

TAN TI (ALIAS TAN TICO), PLAINTIFF AND APPELLEE, VS. JUAN ALVEAR, AS SHERIFF, ET AL., DEFENDANTS AND APPELLANTS. [G.R. No. 8229, January 16, 1914] TIU UCO (ALIAS TION OCCO), PLA...

G.R. No. 8228. January 16, 1914

Ponente: TRENT, J.

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TRENT, J.:

Damages for wrongful attachment. Three cases were, by agreement of counsel, tried together in the court below. Damages were awarded in each case and all were appealed by the defendants. They will be considered together. Tan Ti, Tiu Uco, and Tiu Tiao et al., the respective plaintiffs, each owned a retail store in Dagupan. The Court of First Instance of Manila issued execution on the effects of one Lim Kok Tiu, and ordered notices of garnishment to be served on each of the above named present plaintiffs. These notices were forwarded to the sheriff of Pangasinan. It appears that the sheriff himself was not in his office when the notices were received and they were attended to by his deputy, Lopez. Lopez delivered the notices to another deputy sheriff, Zulueta, for service. Zulueta, instead of merely serving the notices, informed each of the present plaintiffs that unless they submitted their respective bonds in the sum of P15,000, he would close their stores. The respective owners asked for time to go to Manila to secure bondsmen, which was granted them. On arriving at Manila they consulted their lawyers, who informed them that the sheriff had no right to close their stores upon garnishment process, and told them to return to Dagupan and so inform the sheriff and his deputies, with the further admonition that such action would render the latter liable for damages. The three plaintiffs returned to Dagupan and notified deputies Lopez and Zulueta accordingly, but the latter went ahead and closed the stores on November 13, 1911, placing guards at each one. The owners thereupon returned to Manila for further consultation with their lawyers. Their attorneys consulted with attorney for the plaintiff in the case from which the garnishment process had issued, and the latter sent a telegram to the sheriff on November 14th, instructing him not to close the stores but to proceed in accordance with section 431 of the Code of Civil Procedure. At the same time he wrote a letter to the sheriff containing the same instructions. Notwithstanding the fact that the contents of the notices which the sheriff's deputies had served on the owners of these stores clearly showed that they were not writs of attachment, and the further instructions from the counsel for the plaintiff in that civil case to the same effect, the deputy sheriffs refused to raise the attachment. The owners of the stores thereupon filed the complaints in the present civil actions on November 17, 1911, after notification to the deputy sheriff that such was their intention. On November 21, 1911, the attachments were raised and the plaintiffs were allowed to resume business.

The lower court awarded damages to the plaintiff Tan Ti as follows:

For loss of profits on the sale of goods during the time the store was closed P 90.00

Impairment of credit edit 500.00

Counsels' fees 500.00

Rent 22.50

Wages of employees 67.50

Loss of profits from sales of cigarettes 7.50

Two trips to Manila 40.00

Total 1,227.50

The loss of profits on cigarette sales was fixed by stipulation of the parties. The two items of rent for the building and wages of employees, being the pro rata parts of the plaintiffs monthly expenses for these services, should be allowed. It is urged that as one of plaintiff's two trips to Manila was made before the wrongful attachment of his property, this item should be cut in half. The first trip, however, was the direct result of defendants' representations to the plaintiff in their official capacity. We are of the opinion that the defendants would have been liable for this expense even if they had followed the instructions which they received from Manila as the result of plaintiff's first trip to Manila. They had no right to make such representations to the plaintiff on the strength of the notices which they were called upon to serve, and such representations were the direct and proximate cause which induced plaintiff to make the trip. The expenses of both trips should be allowed, and this item of damages is therefore approved. . Loss of profits from sales for the time the store was closed was based upon the record of sales made by the plaintiff during the months of October, November, and December, 1911. The figures were as follows: October, P1,517.54; November, P924.19; and December, P1,651.54. Upon these figures, the reduction in gross sales was fixed at P600 and profits allowed at 15 per cent, or P90. This seems to be a fair and reasonable method of arriving at plaintiff's loss on this item and should be allowed.

We accept the statement of counsel for the defendants to the effect that of the item of P500 for attorneys' fees, P200 were paid for services rendered in securing the release of the goods and P300 for prosecuting the present suit for damages.

That attorney's fees in excess of the amount fixed by statute cannot be taxed as costs against the adverse party in any case is well settled. (Sees. 489 and 492, Code Civ. Proc; *Mendiola vs. Villa*, 15 Phil. Rep., 131; *Orense vs. Jaucian*, 18 Phil. Rep., 553.) Can such fees be allowed in this jurisdiction as an element of damages?

The decisions of the State courts in the American Union on this question are not uniform. They are irreconcilable, some holding that reasonable counsel fees incurred in procuring the dissolution of injunctions, attachments, and in recovering property wrongfully seized is a proper element of damages, the amount being limited to fees paid for procuring the dissolution or recovery and not for the general defense of the case or for prosecuting suits for damages. These holdings proceed upon the idea that the party has been compelled to employ counsel to rid himself of an unjust restriction which his adversary has placed upon him. The courts which take the opposite view say that it is difficult to see upon what ground counsel fees incurred by the adverse party should be charged up to the defeated party any more in attachment and injunction cases than in other litigations upon contracts or for damages for torts. The litigation they say may be equally unjust and oppressive in other cases as in cases of attachment, injunctions and replevin. It is true, however, they reason, that attachments and injunctions are in some respects more summary and may entail damages arising out of the seizure of defendant's property; but all of this is provided for by the terms of the bond required to cover damages sustained. But counsel fees are as necessary in the one class of cases as in the other and are neither peculiar nor more erroneous in cases of attachments and injunctions than in other cases.

The authorities on either side of this question are eminent and there is no middle ground upon which to stand. The authorities pro and con may be found collated in the case notes of the following cases: *Littleton vs. Burgess* (16 L. R. A., N. S., 49) ; *Lindeberg vs. Howard* (8 Am. & Eng. Ann. Cas., 709, injunction) ; *Plymouth Gold Mining Co. vs. U. S. Fidelity & Guaranty Co.* (10 Am. & Eng. Ann. Cas., 951, attachment) ; *Lake vs. Hargis* (30 L. R. A., N.

S., 366, replevin) ; Winkler vs. Roeder (8 Am. St. Rep., 155, attorneys' fees as element of damages).

In the United States Supreme Court and in the Federal Courts such fees are not allowed. The case first decided by the United States Supreme Court upon this point and which has been steadfastly adhered to ever since is *Oelrichs vs. Spain* (15 Wall., 211, 221). In this case the court said:

"The point here in question has never been expressly decided by this court, but it is clearly within the reasoning of the case last referred to, and we think is substantially determined by that adjudication. In debt, covenant and assumpsit damages are recovered, but counsel fees are never included. So in equity cases, where there is no injunction bond, only the taxable costs are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the expensa litis to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the honorarium can be measured. Some counsel demand much more than others. Some clients are willing to pay more than others. More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party there is danger of abuse. A reference to a master, or an issue to a jury, might be necessary to ascertain the proper amount, and this grafted litigation might possibly be more animated and protracted than that in the original cause. It would be an office of some delicacy on the part of the court to scale down the charges, as might sometimes be necessary."

Since the enunciation of this doctrine the Supreme Court of the United States has had occasion to reverse several decisions of State courts where attorneys' fees for services in dissolving writs of injunction and attachment were allowed, the writs having issued out of Federal courts and actions for damages brought in the State courts. (*Tullock vs. Mulvane*, 184 U. S., 497, reversing 61 Kan., 650; 46 L. ed., 657; *Mo. etc. R. Co. vs. Elliott*, 184 U. S., 530; 46 L. ed., 673, reversing 154 Mo., 300.)

The case at bar is one of replevin. In this country the damages must be determined and assessed in the principal action. Two actions, one of replevin and the other for damages, cannot be maintained. This makes the apportionment of attorneys' fees exceedingly difficult and in the absence of an agreement practically impossible. In those jurisdictions where attorneys' fees are allowed as an element of damages two actions as a rule are required.

After an examination of all the available authorities we have concluded that sound public policy demands that counsel fees in suits of the character of the one under consideration should not be regarded as a proper element of damages, even where they are capable of being apportioned so as to show the amount incurred for the release of the goods as separate and distinct from the other services necessary in the prosecution of the suit for damages. It is not sound public policy to place a penalty on the right to litigate. To compel the defeated party to pay the fees of counsel for his successful opponent would throw wide the door of temptation to the opposing party and his counsel to swell the fees to undue proportions, and to apportion them arbitrarily between those pertaining properly to one branch of the case from the other.

This court has already placed itself on record as favoring the view taken by those courts which hold that attorneys' fees are not a proper element of damages. In *Ortiga Bros. & Co. vs. Enage and Yap Tico* (18 Phil. Rep., 345), a wrongful attachment on the pier belonging to plaintiffs had issued at the request of Yap Tico. Ortiga Bros, sued out an injunction preventing the attempted sale of the pier by the sheriff and the matter was then held in statu quo pending judgment of the court as to the right of the sheriff to attach and sell the property. Judgment in the lower court was in favor of the plaintiffs and damages were awarded in the amount of P600 which proved to consist entirely of the fees of plaintiff's attorney. This court expressly disallowed the same, awarding the plaintiffs only the usual statutory costs.

As to the item of P500 for impairment of plaintiff's credit: Plaintiff testified that he was conducting a credit

business with wholesale houses in Manila, and that when his stock of goods was seized by the sheriff he so informed these houses, who thereupon stopped his credit; that on being restored to possession of his goods he so advised them. Although he states that by stoppage of his credit he was unable to secure merchandise for Christmas sales, it appears from his books,' as stated above, that he sold P1,651.54 during the month of December, which was as much as, if not more, than he had sold during the same month of the previous year. The wrongfulness of the seizure was so apparent that a satisfactory explanation of the same could easily have been given to the wholesale houses with which he was doing business, and it apparently had no effect on his sales for the month of December. As we have allowed him the profits on P600 for sales which he was prevented from making during the month of November, it appears that the damage from interruption to his business has been fully compensated. So that, without touching upon the vexatious question of whether damages to credit might be allowed in a proper case, we are of the opinion that such damages in this case, if any, were so infinitesimal and speculative, that they cannot be allowed.

Our decision in the Tan Ti case disposes of the questions raised in the other two cases. All the items allowed in those cases being of a similar character and having been computed in the same manner as those in the first case, should be allowed, with the exception of the amounts allowed as attorneys' fees and for impairment of credit. In both cases these items are disallowed.

For the foregoing reasons, the judgments appealed from are modified as follows: Damages in Tan Ti's case are reduced to P227.50; in Tiu Uco's case, to P460.50; and in the case of Tiu Tiao et al., to P987. As thus modified, the judgments appealed from are affirmed. Without costs in this instance.

Arellano, C. J., Carson and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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