

**GREGORIO APELARIO, DOING BUSINESS UNDER THE STYLE
“GREGORIO TRADING,” PLAINTIFF AND APPELLEE, VS.
INES CHAVEZ & COMPANY, LTD., DOING BUSINESS UNDER THE
STYLE “FIDELITY MOTOR SUP...**

G.R. No. L-17721. October 16, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a judgment on the pleadings rendered by the Court of First Instance of Manila on June 8, 1959 in its Case No. 39822, and certified by the Court of Appeals to this Court on the ground that only questions of law are involved.

The record shows that on April 8, 1959, plaintiff Gregorio Apelario filed a complaint against Ines Chavez & Company, Ltd., a limited partnership, and its general partner, Ines Chavez. It was therein averred, in substance, that on or about October 28, 1958, the defendant partnership had purchased on credit from plaintiff ten sets of axle assemblies for the sum of P2,400.00 (par. 3); that on December 6, 1958, defendant delivered in payment to the plaintiff two postdated cash checks for P1,200.00 each, drawn against the Philippine Bank of Commerce (par. 4); that when the checks were presented for payment, they were dishonored for lack of funds, whereupon the defendant took back the checks and replaced them with two other checks, also postdated, for the same amount as before (par. 5); that these checks were also dishonored (par. 6); that the plaintiff, on February 23, 1959, demanded payment in cash, but defendant refused to pay (par. 7); that because of such malicious and wilful refusal, plaintiff had to engage the services of counsel for an agreed fee of P750.00 (par. 8); that defendant was about to remove and dispose of its properties with intent to defraud the plaintiff, wherefore a writ of attachment became necessary (par. 9); and prayer was made for judgment in favor of plaintiff and against the defendant for the sum of P2,400.00, with legal interest from the filing of the complaint, and for P750.00 attorney's fees, with expenses and costs. Plaintiff also moved and duly obtained a writ of attachment.

Defendants obtained the lifting of the attachment by filing a counterbond on April 14, 1959; and on May 7, 1959, they filed an answer admitting the allegations of paragraphs 1 to 6 of the complaint; admitting that plaintiff had demanded payment of P2,400, but pleaded that—

“defendants could not pay the plaintiff, because they have so many accounts receivables which have not yet been paid to them, of which fact the defendant, was duly informed by the plaintiff and thereby requested to wait a while.” (B. App. p. 27).

Defendants further averred having no knowledge or information of the allegations of paragraph 8 of the complaint concerning the attorneys' fees; denied having performed any act of removal or disposal of its property, branding plaintiff's allegations in paragraph 9 to be false and malicious; and prayed for dismissal of the complaint.

Upon motion of the plaintiff, and over the objection of defendants, the trial court rendered judgment on the

pleadings, sentencing defendants to pay P2,400, plus legal interest from the filing of the complaint; and P500 attorney's fees.

Defendants appealed, and now claim that it was error for the lower court to have rendered judgment on the pleadings, because the answer raised material issues.

We find no merit in the appeal. As pointed out in the judgment complained of, the defendants-appellants had admitted all the material allegations of the complaint concerning the existence of the debt and its non-payment. The pleaded excuse, that they had requested plaintiff to, wait because appellants' many accounts receivable had not yet been collected, is clearly no defense, for a debtor can not delay payment due just to suit its convenience, and the creditor is not an underwriter of his debtor's business unless so stipulated.

The denial of the averment concerning the stipulated fees of plaintiff's attorney tendered no genuine issue, for even without such allegations, it was discretionary in the court to allow reasonable attorneys' fees by way of damages, if it found just and equitable to allow their recovery (Civ. Code, Art. 2203). In this case, allowance of such fees was justified since defendant admitted having issued to the creditor checks without funds, not once but twice. It is well to note that the P750 attorney's fees claimed by plaintiff were reduced P500 only.

Nor does the denial of the complaint's averments concerning the fraudulent removal and disposition of defendant's property constitute a bar to a judgment on the pleadings, since the defendant neither claimed nor asked for any damages on account of the issuance and levy of the writ of attachment.

Wherefore, the appealed judgment of the Court of First Instance is affirmed. Costs against appellants.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes and De Leon, JJ., concur.

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