

RAND B SURETY & INSURANCE CO., INC., AND TOWERS ASSURANCE CORPORATION, PETITIONERS, VS. HON. VICTORINO A. SAVELLANO, AS PRESIDING JUDGE, BRANCH XIX, COURT OF FIRST INSTANCE OF M...

G.R. No. L-45234. May 08, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks to set aside the partial summary judgment rendered by the respondent court. The petitioners state that their answer raised genuine and valid issues. The petitioners also seek to compel the respondent court to allow their amended answer on the ground that the same does not alter the theory of their defense nor delay the proceedings of the trial.

Private respondent Investors' Finance Corporation doing business under the name "FNCB Finance" (FNCB) filed an action for a sum of money against petitioners R & B Surety and Insurance Co., Inc. (R&B) and Towers Assurance Corporation (Towers) in their capacity as sureties and against one Rassagi Transport Corporation (Rassagi) in its capacity as principal debtor.

The complaint alleged, among others, that Rassagi obtained credit facilities from Citiwide Motors, Inc. (Citiwide) duly evidenced by promissory notes in the sum of P1,273,108.06 and P1,696,969.70 or an aggregate amount of P2,970,077.76; that Citiwide endorsed the promissory notes to plaintiff FNCB and notified defendant Rassagi that it had assigned its rights over said promissory notes and said defendant gave its conformity to the assignment; that as security for payment of the promissory notes, defendants R&B and Towers issued surety bonds in favor of Citiwide and which surety bonds were also assigned to plaintiff; that the promissory notes contained a provision that default in payment when due on any installment shall make the whole principal sums remaining unpaid immediately due and payable; that under the provisions of the surety bonds defendant R&B and Towers obligated themselves, jointly and severally with their principal, the other defendant Rassagi, to pay the latter's obligation to plaintiff; that defendant Rassagi broke the terms and conditions of said promissory notes by its failure to pay the installments thereon when the same fell due and as of April 14, 1975, said defendant owed plaintiff the sum of Two Million Eight Hundred Forty-Two Thousand Six I kindred Seventy Six Pesos and Fourteen Centavos — (P2,842,676.14), plus interest thereon from said date at 14% per annum; and that notwithstanding repeated demands by plaintiff, the defendants have failed and refused and still fail and refuse to pay their matured and overdue obligation under the said promissory notes.

Defendant Rassagi in turn, filed its answer, alleging that it did not obtain credit facilities from Citiwide but it had applied for a direct loan from FNCB sometime before October, 1974; that after the approval of said loan which was intended for the purchase of PUB bus trucks, Citiwide offered to supply it with the equipment and had actually delivered 14 units of Chevrolet trucks to the latter; that the amount of the equipment loan acquired by Rassagi from FNCB is P1,960,000.00 which amount was released and paid to Citiwide in payment of the fourteen

(14) units with a unit price of P140,000.00 including the body building; that since the loan was already approved, there was no necessity for the deed of assignment made by Citiwide in favor of FNCB; that what FNCB did was to require Rassagi to sign blank forms, which the latter understood to be documents representing the obligation directly to the former and not to Citiwide; that after Rassagi paid the amount of P61,877.31 as amortization payments, it had requested FNCB to apply the amount of P100,000.00 which was a holdback of the proceeds of the loan which the latter favorably applied and now Rassagi had actually paid P161,877.31 as total amortization payments and that considering that the 14 buses could only possibly earn the amount of P110.00 per unit a day and could not come up with the P210.00 per unit a day equivalent to P20.625.77 a week amortization, Rassagi requested for a restructuring of its amortization payments from weekly amortizations to monthly amortizations and a readjustment of the period of payment from three (3) to five (5) years, but instead of readjusting the same. FNCB after Rassagi failed to pay only one weekly installment tried to collect the entire obligation and to pursue its claim against the bonding company, so much so that it refused to accept the payments made by Rassagi and it was for this reason that the latter stopped its amortization payments.

Rassagi also alleged usury on the part of FNCB stating that after realizing that the amount of its obligation was so excessive considering that only P1,960,000.00 was actually released and approved, it formally demanded a statement of account from FNCB and that was the only time that defendant knew that its entire obligation to said plaintiff is P3,003,231.12.

Defendants R & B and Towers filed their own answer, putting up the same defenses made by Rassagi. They denied the genuineness and due execution of the promissory note alleging that Rassagi was made to sign only blank documents and that the latter obtained a direct loan from FNCB but did not obtain credit facilities from Citiwide; that FNCB had illegally and usuriously charged Rassagi excessive interest upon the loan; and that what the latter knows is that FNCB shall only charge an interest of 14% per annum diminishing balance on the P1,960,000.00 but that there was no agreement to pay three years interest in advance and surcharges for late amortization payments. Defendant sureties admitted that Rassagi had accepted delivery of the fourteen (14) Chevrolet trucks purchased out of the loan of P1,960,000.00.

On July 3, 1975, FNCB filed its reply and answer to the counterclaim by defendants R & B and Towers.

When the case was called for pre-trial, the counsel for Rassagi moved that the pre-trial be postponed in order to enable the parties to try to settle the case amicably. Upon inquiry by the court as to the defense of Rassagi, the latter's counsel informed the court that Rassagi does not deny its obligation as evidenced by the promissory notes and that it would just approach FNCB for the restructuring of said obligation. The counsel for the defendant sureties likewise manifested that the latter are willing to enter into a settlement and ready to assign collaterals in favor of FNCB.

On August 8, 1975, the trial court issued an order, which partly provides:

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"The Court grants the motion for postponement to enable the parties to thresh out all possibilities of settlement with the warning that in view of the manifestation of counsel for defendant transport corporation, the Court may issue a summary judgment at the next scheduled hearing xxx"

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On October 29, 1975, FNCB filed a manifestation and motion for summary judgment on the ground that no genuine issue was tendered in the pleadings. This motion was accompanied by an affidavit of Mamerto Rndriga, FNCB vice-president.

The defendant sureties filed their oppositions to the motion accompanied by the affidavits of their respective corporate secretaries. Rassagi likewise filed its opposition but the same was not accompanied by any affidavit.

Before the trial court could rule on the motion, the defendant sureties, on March 8, 1976, filed a motion for leave to admit amended answer with special and affirmative defenses and counterclaims, alleging:

1. That in the month of February, 1976, herein defendants in their desire and anxiety to check up and investigate what further assets defendant RASSAGI may have for the purpose of attachment or satisfaction of any judgment whatsoever, by chance, upon said investigation and check-up, discovered that the Twenty (20) units of new buses which were supposedly to be sold and delivered to RASSAGI under installment payment, the Promissory Notes of which are the subject of the instant case and covered by the Surety Bonds, have not as yet, to this day been so sold or delivered to defendant RASSAGI;
2. That confronted with such findings, RASSAGI's President and Chairman of the Board, Mr. Rodolfo Echague, confirmed such non-sale and delivery of the buses, even though they were, up to October, 1975, with the Sarmiento Engineering Corp. of Quezon City for preparation and conversion into de Luxe type passenger buses;
3. That this turn of events compels herein defendants to amend their pleadings to the complaint;
4. That in the interest of justice, and considering that the case is still in its early stages, no evidence so far having been presented by any party therein, admission of the herewith attached amended pleadings to the complaint is called for and justifiable.

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In their amended answer, the defendant sureties alleged the following:

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4. Subject to the averments contained in the preceding paragraphs and the hereinafter following Special and Affirmative Defenses, they admit the allegations contained in paragraph 5 of plaintiffs complaint to the effect that they issued their Surety Bonds Nos. G(16) 0743 and G(16) 0059 in the respective amounts appearing therein in favor of Citiwide Motors, Inc., with RASSAGI as principal. The same were to be the security for the Promissory Notes defendant RASSAGI may execute by virtue of and in consideration for credit facilities that may be extended first above alluded to. The said Surety Bonds were applied for and issued specifically for said credit accommodation and no other, and cannot be and must not be, applied as security for any other Promissory Notes executed by RASSAGI under and by virtue of another or other transactions and or obligations or credit accommodations.

5. That they deny the allegations contained in paragraph 6 of the complaint Citiwide Motors, Inc. and plaintiff may have transacted for the assignment of the aforesated Surety Bonds, but said assignment is baseless, unjustified, and is a faceous (sic) farce and charade insofar as herein defendants are concerned, the reason being that Citiwide Motors, Inc. had no rights, title and interests over/in/ against said Surety Bonds unless it had actually made sales on installment basis of the Twenty (20) units of new buses to RASSAGI, the performance of which fact is a condition resolutory that can bind said bonds and give legal rights to Citiwide Motors, inc. over/ in/against the same. No allegation of said fact of installment sales are averred in the complaint. The averments in this paragraph are subject further to the hereinafter following Special and Affirmative Defenses.

The respondent court denied the above-quoted motion on the ground that the amended answer would not only alter the answer sought to be amended but would also delay the proceedings. On May 24, 1976, the court, rendered a partial summary judgment, stating:

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"Under the circumstances obtaining in the present case and pursuant to settled jurisprudence on usury and in order to render substantial justice, the patch of reason, justice and equity dictates that the Court must functionalize and breathe life into invisible justice epitomized in the precepts of equity and justice and render partial judgment on the undisputed obligation so that litigation should continue with respect to the controverted acceleration and alleged usurious interest being charged under plaintiffs financing scheme. The defendant Rassagi in its opposition to plaintiffs motion for summary judgment has attached plaintiffs official receipts for installment payments (pp. 144 to 166, record) which shows that of the amount financed under the promissory note (Annex A) secured by defendant R & B Surety's surety bond (Annex D) the amount of P1 41,417.24 has already been paid while under the promissory note (Annex A-1) secured by defendant Tower's bond (Annex D-1) the amount of P97,25 1.00 has already been paid. These amounts should be deducted from P1,960,000.00 only for the purpose of this partial judgment. At this stage, the Court will not rule on whether or not there was a holdout of P100,000.00 as defendant Rassagi claims. This must be supported by evidence during the trial because the Court considers that 14 buses at the rate of P140,000.00 per unit is P1,960,000.00, the uncontroverted amount received by defendant Rassagi.

WHEREFORE, premises considered, partial judgment at this stage is hereby rendered ordering:

"a. Defendants Rassagi and R & B Surety and Insurance Co., inc. to pay plaintiff, jointly and severally, the amount of P978,582.76:

"b. Defendants Rassagi and Towers Assurance Corporation to pay plaintiff, jointly and severally, (the amount of P742,749.00."

A motion for reconsideration was filed by the defendant sureties but the same having been denied, they filed this instant petition.

Defendant sureties, now as petitioners, contend that the trial court erred in denying their motion to admit the amended answer and in rendering partial summary judgment notwithstanding the fact that their answer and that of defendant Rassagi raised valid defenses, both legal and factual. According to petitioners, in view of the non-delivery of the trucks to Rassagi, no credit facilities were, therefore, extended by Citiwide Motors. Inc. to it, and in effect the promissory notes which are the principal basis of FNCB's action, are totally lacking and short of consideration, the maker thereof not having received anything of value in having signed or executed the same, and are therefore null and void, unenforceable against the petitioners. Petitioners further contend that there is absolutely no basis for the statement of the respondent judge that the admission of the amended answer would only delay the proceedings for they never resorted to dilatory tactics and all postponements were at the instance of Rassagi; and although the defenses raised in the amended answer were only discovered after the filing of the original answer, the motion to admit the same was made prior to the termination of the pre-trial.

After a careful consideration of the case, we find the contentions of the petitioners impressed with merit. The instant petition, therefore, should be granted.

While it is true that in their amended answer, petitioners sought to alter (their own admission in (their original answer by alleging that fourteen (14) Chevrolet (trucks were not actually delivered to Rassagi, such allegation did not really alter the theory of their defense which is, that they are not liable to FNCB.

In their original answer, petitioners and defendant Rassagi denied the fact that the latter obtained credit facilities from Citiwide, they instead alleged that Rassagi obtained a direct loan from FNCB. In essence, therefore, petitioners were already raising the defense of non-liability not on the basis of nondelivery of the subject matter of the promissory notes but on the basis of the fact that since Rassagi obtained a direct loan from FNCB, there was no longer any need for Citiwide to extend credit facilities in favor of Rassagi as the former was paid immediately upon the release of the said loan. Thus, petitioners as sureties can no longer be bound under the contract of surety

wherein they obligated themselves solidarily with Rassagi in favor of Citiwide. in consideration of the credit facilities that the latter was supposed to extend to defendant Rassagi.

In essence, therefore, there was no change in the theory of herein petitioners when they tried to amend their answer by stating that they were not liable to FNCB because the fourteen (14) trucks which were the subject matter of the questioned promissory notes were never delivered by Citiwide to Rassagi although this defense was not present in their original answer where the petitioners virtually adopted the allegations made by Rassagi which however admitted the delivery of the abovementioned trucks. Although as a general rule, facts alleged in a party's pleading are deemed admissions of that party and binding upon it, this is not an absolute and inflexible rule because an answer is a mere statement of fact which the party filing it expects to prove, but it is not evidence. (Sec Gardner v. Court of Appeals, 131 SCRA 600).

Rule 34 of the Rules of Court authorizes the rendition of a summary judgment when, on motion for the plaintiff after the answer to the complaint has been filed, it would appear, during the hearing of the motion for such judgment, from the pleadings, depositions and admissions on file, together with the affidavits that, except as to the amount of damages, "there is no genuine issue as to any material fact and that the winning party is entitled to a judgment as a matter of law." (Section 3, Rule 34, Rules of Court). Conversely, the rendition of summary judgment is not justified when the defending party tenders vital issues which call for the presentation of evidence. (Guevarra v. Court of Appeals, 124 SCRA 313).

It is evident from the records that the original answer filed by the petitioners tendered a genuine issue and thus, the partial summary judgment by the respondent court should not have been rendered.

And, even assuming that the amendment altered the theory of the defense, justice and equity still dictate that such amendment be allowed for if the allegations therein are proven, then the same would altogether negate liability on the part of the petitioners, a fact which may no longer be ventilated should we uphold the propriety of the summary judgment. Surely, the right of the petitioners to be given the chance to prove that they are not liable under the questioned promissory notes is more important than the change in the theory of the defense or the possibility of delay in the proceedings which, in this case is only at its pre-trial stage. As we have held in the case of Sedeco v. Court of Appeals, (115 SCRA 102-103):

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"xxx There is consequently no substantial change in the gist of petitioners' defense and, what is of more vital significance to the ends of justice, is that to admit the Second Amended Answer would serve to give the parties a full hearing on the merits of their entire controversy and avoid multiplicity of suits. Courts should be liberal in allowing amendments to pleadings at any stage on the action to avoid multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined and the case decided on the merits without unnecessary delay. (Demaronsing v. Tandayag, 58 SCRA 484 [1974]; Shaffer v. Palma, 22 SCRA 934 [1968])."

Similarly, in the case of Paman v. Diaz (116 SCRA 129), we ruled:

"When the purpose of an amendment is to submit the real matter in dispute without any intent to delay the action, the court in its discretion, may order or allow the amendment upon such terms as may be just. Anything, therefore, that may preclude a party from fully representing the facts of his case should be brushed aside, if (his) can be done without unfairness to the other party and by the means provided for by the Rules of Court, xxx"

WHEREFORE, the petition is GRANTED. The partial summary judgment and the order denying the motion for reconsideration are hereby REVERSED and SET ASIDE. The

Regional Trial Court of Manila is directed to admit the petitioner's Amended Answer with Affirmative and Special Defenses with Compulsory Counterclaim.

SO ORDERED.

Melencio-Herrera, Plana, Relova, and Alampay, JJ., concur.

Teehankee, Acting C.J., concurs in the result. This is not a proper case for summary judgment,

De la Fuente, J., took no part.

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