

HADJI ABUBAKAR TAN, PLAINTIFF AND APPELLEE, VS. EDUARDO GUA TIAN HO, DEFENDANT AND APPELLANT.

G.R. No. L-18820. December 29, 1962

Ponente: REGALA, J.

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REGALA, J.:

This case originated from the Court of First Instance of Sulu. On appeal to the Court of Appeals that court endorsed the same to Us on the ground that the question involved is one of law, namely, whether or not judgment on the pleadings was correctly rendered by the trial court.

In his complaint filed on June 27, 1956 before the said Court of First Instance of Sulu, the plaintiff-appellee alleged in his first cause of action:

"That sometime on or about January 11, 1958, the plaintiff and the defendant entered into a contract of purchase and sale, whereby the plaintiff bought from the defendant 5 tons of sea sponges, and paying therefore P5,000.00, Philippine currency, in cash;

"3. That after placing the sponges in the sacks ready for delivery to the plaintiff, the defendant discovered that he did not have enough sponges to meet, with the order of 5 tons, made by the plaintiff and neither did he have enough sacks where he could load or place the sponges;

"4. That in view of his inability to deliver the total weight of 4 tons of sea sponges, immediately upon consummation of the sale contract, the defendant pledged and promised to deliver and turn over the 5 tons within 3 days from January 11, 1958, or not later than January 14, 1958;

"5. That on January 14, 1958, the plaintiff demanded from the defendant to deliver to him the 5 tons of sea sponges, he purchased from the defendant, but the latter balked down on his promise to deliver and turn over the 5 tons and instead, the defendant offered to deliver 2 tons of sea sponges to the plaintiff;

"6. That as a result of the failure of the defendant to comply with his part of the agreement, the plaintiff decided to rescind the contract of sale and forthwith demanded the return of his money in the amount of P5,000.00 from the defendant;

"7. That the defendant failed to return the P5,000.00 to the plaintiff, upon demand, claiming that he had spent the same to purchase and complete the purchase order of the plaintiff, and instead he returned to the plaintiff P2,000.00 only;

"8. That upon the failure of the defendant to return the full purchase price of P5,000.00 to the plaintiff, he executed a note, on January 14, 1958, wherein he acknowledged he had received the amount of P3,000.00 from the plaintiff,—and promising to refund the same on February, 1958, said acknowledgment is quoted hereunder in full, to wit:

'January J4, 1958

RECEIVED THE AMOUNT FROM MR. HADJI ABUBAKAR TAN THE SUM OF THREE THOUSAND

(P3,000.00) AND TO BE REFUNDED ON THIS FEBRUARY 1958 OR PARTIAL ONE THOUSAND PESOS.

(Sgd.) Eduardo Gua Tian Ho'

"9. That the defendant has failed, omitted and refused to pay the P3,000.00, on February, 1958, on the date he promised to do so, and in spite of and notwithstanding the numerous demands made by the plaintiff (latest of which was made on June 4, 1959) to the defendant for him to pay the plaintiff the aforesaid sum, the defendant still fails, omits and refuses to pay the amount of P3,000.00 he got, received and obtained from the plaintiff;"

The second cause of action sought to recover the amount of P700.00 representing the unrealized profits or compensatory damages plaintiff failed to earn as a result of defendant's refusal to return the P3,000.00; P500.00 for attorney's fees and costs of the proceedings.

In his answer dated July 29, 1959, the defendant denied the allegations of the second, third, fourth and fifth paragraph of the complaint, but made the following admissions:

"6. That the defendant ADMITS that the plaintiff decided to rescind the contract of sale and forthwith demanded the return of the amount of P5,000.00 as alleged in paragraph 6, but specific ally DENIES that the cause of plaintiff's rescission of the contract of sale was the failure of the defendant to comply with his part of the agreement, as alleged by plaintiff in his cause of action, paragraph 6;

"7. That the defendant ADMITS the averments of the plaintiff in paragraphs 7 and 8 of his first cause of action;

"8. That the defendant ADMITS having failed to pay the amount of P3,000.00 as promised in paragraph 9, but specifically DENIES having refused or omitted to pay plaintiff as alleged in the said paragraph, the inability of the defendant to pay being caused by business reverses he had suffered for quite a time now.

The defendant, however, made the following affirmative defenses:

"1. That upon consummation of the contract of sale by plaintiff and defendant, and receipt of P5,000.00 by defendant, the said amount of P5,000.00 was invested by defendant to purchase sea sponges to meet the order of the plaintiff;

"2. That while the said 5 tons of sea sponges were being packed, ready for delivery to the plaintiff, plaintiff appeared before defendant's office and manifested to defendant that he was rescinding the contract, alleging that he, the plaintiff was fooled by his proposed buyers of the sponges;

"3. That the plaintiff manifested that he was willing to enter into a compromise with the defendant as to the return of the money that may be due the plaintiff, deducting therefrom whatever expenses or damages that may have been incurred by the defendant, as a result of plaintiff's rescission of the contract."

It is to be noted that the defendant's answer also contained a counterclaim seeking to recover from plaintiff: (1) P500.00 representing actual expenses incurred for services of laborers, transportation and handling expenses in packing of the 5 tons of sea sponges; (2) P2,500.00 representing unrealized profits as a result of the rescission of the contract by plaintiff; (3) P2,000.00 representing moral damages incurred by defendant; and (4) P500.00 representing attorney's fees incurred by the defendant to protect his interest.

Asserting that the material allegations of his complaint have been admitted by defendant in his answer, the plaintiff on December 3, 1959 filed a motion for judgment on the pleadings on the first cause of action, under section 10, Rule 35 of the Rules of Court.

Despite opposition on the part of the defendant, the lower court, in an order dated December 24, 1959, rendered judgment on the pleadings as prayed for. In such order, the defendant was thus required to pay the plaintiff the

sum of P3,000.00 with legal rate of interest from the filing of the complaint and to pay costs of the proceedings. The second cause of action, as well as defendant's counterclaim, were ordered dismissed.

Motion for reconsideration of this last mentioned order having been denied, the defendant interposed the instant appeal, as adverted to at the beginning.

The appeal is meritorious.

Section 10, Rule 35 of the Rules of Court provides that "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, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved."

From the above-quoted provision, it is clear that it is only when the answer of defendant does not tender an issue or when all the material allegations of the complaint are admitted that judgment on the pleadings may be rendered.

A careful reading of the affirmative defenses of defendant (quoted above) shows that although defendant has failed to pay plaintiff the P3,000.00 as contained in the promissory note, he does not admit that the cause of plaintiff's rescission of the contract was his (defendant's) failure to pay the said sum. Neither does he admit that he is indebted to plaintiff in the amount of P3,000.00, because, according to him, he has incurred some expenses as a result of plaintiff's rescission of the contract, and that plaintiff manifested that he was willing to enter into a compromise with defendant as to the return of the money that may be due him deducting therefrom such expenses. In other words, there are questions of fact that have to be clarified before the court may adjudge the herein defendant liable to the plaintiff for the amount claimed by the latter. There is, therefore, no occasion in this case for rendering a judgment on the pleadings, considering that defendant, in his answer, tenders an issue which cannot be brushed aside without the presentation of evidence.

The rule is settled that judgment on the pleadings can only be rendered when the pleadings of the party against whom the motion is directed, be he the plaintiff or defendant, does not tender any issue, or admits all the material allegations of the pleading of the movant. Otherwise, judgment on the pleadings cannot be rendered. (*Fabella vs. Provincial Sheriff of Rizal*, 94 Phil., 35; *Santiago vs. Conde*, 105 Phil., 299; 56 Off. Gaz. [22] 3851; *Lim Giok vs. Bataan Cigar and Cigarette Factory, Inc.*, 111 Phil., 595; 58 Off. Gaz. [51] 8402).

In view of the foregoing, the order appealed from is reversed. The case is remanded to the lower court for further proceedings.

Padilla, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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