

ATTACHMENT I

Szendrey v. Hospicare, Inc.

158 D.P.R. 648 (203)

[English Translation]

IN THE SUPREME COURT OF PUERTO RICO

Ladislaus M. Szendrey and his wife,
Maricarmen Ramos de Szendrey, and
the Conjugal Partnership constituted
by them,

Plaintiffs and petitioners

v.

No. CC-2000-845

Certiorari

Hospicare, Inc., *et al.*,

Defendants and respondents

CHIEF JUSTICE ANDRÉU GARCÍA delivered the opinion of the Court.

San Juan, Puerto Rico, February 14, 2003

[1]

On April 23, 1993, Hospicare, Inc., as seller, and Ladislaus Szendrey and his wife, as buyers, entered into a bilateral purchase and sale agreement on suites Nos. 802 and 804 of the Metropolitan Professional Park Condominium building in Río Piedras. At the time, Hospicare, Inc. owned all the office spaces located on five of the ten floors of the Metropolitan Professional Park Condominium. On the other hand, Inversiones y Desarrollos del Caribe, Inc. (INDECA) owned the remaining office spaces on the building's other five floors. A short time later, Hospicare and INDECA rented all the office spaces on the building to the Correctional Department and other related entities.

On March 23, 1994, Ladislaus Szendrey, his wife, and the conjugal partnership constituted by both brought action in the Court of First Instance against Hospicare, Inc.; INDECA; Enrique Irizarry Sorrentini, his wife, and the conjugal partnership constituted by both; Baldomero Collazo Salazar, his wife, and the conjugal partnership constituted by both; and Metropolitan Office Park, Inc. As first cause of action, they alleged breach of the purchase and sale agreement of suites Nos. 802 and 804, and demanded the execution of the pertinent purchase and sale deed. As their second cause of action, they contended that defendants were violating the provisions of the master deed regarding the intended use of the building's office spaces and some common elements. They sought specific compliance with the restrictions included in the master deed and compensation for the damage resulting from such violations.



The complaint was amended on several occasions with the court's leave.¹ In the third amended complaint, the allegations regarding the damages claimed were extended to include all the defendants and to seek damages in the amount of \$500,000.

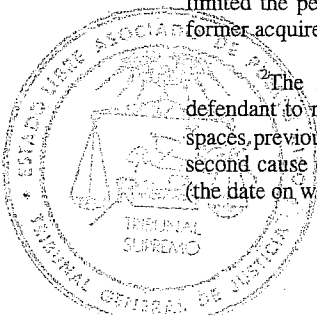
On January 20, 2000, plaintiffs and Hospicare, Inc. filed in the court a settlement agreement entitled "Stipulation of Settlement and Release," which informed that Hospicare, Inc. executed the purchase and sale deed in favor of plaintiffs, as requested in the first cause of action, and that they had reached an agreement on the damages for which said codefendant was liable. Specifically, plaintiffs reserved the right to continue with their claims against the other codefendants. By partial judgment of January 21, 2000, the trial court accepted the parties' stipulation and ordered the dismissal, with prejudice, of petitioners' claims against Hospicare.

INDECA timely sought reconsideration of that partial judgment, alleging that should the settlement stand, dismissal of the claims filed against it would be in order. In the alternative, it asked to be allowed to include Hospicare and the current tenants of the office units previously owned by Hospicare, Luis Fernando Castillo, and Gladys Cruz China, as third-party defendants. The Court of First Instance upheld its partial judgment, denied the motion to dismiss against INDECA, and did not allow the third-party complaint.²

Aggrieved, INDECA and the other codefendants appealed before the Circuit Court of Appeals, which upheld the trial court's refusal to dismiss the action against INDECA because it deemed that the complaint gave rise to a separate claim that was independent from the action settled by plaintiffs with Hospicare, Inc., namely, a petition for injunction to order defendants to observe the purpose and intended use of the building's apartments and common areas as established in the master deed and subject to the horizontal property regime. The intermediate court, however, concluded that although the action for damages affected all the codefendants, plaintiffs' intention was to release only Hospicare, Inc. from liability. For that reason, the court determined that INDECA's third-party complaint was in order, inasmuch as allegedly all the defendants are joint tortfeasors with respect to the damages claimed, and the determination of their

¹The first amended complaint included the tenants of all the other office spaces in the condominium as defendants and claimed \$50,000 in damages. The second amended complaint included Metropolitan Professional Park, Inc. as defendant. The third amended complaint did not change the list of defendants, but extended the claim for damages to all the defendants and increased the sum claimed for damages to \$500,000. The fourth amended complaint, which was filed after the petition for certiorari was filed before the Circuit Court of Appeals, removed Hospicare from the list of defendants to reflect the settlement agreement reached with it, added F. Castillo Family Properties, Inc. and the limited partnership Gam Realty, S.E. (which had acquired the units previously owned by Hospicare) as defendants with respect to the injunctive relief, and limited the period for which damages were claimed to March 31, 1999, the date on which the former acquired the units from Hospicare.

²The fourth amended complaint of [May] 19, 2000, eliminated Hospicare, Inc. as defendant to reflect the settlement agreement they had reached. The new owners of the office spaces, previously owned by Hospicare were joined as defendants in the injunction sought in the second cause of action, and the claim for damages against them was limited to March 31, 1999 (the date on which they acquired the units from Hospicare, Inc.).



proportional share of liability requires that all defendants be parties to the action. The court deemed that otherwise, the principle of procedural economy would be impaired because once damages are awarded, INDECA would have to file a separate post-litigation action for contribution.

Following this decision, plaintiffs came to this Court and alleged that the appellate court erred:

In ruling that INDECA may bring Hospicare as third-party defendant, inasmuch as [plaintiff] Szendrey had released it from liability and, consequently, it is Szendrey who must satisfy or assume any claim INDECA may have as joint debtor in the action for damages by reason of its right to contribution.³

Petition for Certiorari at 10.

II

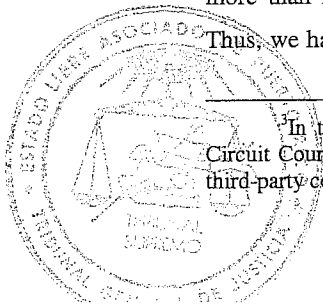
[1] Rule 12.1 of Civil Procedure, 32 L.P.R.A. App. III, R. 12.1, provides:

At any time after commencement of the action, the defendant may, as a third-party plaintiff, serve a summons and a complaint upon a person not a party to the action and (1) who is or may be liable to him for all or part of the plaintiff's claim, or (2) who is or may be liable to the plaintiff exclusively.

The purpose of this rule is to establish a mechanism to facilitate the prompt and inexpensive resolution of multiple actions that may arise from a single set of facts. *Camaleglo v. Dorado Wings, Inc.*, 118 D.P.R. 20 [18 P.R. Offic. Trans. 24] (1986); *A.A.A. v. Builders Ins. Co., Etc.*, 115 D.P.R. 57 [15 P.R. Offic. Trans. 76] (1984). This action does not create, extend or limit substantive rights; it expedites its resolution. For that reason, a claim against a third party lies only when the third party's liability is contingent on the outcome of the main action or when the third party is "secondarily or directly liable to plaintiff." *Gen. Accid. Ins. Co. P.R. v. Ramos*, 148 D.P.R. 523, 534 [48 P.R. Offic. Trans. ___, ___] (1999); *Camaleglo v. Dorado Wings, Inc.*, 118 D.P.R. at 30 [18 P.R. Offic. Trans. at 35].

[2] In Puerto Rico, the right of contribution between joint tortfeasors has been acknowledged since *García v. Government of the Capital*, 72 P.R.R. 133 (1951). The well-known rule that applies when the damage is caused by two or more persons provides that all joint tortfeasors are liable to the plaintiff for the damage sustained by the latter. However, there is among these joint tortfeasors a right of contribution derived from Civil Code sec. 1098 (31 L.P.R.A. § 3109), which allows one of the codebtors who has paid more than his or her share to claim from the other codebtors their respective shares. Thus, we have held that joint tortfeasors are solidarily liable to the injured party, but the

³In the second assignment of error, plaintiffs contend that unlike the decision of the Circuit Court of Appeals, the third-party complaint was belatedly filed. The untenability of the third-party complaint in this case releases us from addressing this second assignment of error.



onerous effect between the joint tortfeasors should be distributed in proportion to their respective degree of negligence. *Security Ins. Co. v. Tribunal Superior*, 101 D.P.R. 191, 208 [1 P.R. Offic. Trans. 271, 290] (1973). See also *Arroyo v. Hospital La Concepción*, 130 D.P.R. 596 [30 P.R. Offic. Trans. ____] (1992).

[3] The main purpose of the right of contribution in Puerto Rico has been to prevent situations of unjust enrichment. As we stated in *P.R. Fuels, Inc. v. Empire Gas Co., Inc.*, 149 D.P.R. 691, 713 [49 P.R. Offic. Trans. ____, ____] (1999):

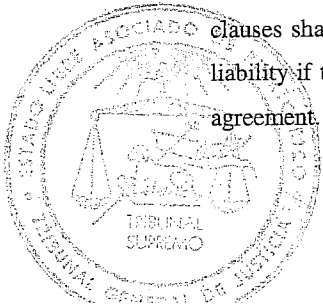
It is really aimed at "preventing situations of unjust enrichment, subjectively allocating the obligation to those [to whom], in the last instance, it may correspond."

The right to contribution is based principally on equity, inasmuch as it is altogether unfair, if two or more persons caused the damage, to allow the plaintiff, by reason of relationship, friendship, collusion, or for any other reason, to release them from liability and to direct his action exclusively against others. *García v. Government of the Capital* [72 P.R.R. at 143].

See also *Arroyo v. Hospital La Concepción*, 130 D.P.R. 596 [30 P.R. Offic. Trans. ____] (1992).

[4] Although the right of contribution of a codebtor does not arise until he or she pays more than his or her share, he or she may file a contingent claim against the other codebtors. *Security Ins. Co. v. Tribunal Superior*, 101 D.P.R. at 198 [1 P.R. Offic. Trans. at 279]; *García v. Government of the Capital*, 72 P.R.R. at 141. In other words, under Civil Procedure Rule 12.1, a joint tortfeasor may file a third-party complaint within the action in which he or she was required to pay more than his or her share of the damages compared to his or her degree of contribution to the occurrence of the damage.

[5-6] The release or discharge from liability granted by a plaintiff to a codefendant and joint codebtor does not release the other joint tortfeasors from liability for the damage when the intention of the parties in the settlement and release agreement has thus acknowledged this fact. *P.R. Fuels, Inc. v. Empire Gas Co., Inc.*, 149 D.P.R. 691 [49 P.R. Offic. Trans. ____] (1999); *Merle v. West Bend Co.*, 97 P.R.R. 392 (1969). In *Merle*, the codefendants alleged that when one of the defendants was released from liability, the release benefited all the other codefendants, since they were all jointly liable for the damage and, therefore, dismissal of the complaint against them was in order. We held that the determining factor in that case was the intention of the parties when releasing one of the joint tortfeasors from liability under the provisions of our Civil Code sec. 1233 (31 L.P.R.A. § 3471), which provides that if the terms of a contract are clear and leave no doubt as to the intentions of the contracting parties, the literal sense of its clauses shall be observed. There, we held that joint tortfeasors were not released from liability if the intention of the parties did not contemplate such release in the settlement agreement. *Merle v. West Bend Co.*, 97 P.R.R. at 402.



In *Merle*, however, we did not pronounce ourselves on the issue raised in this case: whether it is necessary to join, as third-party defendant, the joint tortfeasor that was released from liability for purposes of the action for contribution. We pointed out that it was incumbent upon the trial court to determine the scope of the settlement agreement with respect to the joint tortfeasor that remained in the action, because the settlement agreement seemed to provide that the plaintiff had assumed whatever liability the released codebtor could have to the debtor who remained in the action. *Id.* at 402-403.

[7] Just like in *Merle*, in this case it is necessary to examine the scope of the release contained in the settlement agreement in order to determine the tenability of the third-party complaint for which INDECA sought court authorization. If the codefendant that remains in the action is liable to plaintiff only *for the share that represents its degree of contribution* to the cause of the damage, a third-party complaint is unnecessary and untenable because it does not meet the requirement of being liable to the plaintiff for all or part of the claim. Civil Procedure Rule 12.1 (32 L.P.R.A. App. III). See, generally, *Gen. Accid. Ins. Co. P.R. v. Ramos*, 148 D.P.R. 523 [48 P.R. Offic. Trans. ____] (1999). The tenability of a third-party action depends, therefore, on a practical analysis of the facts in which we must determine the degree of liability of the remaining codefendant or codefendants, that is, the defendant or defendants who were not included in the settlement agreement. In other words, the court must determine whether these defendants must answer to the plaintiff for the liability of the joint tortfeasor that was released as a result of the settlement. See *A.A.A. v. Builders Ins. Co., Etc.*, 115 D.P.R. 57 [15 P.R. Offic. Trans. 76] (1984).

III

In the instant case, the Court of First Instance dismissed all claims against Hospicare, Inc. on January 21, 2000, when it approved the January 20, 2000, Stipulation of Settlement and Release signed by plaintiff and codefendant.

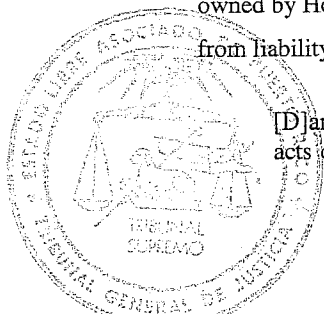
With regard to the scope of the release of Hospicare, Inc. from liability, section 1(e) of the stipulation states:

[P]laintiffs release Hospicare, Inc. . . . from any and all liability, financial or otherwise, for any cause of action they might currently have or have had in the past between them as a consequence of all the facts involved in this complaint, whether these were exercised or not, including the bankruptcy proceedings of Hospicare, Inc.

Appendix to the Petition for Certiorari at 108.

In that same subsection, plaintiffs released the new buyers of the units previously owned by Hospicare, Inc., Fernando Castillo Barahona and his wife, Gladys Cruz Chinaea, from liability for:

[D]amages or causes of action they might have against them as a result of acts committed by Hospicare, Inc. . . . up to March 31, 1999, the date on



which the Castillo Barahona-Cruz China spouses acquired ownership over the real property.

Id.

In section number 1(f), it was clarified:

[P]laintiffs expressly reserve every and all rights to continue litigation of their claim and causes of action, including those to recover damages and those that relate to the compliance with the horizontal property regime, against each and every codefendant in the action that was not released by this settlement.

Id. at 109.

We can thus notice the plaintiffs' unequivocal intention to release Hospicare, Inc. from *all* liability arising from the facts of this case with regard to the breach of the contract, the damages claimed, and the compliance with the horizontal property regime.⁴ This intention, however, does not affect the cause of action asserted against the other codefendants by virtue of the action for damages and the permanent injunction sought, insofar as it was so expressly agreed.

The core language of the stipulation that actually settles this issue is the express release of codefendant (Hospicare, Inc.) from:

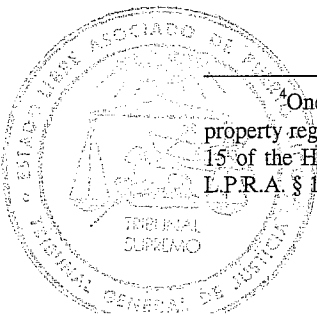
[A]ny and all claims or judgments against it that may be rendered in favor of other persons, who may or may not be codefendants in the action, as a consequence of cross-claims, third-party claims, or actions for contribution already filed or to be filed in the future against them to recover from judgments against them and in favor of plaintiffs.

Appendix at 109-110. (Emphasis added.)

Thus, we see that the parties' intention was to release Hospicare, Inc. from liability for the facts involved in the second cause of action that made Hospicare, Inc. liable for the damages caused as owner of some of the apartments and as joint tortfeasor, along with the other owners of the apartments of the building in question.

In other words, even if the final judgment to be rendered in due time by the Court of First Instance determines that the codefendants that remained in the action contributed jointly and severally, along with Hospicare, to the damage caused to plaintiffs, they need not file any claim against Hospicare, Inc. on account of its contribution to the damage caused, because the court judgment will have to assess the total cash value of the damage caused to plaintiffs by *all* the tortfeasors and will deduct from said total amount a sum equivalent to Hospicare's degree of liability. Likewise, for purposes of contribution

⁴Once Hospicare, Inc. ceases to own any share in the building subjected to the horizontal property regime, dismissal of the action regarding the compliance with said regime lies. Section 15 of the Horizontal Property Act, as amended by sec. 1 of Act No. 157 of June 4, 1976 (31 L.P.R.A. § 1291 m-1).



among the codefendants that remain in the action,⁵ the court must determine the degree of each codefendant's contribution to the damage suffered by plaintiffs, even when they remain solidarily liable to plaintiffs for the totality of the remaining damages—that is, those that result after subtracting the sum corresponding to Hospicare's degree of contribution.

Therefore, the third-party complaint does not lie in this case because it does not fulfill the purpose of Civil Procedure Rule 12.1, which requires that the third party be liable to the defendant for all or part of the plaintiff's claim or otherwise be liable to the plaintiff exclusively.

IV

For the foregoing reasons, *the judgment of the Circuit Court of Appeals is reversed for the purpose of establishing the untenability of the third-party complaint, as held by the Court of First Instance.*

Justice Rivera Pérez disqualified himself.

WBR/mvs

⁵The right of contribution, also called restitution, reimbursement, or return among joint debtors is recognized by Civil Code sec. 1098 (31 L.P.R.A. § 3109), which provides:

“The payment made by any of the joint debtors extinguishes the obligation.

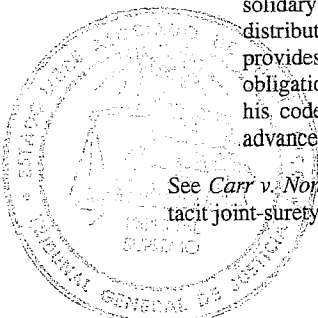
“The person who made the payment can only claim from his codebtors the shares pertaining to each one with interest on the amounts advanced.

“The nonfulfilment of the obligation by reason of the insolvency of a joint debtor shall be made good by his codebtors in proportion to the debt of each of them.” [Emphasis added.]

Ever since *Méndez v. Torres*, 56 P.R.R. 70, 75 (1940), we have stated:

“The confusion noticeable at first sight disappears if it is considered that the concept of solidarity is applicable only to the obligation of the debtors towards their creditor [external relation] but not to the relations of the debtors between themselves [internal relation]. As regards the creditor the liability is a solidary one. As between the debtors among themselves the liability is distributed. Section 1098 of the Civil Code, 1930 ed., clearly and expressly provides that ‘[t]he payment made by any of the joint debtors extinguishes the obligation,’ and that ‘[t]he person who made the payment can only claim from his codebtors the shares pertaining to each one with interest on the amounts advanced.’”

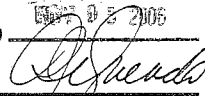
See *Carr v. Nones*, 98 P.R.R. 230 (1970), in which this Court refused to apply said section to a tacit joint-surety contract.



I CERTIFY that this is an Official Translation
made by the Bureau of Translations of the
Supreme Court of Puerto Rico.

In San Juan, Puerto Rico

May 15 2006



LCDA. AIDA ILEANA OQUENDO GRAULAU
Clerk of the Supreme Court

