

NEW JAPAN MOTORS, INC., PLAINTIFF-APPELLEE, VS. MARIANO PERUCHO, DEFENDANT-APPELLANT.

G.R. No. L-44387. November 05, 1976

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Defendant-appellant appealed to the Court of Appeals from the orders dated December 19, 1972 and April 17, 1973 of the Court of First Instance of Manila, Branch XXV (CA-G.R. No. 53479). Because the issues raised by the parties are purely questions of law, the Court of Appeals certified on August 2, 1976 the said appeal to this COURT pursuant to Section 3, Rule 50 of the Rules of Court, in relation to Section 17(4) of the Judiciary Act of 1948, as amended by Section 2, Republic Act 5440.

WE accepted the appeal in OUR resolution of August 23, 1976 and considered the same submitted for decision on even date, it appearing that the parties had submitted their respective briefs in the Court of Appeals, now part of the records transmitted to US by the Court of Appeals which considered the case submitted for decision without any reply brief from appellant who failed to file one within the reglementary period.

The records disclose the following:

On July 3, 1968, plaintiff filed with the City Court of Manila a complaint against defendant for the collection of a sum of money covered by two promissory notes, which were attached to the complaint, respectively executed on June 23, 1965 and July 2, 1965 by defendant in favor of plaintiff, plus interests stipulated, attorney's fees and costs of the suit.

On April 17, 1969, defendant filed his answer denying all the material allegations of the complaint because "x x x he does not have knowledge sufficient to constitute a belief as to the truth of the allegations contained therein x x x." He however interposed the following special and affirmative defenses:

"3. That the defendant incorporates by reference all the allegations contained in the foregoing paragraphs;

"4. That if defendant was not able to pay the installments due for the payment of the motor vehicles bought from the plaintiff, (it) was due to fortuitous event which the defendant had never foreseen to happen. (T)his is so, because on the 4th day of November, 1965, one of the vehicles owned by the defendant met an accident and a complaint was filed in the Court of First Instance of Ilocos Norte, bearing Civil Case No. 4125, entitled Humphrey Tumaneng et al. versus Mariano Perucho, et al., wherein all the vehicles owned by the defendant were attached and impounded by the Provincial Sheriff of Ilocos Norte;

"5. That after Civil Case No. 4125 was filed, the defendant did not longer (sic) operate his transportation business and all the vehicles were placed in storage as a result of which they were afterwards unserviceable to the riding public;

"6. That the defendant then had no more source of income from which to pay the said obligations to the plaintiff much more (sic) when he incurred so much expenses in said Case No. 4125 after settlement of the

same;

"7. That the defendant has informed the plaintiff that he could not resume to pay his obligations because of the accident resulting in the non-operation of the business and asked that payment thereof be suspended;

"8. That the promissory notes mentioned by the plaintiff were only parts of a principal contract, because the defendant bought the said motor vehicles under a contract of sale with chattel mortgage, with the conditions that if defendant fails to pay his obligations under the terms and conditions embodied therein the same vehicles shall be fore-closed and sold at public auction and the proceeds thereof shall be applied to the remaining balance unpaid;

"9. That the defendant signed the promissory notes as specified by the plaintiff without any sufficient know-ledge as to the terms and conditions thereof as partly mentioned in paragraph 7 of the plaintiff's complaint, this is so, because defendant being illiterate plaintiff should have explained fully the terms and conditions in the dialect known to the defendant;

"10. That the plaintiff has know-ledge and is aware of the fact that the vehicle described in the delivery receipt dated July 9, 1965 under charge invoice No. 172 was paid by Pablo Bolivar and the latter assumed the payment of the same to the corporation and therefore, defendant should not be obligated to pay this said vehicle covered by the same and said Pablo Bolivar should be included as an indispensable party to this case; x x x" (pp. 13-15, ROA, p. 15, rec.).

On July 1, 1969, the date set for the hearing of the case, defendant and counsel, despite due notice, failed to attend; and after manifesting in open court that the projected settlement of the case failed to materialize, plaintiff moved that judgment be rendered against defendant in view of his absence and that it be allowed to present evidence ex-parte. Both motions were granted by the trial judge (p. 15, ROA; p. 15, rec.).

On the same date, July 1, 1969, the trial judge rendered judgment ordering defendant to pay plaintiff the amount of P1,904.07 on the first cause of action plus interest at the rate of 12% per annum from January 20, 1967 until fully paid, and attorney's fees equivalent to 25% of the said amount; and on the second cause of action, to pay the amount of P1,876.00, plus 12% interest per annum from January 20, 1967 until fully paid and attorney's fees equivalent to 25% of the amount due (Decision, pp. 17-18 of ROA; p. 15, rec.).

On July 18, 1969, defendant filed a motion for reconsideration alleging that on July 2, 1969, he appeared before the Deputy Clerk of Court but was informed by the latter that the case has been submitted for decision; and that his failure to appear on July 1, 1969 was due to accident or excusable negligence in that "x x x they were delayed on the way because of a broken bridge in Sta. Maria, Ilocos Sur, and they arrived only on the late afternoon of July 1, 1969 " (pp. 18-20 of ROA; p. 15, rec.).

On July 26, 1969, plaintiff filed its opposition to the said motion for reconsideration contending that defendant's ground constitutes gross negligence and is not excusable; that the affidavit of merits executed by defendant's counsel "x x x dwells not on the validity, and authority of the alleged excuse x x x" and therefore "in gross violation of paragraph 2 of Section 2 of Rule 37 of the Rules of Court in relation to Section 1 thereof x x x," but "x x x relates to the purported evidence against plaintiff's claims x x x" which x x x are obviously impertinent to the case x xx"; and that defendant's denial of his signature on the promissory notes can no longer be entertained for the reason that its authenticity has been deemed admitted by defendant's failure to deny the same under oath pursuant to Section 8 of Rule 8 of the Rules of Court (pp. 20-22 of ROA; p. 15, rec.).

On August 2, 1969, the trial court denied said motion for reconsideration (p. 23 of ROA; p. 15, rec.).

Thereafter, defendant filed his notice of appeal, appeal bond and appeal fee, and the record of the case was duly elevated to the Court of First Instance of Manila. It was therein docketed in June, 1971 as Civil Case No. 85319

(p. 23 of ROA; p. 15, rec.).

On December 19, 1972, the Court of First Instance of Manila, Branch XXV, pursuant to Section 9 of Rule 40 of the Rules of Court, dismissed the appeal for failure to prosecute for an unreasonable length of time and ordered the remand of the records of the case to the City Court of Manila for execution (pp. 23-24 of ROA; p. 15, rec.).

On January 8, 1973, defendant filed with the Court of First Instance a verified ex-parte motion for recon-sideration of the aforesaid order of dismissal (pp. 24-26 of ROA; p. 15, rec.). It did not contain any notice of hearing.

On January 26, 1973, plaintiff filed an opposition to the aforesaid motion pointing out, among other things, that the motion "x x x is inherently defective as to amount to a mere scrap of paper for lack of a proper notice of hearing x x" (pp. 26-28 of ROA; p. 15, rec.).

On April 17, 1973, the Court of First Instance of Manila denied the motion for reconsideration of defendant for the following reasons:

"Considering that Sections 4, 5 and 6 of Rule 16, Rules of Court, are mandatory, and the motion under consideration fails to comply with the said provisions of law, the same is therefore considered a useless scrap of paper which should not merit the attention of the Court (Cledera vs. Sarmiento, L-32450-51, June 10, 1971).

"Moreover, in the case of A. Raymundo vs. Judge Morfe, CA-43190-R, June 10, 1969, the Court of Appeals held that where a defendant appeals from a decision of the City Court to the Court of First Instance, and defendant-appellant fails to prosecute the appeal, the same can be dismissed under Sec. 9, Rule 40, Rules of Court, the second sentence of which reads: 'If the appeal is withdrawn or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the Justice of the Peace or Municipal Court for execution', being a new provision, inserted in the Rules of Court, which took effect on January 1, 1964" (pp. 29-30 of ROA; p. 15, rec.).

Hence, this appeal.

I

WE must first deal with the April 17, 1973 order of the lower court (Court of First Instance) denying appellant's January 8, 1973 motion for reconsideration of the December 19, 1972 order of the same court dismissing ex mero motu appellant's appeal from the decision of the City Court of Manila for failure to prosecute.

The lower court was right in labelling and declaring aforesaid January 8, 1973 motion for reconsideration "x x x a useless scrap of paper which should not merit the attention of the Court." Under Sections 4 and 5 of Rule 15 of the Rules of Court (not Rule 16 as erroneously stated by the lower court), a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof and must state the time and place of hearing thereof. Section 6 of the same rule commands that "(N)o motion shall be acted upon by the Court, without proof of service of the notice thereof x x x." It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. WE have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause (Omico Mining Industrial Corp. vs. Vallejos, 63 SCRA 285 [1975]; Andrada vs. Court of Appeals, 60 SCRA 379 [1975]; Sacdalan vs. Bautista, 56 SCRA 175 [1974], citing numerous cases; and Cledera vs. Sarmiento, L-32450-51, June 10, 1971, 39 SCRA 552-576).

Appellant's argument that "x x x although said motion was not set for hearing, because it was intended ex-parte,

the plaintiff was nevertheless furnished a copy of the same and it filed opposition thereto x x x", betrays his ignorance of the aforesaid basic and elementary requirements of a motion. Because of the said indispensable requirements of the Rules of Court, said motion cannot be made ex parte. The opposition subsequently filed by appellee cannot be considered a waiver -- which appellant seems to imply -- for precisely that opposition raised non-compliance with the requirements of the rules. In this connection, WE feel that there is a need of emphasizing once more what WE said in *Cledera vs. Sarmiento* (39 SCRA 552-576 [1971]) that:

"x x x (T)he directives in Section 2 of Rule 37 and Sections 4, 5 and 6 of Rule 15 of the Revised Rules of Court are as mandatory as they are clear and simple; and non-compliance therewith is fatal to the cause of the movant, because the mere filing of the motion for reconsideration, without the requisite notice of hearing, does not toll the running of the period of appeal. Unless the movant sets the time and place of hearing in the notice and serves the adverse party with the same, the court would have no way to determine whether the party agrees or objects to the motion, and if he objects, to hear him on his objection, since the rules themselves do not fix any period within which to file his reply or opposition. The rules commanding the movant to serve on the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing' shall be directed to the parties concerned, and shall state the time and place of hearing of the motion' (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. To deviate from the peremptory principle thus uniformly reaffirmed in the latest cases aforesaid in, and to exempt from the rigor of the operation of said principle, the case at bar would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon -- all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be ignored. We had to draw a line somewhere and We did when we promulgated on January 1, 1964 the Revised Rules of Court, wherein We delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding.

"We have been so unyielding on this matter that even in the aforementioned case of *Manila Surety* (June 24, 1965, supra), We ruled that the filing of the requisite notice of hearing one day before the expiration of the period of appeal, does not retroact to the date of the filing of the motion for reconsideration, which was filed much earlier or just ten days after receipt of the decision. In the *Fulton* case (Nov. 18, 1967, supra), wherein the movant therein filed the requisite notice of hearing five days after the 30-day period for appeal had expired, although the motion for reconsideration itself was filed five (5) days after receipt of the decision, We maintained the same rule. In the case of *Magno* (Jan. 31, 1969, supra), again We reiterated the same principle, even when the trial judge himself caused to be served upon all the parties a notice of hearing. The movant in the *Magno* case filed his motion for reconsideration on the thirtieth day from his receipt of decision without the requisite notice of hearing, which he filed sixteen (16) days after the expiration of the 30-day period for appeal."

No error was thus committed by the lower court in dismissing appellant's January 8, 1973 motion for reconsideration.

II

With the above resolution, WE could have outrightly dismissed this appeal. But WE opted to pass upon the other issues raised by appellant in connection with the December 19, 1972 and April 17, 1973 orders of the lower court in order to dissipate any lingering doubt in appellant's mind as to the merits of his position.

To recall, it must be re-stated that the decision of the City Court appealed to the Court of First Instance was decided by the former court on July 1, 1969. On appeal to the Court of First Instance of Manila, the same was docketed therein in June, 1971 as Civil Case No. 85319. On December 19, 1972, the Court of First Instance of

Manila dismissed *ex mero motu* the appeal for failure to prosecute.

It is contended by appellant that the period of one (1) year and five (5) months when the appeal was pending in the Court of First Instance of Manila cannot be considered unreasonable length of time, for the reason that there were other cases pending trial which were filed much ahead of the instant case; and that it is the duty of the branch clerk of court to initially set the case for pre-trial and/or trial on the merits and that until this is done, it cannot be said that defendant-appellant was negligent or at fault in not asking the court to set the case for hearing.

The above contentions are not new and they have time and again been declared by this COURT as unmeritorious. In the recent case of *Racimo vs. Diño* (69 SCRA 421 [1976]), again passing upon issues substantially identical with those raised by herein appellants, WE declared that:

"It is settled that under section 3, Rule 17 of the Rules of Court an action can be dismissed by the trial court on its own motion for plaintiff's failure to prosecute it for an unreasonable length of time. That power rests in the sound discretion of the trial court. What is unreasonable length of time depends upon the circumstances of each particular case. The lower court's exercise of discretion will not be disturbed in the absence of patent abuse. The onus of showing abuse of judicial discretion rests upon the appellant since every presumption is in favor of the correctness of the lower court's action [*Montejo vs. Urotia*, L-27187, July 22, 1971 and eight other cases, 40 SCRA 41, 51-52].

"That ruling under section 3 of Rule 7 is applicable under section 8 of Rule 40 to an appeal to the Court of First Instance from the decision of an inferior court (see *People's Car, Inc. vs. Arcellana*, L-29098, July 22, 1971, and *Bolivar vs. Bandayral*, L-29373, July 22 1971, 40 SCRA 42 involving cases originating from the City Court of Manila and appealed to the Court of First Instance of Manila, where the appeals were dismissed for failure to prosecute).

"This Court refused to disturb dismissals for failure to prosecute for a period of less than three months or one year (*Montejo vs. Urotia*, *supra*).

"While it is the duty of the Clerk of Court to calendar the case for pre-trial or trial, that obligation does not relieve the appellant in this case from prosecuting his appeal diligently (*Smith Bell & Co., Ltd. vs. American President Lines*, 94 Phil. 879)."

The lower court therefore correctly dismissed appellant's appeal under Section 9 of Rule 40 of the Rules.

III

It is also contended by appellant that the Court of First Instance erred in dismissing the appeal for failure to prosecute, instead of merely requiring the parties to file their respective memoranda.

That contention of appellant is premised upon a mistaken view that his appeal is governed by Republic Act 6031 amending section 45 of Republic Act 296 in relation to Section 9 of Rule 40 of the rules. Republic Act 6031 became effective only on August 4, 1969. By Republic Act 6031, all city and municipal courts became courts of records. (Before RA 6031, city courts were partially converted into courts of records by virtue of R.A. No. 5967 which became effective on June 21, 1969 in the sense that "[E]xcept in offenses punishable by arresto mayor or imprisonment not exceeding six months or fine not exceeding two hundred pesos or both, or violation of municipal ordinances or in civil actions falling under the original exclusive jurisdiction of the City Court which are appealable to the Court of First Instance, proceedings in the City Court shall be recorded and judgment or decision rendered shall be directly appealable to the Court of Appeals or Supreme Court, as the case maybe, in accordance with the Rules of Court applicable to appeal from the judgment of the Court of First Instance" [Sec. 4 of RA 5967]. The civil complaint of appellee lies within the original exclusive jurisdiction of the city court and

therefore the proceedings are not to be recorded).

Appellant's appeal to the Court of First Instance is therefore governed -- the case subject of appeal having been tried and decided by the city court on July 1, 1969 before it completely became a court of record on August 4, 1969 -- by Section 9 of Rule 40 of the rules unaffected yet by the innovations of appeal to the Court of First Instance introduced by Republic Act 6031. Hence, appellant's appeal to the Court of First Instance must proceed by trial de novo. This is but too clear from the third paragraph of section 1 of Republic Act No. 6031, which provides:

"Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts: Provided, That the parties may submit memoranda and/or brief with oral argument if so requested: Provided, however, That if the case was tried in a city or municipal court before the latter became a court of record, then on appeal the case shall proceed by trial de novo.

The contention of appellant therefore is clearly without merit.

IV

Moreover, WE easily discern that appellant's appeal is likewise frivolous and completely devoid of merit. Appellant's answer in the city court tendered no issue at all. Besides the defective specific denial made by appellant in his answer to appellee's complaint in the city court which in effect was an admission of the material allegations of the complaint, there was also the admission of the authenticity of the promissory notes attached to the complaint, bases of the complaint for collection, by appellant's failure to deny the same under oath in accordance with section 8 of Rule 8 of the Rules. Thus:

"Upon the other hand when the matters of which the defendant alleges having no knowledge or information sufficient to form a belief, are plainly and necessarily within the defendant's knowledge, his alleged ignorance or lack of information will not be considered as a specific denial (*Ice Plant Equipment Co. v. Martocello*, D.C.P., Pa., 1941, 43 F. Suppl. 281). For instance, in an action for foreclosure of mortgage, the deed of mortgage sued upon was attached to the complaint. There were allegations of partial payments of outstanding balance and a covenant to pay attorney's fee. The defendants in their answer alleged having no knowledge or information sufficient to form a belief as to the truth of the allegations of the complaint. There is no specific denial under oath as to the due execution and genuineness of the mortgage deed attached to the complaint. Our Supreme Court, thru Chief Justice Paras said: 'It is hard to believe that the appellants could not have knowledge or information as to the truth or falsity of any of said allegations.' And adding that: 'the form of denial adopted by the appellants, although allowed by the rules of court, must be availed of with sincerity and in good faith -- certainly neither for the purpose of confusing the adverse party as to what allegations of the complaint are really put in issue nor for the purpose of delay.' *Warner Barnes & Co., Ltd. v. Reyes, et al.* 55 O.G. 3109-3111" (*Moran's Comments on the Rules of Court*, Vol. I, 1970 ed.).

Furthermore, the defense interposed by appellant in his answer -- lack of income by reason of the attachment and impounding of all his trucks in another civil case -- while it may appeal to the compassion of the appellee, is not a valid and meritorious defense.

V

Lastly, it must be pointed out that the civil case was filed by appellee with the City Court of Manila on July 3, 1968; it was only on April 17, 1969 that defendant-appellant filed his answer dated December 4, 1968 with the City Court; the initial trial was set only on July 1, 1969, on which date a decision was rendered by the City Court; it was only sometime in June, 1971 that appellant's appeal to the Court of First Instance was docketed, after which date, appellant did nothing to pursue his appeal until the questioned order of dismissal on December 19, 1972 was

issued by the lower court.

For a long period of eight (8) years, more or less, a simple collection case involving an amount of three thousand seven hundred eighty pesos and seven centavos (P3,780.07) [excluding interests and attorney's fees] has remained pending in our courts of justice and equity.

WHEREFORE , THE APPEAL IS HEREBY DISMISSED. WITH DOUBLE COSTS AGAINST APPELLANT.

Teehankee, (Chairman), Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

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