

ELPIDIO JAVELLANA, PLAINTIFF-APPELLANT, VS. D. O. PLAZA ENTERPRISES, INC., DEFENDANT-APPELLEE.

G.R. No. L-28297. March 30, 1970

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

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

Direct appeal, on points of law, from an order of the Court of First Instance of Manila, in its Civil Case No. 46762, modifying an earlier decision for the plaintiff by reducing the rate of interest on the sum adjudged, and also the attorney's fees; and by ordering the plaintiff to pay damages to the defendant on account of a preliminary attachment obtained by the former upon the latter's counterclaim.

The complaint in the aforesaid civil case was for collection of the sum of P43,017.32, representing balance due on purchases of wire ropes, tractors and diesel parts made by the defendant-appellee, D. O. Plaza Enterprises, Inc., from the plaintiff-appellant, Elpidio Javellana. The complaint prayed that the defendant be ordered to pay the said sum of P43,017.32, with legal interest, plus attorney's fees in the sum of P5,000.00; it also prayed for a writ of preliminary attachment.

Upon plaintiff's putting up a bond, the trial court, on 15 April 1961, issued a writ of attachment. On 20 May 1961, the defendant moved to discharge the attachment on the ground that it was improperly issued. The motion was denied.

On 7 November 1961, the defendant filed its answer and counterclaimed for damages arising from the attachment. The plaintiff answered and interposed a counterclaim to the counterclaim.

After some years, or on 27 April 1966, the defendant moved for the dissolution of the preliminary attachment. Upon its filing a counterbond, the court, on 7 May 1966, dissolved the attachment.

On 3 November 1966, the plaintiff filed a motion to admit his amended complaint, which the court granted on 12 November 1966. In this amended complaint, the plaintiff averred that of the sum of P43,017.32 alleged in the original complaint, the defendant has paid P3,900.00, thereby leaving a balance of P39,117.32 unpaid, but that, as indicated by invoices, defendant's purchases were payable within thirty (30) days and were to bear interest of 12% per annum plus 25% attorney's fees. The amended complaint accordingly prayed for the increased amounts. Defendant did not answer this amended complaint.

After trial, the court, on 15 June 1967, rendered judgment. It found the following facts:

“ - - - - - . During the period from 23 July 1959 to 30 July 1960, defendant, in a series of transactions, purchased from plaintiff wire ropes, tractors and diesel spare parts, (in) payment for which he issued several checks amounting to P43,017.32, which, when presented to the bank, were dishonored for lack of funds. Defendant substituted these checks with another set of checks for the same amount, but again, the same were dishonored for lack of funds, as evidenced by Exhibits A to M., except for one check in the amount of P3,900.00, as evidenced by Exhibit C. Thus, the principal obligation was reduced to P39,117.32. At the time of

the issuance of the said checks, the de-fendant never informed plaintiff that it had funds to back them up. Plaintiff made demands to defendant for payment, but defendant pleaded for time and liberalization of payment, which was rejected by the plaintiff. The transactions in question were covered by invoices listed in Exhibit P, a sample of which is evidenced by Exhibit C, wherein said transactions were for 30-days term, 12% interest per annum to be charged from date of invoice, and 25% attorney's fees in case of litigation.

"The defendant claims that there were other transactions between plaintiff and defendant involving the amount of P196,828.58; that it had no intention not to pay the checks it issued upon presentment; and that it suffered damages in the amount of P14,800.00 by reason of the attachment.

"-----.

"-----.

"The counterclaim for damages arising from the attachment is without merit. The defendant was manifestly in bad faith when it issued two sets of bouncing checks. Hence, the attachment was not improper, contrary to defendant's claim."

The dispositive portion of the decision decreed:

"WHEREFORE, judgment is hereby rendered for the plaintiff and against the defendant, ordering the latter to pay the former the sum of P39,117.32 with interest at 12% per annum from 14 April 1961, the date of the filing of the original complaint, until final payment, plus 25% of the principal indebtedness as attorney's fees and costs of suit.

"The counterclaim as well as the counterclaim to the counterclaim are hereby dismissed for lack of merit."

On 28 June 1967, the defendant moved to reconsider. Over the objection of the plaintiff, the court issued an order dated 10 August 1967, now the subject of the present appeal, modifying the previous decision, in the manner following:

"WHEREFORE, the dispositive part of the decision rendered in this case is hereby modified as follows:

"(a) By ordering the defendant to pay plaintiff the sum of P39,117.20 plus the legal interest therein from the filing of the complaint until the amount is fully paid.

"(b) Ordering the plaintiff to pay defendant the sum of P16,190.00, the amount of damages suffered by the defendant on account of the preliminary attachment of the defendant; and

"(c) By ordering the defendant to pay P5,000.00 as attorney's fees.

"Without pronouncement as to costs."

Plaintiff-appellant assigns the following errors: the reduction of the attorney's fees, the reduction of the interest, and the grant to the defendant of damages arising from the attachment.

The first two assigned errors are well-taken. The court a quo reduced the interest stated in its previous decision from 12% to mere legal interest and the attorney's fees from 25% to P5,000.00 on the basis of estoppel, the ground therefor being that the reduced amounts were those alleged, hence admitted, by the plaintiff in his original complaint. This was error. The original complaint was not formally offered in evidence. Having been amended, the original complaint lost its character as a judicial admission, which would have required no proof, and became merely an extrajudicial admission, the admissibility of which, as evidence, requires its formal offer.

"Pleadings superseded or amended disappear from the record as judicial admissions. However, any statement contained therein may be considered as an extrajudicial admission, and as such, in order that the court may

take it into consideration, it should be offered formally in evidence." (5 Moran 58, citing Lucido v. Calupitan, 27 Phil. 148; Bastida v. Menzi, 58 Phil. 188)

"Where amended pleadings have been filed, allegations in the original pleadings can have no effect, unless formally offered in evidence." (Jones on Evidence, Sec. 273)

Since the record does not show that the complaint (marked as Exhibit 115) was admitted in evidence, there is no proof of estoppel on the part of the plaintiff on his allegations in the complaint. Not only this, but since the stipulation for 12% interest on balance due and the 25% counsel fees appear on the invoices themselves, appellee Plaza Enterprises can not fairly claim that it was deceived or misled by the pleadings of appellant. Even more, the original plea for P5,000.00 as attorney's fees is only contained in the prayer of the original complaint, and it is a well established rule that the prayer for relief, although part of the complaint, is no part of the cause of action and does not give it character, the plaintiff being entitled to as much relief as the facts warrant (Rosales vs. Reyes, 25 Phil. 495; Aguilar vs. Rubiato, 40 Phil. 470).

But the appellant's last assigned error is without merit. Although the defendant was found to be in bad faith in issuing two (2) sets of bouncing checks in payment for its indebtedness, such bad faith was not related to his having incurred the obligation in favor of the plaintiff but to defendant's failure to perform said Obligation. There was, therefore, no ground for the plaintiff to attach the defendant's properties on the ground of fraud. That the plaintiff acted in good faith in securing attachment does not relieve him from the damages that the defendant sustained by reason of the attachment because he, the plaintiff, was, in the first place, not entitled to attachment; the element of malice was unnecessary (3 Moran, Rules of Court, 19).

FOR THE FOREGOING REASONS, the appealed order is hereby reversed insofar as it reduced the amount of attorney's fees and the interest on the principal sum adjudged in the original decision dated, 15 June 1967; but the order is affirmed in all other respects. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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