

IRENE DINO, PETITIONER, VS. HON. AUGUSTO L. VALENCIA IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY, BRANCH XXXI AND FRANCISCO L. ONG, R...

G.R. No. L-43886. July 19, 1989

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/580fe628995f/>

PADILLA, J.:

This is a petition for certiorari, mandamus and prohibition to annul and set aside the judgment on the pleadings, dated 26 January 1976, rendered by the respondent Judge in Civil Case No. Q-20350 as well as his order dated 14 April 1976 denying the petitioner's motion for reconsideration and to compel the said respondent Judge to allow her to, present evidence.

The record discloses the following facts:

Petitioner Irene Dino is the registered owner of a parcel of land together with all the improvements thereon, situated at No. 94 West Kaunlaran Street, Philamlife Homes, Quezon City, covered by Transfer Certificate of Title No. 140987 issued by the Register of Deeds of Quezon City.

Private respondent Francisco L. Ong is the adverse claimant of the said parcel of land, having filed an Affidavit of Adverse Claim with the Register of Deeds of Quezon City, as evidenced by Entry No. 5608 on the said TCT No. 140987.

On 26 April 1974, private respondent executed a document entitled "AFFIDAVIT AND MEMORANDUM OF QUITCLAIM,"[1] wherein he waived and renounced all his claims, rights and credits over and against the aforesaid parcel of land the pertinent part of which reads as follows:

"2. That for and in consideration of the sum of NINETY THOUSAND PESOS, payable as follows:

'(a) Downpayment of FORTY THOUSAND PESOS (P40,000.00) on or before February 15, 1974, receipt of which (sic) hereby acknowledged; and the future sums covered by post-dated checks in denominations of;

'(b) TEN THOUSAND PESOS (P10,000.00) payable or redeemable on or before April 15, 1974; and,

'(c) EIGHT THOUSAND PESOS (P10,000.00) (sic) EACH payable or redeemable on or before the 15th of June, August, October, December of 1974 and February of 1975, respectively, and for a total of FORTY THOUSAND PESOS (P40,000.00),

I hereby waive and renounce forever and in a manner absolute all my claims, rights and credits over and against the aforesaid parcel of land covered by Transfer Certificate of Title No. 140987 and likewise release the registered owner. IRENE DINO, her heirs, assigns, or representatives, from all obligations including those credits (sic) claimant;

"(3) That it is the essence of this Affidavit and Memorandum of Quitclaim that should said IRENE DINO fail or refuse to comply with the payments stipulated about (sic) or default in any single payment, then the full and

existing balance shall become due and demandable without further necessity of demand, and that said IRENE DINO undertakes to pay the further sum of TWENTY THOUSAND PESOS (P20,000.00) by way of liquidated damages;

"(4) That this Affidavit and Memorandum of Quitclaim is executed for the sole purpose of cancelling my adverse claim and the corresponding Entry thereof on Transfer Certificate of Title No. 140987 and for no other purpose contrary to law; as well as the Deed of Sale With Assumption of Mortgage dated September 21, 1970."

Apparently, petitioner failed to comply with her obligations under the aforestated document, for on 20 March 1975, private respondent filed with the Court of First Instance of Rizal, Quezon City, Branch XXI, a complaint[2] against the petitioner for breach of contract and damages, docketed therein as Civil Case No. Q-20350, alleging inter alia:

"3. That, during the period from June 21, 1974 to February 21, 1975, Defendant issued in favor of the Plaintiff herein, Philippine Commercial and Industrial Bank (PCIB) - Greenhills Branch - Checks Nos. 14872 to 14876, inclusive, each in the amount of P8,000.00, all of which were dishonored by the drawee bank; the first two for having been 'drawn against insufficient funds,' and the last three thereof, for 'account closed';

"4. That the aforementioned checks were drawn by the Defendant in payment to the Plaintiff of the remaining P40,000.00 balance on a total amount of P90,000.00 which Defendant undertook to pay the Plaintiff in consideration of the latter's executing the AFFIDAVIT AND MEMORANDUM OF QUITCLAIM (contents of which are self-explanatory) dated February 26, 1974, a xerox copy of which is hereto attached as ANNEX 'A' and made an integral part hereof;

"5. That Paragraph 3 thereof, to which Defendant conformed and accepted, clearly states:

'3. That it is the essence of this Affidavit and Memorandum of quitclaim that should said IRENE DINO fail or refuse to comply with the payments stipulated above or defaulted (sic) in any single payment, then the full and existing balance shall become due and demandable without further necessity of demand, and that said IRENE DINO undertakes to pay the further sum of TWENTY THOUSAND PESOS (P20,000.00) by way of liquidated damages;'

"6. That when Defendant issued the checks mentioned in Par. 3 of this Complaint, she was aware that she did not have sufficient funds with the drawee bank and had already closed her account with the bank when the last three checks were presented for payment:

"7. That, in view thereof, the 'full and existing balance' of Defendant's obligation to the Plaintiff, which now stands at P32,000.00 (one of the five dishonored checks having been replaced with one good check), is now 'due and demandable without further necessity of demand,' and Defendant is further obligated to pay the Plaintiff the amount of P20,000.00 by way of liquidated damages;

"8. That, despite repeated demands by Plaintiff on the Defendant, the latter has failed and still continues to fail to pay the P52,000.00 due to the Plaintiff, in view of which Plaintiff was constrained to file this case in Court to protect his rights and was thus forced to engage the services of counsel and to defray the costs of this suit."

In her answer,[3] petitioner alleged:

"2. That she admits the allegations contained in paragraph 3 of the complaint insofar only as the issuance of check Nos. 14872 to 14876 of the PCIB and that they were at P8,000.00 each are concerned, but specifically denies the rest, the truth being that not all of the said checks were dishonored by the bank, but only four (4) and also that the original agreement of the parties as to the payment of the said checks had already been novated and disregarded by the parties after the issuance of the said checks and after the Affidavit and Memorandum of

Quitclaim dated February 26, 1974, had been signed and executed by the parties, considering the fact that plaintiff agreed to the request of the defendant not to deposit the said checks but wait for sometime to pay the said amount of P40,000.00 in one lump sum, that as a matter of fact, defendant (sic) deposited the said checks long, long after the supposed date of issuance of the same.

"3. That she admits the allegations contained in paragraph 3 of the complaint subject to the allegations contained in the next preceding paragraph.

"4. That she admits the reproduction of No. 3 of the Affidavit and Memorandum of Quit-claim insofar only as they are consistent with the contents of paragraph 3 of the said document and also subject to the allegations contained in paragraph 2 above.

"5. That she specifically denies the allegation contained in the paragraph 6 of the complaint, the truth of the matter being that when said checks were issued, they were postdated and plaintiff knew for a fact they did not have sufficient funds but plaintiff just the same accepted them subject to the conditions of availability of funds by the plaintiff (sic). In other words said checks were issued only to guarantee the payment of the P40,000.00 but not as payment itself, that is why plaintiff as a matter of fact agreed not to deposit the said checks until after further notice from the defendant, as alleged in paragraph 2 above.

"6. That she admits that the outstanding balance due the plaintiff is P32,000.00 as alleged in paragraph 2 hereof, but denies specifically that they are now 'due and demandable without further necessity of demand', the truth of the matter being that said agreement was already novated and voided as alleged in paragraph 2 above. (Par. 7, comp)

7. That she specifically denies the allegations contained in paragraph 8 of the complaint the truth of the matter being those contained in paragraph 2 above."

Private respondent (as plaintiff) filed a reply,[4] alleging that petitioner should be declared in default for having filed her answer on 1 September 1975, or two (2) days beyond the extended period, or in the alternative, that a judgment on the pleadings be rendered at the pre-trial for the reason that the petitioner virtually admitted the material averments of the complaint, having failed to deny under oath the genuineness and due execution of the Affidavit and Memorandum of Quitclaim, as required by Sec. 8 of Rule 8 of the Rules of Court, and that petitioner admitted in par. 6 of her answer that the outstanding balance due to him (private respondent) is P32,000.00, which negates her gratuitous allegation that the said Affidavit and Memorandum of Quitclaim was novated or voided.

During the pre-trial conference, petitioner through counsel, offered to pay her obligations by monthly install-ments but the same was unacceptable to the private respondent; hence, the pre-trial conference was considered terminated. Thereafter, private respondent's counsel manifested in open court, and without objection on the part of petitioner's counsel, that he was submitting for resolution by the court his alternative motions to declare petitioner in default or for a judgment on the pleadings. Likewise, in open court, respondent judge denied the private respondent's motion to declare petitioner in a default but made it clear that he was considering the alternative motion for a judgment on the pleadings, and gave petitioner sufficient time to file a responsive pleading or opposition to the said motion.[5] Petitioner filed an opposition[6] thereto dated 22 November 1975, alleging that there is no room for a judgment on the pleadings as her answer to the complaint tendered an issue, and that the private respondent's reply is in fact, a motion to declare petitioner in default or for a judgment on the pleadings, and since said motion does not contain a notice of hearing, the same is nothing but a useless piece of paper.

On 26 January 1976, respondent Judge rendered the questioned judgment on the pleadings,[7] the dispositive part of which reads:

"WHEREFORE, judgment on the pleadings is hereby rendered in favor of the plaintiff, ordering the defendant to pay him the balance of P32,000.00 plus liquidated damages of P20,000.00, and cost of suit." [8]

Petitioner moved to reconsider, [9] which the private respondent opposed. [10] On 14 April 1976, respondent Judge issued an order [11] denying the petitioner's motion for reconsideration.

Hence, petitioner filed the instant petition, claiming that respondent Judge acted in excess of his jurisdiction or with grave abuse of discretion in rendering the judgment on the pleadings and in issuing the order denying her motion for reconsideration and that she has no remedy nor any other plain, speedy and adequate remedy in the course of law except through the present petition.

Petitioner maintains that her answer to the complaint tendered an issue as it did not only deny the material allegations contained therein but it also set up special as well as affirmative defenses. Hence, she argues there is no room for a judgment on the pleadings. [12]

The petitioner's contention is untenable. Her defense that the original agreement of the parties had already been novated and disregarded after the issuance of the checks mentioned in private respondent's complaint and after the private respondent had executed and signed the Affidavit and Memorandum of Quitclaim, [13] is a sham and false defense and did not tender an issue that would require a hearing for the reception of evidence. It is a mere device or scheme to avoid or delay the immediate payment of petitioner's obligation to the private respondent under the Affidavit and Memorandum of Quitclaim. Thus, as aptly observed by the court a quo --

"A novation under the rules of civil law, where the term has been introduced into the modern nomenclature of our common law jurisprudence, was a mode of extinguishing one obligation by another; the substitution, not of a new paper or rate but of a new obligation in lieu of an old one, the effect of which was to pay, dissolve or otherwise discharge it (ibid).

"It will be noted that the original contract (Annex "A") was not actually altered or changed. The defendant, as a matter of fact, and for all intents and purposes, had issued checks in payment of her obligation as prestatd by the contract but asserts that the same were issued only to guarantee but not as a payment in itself, but it is no denying the fact that one of the five checks were cashed, thus making the balance of only P32,000.00, that is without mention the liquidated damage of P20,000.00. The ambivalent attitude of the defendant could only mean or should be construed as a mere pretense to avoid an immediate demand for the payment of her obligation.

"In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligation be on every point incompatible with each other (Art. 1292-New Civil Code).

"In the present case the contract referred to did not expressly extinguish the obligation existing in said affidavit and memorandum of quitclaim. On the contrary, it expressly recognized the obligation between the parties and expressly provide a method by which the same shall be extinguished, which method was expressly provided in the aforementioned contract, by means of periodical payments.

"For all the foregoing considerations, the court believes and so holds, that the aforementioned contract has never been altered, changed or novated. For what the herein defendant actually did is not absolutely incompatible with the prestation of the existing contract but rather she expressly ratified such obligation through the issuance of postdated checks, some of which were cashed and others not for reason of insufficiency of funds or 'account closed.'" 13

Besides, the private respondent's cause of action is based on the "Affidavit and Memorandum of Quitclaim," the substance of which was properly alleged in the complaint, and copies thereof, were attached thereto. Section 8,

Rule 8 of the Rules of Court provides that when an action is founded upon a written instrument, copied in or attached to the corresponding pleading, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them. In the present case, the petitioner is deemed to have admitted the genuineness and due execution of the "Affidavit and Memorandum of Quitclaim" for her failure to deny the same under oath; consequently, the judgment on the pleadings rendered by respondent Judge was proper.[14]

In her memorandum,[15] petitioner further contends that the private respondent's reply should not have been treated as a motion for a judgment on the pleadings for non-compliance with the three-day notice rule and for lack of a notice of hearing.[16]

Again, the petitioner's contention is devoid of merit. Section 1, Rule 19 of the Rules of Court which states that where an answer "admits the material allegations of the adverse party's pleading, the court may, on motion of that party direct judgment on such pleading", does not state whether the motion for judgment on the pleading may be considered ex-parte or only after notice of hearing served on the adverse party. A motion for a judgment on the pleadings where the answer admits all the material averments of the complaint, as in the present case, is one that may be considered ex-parte because, upon the particular facts thus presented and laid before the court, the plaintiff is entitled to the judgment.[17] Besides, the purpose of the law in requiring the filing of motions, at least three (3) days before the hearing thereof, is to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the movant.[18] This purpose has been sufficiently complied with the petitioner having filed an opposition to the said motion.

At any rate the questioned judgment on the pleadings is a final judgment: hence, it is appealable. Petitioner therefore could have appealed from the aforesaid judgment, but she did not. Having failed to appeal from the said judgment, she may not avail of the writ of certiorari to offset the adverse effect of her omission.[19]

WHEREFORE, the petition in this case is DISMISSED, with costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, p. 71

[2] Id., p. 27

[3] Id., p. 30

[4] Rollo, p. 33

[5] Id., p. 64

[6] Rollo, p. 42

[7] Id., p. 42

[8] Id., p. 49

[9] Id., p.50

[10] Id., p. 61

[11] Id., p. 61

[12] Sec. 1, Rule 19 of the Rules of Court provides:

"Where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may on motion of that party direct judgment on such pleading. x x x."

[13] Answer, pars. 2 and 6, *supra*

13 Rollo, pp. 47-49

[14] *Young vs. Young*, 124 SCRA 897-898

[15] Rollo, pp. 96, 111-112

[16] Sections 4 and 5, Rule 15 of the Rules of Court

[17] *Cruz vs. Oppen, Inc.*, 22 SCRA 608, 614

[18] *J.M. Tuason & Co., Inc. vs. Magdangal*. 4 SCRA 84, 86

[19] *Tolentino vs. Escalona*, 26 SCRA 613, 617

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.