103 Phil. 662

[G.R. No. L-9531. May 14, 1958]

WARNER BARNES & CO., LTD., PLAINTIFF AND APPELLEE, VS. GUILLERMO C. REYES, ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

PARAS, C.J.:
The plaintiff-appellee filed against the defendants-appellants an action for foreclosure of mortgage on August 20, 1954. The deed of mortgage sued upon was attached to the complaint as Annex "A". After having been granted an extension, the appellants filed an answer on September 30, 1954, alleging:

> "1. That they admit paragraph 1 of the complaint;
>
> "2. That the defendants
> are without knowledge or information sufficient to form a belief as
> to the truth
> of the material averments of the remainder of the complaint; and
>
> "3. That
> they hereby reserve the right to present an amended answer with special defenses
> and counterclaim."

As the appellants did not file any amended answer, the appellee moved on November 15, 1954 for judgment on the pleadings on the ground that the answer failed to tender an issue. The lower court granted appellee's motion in the order dated December 28, 1954 and thereafter (on December 29, 1954) rendered, judgment in favor of the appellee. In granting the motion for judgment on the pleadings, the lower court held "that the denial by the defendants of the

material allegations of the complaint under the guise of lack of knowledge is a general denial so as to entitle the plaintiff to judgment on the pleadings."

In the present appeal taken by the defendants, the question raised is whether the allegation of want of knowledge or information as to the truth of the material averments of the complaint amounts to a mere general denial warranting judgment on the pleadings or is sufficient to tender a triable issue.

Section 7 of Rule 9 of the Rules of court, in allowing the defendant to controvert material averments not within his knowledge or information, provides that "where the defendant is without knowledge or information sufficient to form a belief as to the truth of material averment, he shall so state and this shall have the effect of a denial. This form of denial was explained in one case as follows:

> "Just as the explicit denials of an answer should be either general or specific, so all denials of knowledge or information sufficient to form a belief should refer either generally to all the averments of the complaint thus intended to be denied, or specifically to such as are to be met by that particular form of plea. The answer should be so definite and certain in its allegation that the pleaders' adversary should not be left in doubt as to what is admitted, what is denied, and what is covered by denials of knowledge or information sufficient to form a belief, Under this form of denial employed by the defendant, it would be difficult, if not impossible to convict him of perjury if it should transpire that some of his denials of knowledge, etc., were false, for he could meet the charge by saying that his denials referred only to matters of which he had in fact no knowledge or information." (Kirachbaum vs. Eschmann, 98 NE 328, 329-330.)

This is a foreclosure suit. It is alleged that the appellants are jointly and severally indebted in the sum of P9,906.88, secured by a mortgage. A copy of the mortgage deed was attached to and made a part of the complaint. There are also allegations of partial payments, defaults in the payment of outstanding balance, and a covenant to pay interest and attorney's fees. v It is hard to believe that

the appellants could not have had knowledge or information as to the truth or falsity of any of said allegations. As a copy of the deed of mortgage formed part of the complaint, it was easy for and within the power of the appellants, for instance, to determine and so specifically allege in their answer whether or not they had executed the alleged mortgage. The appellants could be aided in the matter by an inquiry or verification as to its registration in the Registry of Deeds. "An unexplained denial of information and belief of a matter of records, the means of information concerning which are within the control of the pleader, or are readily accessible to him, is evasive and is insufficient to constitute an effective denial," (41 Am. Juris., 399, citing Dahlstrom vs. Gemunder, 92, NE 106.)

It is noteworthy that the answer was filed after an extension granted by the lower court, and that while a reservation was made to file an amended answer, no such pleading was presented. If these show anything, it is that the appellants obviously did not have any defense or wanted to delay the proceedings.

The form of denial adopted by the appellants, although allowed by the Rules of Court, must be availed of with sincerity and in good faith,—certainly neither for the purpose of confusing the advei'se party as to what allegations of the complaint are really put in issue nor for the purpose of delay.

> "* * * no court will permit its process to be trifled with and its intelligence affronted by the offer of pleadings which any reasoning person knows can not possibly be true. * * * 'The general rule that the Court is not bound to accept statements in pleadings which are, to the common knowledge of all intelligent persons, untrue, applies just as well to the provisions of Rule S(b), 28 U.S.C.A. following Section 723c, as to pleadings under the State statute.' " (Nieman vs. Long, 51 F. Supp. 30, 31.)
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> "This rule, specifically authorizing an answer that defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted is to the knowledge of the court as plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue." (Icle Plant Equipment Co. vs. Martocello,

D.C. Pa. 1941, 43 F. Supp. 281.)

Wherefore, the decision appealed from is
hereby affirmed with costs against the appellants. So ordered.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and *Felix, JJ.*, concur.

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