

GIL VILLANUEVA, PLAINTIFF AND APPELLANT VS. FILOMENO GIRGED AND LUCIO S. LEGASPI, DEFENDANTS AND APPELLEES.

G.R. No. L-15154. December 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by plaintiff; Gil Villanueva from an order of the Court of First Instance of Agusan, dismissing the complaint, insofar as defendant Lucio S. Legaspi is concerned, for lack of cause of action, with costs against plaintiff.

The complaint purports to set up three (3) causes of action, for the recovery of the sums of P7,350.00, P2,500.00 and P6,000.00, respectively.

It is alleged therein that the first sum represents the amount of a Philippine National Bank check, issued by defendant Girged in favor of the plaintiff, on February 27, 1956, in exchange for the same amount, in cash, delivered by the latter to the former; that upon presentation, the check was dishonored by the bank, for "Girged had no deposits therein"; that in a letter dated April 28, 1956, copy of which is attached to the complaint as Annex B, defendant Lucio S. Legaspi had "expressly acknowledged and assumed the obligations" of Girged, who was his "business partner"; and that, despite repeated demands, said sum of P7,350.00 is still unpaid.

By way of second cause of action, plaintiff alleged in the complaint that in February and April, 1956, defendants had hired his services as stevedore for the loading of round logs for exportation to Japan, with a total volume of 2,500 cubic meters, at the rate of P1.00 per cubic meter, making a total of P2,500.00; that the obligation to pay the same was, also, acknowledged and assumed by Legaspi in said letter Annex B; and that said obligation "has not been paid despite repeated demands.

By way of third cause of action, plaintiff claims P2,500.00 for moral damages and P3,500.00 for attorney's fees. The complaint contains, also, some allegations in support of the prayer therein that a writ of preliminary injunction be issued.

In due course, defendant Legaspi filed an answer, denying most of the allegations of the complaint, except the execution of the letter Annex B, and alleged, as "affirmative and special defenses", that plaintiff has no cause of action against him; that he is merely Girged's attorney-in-fact; and that, in said letter, Annex B, he (Legaspi) merely tried to help plaintiff in the collection of his credit against Girged, upon completion of a given shipment of logs to Japan by Girged, which shipment has not been completed.

The lower court dealt with this special defense as if it were a motion to dismiss and, after due hearing, concluded that it was well taken. Hence, the order of dismissal appealed from.

The only question before us is whether or not the allegations of the complaint are sufficient to state a cause of action against Legaspi. This issue hinges on the nature and effect of the aforementioned letter Annex B, from which we quote:

"I wish to assure you that any amount that Mr. Girged owe you will be taken care of in his 3rd shipment of logs to Japan.

The 2nd shipment was a losing proposition on account of the fact that it was an attached shipment of Poblete and Nasipit Lumber.

So please feel assure that I, myself, will be the one to take care of his account with you as soon as Mr. Girged has made his 3rd shipment.

I wish to know also by return mail how much really Mr. Girged is indebted to you so that I may have the full amount of Mr. Girged's obligation.

I thank you.

Very truly yours,

Philippine Experimenters' Supply Co.
(Sgd.) Lucio S. Legaspi"

As contended by Legaspi and sustained by the lower court, Legaspi did not thereby assume the obligation of Girged. Legaspi merely assured the plaintiff that any amount due to him by Girged would "be taken care of in his third shipment of logs to Japan" and that he (Legaspi) would "be the one to take care" of Girged's account with plaintiff, "as soon as Mr. Girged has made his third shipment." Moreover, there is no allegation in the complaint to the effect that this shipment has been made, so that, even if said letter Annex B entailed an assumption of obligation, the condition imposed therefor had not been fulfilled as yet, and, hence, said obligation is not due, insofar as Legaspi is concerned. Although plaintiff claims that Girged and Legaspi are business partners—which is denied by both—there is no allegation in the complaint to the effect that the first two (2) causes of action have arisen from transactions with the partnership. Indeed, the contrary is inferable from the fact that plaintiff's causes of action against Legaspi are based upon the alleged assumption of obligation in consequence of Legaspi's letter Annex B, thus indicating that Legaspi was not deemed bound prior to said alleged assumption and that his obligation, if any, did not spring, therefore, from his status as alleged partner of Girged.

Wherefore, the order appealed from is hereby affirmed, with the costs of this instance against plaintiff Gil Villanueva. It is so ordered.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Order affirmed.

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