

TRINIDAD L. AURELIO, PLAINTIFF AND APPELLEE, VS. MAXIMO BAQUIRAN, DEFENDANT AND APPELLANT.

G.R. No. L-9316. October 31, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from a judgment on the pleadings rendered by the Court of First Instance of Ilocos Norte ordering the defendant to pay to the plaintiff the sum of P6,238 together with lawful interest from the date of the filing of the complaint until paid, and costs.

In this verified complaint the plaintiff alleges that from 1 June to 30 September 1950 the defendant borrowed from him various sums of money which after liquidation was ascertained to be P6,288 as acknowledged by the defendant (Exhibit A); that the latter paid the sum of P50 on account and failed to pay the balance thereof despite repeated demands; and that as the defendant had removed or disposed of his property, or, was about to do so, with intent to defraud his creditors, he prayed for a writ of attachment. As prayed for the writ was granted.

In his answer the defendant specifically denies under oath the genuineness and due execution of Exhibit A attached to the complaint and made part thereof; that he borrowed any sum of money from the plaintiff; and that he paid to the plaintiff the sum of P50, the truth being that the sum of P6,288 that he received from the plaintiff was in partial payment of P10,000 that the plaintiff had agreed to contribute to the partnership which he and the plaintiff had organized for the purpose of engaging in the construction business; and alleges that Exhibit A where it appears that he acknowledged to be indebted to the plaintiff in the sum of P6,288 did not express the true intent of the parties, the same having been signed by him just to accommodate the plaintiff for the purpose of showing it to his wife and father that he had invested the said sum in the business. The defendant sets up a counterclaim for P3,712, the unpaid balance of the sum of P10,000 the plaintiff had agreed to contribute to the partnership, and for P5,000 as damages caused by the issuance of the writ of attachment and the malicious filing of an unfounded complaint.

The plaintiff answered the counterclaim alleging that the amount sought to be collected was money borrowed by the defendant from him and the salary and bonus earned by him from 1 June to 30 September 1950 as supervising engineer in the defendants' construction business.

On 12 September 1952, the defendant moved for judgment on the pleadings and dismissal of the plaintiff's complaint on the ground that it states no cause of action. He contended that the document Exhibit A, which purports to be an acknowledgment of his indebtedness, shows that the obligation is without a fixed period or term; and that for the reason plaintiff's action should be to have said period for payment fixed by the Court under and pursuant to article 1197 of the New Civil Code.

On 17 December 1952, the plaintiff filed a pleading agreeing to the defendant's prayer for judgment on the pleadings but objecting to the motion to dismiss.

On 18 December 1952, the Court denied the defendant's motion to dismiss on the ground that the obligation contracted by the defendant was pure and without term, as shown by the partial payment of P50 made on account, and therefore demandable at once; but granted the motion for judgment on the pleadings, holding that "one who prays for judgment on the pleadings without offering proof as to the truth of his own allegation, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings," and ordering "the defendant to pay to the plaintiff the amount of P6,238.00 with legal interest of six per cent per annum from the filing of the complaint until it is fully paid," and costs. The defendant appeals.

Section 10, Rule 35, provides:

Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved.

As the defendant's verified answer to the plaintiff's sworn complaint tendered an issue and did not admit the material allegations of the complaint, a judgment on the pleadings was improper and unauthorized by the above quoted provisions of section 10, Rule 35. After tendering an issue by his answer the defendant should not have moved for judgment on the pleadings. If the answer did not tender an issue or it admitted the material allegations of the complaint, then the plaintiff and not the defendant should have moved for judgment on the pleadings. If intended to test the sufficiency of the complaint the motion to dismiss should have been filed before the answer.

The motion to dismiss the complaint was properly denied because the complaint alleges a cause of action against the defendant. The motion for judgment on the pleadings should also have been denied, because as already stated there was an issue tendered by the answer of the defendant.

The judgment appealed from is set aside and the case remanded to the trial court for further proceedings in accordance with law, without pronouncement as to costs.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, J. B. L., Reyes, Endencia, and Felix, JJ., concur.

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