, the court, ruling on this incidental question raised, issued the aforecited order of October 18, 1910.

Counsel for the administrator Pena did not file a brief calculated to prove the soundness of his appeal from the order of October 14, 1910, whereby there was declared a set-off between the amounts for which the plaintiff and the defendant were liable, up to the sum where the liability of the one equaled that of the other, the latter to pay to the former the difference, together with the interest. This order is pursuant to the law and in perfect harmony with the decision rendered in the case by this court, and, though it was not duly impugned, its legality and correctness will be considered in this decision in demonstrating that of the other order of the 18th of the same month, appealed from by the intervening attorneys and by the counsel for Federico Hidalgo.

With respect to the said order of the 18th of October, the second of those appealed from in this incidental issue, it must be borne in mind, for the proper determination of the pending appeals, that the main action, from which the said incidental issue proceeded, was prosecuted in the Court of First Instance of this city by Jose de la Pena y de Ramon, in his capacity as judicial administrator of the estate of his deceased father, Jose de la Peña y Gomiz, against Federico Hidalgo, for the payment of various sums which the latter was owing, with interest, to the estate; and that the defendant, in answering the complaint filed by the said administrator, presented a counterclaim and, in turn, asked that he be absolved from the complaint with the costs against the plaintiff and that the latter be sentenced to the payment of P9,000 which the testator, Jose de la Peña y Gomiz, owed to Hidalgo. So that if the complaint in the main action was filed by the administrator of the estate of the deceased Peña y Gomiz, the counterclaim presented in the same suit by the defendant, Federico Hidalgo, in answering the complaint of the administrator of the estate, had for its object the collection of a certain sum with interest, which the deceased testator, during his lifetime, owed the said defendant.

The defendant may, pursuant to section 95 of the Code of Procedure in Civil Actions, set forth by answer as many defenses and counterclaims as he may have, whatever their nature. Section 96 of the same code provides that a counterclaim, to be available as a defense in an answer, must be one in favor of all the substantial defendants and against all the substantial plaintiffs in the action.

A counterclaim is termed a mutual petition, because both parties sue each other mutually in the same action, each of them assuming" the double role of plaintiff and defendant, before the trial judge, and the two suits are brought under a single proceeding where both actions are tried at the same time and finally determined in one and the same judgment

The different amounts sought to be recovered by Jose de la Peña y de Ramon, as the administrator of the estate of the deceased Jose de la Peña y Gomiz, from the defendant, Federico Hidalgo, constitute various separate obligations contracted by the latter, according to the complaint, in favor of the deceased testator, Peña y Gomiz; and the amount of the counterclaim was likewise a debt which the said testator at his death left unpaid and owing the defendant Hidalgo; therefore, Jose de la Peña y de Ramon, as administrator, and Federico Hidalgo are the substantial plaintiffs and defendants, reciprocally, in the aforementioned main action.

It is evident, by a simple perusal of the finding of facts and of the grounds of law of the final decision rendered in that action, that the same was instituted by Jose de la Pena y de Ramon, not by himself and in his own representation, but in his capacity as administrator of the estate of his deceased father, Jose de la Peña y Gomiz, demanding payment of certain amounts which, according to his third amended complaint, the defendant Federico

Hidalgo owed the latter; and it is none the less evident that the counterclaim presented by the defendant Federico Hidalgo had for its sole object the collection of a certain sum which was owing to him by the deceased testator, Jose de la Peña y Gomiz, and that the plaintiff, Jose de la Peña y de Ramon, per se and personally, had nothing to do with this debt of the estate, which concerned him only as such administrator. This is shown by the record and clearly appears in the said decision which disposed of the plaintiff-administrator's complaint and the defendant-debtor's counterclaim. That decision, from the beginning to the end, evidences without contradiction or proof to the contrary, all that has been hereinbefore stated; it shows who were the contending parties, the nature of the questions raised by complaint and counterclaim and the respective purposes sought by the one and the other; it is therefore unreasonable to affirm that the counterclaim was made against Peña y de Ramon personally, apart from his position as administrator.

If in any place or in any line of the said decision mention was made of the name of the plaintiff Peña y de Ramon without the title of his office as administrator of the estate, it probably was because the complaint was filed and the action was brought by him in his capacity of administrator, and the counterclaim, also, was directed against him as such administrator; and if in any paragraph the said title of his office was omitted in designating him, such omission can not serve as a ground for concluding that the counterclaim allowed and the sentence imposed in the said decision were against Jose de la Peña y de Ramon as a private individual and not as the administrator of the estate, for the reason that the said Peña y de Ramon is not by himself and in his own name a party to the said action, but is such only in his capacity of administrator of the aforementioned estate; and the sentence contained in the decision referred to can in no wise be understood to have been made against Jose de la Peña y de Ramon personally, but in his capacity of administrator of the estate, which alone was liable for the debt owing to the defendant; if mention was therein made of the plaintiff by name, it is because he was the representative of the debtor estate.

The intervening attorneys allege that, in the aforesaid suit between the administrator Peña y de Ramon and Hidalgo, two judgments were rendered, one against the defendant Hidalgo and the other against the administrator Peña y de Ramon. This averment is incorrect, because, as has been seen and is obvious to all who intervened in the said suit, there was but one judgment appealed from and but one decision rendered in second instance by this court, which in part modified the prior judgment in first instance. A complaint and a counterclaim having been entered in the said suit, it logically follows that the decision should contain a finding relative to the demand contained in the complaint and another finding concerning the counterclaim. This separation of findings in one decision does not denote distinct judgments, but different disposals of the several questions raised in the suit and comprised within a single decision, which alone terminated the double litigation. Reason and justice will not support the claim that the sentence therein contained, directing Jose de la Peña y de Ramon to pay to the defendant Hidalgo the sum of P9,000 and interest by virtue of the counterclaim, was pronounced against the plaintiff in his personal capacity and not as administrator of the estate, inasmuch as Peña y de Ramon did not initiate or prosecute his suit, in the said main action on his own account, but in his capacity as administrator; and the debt demanded in the counterclaim was one owing by the estate, which he represented in that action, and by his father, the testator Peña y Gomiz, as the judge of First Instance, in directing in his order of October 14, 1910, in fulfillment and execution of the decision of this court, so recognized such debt and declared in an unmistakable manner that Hidalgo was entitled, as a result of the set-off between the two amounts specified in the decision of the Supreme Court and which the administrator Peña y de Ramon and the defendant Hidalgo were mutually owing to each other, to collect the sum of P2,274.93 with interest thereon at the rate of 6 per cent per annum, this amount being the difference between the two debts set off against each other and which is owing to the defendant from the estate.

In the aforementioned decision of this court, by which the complaint and the counterclaim presented by the parties

to the said suit were disposed of, the amount which the defendant Hidalgo should pay to the administrator of the estate of the deceased Peña y Gomiz and the sum which the said administrator, designated by his name of Jose de la Peña y de Ramon, should, by virtue of the counterclaim, pay to the defendant, Federico Hidalgo, alone were specified; the resultant difference, after the set-off should have been made, was not stated, as it was considered that this merely arithmetical operation would necessarily be performed in the course of the execution proceedings by the judge of the Court of First Instance charged with carrying out the final decision rendered in the case. This, in fact, he did do in his order of October 14, by directing that the plaintiff should pay the said sum, that is, the difference which was found to exist, after making the set-off between the respective amounts the litigating parties were sentenced to pay. The failure to state in the said decision that both debts were set off against each other up to a concurrent sum, can not avail as a ground for alleging that the attorneys of the administrator Peña y de Ramon have acquired a lien on the amount which Hidalgo should pay to the administrator Peña y de Ramon in preference to the creditor of the amount that is the subject of the counterclaim.

It is to be observed that, although counsel for the plaintiff Peña excepted to the order of October 14, 1910, by which the judge of the Court of First Instance, following the final decision of this court, declared a set-off between the amounts that were owing reciprocally by both parties and directed the said plaintiff to pay to the defendant the difference of P2,274.93 with interest at the rate of 6 per cent per annum, he did not present any bill of exceptions nor any brief with the required assignment of errors, doubtless because he was convinced that the appeal which he would have to maintain was directed against a final decision of this court.

It is lawful and proper to allow the set-off between the two amounts specified in the said decision, in accordance with the provisions of articles 1195, 1196, and 1202 of the Civil Code, because the credit of P6,774.50, together with the legal interest thereon, to the payment of which the defendant Hidalgo was sentenced, belongs to the estate of the deceased Peña y Gomiz, represented by the plaintiff, Peña y de Ramon, and the P9,000, with interest, which, in turn, the plaintiff-administrator was sentenced to pay to the said defendant, was a debt of the testator which it is now incumbent upon his estate to repay to his creditor; therefore, as the trial judge very well says in the order of October 18, appealed from, the lien of the intervening attorneys can not serve to prevent the set-off, for the reason that such interveners rendered their services to Jose de la Peña y de Ramon as administrator of the said estate, and the credit by which the debt owing to this estate by the defendant Hidalgo appears to be set off consists of a debt of the estate in favor of its debtor, Hidalgo.

If it be just that the estate of the deceased Peña y Gomiz should collect the amount owing it by Hidalgo, as determined by final decision, it is equally just that Hidalgo should have the same right to collect the sum which the said estate owes him, according to the same decision; therefore, in order to comply with such decision, determining the two liabilities directly opposed to each other, it consequently and logically follows that a set-off of both credits, up to a concurrent amount, must be effected; and if the lien or the right to collect professional fees on the part of the attorneys were superior to the right of the creditor of the estate, the result would be that the executory decision would not be complied with; there would then be no set-off and the defendant would be compelled to pay to the said administrator his debt to the estate, through the aforementioned lien of the intervening attorneys, but could not collect, nor apply to the payment of the credit owing him by the same estate, the amount of his debt to the latter; this would be illegal and opposed to the most rudimentary principles of justice and, furthermore, would be an absurdity and contrary to common sense.

Section 37 of the Code of Procedure in Civil Actions prescribes, among other provisions, that a lawyer shall have a lien upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation of his client, from and after, but not before, the time when he shall have caused to be entered upon the records of the court, * * * and shall have the same right and

power over such judgments, decrees and executions to enforce his lien as his client had or may have, to the extent that may be necessary for the payment of his just fees and disbursements.

If it be taken into account that, while the administrator Peña y de Ramon is entitled to collect from Hidalgo the P6,774.50 which the latter is owing to the estate left by the said Peña's father, this estate must, in turn, pay to the said Hidalgo P9,000; and that, on comparing these two amounts with each other, in proceeding with the execution of the final judgment, it would necessarily be disclosed by the operation that the said estate or its administrator, far from collecting any sum whatever from its or his credit, would have to pay Hidalgo the difference resulting from the set-off between the one amount and the other, up to a concurrent sum, it will be understood at once that the attorneys for the representative of that estate can not collect any part whatever of the amount awarded in the executory decision, because that sum was intended to cover a large part of the debt of the testator and the latter's testate succession will still have to pay the difference.

The lien or right to collect fees for professional service, which the appellant attorneys possess to the sum awarded in the final decision, is equal to the right of their client, to that of the administrator Peña y de Ramon, recognized in the said decision, pursuant to the provisions of the aforecited section 37 of the Code of Civil Procedure. The preference claimed by these interveners over the creditor's right, by virtue of the latter's counterclaim, does not appear to be established by this section; and if the estate of the deceased Pena is obliged to pay to Hidalgo P9,000, it is not entitled to collect from the latter the said P6,774.50 by way of a set-off, unless it shall previously have satisfied the whole amount of its debt, which it has not done; therefore the attorneys of the representative of the said estate are not entitled to collect their fees out of the said amount recognized by decision to belong to their client, but subject to a set-off by virtue of a counterclaim, as their rights are no better than those of the creditor Hidalgo.

The judgment appealed from having been reversed with respect to that portion thereof relative to the liability asked by the administrator of the estate to be laid against Federico Hidalgo, the sole judgment to be executed is that contained in the decision rendered in second instance and in this decision, as has been shown; and the result, in short, has been in no wise favorable to the plaintiff because, instead of being able to collect the amount of his credit owing by Hidalgo to the estate, he still finds himself obliged to pay the defendant the difference resulting from the set-off to which the counter-claim, made by the latter for a greater sum, gave rise; and therefore, the right claimed by the appellant attorneys to collect their fees out of the amount awarded to the said administrator, is in all respects unsustainable, inasmuch as, in consequence of the counterclaim, there was a set-off against that amount and the plaintiff has nothing to collect, but, on the contrary, is still liable for the difference which was found to exist after the reciprocal debts of both parties had been set off against each other.

The right of the attorneys for the administrator Pena y de Ramon, to collect fees for professional service, under section 37 of the Code of Civil Procedure, is restricted to the personal funds of their client, to amounts awarded to the latter by final decision, but does not comprise sums of money which, according to the same decision, must be applied to the payment of a legitimate debt of their client ordered to be made in such decision by virtue of a prior counterclaim.

We know of no legal provision which grants to the attorneys for the losing party in a suit, or who has not obtained a judgment authorizing him to collect money from the adverse party, the privilege of collecting their professional fees with preference over, and better right than, the said adverse party, the legitimate creditor of the said attorneys' client.

The suit was prosecuted for the collection of amounts which both parties reciprocally were owing each other, and a decision was rendered deciding the complaint and the counterclaim and determining the sums which the litigate

ing parties must mutually pay; therefore, the final judgment must be executed, as provided by the trial judge, pursuant to its terms, and no impediment to such execution can be had in the improper contention made by the appellant attorneys, who can invoke no law or just reason which authorizes them to collect their professional fees out of the bond given by Hidalgo, once the same was not deposited as security for the payment of the said fees.

For the foregoing reasons, whereby the errors attributed by the appellant attorneys to the trial judge have been duly refuted, it is our opinion and we hold that we should and hereby do affirm the order of October 14, 1910, and also the order of the 18th of the same month, with the exception of the final provision of this last order, of October 18, which we reverse and direct that return be made to Federico Hidalgo of the sum of P8,500 retained by the clerk of the court below as a result of the motion of intervention herein concerned. No special finding is made as to the costs. So ordered.

Mapa, Johnson, and Moreland, JJ., concur.

[1] 16 Phil. Rep., 450.

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