

FEDERICODIONISIO, PLAINTIFF-APPELLEE, VS. ESPERANZA SIOSON PUERTO, ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-39452. October 31, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms the appealed judgment on the basis of well settled principles among others, that failure of defendants to attend a pre-trial conference despite due notice subjects them to a declaration of default and that their failure to submit an affidavit of merits showing a valid defense which they may prove in case a new trial is granted is fatal to their cause.

The case originated in the Rizal Court of First Instance at Quezon City on April 22, 1968 when plaintiff filed a complaint for recovery of the principal of P6,000, collection expenses of P1,000 and attorney's fees of P1,000 as stipulated in the negotiable promissory note executed by defendants on October 24, 1966 with a maturity date of January 31, 1967, besides moral damages of P3,000 due to defendants' bad faith and issuance on August 16, 1967 of a rubber check as payment of the note, or a total of P11,000.

Defendants admitted their indebtedness in their answer but claimed that plaintiff had charged usurious interest in that the amount actually received by them on their promissory note was allegedly P5,500 (not P6,000) and the difference (of P500) "represented payment of interest at the rate of 214% a month for three months."

Plaintiff, in his reply, denied the allegation of usury claiming that "such exorbitant interest therein alleged was but a figment of the imagination of the defendants devoid of color of truth, veracity and reality" although such pleading was not made under oath.

Upon plaintiffs motion, the case was set for pre-trial on October 1, 1968 but for lack of proof of service, the pre-trial was reset for November 28, 1968.

On November 27, 1968, defendants filed a Manifestation and Motion claiming that plaintiff's failure to deny under oath the allegation of usurious interest as raised in their affirmative defense would warrant the dismissal of the case if it had been raised in a Motion to dismiss and prayed for postponement of the scheduled pre-trial on November 28, 1968 and that the trial court hold a preliminary hearing on their affirmative defense as if it were raised in a Motion to Dismiss (in accordance with Rule 16, sec. 5) preferably on December 17, 1968, and asked the clerk to submit the pleading to the Court upon calling of the case for pre-trial on the next day, November 28.

When the case was called for pre-trial on November 28, 1968 as scheduled, defendants failed to appear although they were duly served with notice and the trial court declared them in default upon plaintiffs motion and directed the clerk to receive plaintiffs evidence.

On January 11, 1969 the trial court rendered its decision reciting plaintiffs evidence (the promissory note and defendants' rubber check among others; and rendered judgment in favor of plaintiff for a total of P8,000 and costs, after finding that plaintiff failed to present evidence to prove his claim for moral damages as follows;

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants by ordering the latter to pay to the former 'the amounts of P6,000.00, value of the promissory note: P1,000.00, expenses for collection; and P1,000.00 for attorney's fees, plus the costs."

Defendants' motion for reconsideration having been denied, they appealed to the Appellate Court (eighth division¹) and assigned three errors which said court has certified per its resolution of September 16, 1974 to this Court as raising purely issues of law beyond its jurisdiction to adjudicate, as follows:

xxx xxx xxx

"(1) where a motion for preliminary hearing has been filed and requested set for hearing 'immediately' (without the reglementary 3-day period) which happened to be on the same day set for pre-trial at which neither defendants nor their counsel were present despite notice, was it proper for the court to declare the defendants in default, and allow plaintiff to present his evidence ex parte?

(2) considering that plaintiffs reply denying defendants' charge of usury was not under oath; should the court a quo not have dismissed the case outright?

(3) the plaintiffs claim in the complaint was:

P6,000.00 — value of the promissory note

P1,000.00 — collection expenses

P1,000.00 — attorney's fees

P3,000.00 — moral damages

The court a quo's judgment granted all the claims except moral damages.

Now defendants argue that, if the moral damages are excluded the claims would only add up to P8,000.00 which is below the jurisdiction of courts of first instance; hence, the court a quo should have dismissed the case for lack of jurisdiction."^[2]

The three legal issues have no merit, as, will presently be shown seriatim.

1. No error was committed by the trial court in declaring defendants in default for their failure to appear at the pre-trial despite due notice. The trial court's action is expressly authorized under Rule 20, Section 2 which provides that "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default." Defendants' bare submittal in their Motion for Reconsideration that they "(acted) on the honest impression and belief that their personal appearance in Court (could) be dispensed with" because of their last-hour Motion for Rostponement merits no consideration, specially when their ground for postponement was that they wanted their affirmative defense to be treated as a Motion to Dismiss, which they could and should properly have raised at the scheduled pre-trial.

The Court has taken note furthermore that the only other ground raised in their motion for reconsideration below was the trial court's alleged lack of jurisdiction to render the decision, since plaintiffs award amounted to only P8,000 a ground that is manifestly untenable, *infra*, paragraph 3. Their failure to submit an affidavit of merits showing the valid defense which they may prove in case the ex parte decision were set aside and a new trial were granted is fatal to their cause. As recently reiterated by the Court in *Ferrer vs. Sepeng*^[3] such an affidavit of merits is essential "because a new trial would serve no purpose and Would Just waste the time of the court as well as the parties e complaint is after all groundless or the defense is nil or "ineffective," as the case may be.

2. Defendants' second assignment of error that the trial court should have dismissed the case outright, on the ground that plaintiffs reply denying their charge of usury was not under oath, is untenable.

The rule that "(A)llegations of usury are deemed admitted if not denied specifically and under oath"^[4] is a

procedural rule, and the lack of oath in a pleading is a defect which is subject to waiver just as a defective or imperfect verification may be waived. Besides, the reglementary admission of the allegation of usury arising from failure to make a denial under oath may like any other admission in court be withdrawn with leave of court under Rule 10, Sections 2 and 3 permitting "substantial amendments" of pleadings once as a matter of right when "the action has not been placed on the trial calendar," and "after the case is set for hearing . . . only upon leave of Court." [5]

Here, defendants were declared in default and lost their right to object to the reception of plaintiff's evidence establishing his cause of action and negating the charge of usury. The Court has noted that the charge of plaintiff's allegedly having charged P500.00 on a P5,500.00 loan as usurious interest at 2 1/2% per month for three months is rather dubious, considering that the promissory note was non-interest bearing and provided only for a penalty of P1,000- attorney's fees and P1,000-expenses of collection. Up to this late date plaintiff has failed to collect on the defendants' promissory note which matured since January 31, 1967 and during all this period of almost eight years plaintiff has not earned any interest: stretching out the alleged P500 interest paid by defendants in October 1966 through this period of eight years, it is patent that the interest earned by plaintiff would come to only an insignificant little over one (1%) percent per year, which could not be termed usurious by any standard.

3. Defendants' third issue is clearly untenable. Plaintiffs claim, including moral damages of P3,000, was for a total of P11,000 which was manifestly within the trial court's jurisdiction as a Court of First Instance. The mere fact that he failed to present any proof of his moral damages and that the lower court accordingly rendered judgment in the lesser sum of P8,000 did not divest it of jurisdiction over the case. It is an established principle that jurisdiction is determined by the cause(s) of action as alleged in the complaint and not by the amount ultimately substantiated and awarded by the trial court.

ACCORDINGLY, the appealed decision of the trial court is hereby affirmed, with costs against defendants-appellants.

Castro (Chairman), Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

[1] Composed of Lourdes San Diego, Godofredo P. Ramos and Mama Busran. JJ.

[2] Italics copied.

[3] L-39373. September 30, 1974.

[4] Rule 9. Section 1.

[5] Sec. 1 Moran's Rules of Court, 1970 Ed., pp. 343-344 and cases cited.

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