

THE PHILIPPINE BANK OF COMMERCE, PLAINTIFF-APPELLEE, VS. JOSE M. ARUEGO, DEFENDANT-APPELLANT.

G.R. Nos. L-25836-37. January 31, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

The defendant, Jose M. Aruego, appealed to the Court of Appeals from the order of the Court of First Instance of Manila, Branch XIII, in Civil Case No. 42066 denying his motion to set aside the order declaring him in default,[1] and from the order of said court in the same case denying his motion to set aside the judgment rendered after he was declared in default.[2] These two appeals of the defendant were docketed as CA-G.R. NO. 27734-R and CA-G.R. NO. 27940-R, respectively.

Upon motion of the defendant on July 25, 1960,[3] he was allowed by the Court of Appeals to file one consolidated record on appeal of CA-G.R. NO. 27734-R and CA-G.R. 27940-R.[4]

In a resolution promulgated on March 1, 1966, the Court of Appeals, First Division, certified the consolidated appeal to the Supreme Court on the ground that only questions of law are involved.[5]

On December 1, 1959, the Philippine Bank of Commerce instituted against Jose M. Aruego Civil Case No. 42066 for the recovery of the total sum of about P35,000.00 with daily interest thereon from November 17, 1959 until fully paid and commission equivalent to 3/8% for every thirty (30) days or fraction thereof plus attorney's fees equivalent to 10% of the total amount due and costs.[6] The complaint filed by the Philippine Bank of Commerce contains twenty-two (22) causes of action referring to twenty-two (22) transactions entered into by the said Bank and Aruego on different dates covering the period from August 28, 1950 to March 14, 1951.[7] The sum sought to be recovered represents the cost of the printing of "World Current Events," a periodical published by the defendant. To facilitate the payment of the printing the defendant obtained a credit accommodation from the plaintiff. Thus, for every printing of the "World Current Events," the printer, Encal Press and Photo-Engraving, collected the cost of printing by drawing a draft against the plaintiff, said draft being sent later to the defendant for acceptance. As an added security for the payment of the amounts advanced to Encal Press and Photo-Engraving, the plaintiff bank also required defendant Aruego to execute a trust receipt in favor of said bank wherein said defendant undertook to hold in trust for plaintiff the periodicals and to sell the same with the promise to turn over to the plaintiff the proceeds of the sale of said publication to answer for the payment of all obligations arising from the draft.[8]

Aruego received a copy of the complaint together with the summons on December 2, 1959.[9] On December 14, 1959 the defendant filed an urgent motion for extension of time to plead, and set the hearing on December 16, 1959.[10] At the hearing, the court denied defendant's motion for extension. Whereupon, the defendant filed a motion to dismiss the complaint on December 17, 1959 on the ground that the complaint states no cause of action because:

a) When the various bills of exchange were presented to the defendant as drawee for acceptance, the amounts thereof had already been paid by the plaintiff to the drawer (Encal Press and Photo Engraving), without knowledge or consent of the defendant drawee.

b) In the case of a bill of exchange, like those involved in the case at bar, the defendant drawee is an accommodating party only for the drawer (Encal Press and Photo-Engraving) and will be liable in the event that the accommodating party (drawer) fails to pay its obligation to the plaintiff.[11]

The complaint was dismissed in an order dated December 22, 1959, copy of which was received by the defendant on December 24, 1959.[12]

On January 13, 1960, the plaintiff filed a motion for reconsideration. [13] On March 7, 1960, acting upon the motion for reconsideration filed by the plaintiff, the trial court set aside its order dismissing the complaint and set the case for hearing on March 15, 1960 at 8:00 in the morning.[14] A copy of the order setting aside the order of dismissal was received by the defendant on March 11, 1960 at 5:00 o'clock in the afternoon according to the affidavit of the deputy sheriff of Manila, Mamerto de la Cruz. On the following day, March 12, 1960, the defendant filed a motion to postpone the trial of the case on the ground that there having been no answer as yet, the issues had not yet been joined.[15] On the same date, the defendant filed his answer to the complaint interposing the following defenses: That he signed the document upon which the plaintiff sues in his capacity as President of the Philippine Education Foundation; that his liability is only secondary; and that he believed that he was signing only as an accommodation party.[16]

On March 15, 1960, the plaintiff filed an ex parte motion to declare the defendant in default on the ground that the defendant should have filed his answer on March 11, 1960. He contends that by filing his answer on March 12, 1960, defendant was one day late.[17] On March 19, 1960 the trial court declared the defendant in default.[18] The defendant learned of the order declaring him in default on March 21, 1960. On March 22, 1960 the defendant filed a motion to set aside the order of default alleging that although the order of the court dated March 7, 1960 was received on March 11, 1960 at 5:00 in the afternoon, it could not have been reasonably expected of the defendant to file his answer on the last day of the reglementary period, March 11, 1960, within office hours, especially because the order of the court dated March 7, 1960 was brought to the attention of counsel only in the early hours of March 12, 1960. The defendant also alleged that he has a good and substantial defense. Attached to the motion are the affidavits of deputy sheriff Mamerto de la Cruz that he served the order of the court dated March 7, 1960 on March 11, 1960, at 5:00 o'clock in the afternoon and the affidavit of the defendant Aruego that he has a good and substantial defense.[19] The trial court denied the defendant's motion on March 25, 1960.[20] On May 6, 1960, the trial court rendered judgment sentencing the defendant to pay to the plaintiff the sum of P35,444.35 representing the total amount of his obligation to the said plaintiff under the twenty-two (22) causes of action alleged in the complaint as of November 15, 1957 and the sum of P10,000.00 as attorney's fees.[21]

On May 9, 1960 the defendant filed a notice of appeal from the order dated March 25, 1961 denying his motion to set aside the order declaring him in default, an appeal bond in the amount of P60.00, and his record on appeal. The plaintiff filed his opposition to the approval of defendant's record on appeal on May 13, 1960. The following day, May 14, 1960, the lower court dismissed defendant's appeal from the order dated March 25, 1960 denying his motion to set aside the order of default.[22] On May 19, 1960, the defendant filed a motion for reconsideration of the trial court's order dismissing his appeal.[23] The plaintiff, on May 20, 1960, opposed the defendant's motion for reconsideration of the order dismissing appeal.[24] On May 21, 1960, the trial court reconsidered its previous order dismissing the appeal and approved the defendant's record on appeal.[25] On May 30, 1960, the defendant received a copy of a notice from the Clerk of Court dated May 26, 1960, informing the defendant that

the record on appeal filed by the defendant was forwarded to the Clerk of the Court of Appeals.[26]

On June 1, 1960 Aruego filed a Motion to set aside the judgment rendered after he was declared in default reiterating the same ground previously advanced by him in his motion for relief from the order of default.[27] Upon opposition of the plaintiff filed on June 3, 1960,[28] the trial court denied the defendant's motion to set aside the judgment by default in an order of June 11, 1960.[29] On June 20, 1960, the defendant filed his notice of appeal from the order of the court denying his motion to set aside the judgment by default, his appeal bond, and his record on appeal. The defendant's record on appeal was approved by the trial court on June 25, 1960.[30] Thus, the defendant had two appeals with the Court of Appeals: (1) Appeal from the order of the lower court denying his motion to set aside the order of default docketed as CA-G.R. NO. 27734-R; (2) Appeal from the order denying his motion to set aside the judgment by default docketed as CA-G.R. NO. 27940-R.

In his brief, the defendant-appellant assigned the following errors:

"I

THE LOWER COURT ERRED IN HOLDING THAT THE DEFENDANT WAS IN DEFAULT.

"II

THE LOWER COURT ERRED IN ENTERTAINING THE MOTION TO DECLARE DEFENDANT IN DEFAULT ALTHOUGH AT THE TIME THERE WAS ALREADY ON FILE AN ANSWER BY HIM WITHOUT FIRST DISPOSING OF SAID ANSWER IN AN APPROPRIATE ACTION.

"III

THE LOWER COURT ERRED IN DENYING DEFENDANT'S PETITION FOR RELIEF OF ORDER OF DEFAULT AND FROM JUDGMENT BY DEFAULT AGAINST DEFENDANT."[31]

It has been held that to entitle a party to relief from a judgment taken against him through his mistake, inadvertence, surprise or excusable neglect, he must show to the court that he has a meritorious defense.[32] In other words, in order to set aside the order of default, the defendant must not only show that his failure to answer was due to fraud, accident, mistake or excusable negligence but also that he has a meritorious defense.

The record discloses that Aruego received a copy of the complaint together with the summons on December 2, 1960; that on December 17, 1960, the last day for filing his answer, Aruego filed a motion to dismiss; that on December 22, 1960 the lower court dismissed the complaint; that on January 23, 1960, the plaintiff filed a motion for reconsideration and on March 7, 1960, acting upon the motion for reconsideration, the trial court issued an order setting aside the order of dismissal; that a copy of the order was received by the defendant on March 11, 1960 at 5:00 o'clock in the afternoon as shown in the affidavit of the deputy sheriff; and that on the following day, March 12, 1960, the defendant filed his answer to the complaint.

The failure then of the defendant to file his answer on the last day for pleading is excusable. The order setting

aside the dismissal of the complaint was received at 5:00 o'clock in the afternoon. It was therefore impossible for him to have filed his answer on that same day because the courts then held office only p to 5:00 o'clock in the afternoon. Moreover, the defendant immediately filed his answer on the following day.

However, while the defendant successfully proved that his failure to answer was due to excusable negligence, he has failed to show that he has a meritorious defense.

The defendant does not have a good and substantial defense. Defendant Aruego's defenses consist of the following:

a) The defendant signed the bills of exchange referred to in the plaintiff's complaint in a representative capacity, as the then President of the Philippine Education Foundation Company, publisher of "World Current Events and Decision Law Journal," printed by Encal Press and Photo-Engraving, drawer of the said bills of exchange in favor of the plaintiff bank;

b) The defendant signed these bills of exchange not as principal obligor, but as accommodation or additional party obligor, to add to the security of said plaintiff bank. The reason for this statement is that unlike real bills of exchange, where payment of the face value is advanced to the drawer only upon acceptance of the same by the drawee, in the case in question, payment for the supposed bills of exchange were made before acceptance; so that in effect, although these documents are labelled bills of exchange, legally they are not bills of exchange but mere instruments evidencing indebtedness of the drawee who received the face value thereof, with the defendant as only additional security of the same.[33]

The first defense of the defendant is that he signed the supposed bills of exchange as an agent of the Philippine Education Foundation Company where he is president. Section 20 of the Negotiable Instruments Law provides that "Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."

An inspection of the drafts accepted by the defendant shows that nowhere has he disclosed that he was signing as a representative of the Philippine Education Foundation Company.[34] He merely signed as follows: "JOSE ARUEGO (Acceptor) (SGD) JOSE ARUEGO." For failure to disclose his principal, Aruego is personally liable for the drafts he accepted.

The defendant also contends that he signed the drafts only as an accommodation party and as such, should be made liable only after a showing that the drawer is incapable of paying. This contention is also without merit.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party.[35] In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another. In the instant case, the defendant signed as a drawee/acceptor. Under the Negotiable Instruments Law, a drawee is primarily liable. Thus, if the defendant who is a lawyer, really intended to be secondarily liable only, he should not have signed as an acceptor/drawee. In doing so, he became

primarily and personally liable for the drafts.

The defendant also contends that the drafts signed by him were not really bills of exchange but mere pieces of evidence of indebtedness because payments were made before acceptance. This is also without merit. Under the Negotiable Instruments Law, a bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.[36] As long as a commercial paper conforms with the definition of a bill of exchange, that paper is considered a bill of exchange. The nature of acceptance is important only in the determination of the kind of liabilities of the parties involved, but not in the determination of whether a commercial paper is a bill of exchange or not.

It is evident then that the defendant's appeal can not prosper. To grant the defendant's prayer will result in a new trial which will serve no purpose and will just waste the time of the courts as well as of the parties because the defense is nil or ineffective.[37]

WHEREFORE, the order appealed from in Civil Case No. 42066 of the Court of First Instance of Manila denying the petition for relief from the judgment rendered in said case is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.

[1] Record on Appeal, p. 323, Rollo, p. 14 for CA-G.R. NO. 27940 docketed as L-25837.

[2] Ibid., p. 377.

[3] Rollo, p. 5 for CA-G.R. NO. 27940 docketed here as L-25837.

[4] Ibid., p. 12.

[5] Rollo, pp. 31-36 for CA-G.R. NO. 27754 docketed here as L-25836. The resolution was written by then Presiding Justice Fred Ruiz Castro and concurred in by Justice Carmelino Alvendia and Justice Jesus Y. Peres.

[6] Record on Appeal, p. 1.

[7] Ibid., pp. 1-56.

[8] Ibid.

[9] Ibid., p. 241.

[10] Ibid., p. 242.

[11] Ibid., pp. 243-245.

[12] Ibid., pp. 248-249.

[13] Ibid., pp. 249-269.

[14] Ibid., pp. 274-275.

[15] Ibid., pp. 275-277.

[16] Ibid., pp. 302-303.

[17] Ibid., pp. 304-307.

[18] Ibid., p. 307.

[19] Ibid., pp. 308-314.

[20] Ibid., p. 323.

[21] Ibid., pp. 327-339.

[22] Ibid., pp. 346-347.

[23] Ibid., pp. 347-351.

[24] Ibid., pp. 352-356.

[25] Ibid., p. 357.

[26] Ibid., pp. 357-358.

[27] Ibid., pp. 358-370.

[28] Ibid., pp. 370-377.

[29] Ibid., p. 377.

[30] Ibid., p. 381.

[31] Rollo, p. 19, Brief for the defendant-appellant, pp. 1-2.

[32] Bank of Philippine Islands v. de Coster, 47 Phil. 594; The ruling in this case is substantially the same as Section 3, Rule 18 of the New Rules of Court.

[33] Record on Appeal, pp. 316-318, Rollo, p. 14.

[34] Ibid., pp. 177-240.

[35] Section 29, Negotiable Instruments Law.

[36] Section 126, Negotiable Instruments Law.

[37] Ferrer vs. Yang Sepeng, 60 SCRA 149.

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