

M. B. FLORENTINO & CO., LTD., PETITIONER, VS. JOHNLO TRADING COMPANY AND LIPSETT PACIFIC CORPORATION, RESPONDENTS.

G.R. No. L-8388. June 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is a petition to review by certiorari the decision of the Court of Appeals (in CA-G. R. No. 11343-R).

In a complaint filed in the Court of First Instance of La Union against Johnlo Trading Company (hereinafter referred to as JOHNLO) and Lipsett Pacific Corporation (hereinafter referred to as LIPSETT), both foreign corporations doing business in the Philippines, M. B. Florentino & Co., Ltd. sought recovery from the former, under the first cause of action, the sum of P14,304.19, with legal interest thereon from August 18, 1949 until fully paid, representing unpaid charges for the loading, hauling and stevedoring services allegedly rendered by plaintiff for said defendant pursuant to their contracts of June 30, July 22, and November 15, 1948. Under its second cause of action, plaintiff prayed for the rescission of the contract entered into by defendant corporations on October 3, 1949, by virtue of which JOHNLO sold, transferred and conveyed unto LIPSETT, its sister corporation, in consideration of the sum of P100.00, all its properties and equipment in the Philippines, it being charged that such contract was executed to defraud plaintiff and other creditors of JOHNLO. Plaintiff also claimed for damages, allegedly suffered by reason of JOHNLO's refusal to pay the charges due the said company, amounting to P10,000.00, and for attorney's fees in the sum of P2,000.00.

Defendant LIPSETT timely filed an answer denying the allegations in both the first and second cause of action. Defendant JOHNLO, however, which was served summons through Charles T. Balcoff, failed to file an answer and upon plaintiff's motion was declared in default. Said defendant's motion to lift the order of default having been denied, the question of the regularity and sufficiency of the service of summons on Charles T. Balcoff, who disclaimed being JOHNLO's representative or agent in the Philippines, was raised before this Court in a petition for certiorari (G. R. No. L-3987). In our decision of May 18, 1951, it was held that the service of summons for JOHNLO upon Charles T. Balcoff, who had previously been acting for said foreign corporation in a representative capacity, may be considered as sufficient under Section 14, Rule 7 of the Rules of Court. Subsequently, JOHNLO filed in the lower court a motion for relief from the order of default, which motion was denied on July 25, 1951.

On September 30, 1952, the lower court after due trial rendered judgment (1) ordering defendant JOHNLO, under the first cause of action, to pay to plaintiff, for unpaid services rendered to said defendant, the sum of P14,304.19, with legal interest thereon from August 18, 1949, plus damages in the sum of P8,000.00 and another P2,000.00 as attorney's fees; and (2) declaring the deed of sale dated October 3, 1949, executed by johnlo in favor of LIPSETT fraudulent for lack of adequate consideration and, hence, null and void, and accordingly directing the attachment of the sum of P25,000.00, which was considered exclusive property of JOHNLO, from the bank deposit of lipsett

to be paid to plaintiff. Defendant LIPSETT was further required to pay plaintiff the sum of P5,000.00 as damages. Both defendants filed notice to appeal the decision to the Court of Appeals. Plaintiff, however, moved for the dismissal of the appeal of defendant JOHNLO on the ground that, having been declared in default and having failed to cause the lifting of the said default order, said defendant had no personality to appeal from the decision on the merits. This motion was sustained by the lower court and JOHNLO's appeal was, consequently, disapproved.

Passing upon the appeal interposed by defendant LIPSETT, the Court of Appeals ruled that the evidence, Exhibit C, upon which the lower court's finding that plaintiff was underpaid by 1490.84 long tons, amounting to P15,578.88, was based, was incompetent for being hearsay; thus, the appealed decision was modified by holding JOHNLO liable only for the sum of P3,108.74 (for the services in connection with the 19.63 long tons shipped by S.S. Aspesis Nomikos), plus damages in the sum of P3,000.00. The contract between JOHNLO and LIPSETT was declared invalid only to the extent of the properties involved therein necessary to cover the aforementioned amounts. It is this decision of the Court of Appeals that M. B. Florentino & Co., Ltd. asks this Court to review by means of the instant petition for certiorari.

There is no question that by orders of November 14, 1952 and February 27, 1953, the lower court disapproved JOHNLO'S notice of appeal, which orders, needless to say, already became final. It is clear, therefore, that the appeal in the Court of Appeals concerned merely the issues and defenses peculiar to defendant LIPSETT. As aforesaid, however, the Court of Appeals not only passed upon the validity of the contract between LIPSETT and JOHNLO but took cognizance of the evidence and issues relative to the liability of JOHNLO. Herein petitioner now claims that the Court of Appeals erred:

- In modifying the judgment of the trial court in this case, insofar as said judgment affected and bound a defendant who did not appeal and who, in fact, was, by reason of its default, barred from interposing an appeal, and
- In modifying the judgment of the trial court in this case on the basis of its findings that the petitioner's Exhibit "C" is incompetent and inadmissible hearsay evidence.

The rule is well-settled that a defendant who has been declared in default loses not only his right to be heard in court, but also the right to appeal from the judgment on the merits. (*Lim Toco vs. Go Fay*, 81 Phil., 258; 45 Off. Gaz. No. 8 p. 3350.)^[1] Thus, as the defaulting defendant can not appeal from the decision upon expiration of the period within which an appeal may be instituted, the decision as to him shall become final and executory and, even in case of appeal by the other defendants, shall remain undisturbed. (*Municipality of Orion vs. Concha*, 50 Phil., 679.) It is true that an exception to this rule exists, that is—

"* * *. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other cojudgment debtors depends solely upon the question of whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all." (*Municipality of Orion vs. Concha*, supra citing 4 C. J. 1184.)

This situation is not obtaining in the instant case.

As stated before, the complaint against JOHNLO alone, under the first cause of action, was based on contracts between plaintiff and said defendant, of which contracts defendant LIPSETT had no interest or participation whatsoever, LIPSETT was only included as a defendant, under the second cause of action, because it is a party to the contract plaintiff claims to have been executed to defraud the creditors of JOHNLO. It is clear therefrom that a declaration of the liability of defendant johnlo for unpaid charges, under the first cause of action, does not necessarily affect the rights of LIPSETT who, to exculpate itself from any liability under the second cause of

action, must only establish that the transfer of JOHNLO'S properties to said corporation was valid. The resolution of LIPSETT'S appeal from the adverse decision of the lower court, therefore, does not necessitate a reappraisal of the evidence upon which the judgment, finding defendant JOHNLO liable to pay plaintiff's claims was based. The evidence tending to establish the liability of JOHNLO to plaintiff has nothing to do and is different and independent of the evidence regarding the transfer of JOHNLO's properties to LIPSETT, and vice-versa. A judgment against JOHNLO can not affect LIPSETT if the transfer is valid. On the other hand, a judgment in favor or against lipsett will have no bearing on JOHNLO'S liability to plaintiff. In other words, the only connecting link between the two causes of action is that the first establishes plaintiff as a creditor (the amount is absolutely immaterial of JOHNLO which qualifies plaintiff to seek the relief under the second cause of action. It would have been a different matter had the appeal been instituted by JOHNLO. Any reversal of the decision affecting JOHNLO'S liability will necessarily benefit lipsett, because if plaintiff's claim against the former can not be established, the second cause of action would consequently fail. It would then be immaterial whether the transfer of JOHNLO'S properties to lipsett was valid or not.

Respondents, nevertheless, maintain that the Court of Appeals has jurisdiction to review the evidence even as between plaintiff and defendant JOHNLO considering that the lower court allowed lipsett to present proof touching upon the liability of JOHNLO under the first cause of action, and that lipsett had appealed not only from the portion of the judgment concerning the validity of the contract, but from the entire decision. This contention is without merit.

The mere fact that the lower court admitted, such evidence, presumably over the objection of plaintiff, did not make LIPSETT a party under the first cause of action nor did it operate to lift the order of default against JOHNLO and restore its standing in court. In fact, the trial, in disposing of the case on the merits, disregarded such evidence in its final decision.

Admittedly, the law gives even a defaulting party certain degree of protection; hence, plaintiff, despite the absence of the defendant, is still required to substantiate its allegations in the complaint and the court is directed to render judgment and grant relief as thus proved. Sec. 6, Rule 35; *Sudeco vs. Sande*, 91 Phil., 159.) But this rule can riot override the cardinal principle regarding finality of judgment (Sec. 2, Rule 35). Granting, therefore, arguendo, that the court a quo erred in its appreciation of the evidence admitted during the hearing and overlooked certain proofs in favor of the defaulting defendant, such fact does not justify the appellate court's setting aside and modifying a judgment against such defendant which, after the lapse of 30 days from notice thereof, becomes final and executory.

Wherefore, and in view of the foregoing considerations, the decision of the Court of Appeals, insofar as it reduces the liability of JOHNLO is hereby set aside, and the judgment of the court a quo on the matter reinstated. In all other respects, the decision appealed from is affirmed. With costs against respondent. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.
Padilla and Gutierrez David, JJ., took no part.

[1] Reiterated in *Gequillana vs. Buenaventura*, 87 Phil., 301; 48 Off. Gaz., *Son vs. Melendres*, 88 Phil., 703; *Reyes vs. Roman Catholic Archbishop of Manila*, 88 Phil., 513.

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