

ELPIDIO TALASTAS, PLAINTIFF-APPELLEE, VS. CLEMENCO ABELLA, DEFENDANT-APPELLANT.*G.R. No. L-26398. October 25, 1968*

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

From a summary judgment of the Court of First Instance of Manila, the defendant appealed to the Court of Appeals which, subsequently, certified the case to Us, pursuant to Sections 17 and 31 of Republic Act No. 296, as amended,[1] only questions of law being raised in the appeal.

In his complaint, herein plaintiff, Elpidio Talastas, seeks the liquidation of a partnership he claims to have with defendant Clemenco Abella, as well as to recover several sums of money. In said pleading, plaintiff alleges that, sometime in September 1955, defendant and he entered into an oral contract of partnership for the operation of a dance-hall or cabaret, known as the Sambat Recreation Center - hereinafter known as the Center - in Samal, Bataan; that, pursuant to said contract, plaintiff contributed one-third (or P1,546.54) and defendant two-thirds (or P3,093.08) of the partnership capital, aggregating P4,639.62, with the understanding that the profits would be divided among them in the same proportion; that, as managing partner, defendant was bound to render an accounting and deliver plaintiff's share in the profits, at the end of each month; that, after rendering accounts for four (4) months, or beginning from February 1956, defendant failed and refused to make said accounting or give plaintiff's share in the profits; that a corner space in the building housing the Center was leased to a refreshment concessionaire, at P6.00 a night, from September to December 1955; that defendant caused said concessionaire to be ejected from said nook and then operated therein his own refreshment business, since January, 1956; that, in September 1955, the partnership hired taxi-dancers and lent them, by way of advances, the total sum of P327.00, one-third of which had been contributed by the plaintiff; that the taxi-dancers had already refunded said sum of P327.00 to the defendant; and that the latter had failed and refused to deliver plaintiff's share therein, in the aforementioned earnings for the lease of part of the Center and in the proceeds of its operation, as well as to render an accounting thereof.

Plaintiff prayed, therefore, that said partnership be dissolved and liquidated; that the defendant be ordered to render accounts and to deliver to the plaintiff his share in the proceeds of the operation of the Center, in the monthly rentals received or due for the lease of the corner space above referred to and in the above-mentioned advances made to taxi-dancers, as well as to pay moral damages, attorney's fees and the costs.

Upon being summoned, the defendant filed an answer denying "the allegations contained" in plaintiff's complaint, alleging that there had been no oral contract of partnership between them and setting up a counterclaim for attorney's fees and moral damages.

Soon thereafter, plaintiff filed a "motion for summary judgment," upon the ground that "no genuine issue of fact" had been raised in defendant's answer", for: (1) the same is in the nature of a general denial, and, thus, amounts to an admission of the material averments contained in the complaint; (2) defendant's allegation to the effect that

there had been no oral contract of partnership between the parties is manifestly false, as shown in the affidavits of the plaintiff, and Angel Bugay, Luningning Bugay, Marciano Medina, Vicente Tinao and Juan Castillo, annexed to the motion; and (3) plaintiff is in possession of indubitable documents establishing the existence of said partnership, which documents are too voluminous to be attached to the motion, but would be presented at the hearing thereof.

In their respective sworn statements, affiants said, substantially the following:

1. Plaintiff Elpidio Talastas. - Sometime in 1955, defendant and he entered into a partnership agreement whereby he constructed, at his expense, the first floor - including the eaves and an "extension" of said floor - of a building of the defendant, in Samal, Bataan, which had, theretofore, been used as dance-hall or cabaret. As the materials and labor in said construction - which was supervised by the plaintiff, who, at first, was assisted by Luningning Bugay in his task - had cost him the aggregate sum of P1,546.54, and defendant claimed to have spent P3,093.08 for the second floor of the building, it was agreed that their shares in the partnership would be one-third (1/3) for the plaintiff and two-thirds (2/3) for the defendant. After rendering accounts for four (4) months, defendant failed and refused to do so or to deliver plaintiff's share in the profits, since February 1956. Besides, in July 1958, plaintiff learned that his interest in the business had been sold by the defendant, for P1,600.00, to Juan Castillo. Confronted, soon thereafter, by the plaintiff, with this information, in the pre-sence of Castillo, defendant offered to buy plaintiff's share and pay therefor P67.00 a month, but plaintiff rejected the offer. Again, upon its establishment, the partnership had lent to the taxi-dancers hired for its business, the aggregate sum of P327.00, which was subsequently paid to the defendant. Yet, the latter failed to deliver to the plaintiff his share of said loan, or the sum of P109.00. Last-ly, since January 1956, defendant had occupied as lessee a nook of the Center - which used to be let to a concessionaire, at a rental of P6.00 a night - in which he operated a refreshment store, but, des-pite repeated demands, defendant had failed and refused to give plaintiff's share in the corresponding rental.
2. Angel Bugay. - He was the master carpenter, engaged by plaintiff herein in the aforementioned construction, which plaintiff supervised, apart from paying for his services and for the lumber used, all of which were ordered in his name or on his account. Said construction was plaintiff's capital as partner in the operation of the Center.
3. Luningning Bugay. - Upon plaintiff's request, she supervised for a while, and advanced some funds for, the aforementioned construction. The lumber used therein was secured in plaintiff's name. According to the defendant, said construction was plaintiff's contribution to their partnership for the operation of the Center. Upon the completion of the construction, plaintiff engaged her services as ticket seller and his representative in the Center. Said tickets bore the names of the plaintiff and the defendant, as owners of the business. Upon closing every night, defendant and she made an accounting, the records of which were signed by either the defendant or one Rodolfo Buan. She showed these records to the plaintiff, whenever he came.
4. Marciano Medina. - He has a lumber yard from which plaintiff got, for the construction above referred to, lumber worth P1,100, of which P180 is still unpaid. Defendant told him that said construction is plaintiff's share in their business. Sometime in June or July 1958, he learned from the defendant that he had sold plaintiff's share to Juan Castillo.
5. Vicente Tinao. - From 1955 to 1957, he had worked in the Center as ticket seller and as helper of Rodolfo Buan. The tickets sold there bore the names of the plaintiff and the defendant, as owners of the Center, and, whenever plaintiff came, on Saturdays and Sundays, he inspected its books of accounts or records.
6. Juan Castillo. - In June 1958, defendant offered to sell him plaintiff's share in the Center for P1,600.00, which he delivered to the defendant to reimburse plaintiff's investment therein. Thereupon, he acted as cashier of the

Center, but, presently, he found out that defendant had not turned over said sum of P1,600.00 to the plaintiff. So, the three (3) of them had a meeting in the house of Arturo Bugay, in Samal, Bataan, at which defendant admitted his failure to deliver the aforementioned sum to the plaintiff and offered to pay it to him at the rate of P67.00 a month. Plaintiff did not agree thereto, whereas he (Castillo) filed a criminal complaint for estafa against the defendant.

The latter opposed said motion, upon the ground that the allegations in plaintiff's complaint had been denied in his (defendant's) answer and that he affirmed therein that there is no partnership between them. This, notwithstanding, the lower court, after due hear-ing, granted plaintiff's motion and rendered a summary judgment, the dispositive part of which reads:

"FOR THE FOREGOING CONSIDERATIONS the Court hereby renders a summary judgment against the defendant and in favor of the plaintiff as follows:

"1. P1,600.00 on the first cause of action, with 6% interest thereon from the filing of the complaint until full payment;

"2. P240.00 on the second cause of action with the same rate of interest from the filing of the complaint;

"3. P109.00 on the third cause of action, with the same rate of interest from the date of the complaint;

"4. Ordering the defendant to render an ac-counting of the proceeds of the business beginning February, 1956 up to and including September, 1959, and every month thereafter until this issue of the case shall be fully terminated; and

"5. Directing an accounting on the rentals of the space for refreshment from January, 1956 up to September, 1959, and every month thereafter until this issue shall be wholly resolved and that these two accountings shall be submitted to this Court within thirty (30) days from receipt of this decision, otherwise the defendant may be cited for contempt of court; and

"6. Adjudging the defendant to pay plaintiff attorney's fees in the sum of P300.00, plus costs."

A reconsideration of this judgment having been denied, defendant interposed the present appeal. Defendant maintains that the lower court erred: (1) in finding that his answer is "a general denial"; (2) "in finding the existence of a partnership" between the parties "on the strength of mere affidavits"; and (3) "in awarding money judgments x x x even before the accounting" ordered in the decision appealed from had been rendered.

Under his first assignment of error, defendant argues that his answer was not in the nature of a general denial, because he had averred "that the alleged verbal partnership did not exist between him and the plaintiff." It should be noted, however, that "material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied x x x."¹ Moreover, to be specific, within the purview of the Rules of Court, a denial must not only "specify each material allegation of fact the truth of which" is not admitted. He must, also, "whenever practicable, x x set forth the substance of the matters which he will rely upon to support his denial."² This, the defendant herein has not done. Besides, we perceive no reason why, and he does not claim, it would not be practicable for him to "set forth the substance of the matters" on which he would rely to support his denial, if the allegations in the complaint were not true.

Indeed, apart from alleging, in paragraph 2 of the complaint, the existence of said oral contract of partnership, plaintiff averred, in paragraphs 3, 4, 5, 6, 7, 8, 12, 13, 14, 16 and 17 of said pleading, the specific sum contributed by him to the common fund, his particular share therein and in the assets and proceeds of the business, the stipulation concerning accounting, the months during which the defendant rendered account, the month and year from which he allegedly failed and refused to comply with his obli-gations, the specific amount of rental paid by

the concessionaire of the space where the defendant now runs a refreshment store; the date from which the latter was operated by the defendant, the pre-cise sum advanced to taxi-dancers and the exact amount of plaintiff's share therein.

Yet, defendant's answer limited itself to saying that he "denies the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, x x 8, x x 12, 13, x x 14, x x 16 and 17 of the plaintiff's complaint." Surely, defendant could have said something else about the speci-fic topics of these paragraphs, if he had any concrete matter on which to rely in controverting the allegations made therein, instead of making a mere denial thereof.

No matter how we may view the situation, the conclusion is inevitable that defendant has indulged and is indulging in no more than a general denial of the material allegations in plaintiff's complaint.¹

Contrary to defendant's contention, under his second assignment of error, the lower court was fully justified in finding that the existence of a partnership between the parties had been duly esta-blished. Indeed, his aforementioned general denial of the material allegations in the complaint resulted in the admission of the truth of said allegations, including the allegation about the oral contract of partnership between the parties. This admission by the defend-ant was bolstered up by the six (6) affidavits attached to plaintiff's motion for a summary judgment, which affidavits corroborate each other and leave no room for doubt on the construction of the first floor of the building on which the Center was operated, as plaintiff's contribution to the business of said partnership. Furthermore, the impact of said affidavits has been made overwhelming by defendant's failure to submit counter-affidavits - not even his own - even, if only, to give a semblance of earnestness to the denials and allegations made in his answer and in his opposition to plaintiff's aforesaid motion.

It is well-settled that a party against whom a motion for summary judgment is made must show that he has a "plausible ground of defense, something fairly arguable and of a substantial character,"¹ a bona fide defense that he may be able to establish.² He can not take cover under an umbrella of general and specific denials,³ or denials of knowledge or information sufficient to form a belief,⁴ much less repeat denials contained in his answer, or shelter behind pleadings already filed in court.⁵

In connection with the third and last assignment of error made by the defendant, it should be noted that, because of the ad-missions resulting from defendant's general denial and his failure to submit counter-affidavits to offset those attached to plaintiff's motion for a summary judgment, there is, on record, no genuine issue on the fact:

1. That a partnership exists between the parties under the terms and conditions set forth in the complaint;
2. That defendant received from Juan Castillo the sum of P1,600, for delivery to the plaintiff, as the price of his share or interest in the partnership;
3. That defendant has been running a refreshment store on a space in the Center operated by the partnership which used to rent P6.00 a night or P180 a month, so that plaintiff's share therein is P60 monthly, or P240 for the four (4) months during which it was leased to a concessionaire; and
4. That one-third of the P327.00 lent to the first taxi-dancers hired by the partnership and already collected by the same, belongs to the plaintiff and should, therefore, be refunded to him.

And there being no genuine issue on the foregoing facts, the lower court had authority to render the proper summary judg-ment that said facts justified,¹ the reason for said judgment being "to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits."²

As regards the sum of P1,600 received by the defendant from Juan Castillo, in payment for plaintiff's share in the

part-nership, it was proper for the decision appealed from to sentence the defendant to pay to the plaintiff the aforementioned sum, with interest thereon, as directed in the first subdivision of the dis-positive part of said decision, since the understanding with Castillo was that the defendant would turn it over to the plaintiff, to whom it rightfully belongs, without any qualification whatsoever.

Concerning, however, the sums of P240 and P109 mentioned in the second and third subdivisions of said dispositive part, the authority of the lower court was limited to making a declaration of plaintiff's right to have these sums credited in his favor in the accounting ordered in the fourth and fifth subdivisions of the aforementioned dispositive part. The actual amount recoverable by the plaintiff - except as to the price of his share - will depend upon the result of such accounting.

Similarly, the amount of attorney's fees to be awarded to the plaintiff should, likewise, be fixed after said accounting, for, until the same shall have been completed, it is not possible to determine, with reasonable certainty, the nature and extent of the services rendered by his counsel.

In fact, because of the accounting ordered in the decision appealed from, the same partakes of an interlocutory nature and is not appealable, pursuant to the doctrine laid down in *Fuentebella v. Carrascosol*¹ and reiterated in *Zaldarriaga v. Zaldarriaga*.² We should not overlook, however, that this action was instituted on January 27, 1959, and that, although the defendant has set up, in effect, no defense whatsoever, he has managed to delay the final determination of the case for almost ten (10) years now. Besides, considering that none of the parties has questioned the pro-priety of the appeal taken by the defendant, and that the issues therein are purely legal in character, it is our considered opinion that public interest and that of the parties herein would be served better by settling those issues in this appeal, instead of remanding the case to the lower court for the required accounting and let-ting the parties to, thereafter, bring said issues back to this Court, in another appeal.

WHEREFORE, the decision appealed from is hereby affirmed, except only with respect to: (1) the attorney's fees, the amount of which shall be determined upon completion of said accounting, and (2) the aforementioned sums of P240 and P109, with interest on both, which shall be credited to the plaintiff in the accounts to be submitted by the defendant, as ordained in said decision. The defendant shall, also, pay the costs.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] Judiciary Act of 1948.

1 Rule 9, Section 1, Rules of Court.

2 Rule 8, Section 10, Rules of Court.

1 *Lichauco v. Guash*, 76 Phil. 5; *El Hogar Filipino v. Santos Investments Inc.*, 74 Phil. 79; *Galofa v. Nee Bon Sing*, L--22018, January 17, 1968.

1 *Moore's Federal Practice*, Vol. 3, pp. 3184-3185 (1938), citing *Dwan v. Massarene*, 192 NYS 577, 582; *Strasburger v. Rosenheim*, 255 NYS 316; see also 41 Am. Jur. Pleading, Sec. 172, pp. 414-415; 49 C.J.S. Judgments, Sec. 225(c), pp. 419-422.

2 "To avert summary judgment in favor of plaintiff, the affidavits or other proof adduced by defendant must disclose a good defense or set out facts and circumstances sufficient to raise a triable issue of fact and to entitle

defendant to defend." 49 C.J.S. 225(c) p. 419; Perez v. Tomberlin, 340 Pac. 2d 982; Wainscott v. Penikoff, 4 N.E. 2d 511; Lewis v. Hat Corp. of America, 150 A 2d 750.

3 La Pointe v. Wilson, 61 NYS 2d 64; Marra v. Warren, 80 NYS 2d 412; O'Meara Co. v. National Park Bank, 146 N.E. 636; Continental Cas. Co. v. Belknap Hardware & Manufacturing Co. 281 S.W. 2d 914; General Inv. Co. v. Interborough Rapid Transit Co. 139 N.E. 216.

4 New Jersey Mort. & Invest. Corp. v. Calvetti, 171 A 2d 321.

5 Atchison v. McGee, 296 Pac. 2d 860.

1 Urmaneta v. Manzano, L-17478, February 28, 1962; Go Leting & Sons v. Leyte Land Trans. Co., L-8887, May 28, 1958; Philippine National Bank v. Philippine Leather Co., 105 Phil. 400, 403-404; Londres v. National Life Insurance Co. of the Philippines, 94 Phil. 627; Jugador v. De Vera, 94 Phil. 704; Capital Insurance & Surety Co. v. Eberly, 100 Phil. 398; Miranda v. Malate Garage & Taxicab, 99 Phil. 670.

2 Singleton v. Philippine Trust Co., 99 Phil. 91, 97.

1 G.R. No. 48102, May 27, 1942.

2 L-13252, April 29, 1961. See, also, Dy Chun v. Men-doza, L-25461, October 4, 1968; Anota v. Bermudo, L-29417, September 21, 1968; Salazar v. Torres, L-13711, May 25, 1960.

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