

DAMASO P. PEREZ, PETITIONER, VS. COURT OF APPEALS AND PACMAC MACHINERY & MERCHANDIZING CO., INC., RESPONDENTS.

G.R. No. L-21347. July 28, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petition for review of the decision of the Court of Appeals dated April 5, 1963 in CA-G.R. No. 30369-R.

The antecedent facts as found by the Appellate Court are as follows:

"It appears that during the period from 1958 thru 1959, Republic Shoe had purchased machineries and spare parts from PACMAC Machinery & Merchandizing Co., Inc., evidenced by contracts of 'Sale with Chattel Mortgage.'

Upon the instance of Perez, on 11 April 1960 a complaint was filed with the Court of First Instance of Rizal, in the name of Republic Shoe, as plaintiff, and against PACMAC, as defendant, praying, among other things, for reformation of the contracts stated above. PACMAC interposed a counterclaim for collection of the balance of the purchase price of the aforesaid machineries and spare parts, and for damages. In the course of the proceeding, however, the parties submitted this compromise agreement:

'REPUBLIC OF THE PHILIPPINES IN THE COURT OF FIRST INSTANCE OF RIZAL SEVENTH JUDICIAL DISTRICT BRANCH IV, QUEZON CITY

REPUBLIC SHOE MANUFACTURING CO., plaintiff, vs. PACMAC MACHINERY & MERCHANDIZING CO., INC., defendant.

'COMPROMISE AGREEMENT

'COME NOW the parties in the above-entitled case, assisted by their respective counsel, and to this Honorable Court respectfully submit the following Compromise Agreement:

1. The plaintiff hereby withdraws, and consequently requests dismissal of the complaint, without pronouncement as to costs;
2. That plaintiff admits liability to the defendant, the totality of which, for shoe machineries accounts, amount to THREE HUNDRED THIRTY SIX THOUSAND TWO HUNDRED FORTY EIGHT PESOS AND THIRTY CENTAVOS (P336,248.30), as of 31 August, 1960;
3. Plaintiff binds itself to pay all said indebtedness by returning to the defendant within sixty (60) days from date hereof on or before December 20, 1960 all the machineries of shoe manufacturing equipment purchased from said defendant listed, described and enumerated in Annex 'A' and Annex 'B' of this Compromise Agreement; Annex 'A' is a complete list of machineries already returned to the defendant; Annex 'B' is a complete list of machineries still in the possession of plaintiff as of the date of this Agreement;

4. Plaintiff forfeits and waives in favor of defendant all payments made on the machineries and any whatever right or interest it may have on the machineries listed and any enumerated in Annex 'A' of this Compromise Agreement and all other machineries to be returned pursuant to this Agreement; defendant has the absolute and irrevocable right to dispose, alienate and/or perform any and all acts of ownership on all returned machineries; defendant on the other hand concedes and plaintiff agrees with the return by plaintiff of machineries listed in Annex 'A', the only outstanding indebtedness of plaintiff to defendant under shoe machineries account as of the date of this Compromise Agreement is ONE HUNDRED EIGHTY THOUSAND THREE HUNDRED FORTY THREE (P180,343.00) PESOS;

5. Plaintiff during the above-cited sixty (60) day period (please see paragraph 3 hereof) shall have the option to sell at the minimum price equivalent to the machineries' original invoice value, to any interested parties the machineries listed, enumerated and described in Annex 'B'; and in case plaintiff seasonably exercises and utilizes this option, plaintiff instead of returning the machineries listed in Annex 'B', shall pay to the defendant within five days (5) of the sale ONE HUNDRED EIGHTY THOUSAND THREE HUNDRED FORTY THREE (P180,343.00) PESOS; plaintiff's obligation to the defendant under Civil Case No. Q-5093 shall then be written off and considered fully paid; provided, however, that in case plaintiff effects a partial sale of machineries contained and listed in Annex 'B', the undisposed machineries shall be returned to the defendant, who shall be paid by the plaintiff the difference between the unpaid obligation of P180,343.00 minus the invoice value of the undisposed machineries; provided further that the existing mortgage lien in favor of the defendant corresponding to each of the machineries listed, described and enumerated in Annex 'B' shall not be considered abandoned or waived unless the proceeds of the sale of the disposed machines has been turned over to the defendant or the full payment of plaintiff's account on shoe manufacturing machineries as aforesaid is made;

6. Defendant agrees to deduct P10,107.07 from plaintiff's account to defendant on shoe materials and supplies and service order charges, which accounts are the subject of Rizal Court of First Instance, (Quezon City) Branch IV Civil Case No. 5093 to PACMAC Machinery & Merchandizing Co., Inc., in the amount of P35,000.00;

7. Mr. Damaso Perez binds himself to pay all said sum of P35,000.00 plus interest at the rate of one (1%) per cent per month on or before October 31, 1961; in recognition of said indebtedness, Mr. Perez has executed and delivered in favor of PACMAC Machinery & Merchandizing Co., Inc., a pledge of his Republic Savings Bank shares of stock more particularly known as Certificate 9 and 10; a copy of said pledge is attached hereto as Annex 'D' and made an integral part of this Compromise Agreement.

WHEREFORE, parties respectfully pray that the fore-going Compromise Agreement be approved by the Honorable Court and that judgment be rendered in accordance with same and enjoining the parties to its compliance.

Manila, for Quezon City, October 20, 1960.

Respectfully submitted:

REPUBLIC SHOE MANUFACTURING CO. PACMAC MACHINERY & MERCHANDIZING CO., INC.

By: By:

(SGD.) DAMASO P. PEREZ (SGD.) RUSSEL T. ELIOT

Plaintiff Defendant

ASSISTED BY: ASSISTED BY:

HALILI & ZAPA MOJICA, MENDOZA & DOMINGO

By: By:

(SGD.) ROBERTO P. HALILI (SGD.) ARTURO MOJICA

Counsel for the Plaintiff Attys. fro PACMAC

2nd Flr. Republic Bank Bldg. Machinery & Merch. Co., Inc.

P. Paterno, Quiapo 514 Madrigal Bldg.

Escolta'

(Annex D to Petition)

"On 12 November 1960 the trial court rendered judgment approving the compromise agreement and ordering the parties to comply with the terms and conditions thereof."

"PACMAC, it appears, subsequently filed a 'motion for contempt' against Perez, as general manager of Republic Shoe, on account of Republic Shoe's failure to return certain machineries and spare parts in accordance with the compromise agreement, but the motion was 'considered closed' after Perez manifested 'in open court' that if he failed to return the machineries and spare parts in question it was because the same had been 'stolen in his possession' (Annex I to the Petition)."

"On 7 August 1961, PACMAC filed a motion for execution to enforce payment of the sum representing the aggregate value of alleged undelivered machineries and spare parts, which motion was opposed by Republic Shoe."

"In order to give the parties opportunity to present evidence' in connection with the motion for execution, the trial court set a hearing thereon on September 2, 1961. However, by agreement of the parties the reception of evidence was referred to a commissioner, Atty. Dimaguila. Said commissioner eventually submitted his report under date of September 22, 1961, furnishing copies thereof to the parties' respective counsels. Whereupon, on 4 October 1961, the trial court ordered the issuance of a writ of execution against Republic Shoe. We quote from the court's order:

'* * * The Court has considered carefully the content of the Commissioner's Report and found that the conclusion to which said Commissioner has arrived is duly supported by law and the evidence presented before him.

'IN VIEW OF THE FOREGOING, let a writ of execution be issued to collect from the plaintiff the sum of P7,231.00 representing the invoice value of the machineries, missing parts, tools and accessories which were not returned.

'So ordered.' (Annex I to Petition)

"On 10 October 1961, being allegedly still unaware of the trial court's abovestated execution order of October 4, Republic Shoe filed a motion to set PACMAC's motion for execution for 'regular trial,' on the ground that the

commissioner's report 'contains certain conclusions which plaintiff (Republic Shoe) cannot accept, and which requires presentation of evidence to prove his [its] contentions embodied in his [its] opposition' to PACMAC's motion for execution. (Annex J to Petition)

This motion was denied on 14 October 1961.

"Subsequently, PACMAC filed a motion under date of 3 November 1961 praying that the writ of execution which had been issued per the trial court's order be amended so as to make it enforceable personally against Damaso P. Perez, stating, in justification thereof, as follows:

'3. That the plaintiff Republic Shoe Manufacturing Co., is a single proprietorship owned by Mr. Damaso P. Perez, as may be seen by the sworn statement of Mr. Perez himself appearing on page 11 of his own complaint in the above-entitled case, the pertinent portion of which is quoted hereunder for the information and convenience of this Honorable Court:

'I, Damaso P. Perez, of legal age, after having been sworn in accordance with law, depose and state:

That I am the proprietor of the Republic Shoe Manufacturing Company, plaintiff in the above-entitled case;

That I have caused the preparation of the foregoing Complaint; and

That the allegations contained therein are true and correct to the best of my knowledge and belief;

x x x x x

'6. That the amendment sought, namely, the addition of the phrase, 'and/or Damaso P. Perez' (the Republic Shoe Manufacturing Co. being a single proprietorship owned by Damaso P. Perez) after the words, 'We command you that of the goods and chattels of Republic Shoe Manufacturing Co., 'so that same would read as follows:

'We command you that of the goods and chattels of Republic Shoe Manufacturing Co., and/or Damaso P. Perez,' is not substantial but merely of a descriptive nature, there being no reference except to the entity and/or person against whom there is actually a final judgment; * * *' (Annex K to Petition)

Republic Shoe opposed said motion on the ground that Damaso P. Perez was not a party to the case. Nonetheless, the trial court granted the motion in its order of 14 December 1961."

Upon the foregoing facts petitioner elevated the case to the Court of Appeals in a petition for certiorari with preliminary injunction. On January 8, 1962 the Court of Appeals gave due course to the petition and, after petitioner had filed a sufficient bond, issued a writ of preliminary injunction to stop enforcement of the Orders of October 4, and December 14, 1961. However, as early as January 3, 1962, allegedly without notice to petitioner, respondents PACMAC and the Sheriff sold on execution sale 80 shares of stock of petitioner Perez in the Republic Bank valued at more than P8,000.00. On February 2, 1962 petitioner Perez filed a supplemental petition for the issuance of a writ of preliminary mandatory injunction, which petition was answered by respondent PACMAC on March 8, 1962. And on April 5, 1963 the Court of Appeals denied the petition and affirmed the decision of the trial court.

In the instant petition for review, petitioner avers: (1) that the Order dated October 4, 1961 is not valid for being contrary to Section 10, Rule 33 of the Rules of Court; (2) that since the motion for execution raised matters that are litigious, no execution may issue without a prior hearing; and (3) that the order dated December 14, 1961 is not proper and legal because it deprives petitioner of his day in court.

The trial court's Order dated October 4, 1961, approving the commissioner's report and directing the issuance of a writ of execution against Republic Shoe Manufacturing Co., is assailed on the ground that it is not in accordance

with Section 10, Rule 34 (now Rule 33) of the Rules of Court, which provides:

"SEC. 10, Rule 33. Notice to parties of the filing of report. Upon the filing of the report, the parties shall be notified by the clerk, and they shall be allowed ten (10) days within which to signify grounds of objection to the findings of the report, if they so desire. Objections to the report based upon grounds which were available to the parties during the proceedings before the commissioner other than objections to the findings and conclusions therein set forth, shall not be considered by the court unless they were made before the commissioner."

It is clear from the above-quoted rule that the parties should be notified by the clerk of court of the filing of the report, after which they have ten (10) days within which to signify their objections thereto. And under Section 11 of the same Rule, upon the expiration of the ten (10) day period the report shall be set for hearing, after which the court shall render judgment. In this case the trial court, without giving petitioner an opportunity to comment on the report, approved the same and ordered the issuance of a writ of execution on October 4, 1961. The trial court's action was premature, since it was only on October 7, 1961 that petitioner received a copy of the commissioner's report. And then on October 10, 1961, being unaware that execution had been ordered (petitioner received a copy of the order on October 19, 1961 per Annex "A-1-A"), petitioner, relying on Section 10 of Rule 33, filed a motion to set for trial respondent's motion for partial execution, alleging that "said report contains certain conclusions which plaintiff cannot accept, and which requires presentation of evidence. The motion to set was filed well within the ten (10) day period. However, the trial court stood pat and denied the motion in its order dated October 14, 1961, which reads in full:

"It appearing in the Order of October 4, 1961 that this Court has issued a writ of execution to collect from the plaintiff the sum of P7,231.00 representing the invoice value of the machineries, missing parts, tools and accessories which were not returned, Motion of Plaintiff dated October 10, 1961 is hereby DENIED."

It has been held that failure to grant the parties an opportunity to object to the report may in some instances constitute a serious error in violation of the substantial rights of the parties (Gov't of the Phil. vs. Ossorio, 50 Phil. 864). We believe the trial court gravely abused its discretion in approving the commissioner's report without giving petitioner an opportunity to be heard on his objections thereto.

It is to be noted that the trial court, instead of conducting a hearing on respondent's motion for partial execution, referred the matter to a commissioner. This is sanctioned by section 2 of Rule 33.[*] But sections 10 and 11 require not only that the parties be notified of the commissioner's report but also that the same be set for hearing, and only thereafter shall the court "render judgment by adopting, modifying, or rejecting the report in whole or in part or receive further evidence or recommit it with instructions."

The pertinent portions of the commissioner's report read as follows:

"Plaintiff claims that item 1 with value of P2,302.00 should be deducted from the value of undelivered machineries because in the list appearing in page 203 of the records the said item 1 appears to have been returned by plaintiff to the defendant. The undersigned has scanned page 203 (Annex A of compromise agreement) of the records and found therein listed as returned said machinery covered by item 1. However, in the complete list of machineries still in possession of the plaintiff appearing on page 205 (Annex B of compromise agreement) of the records, the same property is enumerated therein as unreturned and still in possession of the plaintiff. From the two lists, Annexes A and B, pages 203 and 205, said item 1 appears to have been both returned and unreturned. There seems to have discrepancy in the two lists.

Now on page 58 of the records which is Annex 2 (a) of the defendant's answer, there is listed, as in possession of plaintiff, two (2) pieces of machineries, to wit:

'2 pcs. Fortuna Model 50 Su, Upper Skiving Machine, Ser. No. 38520 with standard set of tools and acc. w/one BTH motor 1/2 hp., Ser. No. 1269, with table top and stand; and the other-Ser. No. 38439 with standard set of tools and acc., with one 13TH motor, 1/2 hp. Ser. No. 1221, and table top and stand, (a) P2,302.00 - P4,604.00' (Italics supplied)

It appears, therefore, that at the time of filing the defendant's answer there were two (2) pieces of upper skiving machine in possession of the plaintiff and if one is returned the one is unreturned. In the manifestation filed by defendant on September 18, 1961, said defendant manifests that one (1) piece of upper skiving machine with Serial No. 34839 and Motor No. 1221 was not returned, and the discrepancy in the two lists (pages 203 and 205) was one of clerical error in copying the description, particularly the serial number of machine and motor which remains unreturned. This manifestation of the defendant seems to lend credence because, as could be seen in the commissioner's report, plaintiff's representative admitted that one fortuna Model 50 Su, upper skiving machine could not be returned to defendant because it was one of the machineries stolen. If one machine is returned and another one stolen, there are, therefore, two (2) pieces of machines in possession of plaintiff." (Annex "A-H")

It may be gleaned from the above-quoted portion of the commissioner's report that there seems to be a discrepancy between the two lists of machinery/spare parts returned and unreturned (Annexes "A" and "B" of the Compromise Agreement). The commissioner, in trying to reconcile the discrepancy, made reference to Annex 2 (a) of the defendant's answer to the complaint wherein two (2) pieces of machinery are listed as in the possession of plaintiff. But it should be remembered that the judgment subject of execution is based on the compromise agreement, and therefore in considering the issues raised in the motion for execution only the compromise agreement should be referred to. Pleadings filed theretofore have no material bearing on the question, and the allegations of fact therein, such as those made by the defendant in its answer, cannot be the basis of a finding by the court unless admitted by the other party or established at the hearing required by the Rules.

The other issue raised by petitioner is that since he is a stranger to the action the amendment of the original writ of execution so as to make it enforceable against him is not legally justified, for it deprives him of his day in court.

The point is not well-taken in this case. It is not disputed that Republic Shoe Manufacturing Co. is a sole proprietorship owned by petitioner Perez. It is not a duly registered corporation which can hide behind the veil of corporate fiction. The Court of Appeals as well as the trial court correctly found that Republic Shoe Manufacturing Co. and petitioner Perez are one and the same. From the very start Perez was the real plaintiff, being the sole owner of the company, such that any judgment for or against the company will necessarily benefit or prejudice him. It has been held that since the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded to the real litigant, he may be held liable as a party (Albert vs. University Publishing Co., Inc., G.R. No. L-19118, June 16, 1965). In the instant case it should be noted that the complaint in the court below was withdrawn and dismissed at the instance of petitioner Perez. The subject of execution was the compromise agreement approved by the court, in which agreement (paragraph 7) Damaso Perez personally bound himself to pay the indebtedness and executed in favor of PACMAC a pledge on his Republic Savings Bank Shares of stock, more particularly Certificates Nos. 9 and 10.

IN VIEW OF THE FOREGOING , the judgment appealed from is modified by setting aside the orders of the trial court of October 4 and October 14, 1961, and remanding this case to said court, with instruction that the motion for execution be heard, with notice to the parties. No pronouncement as to costs in this instance.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[*] Rule 33, Sec. 2. Reference ordered on motion. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference to a commissioner in the following cases:

(a) x x x

(b) x x x

(c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect.

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