

FABAR, INCORPORATED, PLAINTIFF-APPELLEE, VS. RUPERTO RODELAS, DEFENDANT-APPELLANT.

G.R. No. L-46394. October 26, 1977

Ponente: GUERRERO, J.

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GUERRERO, J.:

This case was certified to Us by the Court of Appeals[1], pursuant to Sec. 17, in relation to Sec. 31 of the Judiciary Act on purely questions of law arising from the decision rendered by the Court of First Instance of Manila, Branch XV on July 6, 1971, granting the plaintiff-appellee a favorable judgment for the collection of a sum of money.

The facts are as follows:

On March 21, 1966, Fabar, Incorporated filed a complaint against Ruperto Rodelas and Apolonio Elevado for collection of a sum of money, docketed as Civil Case No. 64789 in Branch XV, Court of First Instance of Manila. The complaint avers that Ruperto Rodelas and Apolonio Elevado purchased from Fabar, Incorporated three (3) brand new motor vehicles (Austin 1100 De Luxe Saloons) for the total price of P34,945.95. Defendants made a down payment of P6,000.00 and executed a promissory note in favor of Fabar, Inc. undertaking to pay jointly and severally the balance of P28,945.95 payable in weekly installments of P360.45. After the 17th installment, defendants stopped paying and defaulted in the payment of all installments falling due thereafter. After repeated and unsuccessful demands, plaintiff Fabar, Inc. filed the complaint, particularly invoking the acceleration clause in the terms of the promissory note, for collection of the entire unpaid balance, plus interest, liquidated damages, and attorney's fees.

Defendants filed their answer on June 14, 1966 alleging that the true buyer of the motor vehicles was one Robert Yap; that they merely signed the promissory note as accommodation parties for Yap; and that subsequently, Yap was substituted as the principal debtor to the plaintiff with the consent of the latter. On June 19, 1966, the court issued a pre-trial order pursuant to Section 1, Rule 20 of the Rules of Court, setting a pre-trial conference on September 2, 1966 to be followed by trial on the merits if the parties fail to settle amicably. Copy of the order was received by defendants on July 21, 1966.

On August 29, 1966, plaintiff, pursuant to the aforesaid order, filed its pre-trial brief while on August 30, 1966, defendants filed a manifestation and motion praying that they be excused from compliance with the order on the ground that the documentary evidence they expect to submit consists of receipts which are in the possession of plaintiff. This manifestation and motion was denied on August 31, 1966.

Thereafter, the pre-trial conference was re-set on October 12, 1966. However, on that day, the pre-trial conference was suspended in an order dated October 12, 1966 in view of the manifestation by counsel for defendants that he will file a third-party complaint. With leave of court, the third-party complaint was filed on October 24, 1966 and admitted by the court on November 3, 1966. In the third-party complaint filed by Rodelas on October 24, 1966, Robert Yap was sued as third-party defendant and Rodelas prayed that the latter be declared

liable to plaintiff for any judgment that might be rendered in its favor, or in the event that defendants be held jointly liable with third-party defendant, the latter be ordered to indemnify the former. The court issued instruction that a copy thereof and summons be served on the third-party defendant.

In a motion dated January 5, 1968, which was granted on January 16, 1968, counsel for defendants withdrew his appearance for Apolonio Elevado because the latter's interest conflicted with that of Ruperto Rodelas whom counsel principally represents. Apolonio Elevado was ordered to engage immediately the services of a new counsel. With leave of court, counsel for defendants filed an amended answer which reiterated substantially the previous answer but now serving only the benefits of defendant Rodelas, which amended answer was admitted by the court in the order of July 25, 1969.

On July 29, 1969, another pre-trial order was issued setting the pre-trial conference on September 22, 1969. Defendant Rodelas failed to file his pre-trial brief nor did he and his counsel appear at the scheduled pre-trial conference on September 22, 1969, for which reason, defendant was, on the same day, declared in default. On May 24, 1971, the court also declared Apolonio Elevado in default and plaintiff was then authorized in the same order to present its evidence ex-parte before the branch clerk of court commissioned to receive the same.

For failure of defendant to file pre-trial brief and to appear together with his attorney at the pre-trial conference, and on the basis of the pleadings and ex-parte evidence presented by plaintiff, the lower court rendered judgment on July 6, 1971, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants, ordering the latter to pay the former, jointly and severally:

1. the sum of P51,913.11 covering the out-standing principal balance, the agreed interest at 12% per annum from May 29, 1965 to May 28, 1971 and the liquidated damages equivalent to 33-1/3% of the total amount due;
2. the agreed interest on the outstanding principal balance at the rate of 12% per annum from May 29, 1971 until the obligation is finally paid; and
3. the costs.

SO ORDERED."

On August 14, 1971, defendant Rodelas moved to set aside the decision, alleging as ground thereof the absence of notice to him of the pre-trial set for September 22, 1969 and the fact that his co-defendant Elevado had not yet secured the services of counsel. This motion is hereunder quoted as follows:

"MOTION TO SET ASIDE DECISION

COMES NOW defendant Ruperto M. Rodelas and to this Honorable Court, respectfully moves to set aside the decision in the above-entitled case dated July 6, 1971, copy of which was received on July 16, 1971. In support of the motion, herein defendant-movant alleges:

1. That upon verification of the record of this case, movant has discovered that:
 - a. On February 21, 1968, the Court has issued an Order (pls. see p. 80, Record) postponing the pre-trial of this case until further assignment;
 - b. On July 29, 1969, an Order was issued admitting the amended Answer filed by the movant (p. 81, Rec.);
 - c. That on July 29, 1969, a notice of pre-trial for September 18, 1960 and directing the parties to submit their pre-trial brief;

- d. On September 18, 1969, the plaintiff filed their pre-trial brief;
- e. On September 22, 1969, the Court issued an Order declaring defendant-movant in default for his failure to appear or his counsel and forth-with, it authorized the plaintiff to present evidence ex-parte; and
- f. Finally, on July 6, 1971 the Court rendered the decision subject of this motion, copy of which was received by movant through counsel on July 16, 1971.

2. That not any one of the aforementioned Orders of the Court, except the decision, was received by defendant-movant personally or through his undersigned counsel;

3. That defendant-movant has not also received a copy of the pre-trial brief filed by the plaintiff on September 18, 1969;

4. That in any case, defendant-movant had always been under the honest impression that no further pro-ceedings as yet could be taken in this case because defendant Apolonio Elevado had not yet secured the services of a separate counsel in conformity with the Order of this Court dated January 16, 1968;

5. That too, defendant-movant had personal knowledge that the Hon. Judge Felix Domingo had been taken ill for a considerable time so that he had always been under the honest belief that no new proceedings had transpired in the meantime, or at least a new judge had been assigned in the absence of Judge Domingo;

6. That defendant-movant has valid and meritorious defenses in the complaint and principal'of which de-fenses is that movant had been substituted by another person by the name of Robert Yap as debtor in the promissory note (Annex "A", Complaint) with the consent of the plaintiff and the consent being manifested in its acceptance of payments on the note by said Robert Yap. Moreover, there is jurisprudence to the effect that a co-maker in the promissory note who had not actually benefited from the proceeds thereof could not be held liable therefor, the result of which is as in this case, the plaintiff would not have any cause and/or right of action against the defendant-movant;

7. That lastly, since it is held that Notice to both the party and his attorney at the pre-trial is mandatory, the Order: of default on September 22, 1969 is null and void. (cf. International Harvester vs. Ban Ling, 25 SCRA, 612-616; American Ins. Co. vs. MPS 22 SCRA, 482-484 and Home Ins. Co. vs. U.S. Lines, 21 SCRA, 863-866

P R A Y E R

WHEREFORE, it is respectfully prayed that the Decision of this Court dated July 6; 1971 in the above-entitled case be set aside; that the case be reopened and that the defendant-movant be allowed, at least, to cross-examine the witnesses for the plaintiff and to adduce evidence in support of his defenses.

Manila, Philippines, August 14, 1971.

RECON, SANTAROMANA & ASSOCIATES

Suite 201 Del Mundo Building

2121 Taft Avenue, Manila D-406

By:

DENNIS B. RECON

Counsel for Ruperto Rodelas

REPUBLIC OF THE PHILIPPINES)

CITY OF MANILA) S.S.

RUPERTO M. RODELAS, after being duly sworn deposes and states:

1. That he is the defendant-movant in the above-entitled case;
2. That he has read the foregoing motion to set aside decision; and
3. That the allegations therein are true and correct of his own personal knowledge.

RUPERTO M. RODELAS

Defendant-Affiant

SUBSCRIBED AND SWORN to before me this 14th day of August, 1971, in the City of Manila, Philippines, affiant exhibited to me his Res. Cert. No. A-4830731, issued on Jan. 8, 1971 at Lipa City.

DENNIS B. RECON

Notary Public

Until Dec. 31, 1972; PTR No. 3390029

Issued on Jan. 8, 1971 at Manila

Doc. No. 41

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Series of 1971"

Opposition was filed by plaintiff contending that defendant Rodelas was duly notified through counsel. The motion to set aside the decision was denied in the order dated October 30, 1971 stating that copy of the order of July 29, 1969 was received by defendant's counsel as shown by the registry return receipt.

Only defendant Rodelas appealed the foregoing decision to the Court of Appeals. After the recital of facts, the Tenth Division of the Court of Appeals, in its resolution of May 23, 1977, certified this case to Us, pursuant to Section 17 of the Judiciary Act, as amended, since the matters involve purely questions of law.

The sufficiency of appellant Rodelas' motion to set aside the decision is the principal question of law raised for Our resolution. This in turn depends on whether the requirements of Rule 38, Sections 2 and 3 of the New Rules of Court have been complied with or not. This Rule provides:

"Sec. 2. Petition to Court of First Instance for relief from judgment or other proceeding thereof.- When a judgment or order is entered, or any other proceeding is taken against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside.

Sec. 3. Time for filing petition; contents and verification.- A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceedings to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial

cause of action or defense, as the case may be."

We have carefully and closely, examined the motion to set aside the decision and We find that, indeed, it is verified by the movant and no separate affidavit of merits is attached thereto. Although the Rule cited above requires, besides the motion to be verified, an accompanying affidavit of merits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, it has been held by the Supreme Court that a petition for relief without a separate affidavit of merits is sufficient where facts constituting petitioner's substantial cause of action or defense as the case may be, are alleged for the oath elevates the petition to the same category as a separate affidavit. (Consul vs. Consul, G. R. No. L-22713, July 26, 1966). We may grant the mistake of the movant in his honest impression that no further proceedings as yet could be taken in this case because defendant Apolonio Elevado had not secured the services of a separate counsel and that movant had personal knowledge that the presiding judge had been taken ill for a considerable time so that he had the honest belief that no new proceedings had transpired in the meantime. Nonetheless, Our main inquiry must be directed into the petitioner's alleged good and substantial defense which is "that movant had been substituted by another person by the name of Robert Yap as debtor in the promissory note with the consent of the plaintiff and the consent being manifested in its acceptance of payment on the note by said Robert Yap."

We hold these allegations as mere conclusions, opinions, or beliefs of the movant himself. The motion does not state facts or circumstances, not a document, writing or note whatsoever showing such substitution, much less the acceptance of it by the plaintiff. By the movant's palpable failure to state said facts or circumstances whether documentary or otherwise, the motion becomes utterly inadequate and insufficient to constitute by itself or to be considered in lieu of an affidavit of merits. It cannot be elevated to the category as a separate affidavit. We, therefore, find that movant has not complied with the requirements of Rule 38, Sec. 3 and consequently, the motion must fall. It would serve no useful and beneficial purpose to set aside the decision when the purported defense is after all not meritorious, good and substantial.

This Court, in *Correos vs. Valenzuela*, G. R. No. L-24099, July 20, 1968, 24 SCRA 80, pp. 82-83, said: "We have held consistently in this connection that it is not enough to allege in a motion of that kind that the movant has a good and meritorious defense, because that is a mere conclusion and an expression of his own opinion as to the merit of his case. The rules require such motion to be supported by affidavits not only proving the ground relied upon but likewise the merits of movant's case, which means that it is the latter's duty to submit to the court for consideration, in the form of depositions or sworn statements, his testimony and that of his witnesses, so that the court may be in a position to decide whether the re-opening of the case would be for a useful purpose or would be a mere empty and useless gesture."

Moreover, appellant's claim of a valid and good defense of novation in that he had been substituted by another person by the name of Robert Yap as debtor in the promissory note with the consent of the appellee does not appear to be true and meritorious in the light of the apparent neglect and omission of the appellant in prosecuting the third party complaint purposely filed by him to prove and enforce said defense.

The record shows that appellant filed the third party complaint on Oct. 24, 1966, and the court, on Nov. 3, 1966 directed that copy thereof and summons be served on Robert Yap. But there is no proof of compliance with this order of the court. Neither is there any showing that appellant himself caused service of the summons by paying the necessary fees, or moved to have Robert Yap declared in default if the latter was in fact summoned but failed to answer, and if an answer was filed, then to prosecute the case in earnest and with dispatch. After filing the third party complaint, appellant made no move whatsoever, filed no pleading or motion of any kind. Hence, the truth, merit and validity of appellant's claim of novation is open to serious doubt and suspicion that the filing of the third

party complaint was a mere strategem to delay justice. The right of the appellee to the payment of the vehicles purchased by the appellant may not be thwarted or denied by the mere filing of the third party complaint that appellant had completely abandoned and conveniently for-gotten.

The appellant contends that the absence of notice of pre-trial to him deprived the lower court of the right to conduct the pre-trial, much less declare him in default and that the failure of his counsel to attend said pre-trial although notified thereof did not render nugatory his right to the notice of the pre-trial. The record shows, however, that the pre-trial called by the court in its order of July 29, 1969 setting the hearing on Sept. 22, 1969, which appellant strongly assails, was the third pre-trial setting of the case. The first was called for Sept. 2, 1966, of which appellant was duly notified on July 21, 1966. The parties were required to submit their respective pre trial briefs and while the plaintiff (appellee herein) sub-mitted its brief, defendant (appellant herein) failed to do so. Then, on Oct. 12, 1966, appellant avoided the pre-trial hearing by-announcing his intention to file a third party complaint and although he did file the complaint, he conveniently abandoned and neglected to prosecute it. After four years and 10 months that appellant failed to prosecute the third party complaint he filed to avoid the pre-trial hearings of the case, and after one year and 10 months since the order of default was entered against him, appellant may not now be heard to raise objection s to said order.

IN VIEW OF THE FOREGOING, We hereby affirm the decision appealed from, without costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Fernandez, JJ., concur.

[1] Tenth Division, penned by Justice Ameurf Melencio Herrera, and concurred by Justice Ericta and Gopengco.

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