

MARLENE DAUDEN-HERNAEZ, PETITIONER, VS. HON. WALFRIDO DELOS ANGELES, JUDGE OF THE COURT OF FIRST INSTANCE OF QUEZON CITY, HOLLYWOOD FAR EAST PRODUCTIONS, INC., AND RAMON VALENZU...

G.R. No. L-27010. April 30, 1969

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Petition for a writ of certiorari to set aside certain orders of the Court of First Instance of Quezon City (Branch IV), in its Civil Case No. Q-10288, dismissing a complaint for breach of contract and damages, denying reconsideration, refusing to admit an amended complaint, and declaring the dismissal final and unappealable.

The essential facts are the following:

Petitioner Marlene Dauden Hernaez, a motion picture actress, had filed a complaint against herein private respondents, Hollywood Far East Productions, Inc., and its President and General Manager, Ramon Valenzuela, to recover P14,700.00 representing a balance allegedly due said petitioner for her services as leading actress in two motion pictures produced by the company, and to recover damages. Upon motion of defendants, the respondent court (Judge Walfrido delos Angeles presiding) ordered the complaint dismissed, mainly because the "claim of plaintiff was not evidenced by any written document, either public or private", and the complaint "was defective on its face" for violating Articles 1356 and 1358 of the Civil Code of the Philippines, as well as for containing defective allegations. Plaintiff sought reconsideration of the dismissal and for admission of an amended complaint, attached to the motion. The court denied reconsideration and the leave to amend; whereupon, a second motion for reconsideration was filed. Nevertheless, the court also denied it for being pro forma, as its allegations "are: more or less, the same as the first motion", and for not being accompanied by an affidavit of merits, and further declared the dismissal final and unappealable. In view of the attitude of the Court of First Instance, plaintiff resorted to this Court.

The answer sets up the defense that "the proposed amended complaint did not vary in any material respect from the original complaint except in minor details, and suffers from the same vital defect of the original complaint", which is the violation of Article 1356 of the Civil Code, in that the contract sued upon was not alleged to be in writing; that by Article 1358 the writing was absolute and indispensable, because the amount involved exceeds five hundred pesos; and that the second motion for reconsideration did not interrupt the period for appeal, because it was not served on three days' notice.

We shall take up first the procedural question. It is a well established rule in our jurisprudence that when a court sustains a demurrer or motion to dismiss it is error for the court to dismiss the complaint without giving the party plaintiff an opportunity to amend his complaint if he so chooses.^[1] Insofar as the first order of dismissal (Annex D, Petition) did not provide that the same was without prejudice to amendment of the complaint, or reserve to the plaintiff the right to amend his complaint, the said order was erroneous; and this error was compounded when the

motion to accept the amended complaint was denied in the subsequent order of 3 October 1966 (Annex F Petition). Hence, the petitioner-plaintiff was within her rights in filing her so-called second motion for reconsideration, which was actually a first motion against the refusal to admit the amended complaint.

It is contended that the second motion for reconsideration was merely pro forma and did not suspend the period to appeal from the first order of dismissal (Annex D) because (1) it merely reiterated the first motion for reconsideration and (2) it was filed without giving the counsel for defendant-appellee the 3 days' notice provided by the rules. This argument is not tenable, for the reason that the second motion for reconsideration was addressed to the court's refusal to allow an amendment to the original complaint, and this was a ground not invoked in the first motion for reconsideration. Thus, the second motion to reconsider was really not pro forma, as it was based on a different ground, even if in its first part it set forth in greater detail the arguments against the correctness of the first order to dismiss. And as to the lack of 3 days notice, the record shows that appellees had filed their opposition (in detail) to the second motion to reconsider (Answer, Annex 4); so that even if it were true that respondents were not given the full 3 days' notice, they were not deprived of any substantial right. Therefore, the claim that the first order of dismissal had become final and unappealable must be overruled.

It is well to observe in this regard that since a motion to dismiss is not a responsive pleading, the plaintiff-petitioner was entitled as of right to amend the original dismissed complaint. In *Paeste vs. Jaurigue*, 94 Phil. 179, 181, this Court ruled as follows:

"Appellants contend that the lower court erred in not admitting their amended complaint and in holding that their action had already prescribed. Appellants are right on both counts.

"Amendments to pleadings are favored and should be liberally allowed in the furtherance of justice (*Torres vs. Tomacruz*, 49 Phil. 913). Moreover, under section 1 of Rule 17, Rules of Court, a party may amend his pleading once as a matter of course, that is, without leave of court, at any time before a responsive pleading is served. A motion to dismiss is not a 'responsive pleading'. (*Moran on the Rules of Court*, vol. 1, 1952, ed., p. 376). As plaintiffs amended their complaint before it was answered, the motion to admit the amendment should not have been denied. It is true that the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration."

The foregoing observations leave this Court free to discuss the main issue in this petition. Did the court below abuse its discretion in ruling that a contract for personal services involving more than P500.00 was either Invalid, or unenforceable under the last paragraph of Article 1358 of the Civil Code of the Philippines?

We hold that there was abuse, since the ruling herein contested betrays a basic and lamentable misunderstanding of the role of the written form in contracts, as ordained in the present Civil Code.

In the matter of formalities, the contractual system of our Civil Code still follows that of the Spanish Civil Code of 1889 and of the "*Ordenamiento de Alcalá*"[2] of upholding the spirit and intent of the parties over formalities: hence, in general, contracts are valid and binding from their perfection regardless of form, whether they be oral or written. This is plain from Articles 1315 and 1356 of the present Civil Code. Thus, the first cited provision prescribes:

"ART. 1315. Contracts are perfected mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law." (Emphasis supplied)

Concordantly, the first part of Article 1356 of the Code provides:

"ART. 1356. Contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present...." (Emphasis supplied)

These essential requisites last mentioned are normally (1) consent, (2) proper subject matter, and (3) consideration or causa for the obligation assumed (Article 1318).[3] So that once the three elements exist, the contract is generally valid and obligatory, regardless of the form, oral or written, in which they are couched.

To this general rule, the Code admits exceptions, set forth in the second portion of Article 1356:

"However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable...."

It is thus seen that to the general rule that the form (oral or written) is irrelevant to the binding effect inter partes of a contract that possesses the three validating elements of consent, subject matter, and causa, Article 1356 of the Code establishes only two exceptions, to wit:

(a) Contracts for which the law itself requires that they be in some particular form (writing) in order to make them valid and enforceable (the so-called solemn contracts). Of these the typical example is the donation of immovable property that the law (Article 749) requires to be embodied in a public instrument in order "that the donation may be valid", i. e., existing or binding. Other instances are the donation of movables worth more than P5,000.00 which must be in writing, "otherwise the donation shall be void" (Article 748); contracts to pay interest on loans (mutuum) that must be "expressly stipulated in writing" (Article 1956); and the agreements contemplated by Articles 1744, 1773, 1874 and 2134 of the present Civil Code.

(b) Contracts that the law requires to be proved by some writing (memorandum) of its terms, as in those covered by the old Statute of Frauds, now Article 1403(2) of the Civil Code. Their existence not being provable by mere oral testimony (unless wholly or partly executed), these contracts are exceptional in requiring a writing embodying the terms thereof for their enforceability by action in court.

The contract sued upon by petitioner herein (compensation for services) does not come under either exception. It is true that it appears included in Article 1358, last clause, providing that "all other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one". But Article 1358 nowhere provides that the absence of written form in this case will make the agreement invalid or unenforceable. On the contrary, Article 1357 clearly indicates that contracts covered by Article 1358 are binding and enforceable by action or suit despite the absence of writing.

"ART. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article,[2] the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contracts." (Emphasis supplied)

It thus becomes inevitable to conclude that both the court a quo as well as the private respondents herein were grossly mistaken in holding that because petitioner Dauden's contract for services was not in writing the same could not be sued upon, or that her complaint should be dismissed for failure to state a cause of action because it did not plead any written agreement.

The basic error in the lower court's decision lies in overlooking that in our contractual system it is not enough that the law should require that the contract be in writing, as it does in Article 1358. The law must further prescribe that without the writing the contract is not valid or not enforceable by action.

WHEREFORE, the order dismissing the complaint is set aside, and the case is ordered remanded to the court of origin for further proceedings not at variance with this decision. Costs to be solidarily paid by private respondents Hollywood Far East Productions, Inc., and Ramon Valenzuela.

Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.
Concepcion, C.J., and Castro, J., on official leave.
Capistrano, J., did not take part.

[1] Macapinlac vs. Gutierrez Repide, 43 Phil. 774; Ibañez vs. Fortis, 17 Phil., 82; Balderrama vs. Compañia General de Tabacos, 13 Phil. 609; Molina vs. La Electricista, 6 Phil. 519; Mapua vs. Suburban Theaters, Inc., 87 Phil. 364. Unless, of course, the defect is incurable, as in lack of jurisdiction.

[2] Law 1, Title I, Book X, of the Novisima Recopilacion.

[3] Plus a fourth requisite of delivery in so-called real contracts, such as deposit, pledge and commodatum (Article 1316). But the contract here involved is not of this class.

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