

FIFTH DIVISION

[CA-G.R. CV NO. 97580, November 28, 2014]

**JUANITA TAN, PLAINTIFF-APPELLANT, VS. SY CHIM,
DEFENDANT-APPELLEE.**

D E C I S I O N

CRUZ, J.:

THE CASE

This is an appeal taken from the Orders dated May 3, 2011 and July 29, 2011, respectively, both issued by the Regional Trial Court (RTC) of Manila, Branch 173, in Civil Case No. 04-111304 for damages, the dispositive portion of which reads, as follows:

(a) Order^[1] dated May 3, 2011

X X X

"In view thereof, said manifestation and motion to dismiss having a leg to stand on, the same is GRANTED. The instant action is hereby DISMISSED.

"SO ORDERED."

X X X

(b) Order^[2] dated July 29, 2011

X X X

"In view thereof, the Motion for Reconsideration having no leg to stand on is hereby DENIED.

"SO ORDERED."

X X X

THE ANTECEDENTS

On November 4, 2004, Juanita Tan, as plaintiff, filed with the RTC of Manila a

complaint against Sy Chim denominated as one for damages with Writ of Preliminary Attachment and docketed as Civil Case No. 04-111304. Before an answer was filed by defendant, plaintiff filed an Amended Complaint^[3] alleging that Defendant Sy Chim was formerly the President of Sy Siy Ho & Sons, Inc., (SSHSI) doing business under the name and style "Guan Yiac Hardware", while plaintiff is the Treasurer of SSHSI.

Plaintiff alleged that sometime on May 6, 2003, a Complaint for Accounting and Damages was filed by SSHSI against Sy Chim and his wife Felicidad Chan Sy. The Complaint, docketed as Civil Case No. 03106456, was raffled to Branch 46 of the RTC of Manila.

Pending resolution of the said Complaint, Sy Chim and Felicidad Chan Sy filed with the Office of the City Prosecutor of Manila a criminal complaint against Plaintiff Juanita Tan and others for violation of Section 74 of the Corporation Code in relation to Section 144 of the Corporation Code and perjury. The criminal complaint was docketed as I.S. No. 03E-15285 and 03E-15286.

After the preliminary investigation, a Resolution^[4] dated December 29, 2003^[5] was rendered by Assistant City Prosecutor Bernardino L. Cabiles dismissing the criminal complaint, thus:

x x x

"WHEREFORE, it is recommended that the charges of perjury and falsification, in I.S. No. 03E-15287 and 03E-15288 be dismissed due to lack of merit and the resolution of the charges of Violation of Section 74 of the Corporation Code, on I.S. No. 03E-15285 and 03E-15286, be suspended in view of the pendency between the parties of a prejudicial question in Civil Case No. 03106456 before the Regional Trial Court, Manila, Branch 46."

x x x

Sy Chim moved for a reconsideration of the said Resolution but the same was denied by the Office of the City Prosecutor of Manila, through 2nd ACP Jose Torres Tan, Jr. in the Resolution^[6] dated June 14, 2004. Sy Chim appealed before the Department of Justice (DOJ) through a Petition for Review but the same was similarly dismissed.^[7]

Plaintiff then alleged that, despite the finality of the DOJ Resolution, Defendant Sy Chim still continued to discredit the reputation, character, integrity and honesty of plaintiff, which constrained her to file the complaint for damages. She alleged that the malicious filing of the criminal complaint against her denied her guaranteed net earning of several million pesos and that, as a consequence of the filing of the said criminal complaint, she suffered mental anguish, moral anxiety, sleepless nights and besmirched reputation that warrants the award of moral damages and exemplary damages. She was also constrained to hire the services of a legal counsel to defend her in court, incurring expenses for attorney's fees.

Ultimately, plaintiff asked for the following reliefs, to wit:

X X X

"3. After hearing, judgment be rendered to ORDER defendant SY CHIM to pay:

3.1. P9,000,000.00 as a fair, just and reasonable amount Plaintiff has been guaranteed to earn had defendant did not file the malicious criminal complaint;

3.2 P200,000.00 Plaintiff had paid counsel for the preparation of Plaintiff defense and appearances in defendant the criminal complaint Sy Chim filed against Plaintiff and P200,000.00 which Plaintiff agreed to pay counsel in the preparation filing of this complaint and prosecuting the same in Court;

3.3 The amount of P1,000,000.00 as just, fair and reasonable compensation for the moral damages Plaintiff has suffered by reason of the filing by defendant of the criminal complaint against Plaintiff;

3.4 The amount of P500,000.00 by way of exemplary damages to deter others from following the unethical and malicious acts of defendant in filing a criminal complaint without factual/legal basis;

3.5 To pay Plaintiff the amount of P5,000.00 as Attorney's fees in his daily appearance in Court as the case is set for deliberation;

3.6 To pay the cost of suit.

X X X

Defendant Sy Chim filed a Motion to Dismiss^[8] dated January 26, 2005 on the ground of failure to state cause of action and lack of cause of action. The RTC denied the motion through a Resolution^[9] dated November 14, 2006. Their motion for reconsideration of the said Order was likewise denied by the RTC.^[10]

In the meantime, the defendant filed a Petition for Certiorari before Us questioning the DOJ Resolution dismissing the criminal complaint against plaintiff. On May 31, 2006, We promulgated a Decision^[11] in connection with the criminal complaint filed by defendant against plaintiff, the dispositive portion of which reads:

X X X

"UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition at bench is hereby GRANTED. The Office of the City Prosecutor of Manila is ORDERED to file the appropriate information against private respondents for violation of Section 74 in relation to Section 144 of the Corporation Code. It is also ordered to file the appropriate informations against private

respondents for violation of Article 172 and Article 183 of the Revised Penal Code. Without costs in this instance.

"SO ORDERED."

X X X

The motion for reconsideration filed by private respondents therein, which includes plaintiff herein, was denied for lack of merit through a Resolution dated August 8, 2006.

Defendant filed his Answer with Counterclaim^[12] dated September 24, 2007 in Civil Case No. 04-111304, alleging that the Amended Complaint is a case for damages for malicious prosecution, the requisites of which are not present in this case. He argues that the first requirement, that the plaintiff in the malicious prosecution case must have been acquitted, is not present in this instance, since this Court's Special Ninth Division issued the Decision dated May 31, 2006 finding probable cause of violation of the Corporation Code, specifically Section 74 thereof, with respect to Section 144, and ordering the filing of an Information against the respondents in I.S. No. 03E-15285, which includes plaintiff. The second requirement that the defendant in the malicious prosecution case must have acted without probable cause is likewise not true in this instance because of the said finding of probable cause by this Court. The third requirement, that the defendant in the malicious prosecution case must have been actuated or impelled by legal malice, is also not present based on the same reason.

Before a pre-trial was held, defendant's counsel moved for the suspension of the proceedings in view of the pendency of a Petition for Certiorari he filed with Us in connection with the RTC's denial of his Motion to Quash/Set Aside/Discharge (re: 22 December 2004 Writ of Attachment) and his Motion to Dismiss dated January 26, 2005. The motion to suspend was granted by the RTC through the Order^[13] dated February 5, 2008.

After a long interregnum, the RTC issued an Order^[14] dated July 7, 2010 directing the parties to submit themselves before the Philippine Mediation Center.

Plaintiff filed her Manifestation^[15] dated July 29, 2010 stating that Defendant Sy Chim had died in December 2008.

Counsel for Defendant Sy Chim filed a Manifestation and Motion to Dismiss^[16] dated April 6, 2010 stating that he was just informed that his client has already passed away on December 15, 2008. In view of which, it was prayed that the complaint for damages arising from malicious prosecution be dismissed, not being an action that survive the death of the defendant. He also mentioned important supervening events that would justify the outright dismissal of the case, *i.e.*, the Supreme Court Decision dated March 30, 2009 rendered in G.R. No. 174168 entitled "Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan v. Sy Chim and Felicidad Chan Sy" ruling that there was probable cause in the criminal complaint filed by Defendant Sy Chim against, among others, Plaintiff Juanita Tan.

The RTC, in the assailed Order dated May 3, 2011, granted defendant's Manifestation and Motion to Dismiss, ruling that:

X X X

"In as much as the instant action is a civil complaint for damages for the malicious prosecution of the criminal complaint filed by plaintiff which does not survive with the death of said defendant before any judgment could be rendered by this Court, the claim being not one (1) of those mentioned in Section 21, Rule 3 of the Rules of Court which states that:

'Where claim does not survive - When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.'

the civil action is therefore extinguished.

"With more reason that with the finding of probable cause by the decision of the Supreme Court in the criminal complaint filed by the defendant Sy Chim against herein-plaintiff Juanita Tan, there is no more malicious prosecution to speak of."

X X X

Plaintiff filed a Motion for Reconsideration^[17] stating that her action is one for damages for acts which constitute grave abuse of right *vis-à-vis* Article 19 of the Civil Code, and not one for malicious prosecution. The RTC denied said motion through its Order dated July 29, 2011.

Plaintiff then filed a Notice of Appeal which was given due course by the RTC through the Order dated September 2, 2011. Hence, this appeal.

THE ASSIGNED ERRORS

Plaintiff, as Our appellant, raised the following errors in her Appellant's Brief, to wit:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE COMPLAINT IS FOR MALICIOUS PROSECUTION WHICH DOES NOT SURVIVE UPON THE DEATH OF THE DEFENDANT.

II

THE TRIAL COURT ERRED IN DISMISSING THE CASE DESPITE THE FACT