

PHILIPPINE BANK OF COMMUNICATIONS, PLAINTIFF-APPELLEE, VS. GUITAR MATCH MANUFACTURING CO., INC., ET AL., DEFENDANTS-APPELLANTS.*G.R. No. L-9139. September 27, 1957*

Ponente: MONTEMAYOR, J.

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The Guitar Match Manufacturing Company, later referred to as the Company, and its vice president and manager Ong Hing Lian, are appealing from the order of the Court of First Instance of Rizal, dated August 7, 1954, which granted the motion of appellee Philippine Bank of Communications, later referred to as the Bank, for the sale of the attached and mortgaged properties of defendant Company, as well as its motion for summary judgment, and which denied appellant's motion to admit an amended answer.

On October 10, 1950, defendant Company entered Into an OVERDRAFT AGREEMENT with the Bank, whereby the Company was allowed to overdraw its account with the Bank to the extent of P100,000.00 and for a period of one year, that is, until October 10, 1951. For the Bank's security, the Company executed on the same date a chattel and real estate mortgage on its personal and real properties in Butuan City, where the Company was presumably operating its business. For further security, Ong Hing Lian executed a security agreement binding himself jointly and severally with the Company, for the payment of the latter's over-draft with the bank. On April 15, 1953, the Bank commenced the present special civil action against appellants for the payment of P117,321, plus liquidated damages stipulated in the mortgage at 15% of the said sum, with interest, and for the foreclosure of the mortgage. On the same date, the trial court, at the instance of the Bank, issued an order for a writ of attachment.

On April 20, 1953, Atty. Pedro C. Navarro, in representation of the appellants, filed an answer practically admitting delay in the fulfillment of their obligation to plaintiff, giving as reason therefor the temporary suspension of the Company's operation of its business brought about by its difficulty in securing import allocations or licenses for necessary materials, supplies, etc., and the unexpected passage of the Minimum Wage Law which had doubled the cost of operation; that Ong Hing Lian had left; for Manila to make a correct and detailed computation as to the true and correct obligation still due the plaintiff and that the defendants would seek an amicable extra-judicial settlement of the ease, after ascertaining from their books the exact amount of indebtedness.

On April 27, 1953, Attys. Bausa and Ampil, the present lawyers of appellants filed an "Urgent ExParte Petition for Extension of Time to File Responsive Pleading", praying that they be given 15 days extension from May 2, 1953, within which to file said responsive pleading. Because defendants had already filed an answer through Atty. Navarre, and inasmuch as the 15-day extension sought By Attys. Bausa and Ampil from May 2, 1953 and long expired, without their filing said responsive pleading, the trial court on October 22, 1953, issued an order denying the motion for extension, at the same time saying that Attys. Bausa and Ampil "may, however, file an amended answer, if they so desire, subject to the approval of this court, after the plaintiff had been duly notified for its

admission."

On April 2, 1954, about one year after the filing of the complaint and the answer by Atty. Navarro, the Bank presumably realizing that appellants were not sincere in what they said in their answer about an extra judicial settlement of the case, filed a motion for summary judgment. This motion for summary judgment was not opposed by defendants-appellants, but on May 24, 1954, appellants filed a motion for leave to admit a proposed amended answer it? attaching thereto a copy of said amended answer. The substance of said amended answer is that there had been a novation of the contract as regards the maturity of the obligation, for the reason that before the date of maturity as stated in said contract, the Bank had agreed to an extension of one year, and therefore s the complaint was prematurely filed. The amended answer contained a counter- claim in the amount of P50,000.00, on the ground that the premature filing of the complaint and the procurement of the writ of preliminary attachment resulted in completely stopping the operations of the Company at the time when the price of locally made matches was high and demand thereof great, plus damages and attorneys fees in the amount of P10,000.00.

On August 4, 1954, the City Attorney for Butuan City filed a motion for intervention, alleging that the city had a legal interest in the property in litigation presumably referring to the Company's properties mortgaged and attached, in the form of taxes due from 1951 to 1954, in the sum of P5,412.56, and that said city would be adversely affected by the distribution and other disposition of the said properties now in the custody of the court.

On August 7, 1954, as already stated, the appealed order was issued, ordering the sale at public auction of the attached properties, granting the motion for summary judgment denying defendants' motion for leave to admit an amended answer, practically granting the motion of the attorney for Butuan City for intervention, and directing that out of the proceeds of the sale of the mortgaged properties, a sum equivalent to the claim of the City of Butuan for taxes be withheld for the satisfaction of said taxes j and sentencing' the defendants to

" . . . pay the plaintiff, Jointly and severally, the sum due on the overdraft agreement as of March 3, 19531 which is P777,321.49, plus, in accordance with the mortgage stipulation, an additional sum equal (to) 15% thereof, or P17,598.22. 'as costs attorney's fees, expenses and liquidated damages,' with interest on the aggregate of said stuns at the rate of 12% per annum computed from said date, Unless said sums are paid, into Court within a period of 90 days from the date of service of this order, the mortgaged buildings and improvements shall foe sold to realize the mortgage debt, interests, and costs."

Appellants make the following assignment of errors:

"ASSIGNMENT OF ERRORS

- That the court n SBS erred and acted with grave abuse of discretion in denying the admission of appellants' amended answer,
- That the court a quo erred and acted with grave abuse of discretion in granting appellee's motion for summary judgment.
- That as a necessary consequence of the two (2) previous errors the court a could likewise erred in rendering Judgment, in favor of appellee and against the appellants in accordance with the former's complaint."

Claiming that the court erred in denying the admission of the amended answer they invoke Section 2, Rule 17 of the Rules of Court. They also claim that the trial court acted with great abuse of discretion in granting appellee's motion for summary judgment and in rendering said judgment.

We have with care and interest examined the well prepared and considered appealed order of the trial court and we fully agree with His Honor, Judge Francisco Arca, that appellants were not entitled to the admission of their amended answer, and that on the other hand, plaintiff was entitled to a summary judgment, considering all the

circumstances of the case. The trial court found the amended answer to be sham and frivolous, and it was convinced that the amended answer was intended merely for purpose of delay. We can do no better than reproduce the pertinent portions of the said order on this points. Said the trial court as to why plaintiff was entitled to summary judgment:

12.00 Normal 0 false false false EN-PH X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */
table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0;
mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes;
mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin-top:0in; mso-para-margin-right:0in;
mso-para-margin-bottom:10.0pt; mso-para-margin-left:0in; line-height:115%; mso-pagination:widow-orphan;
font-size:11.0pt; font-family:"Calibri", "sans-serif"; mso-ascii-font-family:Calibri;
mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman";
mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin;
mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} "There are before the Court,
four motions, namely, a motion for the sale of attached properties filed on February 26, 1954, by the plaintiff; a
motion for summary judgment filed on April 6, 1954, also by the plaintiff; a motion for leave to admit
amended answer filed on June 7, 1954, by the defendants Guitar Match Manufacturing Company and Ong
Hing Lian; and a motion for intervention filed on August 4, 1954, by the City Attorney of Butuan City.

"The defendants have not filed any opposition to plaintiff's said motions and have not appeared at the hearing thereon today despite due notice upon them of said hearing and (not-) withstanding the fact that they are themselves movants on the third of the four motions enumerated above. On the other hand plaintiff appeared thru counsel and submitted to the Court in support of its aforesaid motions and the opposition it has filed against defendants' motion for leave to admit amended answer, five exhibits namely, Exhibit "A", the original of the overdraft agreement, a certified true copy whereof is attached to the complaint, as Annex "A"; Exhibit "B", a duplicate original of the deed of chattel and real-mortgage, a certified true copy whereof is attached to the complaint, as Annex "B"; Exhibit "C", the original of the surety agreement, a certified true copy whereof is attached to the complaint as C."

* * * * *

"As regards the motion for summary judgment, the records show that defendants were served with copy thereof on April 2, 1954. On April 13, 1954 the date set for the hearing of said motion in the notice of hearing given by the plaintiff defendants' attorneys addressed a telegram to the Court praying for the postponement of the hearing of said motion and stating that they are filing a 'written argued opposition' thereto. As we have noted earlier above, defendants failed to file any opposition to the motion for summary judgment and did not appear at the hearing thereon today. It would seem, therefore, that defendants are unable to adduce any valid ground of opposition and to support the same with counter-affidavits as required by Rule 39. Apart from this, however, the Court finds, from a consideration of the original pleadings on file, the supporting affidavit of the plaintiff bank's sub-accountant, and the photostatic and certified true copies of the papers referred to in said affidavit, that there is really no genuine issue as to any material fact and that, therefore, the plaintiff is entitled to a judgment as a matter of law."

* * * * *

"In the original answer filed on April 20, 1953, the defendants do not, tender issue on, any of the material averments of the complaint, save one, perhaps, viz., plaintiff's averment of the amount due it as of March 3, 1953. The answer is made up of three numbered paragraphs and three unnumbered paragraphs under the heading 'special defenses'. In paragraphs numbered 1, 2 and 3 of said answer, defendants expressly admit paragraphs 1, 2, 3, 6 and 8 of the first cause of action, paragraph 11 of the second cause of action, and paragraph 12 (erroneously typed 'U') of the third cause of action. Defendants deny paragraphs 12 under the second cause of action. The denial, however, is qualified by the phrase 'except those as may be impliedly

admitted in the herein special defense'. As the 'special defenses' contain an admission that the defendants have Incurred in delay in the fulfillment of their obligation to the plaintiff, the first part of paragraph 5 and paragraph 12, at least, where defendants' default is averred, must be deemed admitted. As to the second part of paragraph 5, where plaintiff avers the penal provisions and interest rate chargeable at foreclosure, the same must be deemed admitted also, because the mortgage contract reciting said stipulation is incorporated as part of paragraph 2 and this paragraph is expressly admitted. As to paragraphs 7 and 9, these, together with paragraphs 6 and 8, appear to be the allegations required by paragraphs (a), (b), (c) and (d) of section 2 of Rule 62, for the issuance of a writ of replevin; and as plaintiff did not pursue that provisional remedy, said paragraphs have become immaterial and academic. As to paragraph 4 where the amount due the plaintiff is averred, we need not dwell upon it now in view of what we have to say here stander on the 'Special defenses'. As regards paragraph 15, defendants' statement in paragraph 3 of the original answer that 'the truth (is) that defendants have never misrepresented to the plaintiff the kind of title defendants have on the two-hectare parcel of land' appears to the Court as tantamount to an admission of defendant corporation's kind of title averred in said paragraph 10 and the further averment that the certificate of title has not been delivered although said defendant had already acquired said land from its former owner. Finally, as regards paragraphs 10 and 13, defendants rightly saw no point in either denying or admitting them, since in said paragraphs plaintiff simply reproduces its allegations in preceding paragraphs.

"Coming now to the 'special defenses', wherein the defendants were expected to set forth their theory of the case, the Court notes that they merely claim that they 'have actually no definite idea or knowledge of the exact amount yet owing and due the plaintiff, including interests and other charges, because while defendant Ong Hing Lian is residing in Surigao, Surigao, some of the books of the defendant Guitar Match Manufacturing Company are in Manila'. It is further averred that 'Ong Hing Lian has left for Manila to make a correct and detailed computation as to the true and correct obligation still due the plaintiff and make settlement with plaintiff in Manila in accordance therewith, that 'the reason for the delay in fulfillment by (sic) defendants' obligation to the plaintiff is due to the temporary suspension of the operation of the defendants' business brought about by unforeseen circumstances beyond control, like the difficulty of securing import allocations as licenses for essential materials, supplies and equipments for the defendants' business and the adverse effect on young industries by the sudden and unexpected passage of the Minimum Wage Law which has doubled the costs of operation', and that 'the defendants seek amicable extrajudicial settlement of this case after ascertaining from their books the exact amount of indebtedness still outstanding in favor of the plaintiff'. Punning thru these statements is an unmistakable vision of apology and confession of liability. They certainly are not valid defense at all. As a matter of fact, defendants do not in their prayer, ask for the dismissal of the complaint' or for judgment in their favor, but simply asks for the lifting of the writ of attachment. Except for one thing, a judgment on the pleadings would have been proper. This obstacle to such a disposition of this case, is to be found, in the Court's opinion, in the allegation of lack of a 'definite Idea or knowledge of the exact amount yet owing and due the plaintiff'. This is of course not a special defense. But a liberal interpretation should entitle this clause, at least, to the effect of a denial such as Is awarded under our Rule to an averment of lack of 'knowledge and information sufficient to form a belief.¹ Therefore, it seems plain that if trial had been held on the original pleadings, the most the answer could have called upon the plaintiff to prove would have been the amount due as averred in paragraph if of the complaint.

The fact is sufficiently proved by the aforesaid affidavit of plaintiff bank's sub-accountant, by the photostatic and certified true copies of all the pertinent bank ledger cards, all the checks drawn on the plaintiff by the defendant corporation, and all the charge marks and requests for issuance of certified, checks. These banking and commercial documents appear to be the entire evidence of which the case is susceptible as regards the amount due the plaintiff, and inasmuch as the defendants have been furnished with said affidavit and bank records along with the summary judgment motion over four months ago and they have not been able to point any error therein, much less deny in a counter-affidavit the correctness of the amount claimed by the plaintiff, it would indeed be as plaintiff's alleges, 'an utter and useless waste of time' of this Court and of the parties to proceed to trial." (Underlining supplied).

The reason of the lower court in denying defendants' "motion for leave to admit amended answer", and in finding said amended answer to be sham and frivolous and intended merely for purposes of delay, are given in the portion of the order reproduced below;

"Be that as it may, summary judgment cannot be rendered if the defendants' motion for leave to admit amended answer were to be granted, because the proposed answer avers matters not alleged in the original answer that would necessitate a trial. Thus, defendants now claim as a special defense in their proposed amended pleading that action was prematurely filed, purportedly because the defendant corporation was not yet in default under the overdraft agreement when the complaint was filed in April 16, 1953, 'for the reason that before the maturity date thereof, defendants requested an extension of time of one year from the plaintiff and which the latter had granted.⁸ In addition to this new special defenses, two counterclaims have been interposed. The first is for P50,000.00, said to be the damages suffered by the defendant corporation when its 'business of manufacturing matches had been completely stopped at the time when the price of locally made matches was high and demand thereof great', said stoppage allegedly being a consequence of the premature filing of the complaint and the unjust procurement and actual levying of a writ of preliminary attachment against the properties of the herein defendants'. The second counterclaim is for P10,000.00, allegedly as damages 'by way of attorney's fees' suffered 'as a consequence furthermore of the filing of this complaint with plaintiff bank showing fully well that it did not have a cause of action against both defendants'. These proposed amendments are clearly sham and frivolous. Inasmuch as under the agreement, the overdraft was to mature on October 10, 1951, a one-year extension, evidently, cannot advance the maturity date beyond October 10, 1952, and since the complaint was filed on April 16, 1953, it is obvious that even under defendants' novation-theory, said pleading was not prematurely filed. The fate of the second counterclaim is of course linked with the pretended novation and we need not consider it further. As to the first counter-claim, it seems even more frivolous, if that is possible. In the original answer defendants say that 'the reason for the delay in the fulfillment by (sic) the defendants' obligation to the plaintiff is due to the temporary suspension of the operation of defendants' business brought about by* the unforeseen circumstances there enumerated. Assuming that defendants have in fact been granted a year's extension to pay, it should follow that by Oct. 10, 1952, the extended date of maturity, defendant must have been no longer operating, because they admit having incurred in delay, i.e., they admit having failed to pay on that date and they lay the blame for their delay on 'suspension of operations'. In other words, it seems obvious from said original pleading that at the time of the institution of this suit, the defendant corporation has been long out of business. This appears to be further borne out by the sheriff's return of the writ of attachment which recites that said, writ was served on a mere watchman at the factory premises and that said officer instructed him to deliver the same to the Manager Ong Hing Lian, who it must be remembered of "is residing in Suriga, Surigao", according to the original answer. On top of the same and frivolous nature of the proposed amendments, no effort whatever has been made by the defendants to explain why these matters, which by their nature must have been known to them in April 1953, were not alleged in the original answer filed in that month, and why they are the direct antithesis of what was there averred. Finally, neither have the defendants attempted to explain why they have allowed over a year to elapse before moving to amend, and why they have thought of amending their answer only after the plaintiff had undertaken the expense and spent the time and effort called for by a motion for summary judgment. By all these, the Court is led to the conviction that the proposed amended answer is sought to be admitted merely for purposes of delay. Defendants' motion should therefore be, as it is hereby denied."

We may add that even under Section 2, Rule 17 of the Rules of Court, invoked by appellants for the granting of their motion to admit an amended answer, which Rule and section reads:

"SEC. 2. By leave. — The court may, upon motion at any stage of an action, and upon such terms as may be just, order or give leave to either party to alter or amend any pleading, process, affidavit, or other document in the cause, to the end that the real matter in dispute and all matters in the action in dispute between the parties may, as far as possible, be completely determined in a single proceeding. But such order or leave shall be refused if it appears to the court that the motion was made with intent to delay the action." (Underlining

supplied.)

the court, not only has the right to deny, but is even directed to deny the motion If It finds the motion to have been made with intent to delay the action, as in fact it so found.

In view of the foregoing, the appealed order hereby affirmed, with costs against appellants.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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