Supreme Court E-Library

defense version that accused Reynaldo Arevalo killed the victim Abelardo Gonzales in legitimate self-defense, and in finding that the other accused Bernardo Arevalo, Ernito Arevalo and Roceval Arevalo participated in the crime. Furthermore, the evidence for the prosecution conclusively established the qualifying circumstance of treachery to qualify the killing to murder.[18] This qualifying circumstance absorbs the aggravating circumstances of nighttime and abuse of superior strength.

There being no aggravating nor mitigating circumstance in the commission of the crime, the trial court correctly imposed the penalty of *reclusion perpetua*.

WHEREFORE, the judgment appealed from, being in accordance with the law and the evidence, is AFFIRMED *in toto*.

SO ORDERED.

Barredo C.J., Antonio, Aquino, and *De Castro, JJ.*, concur.

Santos and *Abad Santos, JJ.*, are on leave.

FIRST DIVISION

[G.R. No. L-41432. July 30, 1979]

IVOR ROBERT DAYTON GIBSON, *petitioner, vs.* **HON. PEDRO A. REVILLA, in his official capacity as Presiding Judge of Branch XIII, Court of First Instance of Rizal, and LEPANTO CONSOLIDATED MINING COMPANY,** *respondents.*

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[18] pp. 18-19, *rollo*.

Supreme Court E-Library

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; DEFINED AND DISCUSSED.— The term "intervention" refers to the proceeding by which one not originally a party to an action is permitted, on his own application, to appear therein and join one of the original parties in maintaining the action or defense, or to assert a claim or defense against some or all of the parties to the proceeding as originally instituted. Such a third party may, upon the discretion of the court, become a party to a pending proceedings between others for the protection of some rights or interest alleged by him to be affected by such proceedings. Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding." Once judicial discretion is exercised, the action of the court cannot be reviewed or controlled by *mandamus* however erroneous it may be, except only when there is an arbitrary or capricious exercise of discretion, in which case, the fault is correctible by *mandamus* if there be no other adequate and speedy remedy.

Supreme Court E-Library

2. ID.; ID.; ID.; REQUIREMENTS BEFORE INTERVENTION MAY BE ALLOWED.— The first paragraph of Section 2, Rule 12 prescribes the time to intervene and also who may intervene, that is, one who has legal interest in the matter in litigation, or in the success of either of the parties or an interest against both or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof. Paragraph (b) of the same section directs what matters are to be considered in exercising discretion to allow or disallow a motion for intervention, which are whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding. Clearly, for the Court to permit intervention, it must be shown that movant is possessed of legal interest in the matter in litigation or otherwise qualified under the first paragraph of Section 2, and the Court must also consider the matters mentioned in paragraph (b) thereof. The latter are not and should not be taken as secondary to the former for both must concur since they are equally important, requisite and necessary for consideration in the exercise of discretion by the Court to allow or disallow intervention.

3. ID.; ID.; ID.; WILL NOT BE ALLOWED WHEN IT WOULD UNDULY DELAY THE PROCEEDINGS BETWEEN THE PARTIES.— If petitioner is allowed to intervene, We hold that there is good and sufficient basis for the Court *a quo* to declare that the trial between Lepanto and Malayan would be definitely disrupted and would certainly unduly delay the proceedings between the parties especially at the stage where Lepanto had already rested its case and that the issues would also be compounded as more parties and more matters will have to be litigated. In other words, the Court's discretion is justified and reasonable.

4. COMMERCIAL LAW; INSURANCE; REINSURANCE; GENERAL RULE.— The general rule in the law of reinsurance is that the re-insurer is entitled to avail itself of every defense which the re-insured (which is Malayan) might urge in an action by the person originally insured (which is Lepanto).

Supreme Court E-Library

APPEARANCES OF COUNSEL

Quasha, Asperilla, Ancheta, Valmonte, Peña & Marcos for petitioner.

Sycip, Salazar, Feliciano, Hernandez & Castillo for respondents.

D E C I S I O N

GUERRERO, *J.*:

This is a petition for review[1] seeking to set aside the Order of the Court of First Instance of Rizal, Branch XIII, presided by respondent Judge Pedro A. Revilla, in Civil Case No. 20046 entitled "*Lepanto Consolidated Mining Company versus Malayan Insurance Company, Inc.*" denying the motion of the petitioner Ivor Robert Dayton Gibson for leave to intervene in said case, and to order the respondent Judge to admit him as intervenor therein.

The antecedent facts of this case are as follows:

Lepanto Consolidated Mining Company (hereinafter referred to as Lepanto) filed on September 27, 1974 in the Court of First Instance of Rizal, Branch XIII a complaint with a plea for preliminary mandatory injunction against Malayan Insurance Company, Inc., (hereinafter referred to as Malayan), docketed as Civil Case No. 20046 seeking the following relief:

"(a) upon the filing of this complaint, a writ of preliminary mandatory injunction be issued directing defendant to advance to plaintiff an interest-free loan of ₱1,831.695.75; and

(b) upon trial on the merits —

(i) an accounting or average adjustments be made for the liquidation of the general average losses, damages and expenses arising from the marine accidents subject of this action and the determination of the contributions due from subject cargoes under the Policy;

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[1] Treated as a special civil action.

Supreme Court E-Library

(ii) defendant be ordered to pay plaintiff the amounts under item (i) above, with interest thereon at the rate of 12% per annum, from February 20, 1972 as to the cargo's contribution relative to the 'Hermosa' and from March 27, 1972 as to the cargo's contribution relative to the 'General Aguinaldo';

(iii) the amount of ₱1,831,695.75 as interest-free loan due plaintiff from defendant be declared repayable upon and only to the extent of any corresponding recovery from the owners of the 'Hermosa' and 'General Aguinaldo'";

Lepanto also sought payment of interest on delayed loan amounts, exemplary damages of at least ₱500,000.00, attorney's fees and other litigation expenses, and other cumulative and/or alternative reliefs as may be lawful, just or equitable in the premises.

The civil suit thus instituted by Lepanto against Malayan was founded on the fact that on Sept. 9, 1971, Malayan issued Marine Open Policy No. LIDC-MOP-001/71 covering all shipments of copper, gold and silver concentrates in bulk from Poro, San Fernando, La Union to Tacoma, Washington or to other places in the United States which Lepanto may make on and after August 1, 1971 and until the cancellation of the policy upon thirty (30) days' written notice.

Thereafter, Malayan obtained reinsurance abroad through Sedgwick, Collins & Co., Limited, a London insurance brokerage. The Memorandum of Insurance issued by Sedgwick to Malayan on September 24, 1971 listed three groups of underwriters or reinsurers and their reinsurance interest are as follows:

Lloyds	62.808%
Companies (I.L.U.)	34.705%
Other Companies	2.487%
	100.000%

At the top of the list of underwriting members of Lloyds is Syndicate No. 448, assuming 2.48% of the risk assumed by the reinsurer, which syndicate number petitioner Ivor Robert Dayton Gibson claims to be himself.

Supreme Court E-Library

In November, 1971, a cargo of concentrates was shipped by Lepanto on the M/V Hermosa at Poro, San Fernando, La Union destined for Tacoma, Washington. During the sea voyage, while the vessel was in the Northern Pacific Ocean south of Japan on or about Nov. 11, 1971, it encountered heavy weather and rough seas which caused it to roll, pitch and vibrate heavily so that certain shifting boards in the vessel broke and part of the cargo shifted transversely, thereby causing a list. The vessel deviated to Moji, Japan and after the shifting boards were repaired and/or replaced, it proceeded on its trip to Tacoma, but about the end of the month, the ship once again met with strong winds, monsoon rains, severe winter and very rough seas and it rolled, pitched and vibrated heavily so other shifting boards broke and part of the cargo also shifted causing a heavier list. The captain of the boat, fearing that the vessel might sink, sailed to Osaka and unloaded the cargo. Expenses were incurred by Lepanto relative to the cargo while in Japan but eventually the cargo was transhipped to Tacoma via another vessel.

Also in November, 1971, another cargo of concentrates was shipped by Lepanto on board the M/V General Aguinaldo at Poro, San Fernando, La Union and destined for Tacoma, Washington. Similarly, during the sea voyage on or about November 30, 1971 in the Northern Pacific Ocean southeast of Japan, it met with heavy weather and rough seas, causing it to pitch, roll and vibrate heavily so that certain shifting boards in the vessel broke and part of the cargo shifted transversely which caused the listing of the vessel. The captain, fearing also that the vessel might sink, sailed for Miyako, Japan, unloaded the cargo and expenses were incurred relative to the cargo while in Japan. Thereafter, the cargo was transhipped to Tacoma on board another vessel.

Lepanto notified Malayan and another insurer, Commercial Union in London in November and December, 1971 of the accidents. Formal claims under the open policy were also filed by Lepanto with Malayan in March and July, 1972 upon the conclusion of the voyages and the determination of the shortweight.

Supreme Court E-Library

The claims were denied by Malayan tentatively at first claiming that it needed time to determine whether or not the marine accidents resulted from the inherent vice or nature of the cargo and finally Malayan rejected Lepanto's insurance claim for the reason that the cargoes were inherently vicious on loading and such condition caused the listing of the vessel.

Hence, the complaint filed by Lepanto against Malayan in Civil Case No. 20046 for the interest-free loan to Lepanto as stipulated in the policy computed at ₱1,831,695.75.

Malayan filed a motion to dismiss the case on three grounds: 1. that the instant case has been brought in the name of other than the real party in interest; 2. that the complaint states no cause of action; and 3. that the claim set forth in the complaint has been extinguished.

On December 4, 1974, Malayan's motion to dismiss was denied. On January 17, 1975, Malayan filed its Answer incorporating as part of its special and affirmative defenses the following allegations:

"(5) Defendant acted in good faith in rejecting plaintiff's insurance claims, not only because of the circumstances and reasons set forth in the preceding sub-paragraphs (1) to (4) which defendant had been reasonably led to believe by reports of reputed experts and/or by legal advice as justifying rejection, but also because, as plaintiff had been repeatedly told, it is under constraint, on one hand, by customs of the insurance trade to adhere to the decisions of the lead insurers, and on another hand, by its contract with its reinsurer which among others, prohibit settlement of the reinsured claims without the reinsurer's assent."

On January 27, 1975, Lepanto filed its reply. On January 30, 1975, the Court denied Lepanto's motion for mandatory preliminary injunction "without prejudice to reconsider the said motion after the pre-trial of this case shall have been concluded." On March 19, 1975, the first pre-trial conference was held and on March 25, 1975, the parties filed their Stipulation of Facts and Issues, which Stipulations was approved *en toto* in the trial court's order of April 1, 1975.

Supreme Court E-Library

Subsequently, pre-trial conferences were held on April 3, 1975, May 21, 1975, and June 19, 1975 when Lepanto concluded its evidence. Defendant through counsel reserved its right to make a formal offer of its evidence at the continuation of the hearing scheduled on July 16, 1975.

Then on June 25, 1975, petitioner Ivor Robert Dayton Gibson filed a motion to intervene as defendant, which motion is as follows:

"*MOTION TO INTERVENE*

COMES NOW Ivor Robert Dayton Gibson, Reinsurer in the above-entitled case, through undersigned counsel, and to this Honorable Court respectfully alleges that:

1. Movant is of legal age, a British citizen, with address at Lloyd's Lime Street, London, EC3.

2. Movant is the leading re-insurer of the risks and liabilities assumed by defendant Malayan Insurance Co., Inc. in a contract of marine insurance involving two (2) separate shipments of copper concentrates aboard the MV "Hermosa" and the MV "General Aguinaldo" shipped by Lepanto Consolidated Mining Co., Inc. to American Smelting & Refining Co. from Poro Point, San Fernando, La Union, to Tacoma, Washington for which defendant issued Policy No. LIDC-MOP-001/71 dated September 9, 1971, in the amount of 20% of the declared value of each shipment but not to exceed US$2,000,000 per shipment.

3. Prior to these two shipments and after defendant Malayan contracted with Lepanto to insure these two (2) copper concentrates shipments against risks of loss and damage, defendant Malayan, in turn, re-insured its liabilities with movant who undertook to indemnify defendant for losses and damages in accordance with the terms of their reinsurance contract.

4. After the defendant Malayan filed Answer to this suit, movant was informed that defendant made express reservations 'to file in due time a third-party complaint against the lead insurers and/or its reinsurers' (par. XVIII, Answer).

5. Movant has a legal interest in the subject matter of litigation in that he stands to be held liable to pay on its re-insurance contract should judgment be rendered requiring the defendant to pay the claim of the plaintiff.

Supreme Court E-Library

6. To avoid multiplicity of suits and allow all parties who have any relation to the cause of action, whether legally or in equity, to ventilate expeditiously every issue relevant to the suit, it is respectfully submitted that movant be allowed to intervene as a defendant in the interest of justice.

7. By the very nature of a contract of reinsurance and considering that the reinsurer is obliged 'to pay as may be paid thereon' (referring to the original policies), although this is subject to other stipulations and conditions of the re-insurance contract, it will serve better the ends of justice if a full disclosure of all pertinent facts and issues is made with the participation of the movant at this trial where his interests have been and are already inevitably at stake."

Counsel for the movant submitted the foregoing motion for the consideration and resolution of the Court on June 30, 1975. The motion to intervene was opposed by Lepanto on the following grounds: 1. Movant Ivor Robert Dayton Gibson has no legal interest in the matter in litigation or in the success of either plaintiff or defendant; 2. Movant is estopped by his laches from intervening in this action; 3. The intervention is intended for delay and if allowed, will unduly delay the proceedings between plaintiff and defendant; and 4. The rights, if any, of movant are not prejudiced by the present suit and will be fully protected in a separate action against him and his co-insurers by defendant herein.

Replying to Lepanto's opposition, movant Ivor Robert Dayton Gibson contended that 1. Contrary to oppositor's contention, movant Gibson has a legal interest in the matter in litigation because a contract of reinsurance between the defendant Malayan Insurance Company, Inc. and the movant herein is a contract of indemnity against liability, and not merely against damage, and therefore, movant has a direct and immediate interest in the success of defendant Malayan Insurance Company, Inc.; 2. Neither estoppel nor laches applies to the movant since the motion to intervene was filed seasonably on June 25, 1975 during the period of introduction of evidence by defendant Malayan; 3. The intervention is not intended for delay; movant is merely asserting a legal right or interest in the pending case with the request for opportunity to appear and be joined so that he could

Supreme Court E-Library

protect or assert such right or interest; and 4. The filing of an independent and separate suit proposed by the plaintiff is condemned by the basic and fundamental principles against multiplicity of suits.

On July 26, 1975, Lepanto filed a Rejoinder to the movant's "Reply to Opposition." On July 28, 1975, Malayan made a manifestation that it had no objection to the "Motion to Intervene" of Ivor Robert Dayton Gibson and on July 31, 1975, movant made a Sur-Rejoinder to Lepanto's Rejoinder.

On August 18, 1975, the Court *a quo* resolved to deny the Motion for Intervention in the following:

"ORDER

Ivor Robert Dayton Gibson, thru counsel, has presented before this Court a motion to intervene on June 25, 1975. In his motion, he alleges that he is a British citizen with address at Lloyd's Lime Street, London, EC3; that he is the leading re-insurer of the risks and liabilities assumed by defendant Malayan Insurance Company, Inc. in the contract of marine insurance involving the shipments subject of the instant suit. He further contends that he has a legal interest in the subject matter of litigation for he stands liable on his re-insurance contract should judgment be rendered against the defendant and that this intervention would avoid a multiplicity of suits. Plaintiff vigorously opposed the motion contending that movant Ivor Robert Dayton Gibson has no legal interest in the matter in litigation or in the success of either parties in this suit; that he is estopped by laches; that the intervention is intended for delay and will unduly delay the proceedings between plaintiff and defendant; and that movant will not be prejudiced by the present suit and can be fully protected in any separate action which defendant may file against him and his co-insurers.

Considering the grounds of the opposition, the Court believes that the third and fourth grounds raised in the opposition appear highly meritorious. Since movant Ivor Robert Dayton Gibson appears to be only one of several re-insurers of the risks and liabilities assumed by Malayan Insurance Company, Inc., it is highly probable that other re-insurers may likewise intervene. This would definitely disrupt the trial between plaintiff and defendant, the principal protagonists in this suit. To allow the intervention would certainly unduly delay the

Supreme Court E-Library

proceedings between plaintiff and defendant especially at this stage where plaintiff had already rested its case. It would also compound the issues as more parties and more matters will have to be litigated. At any rate, Ivor Robert Dayton Gibson may protect whatever interest he has in a separate action.

IN VIEW OF ALL THE FOREGOING, the Court resolves to deny the motion for intervention.

SO ORDERED.

Pasig, Rizal, August 18, 1975.

(SGD) PEDRO A. REVILLA
Judge"

Not satisfied with the denial of his Motion to Intervene, petitioner now comes before Us seeking to set aside the order of denial and to order the respondent Judge to admit him as intervenor. By resolution of this Court dated November 17, 1975, the petition was denied due course for lack of merit, but upon petitioner's motion for reconsideration, the petition was allowed in the Resolution of February 18, 1976, treating it as a special civil action.

The principal issue is whether the lower court committed, reversible error in refusing the intervention of petitioner Ivor Robert Dayton Gibson in the suit between Lepanto and Malayan.

We lay down the law on Intervention as found in Sec. 2, Rule 12 of the Rules of Court:

"Section 2. Intervention. — A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

(a) Motion for intervention. — A person desiring to intervene shall file a motion for leave of court with notice upon all the parties to the action.

Supreme Court E-Library

(b) Discretion of court. — In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding.

(c) Complaint or answer in intervention. — The intervention shall be made by complaint filed and served in a regular form, and may be answered as if it were an original complaint; but where intervenor unites with the defendant in resisting the claims of the plaintiff, the intervention may be made in the form of an answer to the complaint.

(d) Time. — Unless a different period is fixed by the court, the complaint or answer in intervention shall be filed within ten (10) days from notice of the order permitting such intervention."

According to pertinent jurisprudence, the term "intervention" refers to the proceeding by which one not originally a party to an action is permitted, on his own application, to appear therein and join one of the original parties in maintaining the action or defense, or to assert a claim or defense against some or all of the parties to the proceeding as originally instituted. Such a third party may, upon the discretion of the court, become a party to a pending proceedings between others for the protection of some rights or interest alleged by him to be affected by such proceedings.[2]

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention.[3] Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof.[4] As regards the legal interest

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[2] 59 AM JUR 2d, 553; *Gutierrez v. Villegas*, G.R. No. L-11848, May 31, 1962, 5 SCRA 313.

[3] AM JUR, *supra*, 565.

[4] Rule 12, Section 2.

Supreme Court E-Library

as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity, or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral.[5] However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by considering "whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding."[6] Once judicial discretion is exercised, the action of the court cannot be reviewed or controlled by *mandamus* however erroneous it may be, except only when there is an arbitrary or capricious exercise of discretion, in which case, the fault is correctible by *mandamus* if there be no other adequate and speedy remedy.[7]

As may be noted in the questioned Order, respondent Judge denied the Motion to Intervene on the last two grounds of Lepanto's Opposition, namely: "3. The intervention is intended for delay and if allowed, will unduly delay the proceedings between plaintiff and defendant; and 4. The rights, if any, of movant are not prejudiced by the present suit and will be fully protected in a separate action against him and his co-insurers by defendant herein."

Respondent Judge, reasoning out his Order, ruled that "(s)ince movant Ivor Robert Dayton Gibson appears to be only one of

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[5] *Garcia v. David*, 67 Phil. 279 (1939); *Hacienda Sapang Palay Tenant's League v. Yatco*, G.R. No. L-14651, February 29, 1960; AM JUR, *supra*, 567; *Batama Farmers' Cooperative Marketing Association, Inc. v. Rosal*, G.R. No. L-30526, November 29, 1971, 42 SCRA 408.

[6] *Balane v. De Guzman*, G.R. No. L-21281, May 24, 1967, 20 SCRA 177.

[7] *Tavera-Luna v. Nable*, 67 Phil. 340 (1939); *Dizon v. Romero*, G.R. No. L-26252, December 24, 1968, 26 SCRA 452.

Supreme Court E-Library

several co-insurers of the risks and liabilities assumed by Malayan Insurance Company, Inc., it is highly probable that other re-insurers may likewise intervene. This would definitely disrupt the trial between plaintiff and defendant, the principal protagonists in this suit. To allow the intervention would certainly unduly delay the proceedings between plaintiff and defendant especially at this stage where plaintiff had already rested its case. It would also compound the issues as more parties and more matters will have to be litigated. At any rate, Ivor Robert Dayton Gibson may protect whatever interest he has in a separate action."

In his petition, petitioner submits that the respondent Judge, in refusing to permit/allow him to intervene in Civil Case No. 20046, incorrectly interpreted and/or appreciated the purpose/intent of the pertinent rules of procedure that govern intervention of parties in a given action and that the respondent Judge erred: (1) In concluding that to allow the intervention of herein petitioner "would definitely disrupt the trial" and "would certainly unduly delay the proceedings," when such apprehension appears to be clearly immaterial in determining when intervention is proper or not; (2) In viewing the alleged availability of another recourse on the part of herein petitioner to protect his interest, *i.e.* separate action, as an added justification to deny his intervention, despite the fact that the applicable rule of procedure in this regard (Section 2, Rule 12) does not preclude intervention even if another separate action is appropriate and/or available; and (3) In its obvious disregard of the very rule (Section 2, Rule 12) precisely designed to apply on cases where intervention is sought, thereby departing from the accepted and usual procedure under the premises.

After carefully considering the arguments of both the petitioner and Lepanto, the facts and circumstances obtaining in the case at bar and applying Rule 12, Sec. 2 of the Rules of Court and the doctrines enunciated by the Supreme Court on the matter, We rule that the respondent Judge committed no error of law in denying petitioner's Motion to Intervene. And neither has he abused his discretion in his denial of petitioner's Motion for Intervention.

Supreme Court E-Library

It is quite crystal clear that the questioned Order of the respondent Court was based strictly and squarely on Section 2(b) of Rule 12 which specifically directs the Court in allowing or disallowing a motion for intervention in the exercise of discretion to consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding. The Court *a quo* has specifically and correctly complied with the Rule's mandate and We cannot fault the respondent Judge therefore.

We reject the contention of the petitioner that the question regarding delay in the adjudication of the rights of the original contending parties, while recognized as factors in allowing or disallowing intervention, should assume a secondary role to the primary and imperative requirement that the legal interest of the would-be intervenor in the matter under litigation must be clearly shown and that once the legal interest of the would-be intervenor is clearly shown, the fact that his intervention may work to delay a little the main conflict between the parties should not by itself justify the denial of intervention.

Petitioner's contention is untenable. The first paragraph of Section 2, Rule 12 prescribes the time to intervene and also who may intervene, that is, one who has legal interest in the matter in litigation, or in the success of either of the parties or an interest against both or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof. Paragraph (b) of the same section directs what matters are to be considered in exercising discretion to allow or disallow a motion for intervention, which are whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding. Clearly, for the Court to permit intervention, it must be shown that movant is possessed of legal interest in the matter in litigation or otherwise qualified under the first paragraph of Section 2, and the Court must also consider the matters mentioned in paragraph (b) thereof. The

Supreme Court E-Library

latter are not and should not be taken as secondary to the former for both must concur since they are equally important, requisite and necessary for consideration in the exercise of discretion by the Court to allow or disallow intervention. We cannot invest nor render primary or secondary importance to either of these requirements for the law does not make any distinction. Each case must be decided according to its facts and merits, subject to the discretion of the Court.

From the particular facts and circumstances of the case at bar, We are satisfied that the respondent Judge has not abused his discretion in denying petitioner's Motion to Intervene. We agree with the holding of the respondent Court that since movant Ivor Robert Dayton Gibson appears to be only one of several re-insurers of the risks and liabilities assumed by Malayan Insurance Company, Inc., it is highly probable that other re-insurers may likewise intervene. The record shows that aside from the petitioner there are sixty-three (63) other syndicate members of Lloyds, the twenty-six (26) companies in the "I.L.U." group holding a 34.705% reinsurance interest and the two (2) "Other Companies" holding the balance of the reinsurances, as listed in Annex "A", Sur-Rejoinder to Lepanto's Rejoinder, pp. 136-138, Records. The high probability that these other re-insurers like the petitioner herein may likewise intervene if the latter's motion is granted is not an arbitrary assumption of the Court. Considering petitioner's assertion that he will have the opportunity to show, among others, that the losses and damages purportedly sustained by Lepanto occurred not from the perils of the seas but from perils of the ships; that Lepanto is not the real party in interest; that it has no cause of action; and, neither has it complied with its obligations under the policy which makes the filing of the complaint premature (p. 118, Records, Reply to Opposition) if petitioner is allowed to intervene, We hold that there is good and sufficient basis for the Court *a quo* to declare that the trial between Lepanto and Malayan would be definitely disrupted and would certainly unduly delay the proceedings between the parties especially at the stage where Lepanto had already rested its case and that the issues would also be compounded as more parties and more matters will

Supreme Court E-Library

have to be litigated. In other words, the Court's discretion is justified and reasonable.

We also hold that respondent Judge committed no reversible error in further sustaining the fourth ground of Lepanto's Opposition to the Motion to Intervene that the rights, if any, of petitioner are not prejudiced by the present suit and will be fully protected in a separate action against him and his co-insurers by Malayan.

Petitioner contends that his rights would not be fully protected in a separate proceeding because "(a) decision in favor of Lepanto, declaring Malayan liable on its insurance policies would necessarily and injuriously affect the interests of petitioner, (which) interest as a re-insurer of Malayan's risk is not only inchoate but material, direct and immediate and for such interest to be in any manner prejudiced without first giving petitioner a chance to be heard would be violative of due process. Upon the other hand, a decision in favor of Malayan, recognizing it as not liable under its insurance policies, could subject petitioner to the danger of having to admit that Malayan had not breached its insurance contract with the entity (Lloyds) of which petitioner is the leading syndicate member." (Petitioner's Memorandum p. 230, Records). Petitioner also asserts that "by the very nature of a contract of re-insurance and considering that the re-insurer is obliged 'to pay as may be paid thereon' (referring to the original policies), although this is subject to other stipulations and conditions of the reinsurance contract, it will serve better the ends of justice if a full disclosure of all pertinent facts and issues is made with the participation of the movant at this trial where his interests have been and are already inevitably at stake." (Petition, p. 18, Records)

On the contrary, Lepanto insists that petitioner will have his day in court and his rights can be fully protected in a separate proceeding. According to Lepanto, if it loses the case against Malayan, petitioner cannot possibly be liable to Malayan for indemnity on the reinsurances. If Lepanto wins, then petitioner, the sixty-three (63) other syndicate members of Lloyds, the twenty-six (26) companies in the "I.L.U." group holding a

Supreme Court E-Library

34.705% reinsurance interest and the two (2) "Other Companies" holding the balance of the reinsurances are free either to pay Malayan or to resist Malayan and thus force Malayan to sue in whatever country most of them, qualitatively and not quantitatively, may be served with summons.

Petitioner's contention that he has to pay once Malayan is finally adjudged to pay Lepanto because of the very nature of a contract of reinsurance and considering that the re-insurer is obliged 'to pay as may be paid thereon' (referring to the original policies), although this is subject to other stipulations and conditions of the reinsurance contract, is without merit. The general rule in the law of reinsurance is that the re-insurer is entitled to avail itself of every defense which the re-insured (which is Malayan) might urge in an action by the person originally insured (which is Lepanto). Specifically, the rule is stated thus —

"Sec. 1238. — In an action on a contract of reinsurance, as a general rule the reinsurer is entitled to avail itself of every defense which the reinsured might urge in an action by the person originally insured; x x x"

The same rule is stated otherwise in 44 Am. Jur. 2d, Sec. 1862, p. 793, as follows:

"Moreover, where an action is brought against the reinsurer by the reinsured, the former may assert any defense that the latter might have made in an action on the policy of original insurance." (*Eagle Ins. Co. vs. Lafayette Ins. Co.*, 91 Ind. 443)

As to the effect of the clause "to pay as may be paid thereon" contained in petitioner's re-insurance contract, Arnould, on the Law of Marine Insurance and Average, 13th Ed., Vol. 1, Section 327, p. 315, states the rule, thus:

"It has been decided that this clause does not preclude the re-insurer from insisting upon proper proof that a loss strictly within the terms of the original policy has taken place."

"This clause does not enable the original underwriter to recover from his re-insurer to an extent beyond the subscription of the latter."

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It is significant and revealing that petitioner himself admits in his Memorandum, p. 231, Records, that "(o)f course, petitioner, if finally sued in London, (he) could avail himself of remedies available to him." He adds that "such a procedure, if not entirely time-consuming, would actually beg the issue on hand. Petitioner believes that his defenses on the claims ventilated in the court *a quo* can be appreciated only here; elsewhere in view of the peculiar circumstances surrounding Lepanto's claims the basic issue will be obfuscated and perhaps even obliterated by arguments on procedural niceties." However, such a procedural problem is no legal ground to compel allowance of and insist on his intervention.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby dismissed. No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-42800. July 30, 1979]

LIM SE and BENITO LIM, *petitioner, vs.* **HON. MANUEL A. ARGEL, Presiding Judge of the Court of First Instance of Rizal, Caloocan City Branch XXXV, JUANA SAN PEDRO-OCAMPO, FRANCISCO SAN PEDRO, GENARO BULOTANO and THE SHERIFF OF BAGUIO CITY and/or his deputy/deputies or DEPUTY SHERIFF ESTEBAN S. PAR,** *respondents.*