

**FEDERICO T. JUGADOR, PLAINTIFF AND APPELLEE, VS. ZACARIAS DE VERA, DEFENDANT AND APPELLANT.***G.R. No. L-6308. March 30, 1954*

Ponente: PARAS, C.J.

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On December 13, 1949, the plaintiff Federico T. Jugador filed a complaint against the defendant Zacarias de Vera in the Court of First Instance of Manila, alleging that in October, 1948, the plaintiff agreed to construct a residential house at No. 33 Bulosan St., Sta. Mesa Heights, Quezon City, for the defendant who undertook to pay to the plaintiff the total sum of P18,500; that in December, 1948, the defendant received the house to his complete satisfaction but failed to pay in full the construction price ; that on April 22, 1949, the defendant executed in favor of the plaintiff a certificate of indebtedness) (quoted in paragraph 4 of the complaint) whereby the defendant acknowledge having accepted the finished house free from liens and encumbrances, and promised to pay to Jugador Construction the sum of P3,500 as liquidated unpaid balance of the contract price, P500 on or before May 15, 1949, and to make all sincere and serious effort to pay P2,000 so as to leave in June, 1949, only a balance of P1,000 payable monthly at P100 beginning August 1, 1949; that prior to the filing of the complaint, the defendant had made partial payments amounting to P900, thereby leaving P2,600 still due from the defendant to the plaintiff; that the defendant, notwithstanding repeated demands, has failed and refused to pay the said amount which the plaintiff seeks to recover from the defendant, with legal interest from April 22, 1949. Acting upon plaintiff's prayer in the complaint, the court issued on December 12, 1949, a writ of attachment by virtue of which the defendant's property covered by transfer certificate of title No. 6764 of the Register of Deeds of Quezon City, was levied upon. On December 27, 1949, the defendant filed an answer, alleging that his building contract was with Jugador Construction which has not completed the house in accordance with the prescribed plans and specifications; that the defendant has been paying regularly and the unpaid balance is only P2,400 not yet due and payable for failure of Jugador Construction to comply with construction laws and regulations; that the defendant has complied with the terms of the certificate of indebtedness quoted in paragraph 4 of the complaint, and has paid P100 monthly from August 1, 1949; that the attachment issued by the court was secured improperly and illegally, and had caused him damages in the sum of P500 which he seeks to recover from the plaintiff by way of counterclaim, in addition to the dismissal of plaintiff's complaint. On January 5, 1950, the plaintiff filed an answer of specific denial to defendant's counterclaim.

On July 22, 1950, the plaintiff filed a motion for summary judgment, on the ground that there is no genuine issue as to any material fact, supported by an affidavit of the plaintiff alleging that, notwithstanding defendant's allegation that the building agreement was with Jugador Construction, the defendant had always recognized the plaintiff as the actual contractor to whom, as a matter of fact, he made the first payment of P100 on July 20, 1949 upon account of the liquidated balance mentioned in the certificate of indebtedness; that notwithstanding defendant's allegation that his house was not built in accordance with plans and specifications, he had accepted the work under his certificate of indebtedness; that, notwithstanding defendant's allegation that he has been complying with the term of his certificate of indebtedness, he had failed to pay the sum of P2,000 before June 30,

1949, and had paid only P100 on July 20, 1949, after receiving the letter of demand dated July 14, 1949, written to him by plaintiff's attorney. On August 10, 1950, the defendant filed an amended answer, which was admitted by the court on August 14, 1950, the amendment consisting in the allegation that the unpaid balance of P2,400 was not due and payable because the plaintiff had failed to execute the necessary bond and affidavit showing that he has already paid the wages of the laborers he employed in connection with the construction of the defendant's house as provided for by Act No. 3959. The court postponed action on the motion for summary judgment until after all the issues had been joined; but on November 8, 1950, after a previous motion for reconsideration had been denied, the plaintiff filed another motion for summary judgment, reiterating that of July 22, 1950. Whereupon, on August 18, 1951, the Court of First Instance of Manila rendered a decision sentencing the defendant to pay to the plaintiff the sum of P2,600, with legal interest from April 22, 1949, plus the costs, and dismissing the defendant's counterclaim for damages for lack of merit. From this decision the defendant has appealed.

The appellant contends that there is no legal basis for the rendition of the appealed summary judgment, because there are three genuine issues in the case established by the allegations of the complaint and the amended answer, namely, (1) How much has already been paid on the amount? (2) Has the plaintiff complied with the provisions of Act No. 3959? (3) Has the defendant suffered damages in the sum of P500 by reason of plaintiff's illegal and improper pronouncement of the attachment?

In our opinion the lower court acted properly. Under section 3 of Rule 36 of the Rules of Court, a summary judgment "shall be rendered forthwith if the pleadings, depositions, and admission on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as to a matter of law." As may be gleaned from the plaintiff's complaint, the defendant's amended answer, and the plaintiff's motion for summary judgment with supporting affidavit, there is no question that the defendant is indebted to the plaintiff for the construction of the former's house. Indeed, although the defendant alleged that his agreement was with Jugador Construction, the point is not now urged it being merely claimed that there is an issue relating to the exact amount still unpaid, the defendant contending that it is only P2,400 instead of P2,600 as sued by the plaintiff in his complaint. As to this detail, however, we are confronted by the allegations both in the complaint and in the plaintiff's affidavit supporting the motion for summary judgment; and the defendant did not even attempt to file opposing affidavits authorized under section 3 of Rule 36. As pointed out by Chief Justice Moran in his Comments on the Rules of Court, 1952 ed., Vol. I, pages 729-730, "if the defendant does not oppose the motion by counter-affidavits, and, in all probability he will not, if the debt is not yet paid a summary judgment may be rendered."

With reference to the alleged issue as to whether or not the plaintiff has complied with the provisions of Act No. 3959, it is clear that, as observed by counsel for the plaintiff, no material question of fact arises and the point is purely one of law. Indeed, the trial court decided the case against the defendant on the premise that the plaintiff failed to comply with said Act, although it found that the same is not a defense to plaintiff's recovery of the unpaid balance, since one year had already elapsed after the completion of the work and the defendant had waived the benefits of the law. It is significant that Act No. 3959 provides that "That the bond herein provided for shall be automatically cancelled at the expiration of one year from the completion of the work, unless a claim for the payment of laborer's wages has been filed within said period, in which case said bond shall continue in force and effect until such claim has been paid or otherwise finally settled." The purpose of the bond is obviously to guarantee the payment of the laborer's wages, but since one year had already elapsed after the defendant's house was completed and no claim for wages had been filed within said period, the necessity for such bond ceased to exist.

It is contended for the defendant that the latter could not waive the legal effect of Act No. 3959 for being against public policy. This is erroneous, since the law is aimed at protecting the defendant against possible claims for wages emanating from the contractor's laborers. At any rate, under section 2 of the Act, if the defendant had committed a violation by untimely paying to the contractor the entire cost of the work, he would merely be responsible jointly and severally with the contractor for the payment of the wages of the laborers employed in the work covered by the contract, with the result that the laborers would have a double source from which to collect their unpaid wages.

The defendant also argues that his counterclaim for damages presented the substantial issue of fact as to whether he could collect from the plaintiff the sum of P500 by reason of plaintiff's illegal and improper procurement of the attachment. This contention is without merit, as the amount of damages may be distinguished from the right thereto; and in the present case the lower court rendered its summary judgment in relation to the legal question whether the defendant was entitled to any damages, in view of the circumstances under which the writ of attachment was obtained by the defendant and issued by the court. As a matter of fact, under section 3 of Rule 36, a summary judgment may be rendered except as to the amount of damages. In other words, such judgment may be entered on the issue relating to the existence of the right to damages. Chief Justice Moran pertinently observes that "if there is any real issue as to the amount of damages, the court, after rendering summary judgment, may proceed to assess the amount recoverable." In the case at bar the court in effect held, as a matter of law, that there was no basis for the counterclaim for damages, considering the facts appearing in the pleadings and plaintiff's affidavit in support of his motion for summary judgment, unopposed by any counter-affidavit which the defendant had the right to present.

Wherefore, the appealed decision is affirmed, and it is so ordered with costs against the defendant-appellant.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Diokno, JJ., concur.

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