

## **CAPITOL MOTORS CORPORATIONS, PLAINTIFF-APPELLEE, VS. NEMESIO I. YABUT, DEFENDANT-APPELLANT.**

*G.R. No. L-28140. March 19, 1970*

Ponente: VILLAMOR, J.

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### **VILLAMOR, J.:**

Appeal on a question of law from the judgment of the Court of First Instance of Rizal in its Civil Case No. Q-9869.

On March 1, 1966, Capitol Motors Corporations filed a complaint against Nemesio I. Yabut. It was therein averred that on April 24, 1965, the defendant executed in favor of the plaintiff a promissory note (copy of which was attached to the complaint) for the sum of P30,134.25, payable in eighteen (18) equal monthly installments with interest at 12% per annum the first installment to become due on June 10, 1965; that it was stipulated in the promissory note that should the defendant fail to pair two (2) successive installments, the principal sum remaining unpaid would immediately become due and demandable and the defendant would, by way of attorney's fees and costs of collection, be obligated to the plaintiff for an additional sum equivalent to 25% of the principal and interest due; that as of February 23, 1966, the sum remaining unpaid on the promissory note was P30,754.79, including accrued interest; that the defendant defaulted in the payment of two (2) successive installments, and likewise failed to pay the interest due on the promissory note; and that in spite of demands by the plaintiff, the defendant failed and refused to pay the said principal sum and interest due. Prayer was made that the defendant be ordered to pay the plaintiff the sum of P30,754.79, as well as the interest due thereon from February 23, 1966, and an additional sum equivalent to 25% of the amount due, plus costs.

On April 27, 1966, and within the reglementary period, the defendant, through his counsel, filed an answer which reads:

"DEFENDANT through counsel alleges:

"1. Paragraph 1 of the complaint is admitted.

"2. Paragraphs 2, 3, 4, 5, 6 and 7 of the complaint are specifically denied for lack of know-ledge sufficient to form a belief as to the truth thereof.

"WHEREFORE, it is respectfully prayed that the Complaint be dismissed with costs against the plaintiff."

On June 16, 1966, the plaintiff filed a motion for judgment on the pleadings, on the ground that the defend-ant, not having set forth in his answer the substance of the matters relied upon by him to support his denial, had failed to deny specifically the material allegations of the complaint, hence, must be deemed to have admitted them. The defendant did not file an opposition to the motion. On September 13, 1966, after hearing on the motion, the court issued an order granting the said motion and considering the case submitted for decision on the basis of the pleadings; and on January 9, 1967, the court rendered judgment granting in toto the plaintiff's prayer in its complaint.

In this appeal, defendant-appellant contends that the court a quo erred in considering him as having failed to deny specifically the material allegations of the complaint, and, consequently, in deciding the case on the basis of the pleadings. Citing Moran, Comments on the Rules of Court, Vol. I 1963 Ed., p. 281, he argues that since Section 10 Rule 8 of the Revised Rules of Court, recognizes three (3) modes of specific denial, namely: (1) by specifying each material allegation of fact in the complaint the truth of which the defendant does not admit and, whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial or (2) by specifying so much of an averment in the complaint as is true and material and denying only the remainder or (3) by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of a denial, and he has adopted the third mode of specific denial, his answer tendered an issue, and, consequently, the court a quo could not render a valid judgment on the pleadings.

This appeal is without merit.

We agree with defendant-appellant that one of the modes of specific denial contemplated in Section 10, Rule 8, is a denial by stating that, the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint. The question, however, is whether paragraph 2 of defendant-appellant's answer constitutes a specific denial under the said rule. We do not think so. In Warner Barnes & Co., Ltd. vs. Reyes, et al., G.R.No.L-9531, May 140 1958 (103 Phil., 662), this Court said that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In said case the suit was one for foreclosure of mortgage; and a copy of the deed of mortgage was attached to the complaint; thus, according to this Court, it would have been easy for the defendants to specifically allege in their answer whether or not they had executed the alleged mortgage. The same thing can be said in the present case, where a copy of the promissory note sued upon was attached to the complaint. The doctrine in Warner Barnes & Co., Ltd. was reiterated in J.P. Juan & Sons, Inc. vs. Lianga Industries, Inc., G.R.No. L-25137, July 28, 1969 (28 SCRA 807). And in Sy-quia vs. Marsman, G.R. No. L-23426, March 1, 1968 (22 SCRA 927), this Court said:

"With regard to the plea of lack of knowledge or information set up in paragraph 3 of the answer, this Court's decision in Warner Barnes vs. Reyes, 103 Phil. 662, 6650 is authority for the proposition that this form of denial must be availed of with sincerity and good faith, not for the purpose of confusing the other party, nor for purposes of delay. Yet, so lacking in sincerity and good faith is this part of the answer that defendants-appellants go to the limit of denying knowledge or information as to whether they (defendants) were in the premises (Marsman Bldg.) on January 4, 1961, as averred, in paragraph 4 of the complaint. Yet whether such a fact was or was not true could not be unknown to these defendants."

In National Marketing Corporation vs. De Castro, 106 Phil., 803 (1959), this Court held:

"Furthermore, in his answer to the appellee's complaint, he merely alleged that 'he has no knowledge of information sufficient to form a belief as to the truth of the matters contained in paragraphs 3, 4, 5 and 6 so much so that he denies specifically said allegations.' A denial is not specific simply because it is so qualified. (Sections 6 and 7, Rule 9; El Hogar Filipino vs. Santos Investments, Inc. 74 Phil., 79; Baetamo vs. Amador, 74 Phil., 735; Dacanay vs. Lucero, 76 Phil., 139; Lagrimas vs. Lagrimas, 95 Phil., 113.) Material averments in a complaint, other than those as to the amount of damage, are deemed admitted when not specifically denied. (Section 8, Rule 9.) The court may render judgment upon the pleadings if material averments in the complaint are admitted. (Section 10, Rule 35; Baetamo vs. Amador, supra Lichauco vs. Guash, 76 Phil., 5; Lati vs. Valmores, G.R.No. L-6877, 30 March 1954.)"

It becomes evident from all the above doctrines that a mere allegation of ignorance of the facts alleged in the complaint, is insufficient to raise an issue; the defendant must aver positively or state how it is that he is ignorant of the facts so alleged. (Francisco, *The Revised Rules of Court in the Philippines*, Vol. I, p. 417, citing *Wood vs. Staniels* 3 Code Rep. 152 and *Vassalt vs. Austin*, 32 Cal. 597.)

Thus, in at least two (2) cases where this Court ruled that judgment on the pleadings was not proper, it will be seen that the reason was that in each case the defendants did something more than merely alleging lack of knowledge or information sufficient to form a belief. In *Arrojo vs. Caldoza, et al.*, G.R.No. L-17454, July 31, 1963 (8 SCRA 547), the defendants, in their answer to the complaint for recovery of possession of a parcel of land, did not merely allege that they had no knowledge or information sufficient to form a belief as to the truth of the material allegations in the complaint, but added the following: "The truth of the mat-ter is that the defendants have not occupied or taken any property belonging to the plaintiff. They took possession and ownership only of the land belonging to them, which properties were possessed and owned originally by their predecessors-in-interest, who were the parents of the defendants \* \* \*." In *Benavides vs. Alabastro*, G.R.No.L-19762, December 23, 1964 (12 SCRA 553), the defendant's answer did not only deny the material allegations of the complaint but also set up certain special and affirmative defenses the nature of which called for presentation of evidence.

There are two other reasons why the present appeal must fail. First. The present action is founded upon a written instrument attached to the complaint, but defendant-appellant failed to deny under oath the genuineness and due execution of the instrument; hence, the same are deemed admitted. (Section 8, Rule 8 of the Revised Rules of Court; *Songco vs. Sellner*, 37 Phil. 254; *Philippine Commercial & Industrial Bank vs. ELRO Phil., Corporation et al.*, G.R. No. L-30830, August 22, 1969 [29 SCRA 38]; *J.P. Juan & Sons, Inc. vs. Lianga Industries, Inc.*, supra.) Second. Defendant-appellant did not oppose the motion for judgment on the pleadings filed by plaintiff-appellee; neither has he filed a motion for reconsideration of the order of September 13, 1966, which deemed the case submitted for decision on the pleadings, or of the decision rendered on January 9, 1967. In *Santiago vs. Basilan Lumber Company*, G.R. No. L-15532, October 31, 1963 (9 SCRA 349), this Court said:

"It appears that when the plaintiff moved to have the case decided on the pleadings, the defendant interposed no objection and has practically assented thereto. The defendant, therefore, is deemed to have admitted the allegations of the complaint, so that there was no necessity for the plaintiff to submit evidence of his claim."

PREMISES CONSIDERED, the judgment appealed from is affirmed, with costs against defendant-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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