

NAGA DEVELOPMENT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS AND PACIFIC MERCHANDISING CORPORATION, RESPONDENTS.

G.R. No. L-28173. September 30, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

Appeal by certiorari from the decision of the Court of Appeals in CA-G.R. 33126-R dated July 25, 1967, affirming (a) the order of default issued by the Court of First Instance of Manila in a collection suit instituted by the Pacific Merchandising Corporation (hereinafter referred to as the Pacific) against the Naga Development Corporation (hereinafter referred to as the Naga), and (b) the judgment by default in the same case which ordered the Naga to pay the Pacific the sum of P143,282.76, with interest at the rate of 1% a month from July 21, 1962 until fully paid, a sum equivalent to 12% of the principal obligation as attorney's fees, and the costs of suit.

A sales agreement dated August 10, 1962 was entered into by and between the Naga and the Pacific, by virtue of which the latter agreed to supply the former roofing and related materials and to be responsible for their installation at the Naga City public market, for a total cost of P238,447.76, exclusive of materials that may be additionally required during construction.

Under the terms of payment specified in the mentioned agreement, the Naga covenanted that it shall (a) deposit the sum of P106,300 with the Pacific upon the signing of the contract; (b) pay the balance of the price, payable within 45 days after completion of the deliveries and installation of the roofing materials, but not later than 95 days from the date of delivery thereof to the job site in case their installation is delayed due to the fault of the Naga; and (c) furnish the Pacific a deed of assignment, properly acknowledged, recognized and/or accepted by the Government Service Insurance System, providing direct payment to the Pacific in an amount equal to P142,144.76, representing the balance of the amount involved, within 45 days after completion of the installation of the roofing materials by the Pacific.

Several days before the date of the aforesaid agreement, or, on July 21, 1962, the Pacific already made deliveries to the job site at Naga City of roofing materials to be used in the construction of the mentioned Naga City public market. The total value of the materials delivered plus the cost of installation from July 21, 1962 to October 19, 1962 amounted to P250,312.76.

On July 19, 1963 the Pacific filed with the Court of First Instance of Manila a complaint against the Naga (docketed as civil case 54547), alleging in essence that only P107,030 of the total obligation of the Naga under their agreement had been paid and that the Naga refused to pay the balance thereof in the amount of P143,282.76.

On August 5, 1963 the Naga filed a motion with the trial court requesting for an extension of 15 days, to expire on August 20, 1963, within which to file its answer, counsel stating that ---

"The inability to prepare and finalize defendant's answer on time is due to the burden of other equally if not

more urgent professional work on the part of the undersigned counsel."

The said motion was granted.

On August 16, 1963 the Naga filed another motion for an additional extension of 10 days within which to file its responsive pleading, counsel alleging this time that the extension ---

"... is requested for the reason that counsel is presently verifying certain material facts and information relative to the transaction object of the plaintiff's complaint, which are needed in order that they may be able to intelligently prepare defendant's answer, and such verification may not be accomplished in time for the completion of the answer on or before the aforesaid due date."

The court a quo, however, denied the foregoing motion.

On August 22, 1963, a day after receipt of the said order of denial, counsel for the Naga moved for reconsideration. On August 23, 1963 the Naga filed a supplemental motion for the admission of its answer and for the denial of the Pacific's motion, filed the day before, to declare the Naga in default.

The court below denied the Naga's motions and declared it in default in an order dated August 29, 1963.

On September 7, 1963, the Naga filed a motion to set aside the default order on the following grounds:

(a) The court's order was entered after the Naga had tendered its answer to the complaint, so that judicial discretion should have been exercised in favor of its admission, following the policy laid down in *Coombs vs. Santos*, 24 Phil. 446 (1913).

(b) In the process of drafting the answer to the complaint, counsel for the Naga found it necessary to make further verification and re-checking of the amount claimed as well as the articles alleged to have been shipped to Naga City, considering that the total amount involved was more than P100,000. This took some doing as the data to be checked were available only in Naga City.

(c) The order of default was issued merely on the strength of the Pacific's representation that the Naga does not have an office in Naga City, which is belied not only by the fact that the Naga's articles of incorporation state that its principal office is in Naga City but as well by the Pacific's allegation in its complaint that the materials in question were sold and delivered to the Naga at Naga City through the Manila Railroad Company.

(d) The Naga has good and substantial defenses, such as that the claim was prematurely filed, it being the express agreement of the parties that payments after the completion and acceptance of the work will be satisfied out of the releases of the loan applied for by the Naga to the GSIS which, due to the latter's refusal to release, prompted the Naga to file a complaint against the GSIS to obtain release of payments (civil case 52637 of the Court of First Instance of Manila). In the said litigation, the Pacific even filed a motion for intervention, but later withdrew the same.

(e) There has been no delivery to, and acceptance by, the Naga of the complete installation work made by the Pacific.

The Naga, through an affidavit of merit executed by its president and attached to the motion to set aside the order of default, stated additionally that ---

"... the result of the complete verification and re-checking conducted shows that there were several amounts advanced and paid for by the Naga Development Corporation for the account of the plaintiff Pacific Merchandising Corporation, such as the sum of P600.00 which was paid some-time in May, 1963 to sub-contractor Marquez upon the request of the plaintiff, which advances should be taken into account of and

considered in the final accounting."

The trial court, however, in an order dated September 20, 1963, denied the motion to set aside the order of default, for the following reasons:

(a) The Naga does not have a valid defense. It does not dispute the completion of the delivery and the installation of the materials in question. The sales agreement provides that payment for the services and materials should be made within 45 days after the materials are installed. Moreover, there is no provision in the agreement in question which makes the right of the Pacific to collect the balance of the price agreed upon dependent on the re-release of the GSIS loan aforementioned.

(b) The failure of the Naga to file its answer within the extended period was due to its fault and negligence. For while in its first motion for extension, counsel for the Naga said that the responsive pleading could not be prepared and finalized due to the pressure of urgent professional commitments, in its second motion for extension, the Naga's counsel alleged that more time was needed to verify the truth of the allegations in the complaint. The reason adduced by the Naga in its first request for extension, according to the lower court, gave the lie to the second request for extension.

(c) There was no real need to verify the truth of the averments contained in the Pacific's complaint. In the complaint filed by the Naga against the GSIS on January 3, 1963, it was therein expressly averred that the Naga was indebted to the Pacific in the amount of P143,282.76 --- a sum identical to the amount of the claim of the Pacific in the instant suit. Considering the large amount involved, there must have been a thorough inquiry made about the said debt before the complaint against the GSIS was filed, as in fact, said the court, the president of the Naga admitted that several conferences were held with representatives of the Pacific relative thereto.

(d) The answer which the Naga belatedly submitted for admission admitted the correctness of the Pacific's claim to the last centavo, but the Naga sought avoidance thereof solely upon the grounds that the same was not yet demandable on account of the GSIS's refusal to release the mentioned loan and that there was as yet no delivery and acceptance of the installation work performed by the Pacific at the Naga City public market. These grounds, however, according to the court, cannot be sustained under the express terms of the sales agreement in question.

On October 10, 1963, after the ex parte reception of the evidence submitted by the Pacific, the trial court rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered sentencing the defendant to pay the plaintiff the sum of P143,282.76, with interest thereon at the rate of 1% per month from July 21, 1962, until full payment is made, and a sum equivalent to 12% of the unpaid obligation as attorney's fees and expenses of litigation, together with costs."

The Naga appealed the foregoing decision as well as the orders refusing it recognition to participate in the trial below to the Court of Appeals; the latter court, in a decision rendered on July 25, 1967, ruled in favor of the Pacific. It also denied the Naga's motion for reconsideration in a resolution dated September 26, 1967.

Hence, the present recourse.

This appeal raises the following issues: (a) whether the trial court's order of default and its order denying the Naga's motion to set aside were correctly issued, and (b) whether the adjudication made by the trial court on the merits is correct.

1. Anent the first issue, we are in agreement with the Court of Appeals' affirmance of the questioned orders of the trial court.

The granting of additional time within which to file an answer to a complaint is a matter largely addressed to the sound discretion of a trial court. While trial courts are persuaded, as a matter of policy, to adopt a basically flexible attitude in favor of the defendant in this area of our adjective law, the defense should never be lulled into the belief that whenever trial courts refuse a second request for extension to file an answer, the appellate courts will grant relief. Where, as in the case at bar, another full period of 15 days to file the answer had been granted, substantial grounds must be shown by the party declared in default in order that the questioned order of the trial court may be reversed.

The Naga, in its second request for extension to file its answer, pleaded that a verification of the truth of the averments contained in the complaint would be needed because it had made certain payments, such as the amount of P600, which should be deducted from the claim of the Pacific.

This excuse, in our opinion, is flimsy. In its belated answer filed with the trial court for admission, the Naga explicitly denied that the claim asserted in the complaint was already due and demandable at that time, the Naga saying that the GSIS loan (the release of which was claimed to be a pre-condition to the payment of the Pacific's claim) had not yet been released and that the installation work done by the Pacific had not yet been accepted. A written denial of this nature will not, in our view, take long to make, as, indeed, the Naga, after it came to know of the default order, was able to make the said answer in less than three days. The said belatedly filed answer, as we read it, sufficiently joined issues with the material allegations of the Pacific's complaint.

But even if it is true, as the Naga asserts, that it had made certain payments to the Pacific which should be deducted from the amount of the claim, it would likewise have been a very simple matter to allege that the complaint does not reflect the true amount due to the Pacific because of payments made. These payments could then be proved at the trial, or, possibly, admitted at the pre-trial conference. The essential purpose of a responsive pleading is to secure a joinder of the issues and not to lay down evidentiary matter.

There is also another aspect of this case which, in our opinion, should be counted as a factor in determining whether the trial court exercised its discretion soundly in declaring the Naga in default and denying its motion to set aside.

The Pacific claims, as one of its defenses against the grant-ing of the petition at bar, that the Naga City public market has been operating since 1965 and that the questioned GSIS loan had already been released as early as in March, 1966. The Naga's sole answer to this is: "Just because a debt will fall due in the future does not mean that it can be filed now... For, settled is the rule that a com-plaint that states no valid cause of action at the time it is filed cannot be cured by the subsequent accrual of one (*Surigao Mine Exportation Co., Inc. v. Harris, et al.*, 68 Phil. 113, 119)."

The correctness of the foregoing legal postulate is conceded, but the very fact of its assertion in the case at bar demonstrates that the Naga intends solely to bank upon the trenches of what may perhaps be called a pure and simple "lawyer's defense." A defense of this nature serves precisely to affect adversely, rather than enhance, the cause of the Naga.

Adverting next to the Naga's claim that it has valid and meritorious defenses, we concur in the conclusion reached below that the payment of the amount agreed upon in the sales agreement aforementioned did not depend upon the availability of funds from the GSIS.

Under the said agreement, it was the obligation of the Pacific to supply and install the roofing materials needed for the construction of the Naga City public market; and for those materials supplied and the services rendered, it was the reciprocal duty of the Naga to pay the price agreed upon. The GSIS, which was not a party to the said

contract, and, consequently, not bound by its terms, can-not be made to assume the obligation of the Naga thereunder with-out its consent. In its desire to speed up payments to the Pacific, the Naga could make arrangements, as it apparently attempted to do, so that the GSIS would make its treasury warrants payable directly in favor of the Pacific on the basis of the amounts the Naga would certify to the GSIS, but such an arrangement obviously cannot destroy or modify the direct legal responsibility of the Naga to the Pacific to pay for what the latter gave and rendered to the former.

With reference to its other allegedly valid and meritorious defense - that the materials in question had not yet been delivered and that the alleged installation job had not yet been accepted by the Naga - suffice it to state that this defense involves a factual determination with which this Court is not concerned in the instant appeal. The determination made by the Court of Appeals on such factual matters is binding upon us.

2. We now turn to the second issue.

The Naga contends that the Court of Appeals erred in affirm-ing the judgment by default rendered by the trial court ordering the Naga to pay (a) the sum of P143,282.76, representing the unpaid balance of the price of the materials delivered and services ren-dered by the Pacific; (b) interest thereon at the rate of 1% per month from July 21, 1962 until the principal is fully paid; (c) a sum equivalent to 12% of the unpaid principal as attorney's fees; and (d) the costs of suit.

Bearing in mind the nature of the instant suit and considering that the Court of Appeals' concurrence in the trial court's assessment of the amount of P143,282.76 is in the nature of a factual finding, this Court cannot now pass upon its correctness. The two courts below had before them the sales agreement between the parties, and to what extent the parties complied with their respective prestations thereunder was purely a matter of evidence.

However, although we cannot pass upon the correctness of the said assessment, it is quite obvious that in the execution of its judgment as affirmed by the Court of Appeals, the trial court cannot compel the Naga to pay more than what it actually owes the Pacific under the terms of their covenant. Deeply imbedded in our legal system are the principles that no man may unjustly enrich himself at the expense of another, and that every person must, in the exercise of his rights, act with justice, give everyone his due, and observe honesty and good faith. Upon these sacred legal postulates, the Naga should, therefore, be allowed, during the execution phase of the judgment, to present proof of payments made by it to the Pacific which constitute proper deductions from the principal amount it owes.

The payment of interest on the principal sum ordered by the trial court, on the other hand, presents certain aspects of law which properly lie within the compass of the present appeal.

That portion of the decision of the trial court awarding inte-rest appears to have been based upon a clause, contained in the invoices receipted for by the Naga's agents at Naga City evidencing delivery of the materials contracted for, which states:

"Terms: All bills are payable on demand unless otherwise agreed upon. Interest at 1% per month will be charged on overdue accounts. ... The parties expressly submit to the jurisdiction of the courts of the City of Manila on any legal action arising out of this transaction and an additional 25% representing attorney's fees and cost of collection will be charged by the vendor."

In *Pan Pacific Company (Phil.) vs. Philippine Advertising Corporation* (L-22050, June 13, 1968, 23 SCRA 977), we recognized the binding effect of an identical provision appearing in the invoice slips issued by the seller on the ground that since the buyer never expressed any objection thereto, and, further, accepted and made use of the goods, the buyer is deemed to have given its implied conformity to the terms of the said invoices.[1] In that case,

the terms and conditions of sale were embodied in a letter-agreement.

Following the ruling laid down in the said case, it is our opinion that the Naga's failure to interpose any objection to the invoices issued to it by the Pacific to evidence delivery of the materials ordered as per their agreement and which contained the clause in question on the payment of interest, should be deemed as an implied acceptance by the Naga of the said condition.

Nonetheless, while we hold that the foregoing clause is binding upon the Naga, it is also our view that the courts below erred in determining the time from which the said interest to be paid should be computed.

By the express terms of the sales agreement, the Naga was to make a deposit with the Pacific of a certain amount upon the signing of the agreement, and the balance of the price, to include the value of additional materials, was to be paid within 45 days after completion of the installation work.

The record of this case shows that the installation of the roofing materials was finished in "January, 1963." Hence, the interest should be computed starting on the 46th day after the completion of the installation work as it was only on this date that the Naga's account became due. There being no definite statement in the record of the exact day in January, 1963, we shall presume, for purposes of computing the interest due, that the installation of the roofing materials was completed in the middle of January, 1963, that is, on January 15, 1963. This presumption we base solely on equity, there being nothing in the record to show exactly when the said installation work was completed. Should there be any inaccuracy in this presumption, vis-a-vis the actual completion date, it is our considered opinion that the difference involves a trifling amount which, in law, may be overlooked. *De minimis non curat lex*.

Concerning the payment of the attorney's fees which were fixed at 12% of the principal obligation to be paid by the Naga to the Pacific, it is our view that the said adjudication is fair and reasonable, considering the various stages that the instant case has passed and now reached. This 12% award of attorney's fees should be computed on the basis of the outstanding obligation of the Naga to the Pacific as of the date of the filing of the complaint.

ACCORDINGLY, the judgment of the Court of Appeals affirming the questioned orders of the trial court declaring the Naga Development Corporation in default and denying its motion to set aside the said default order, is hereby affirmed.

The judgment by default, rendered by the trial court and affirmed by the Court of Appeals, ordering the Naga Development Corporation to pay the Pacific Merchandising Corporation the amount of P143,282.76 is hereby affirmed, with the qualification that the Naga Development Corporation shall be allowed to prove, during the process of execution of the said judgment, whatever payments it had made to the Pacific Merchandising Corporation, either before or after the filing of the complaint, which constitute a proper deduction from the principal sum ordered to be paid.

The interest ordered to be paid by the said judgment by default shall be computed on the basis of the total amount due and outstanding as of the 46th day after January 15, 1963, at the rate of 1% per month until fully paid.

The award of attorney's fees shall be computed on the basis of the total amount of the obligation of the Naga Development Corporation outstanding as of the date of the filing of the complaint.

Costs against the Naga Development Corporation.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., concurs in separate opinion.

Makalintal, J., no part.

[1] Cf. *Royal Shirt Factory, Inc. vs. Co Bon Tic*, L-6313, May 14, 1954, 94 Phil. 995, where the provision in the invoice slip concerning the payment of interest and attorney's fees was not considered binding upon the buyer because he did not sign the slip, and because even if the buyer accepted and made use of the goods sold, he had placed a written notation on the printed slip which was construed as a demurrer to the printed provision on the payment of interest and attorney's fees.

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CONCURRING OPINION

BARREDO, J.:

I concur, except as to the qualification allowing petitioner Naga Development an opportunity to prove partial payments during the execution proceedings. I believe that since Naga has been declared in default, and no grave abuse of discretion having been found by the Court in that respect, the judgment by default must stand and be executed, as is. Whether or not Naga has partially paid was part of the issues before the court before judgment was rendered; Naga, thru its own fault, was not allowed to prove any such partial payment by the trial court; surely, that issue cannot be reopened during the execution because that would tend to vary the terms of the judgment. The matters of equity which can be raised in an execution proceeding, cannot to my mind, refer to those which the court could have passed upon before judgment. Otherwise, there will be no end to litigation, since conceivably, the proof of partial payments could be so seriously controversial as to need another full blown trial, decision and appeal. It is my view that under the circumstances, Naga can do no more than address itself to the benignity or conscience of the private respondent.

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