

PHILIPPINE ROCK PRODUCTS, INC., PLAINTIFF AND APPELLEE, VS. MAYON MINING CORPORATION, DEFENDANT AND APPELLANT.*G.R. No. L-19602. October 30, 1964*

Ponente: PAREDES, J.

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On July 3, 1957 , Philippine Rock Products, Inc. presented with the CFI of Rizal Civil Case No. 4604, for the recovery of various sums of money, from the defendant Mayon Mining Corporation. totaling P2,576.46, exclusive of interests. On July 24, 1957 , defendant entered defenses in the manner of confession and avoidance. Defendant-appellant company pointed out that there were expenses incurred by it, before it could use the D-8 tractor, including parts installed, transportation and four (4) days shutdown, all amounting to P2,208.65. Since its claim is only P2,376.46, the amount of P167.81 is the balance due to plaintiff.

Under date of January 20, 1958 , defendant-appellant presented a Motion for Leave to Amend Answer, attaching therewith the Amended Answer. The Amended Answer disclosed a volte-face. While in the original answer, defendant admits the lease of the D-8 tractor and the other equipment, in the amended answer, it now claims that it bought the tractor and returned the other equipments, some time before the presentation of the complaint; and that there has been over-payment erroneously made to plaintiff with regards to the rentals of the tractor, in the amount of P5,900.00. In the counter-claim, of the amended answer, defendant asked for P5,900.00 (over-paid rentals); P1,900.00 (parts installed); P41.95 (transportation of parts installed) and P266.89 (rebate on rental charges on four days shutdown), or a total of P8,108.65 plus P2,000.00 by way of attorney's fees.

The motion for leave to file the amended answer was opposed by plaintiff, on the ground that its admission would in effect substantially, if not completely, change and alter the defendant's defenses and theory of the case. The opposition notwithstanding, the lower court admitted the amended answer and set the case for a pre-trial conference; after which the trial court entered the following Order:

"At the pre-trial conference held in chambers, both parties made the following admissions:

That the parties agree that the items alleged in the complaint such as the scraper, the roter and the tractor were leased and delivered to defendant by the plaintiff on January 26, 1953; that the scraper and roter were returned to plaintiff on July 31, 1953 and that the lease of these items covers only a six-month period at a rental of P3,900."

On May 15, 1961 , after trial on the merits, the court o quo rendered judgment, " * * * ordering defendant to pay the plaintiff the amount of P2,376.46 with legal interest thereon from the filing of the complaint and until the full amount shall have been paid. The defendant is likewise ordered to pay the plaintiff by way of attorney's fees the sum of P200.00 and the costs of the suit."

On July 5, 1961 , the defendant presented a Notice of Appeal from the above judgment and the Record on Appeal was incomplete, alleging that the Record on Appeal was incomplete, in that it did not contain a number of pleadings, opposed the approval thereof. These pleadings are: (a) Answer dated July 24, 1957; (b) Defendant's

motion for leave to amend answer, dated January 17, 1958; (c) Opposition to motion for leave to amend answer, dated January 18, 1958; and (d) Order dated January 20, 1958, admitting defendant's amended answer. A reply to the opposition was registered, wherein the defendant claimed that these pleadings were not necessary, since what was being appealed from was the decision only and not the orders going into the propriety of admitting the amended answer, an issue which will not be raised in the appeal. The trial court resolving the foregoing motions entered on August 4, 1961, an order directing the defendant-appellant to include the pleadings mentioned in the opposition within ten (10) days from receipt. After the lower court had denied the motion for reconsideration presented by defendant-appellant, it again ordered, on September 16, 1961, the inclusion of the pleadings in question, within 5 days from receipt. Thereafter, the present appeal was perfected to this court, which appeal deals only with the Orders of August 4, 1961 and September 16, 1961.

The instant case is before Us on two alleged errors of the court a quo, which converge on the dominant issue, of whether or not, the pleadings in question should be included in the record on appeal.

A perusal of the facts obtaining in the case at bar, leads Us to the conclusion that if the pleadings under consideration, will be incorporated in the record on appeal, it would show that the defendant-appellant has adopted a stand which is the anti-thesis of a former one, in the same case. It would also show that defendant-appellant presented an Answer without ascertaining the true facts of the case. And this explains the herculean efforts exerted by him, in resisting the inclusion of the said pleadings.

The pertinent portion of section 6 of Rule 41 states:

SEC. 6. Record on appeal; form and contents thereof.—The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies such pleadings, petitions, motions and all interlocutory orders as are related to the appealed order or judgment and necessary for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time.* * *

From what has heretofore been exposed, the pleadings sought to be included relates to the decision and motion for reconsideration referred to and are necessary for the proper understanding of the issues involved in the case.

It should likewise be observed that the last order of the respondent court, dated September 16, 1961, simply required the defendant-appellant to file within 5 days from receipt, an amended record on appeal, in accordance with the order dated August 4, 1961; and that on October 4, 1961, the defendant-appellant filed its intention to appeal the said orders of August 4, 1961 and September 16, 1961. There was nothing, therefore, to appeal from, because the respondent court had not provided or, in the least, insinuated in said order, the action it would take, if the same was not obeyed.

Premises considered, the appeal should be, as it is hereby dismissed, for being wholly devoid of merits. Double costs against defendant-appellant, in both instances.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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