

BEATRIZ P. WASSMER, PLAINTIFF AND APPELLEE, VS. FRANCISCO X. VELEZ, DEFENDANT AND APPELLANT.

G.R. No. L-20089. December 26, 1964

Ponente: BENGZON, J. P., J.

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BENGZON, J. P., J.:

The facts that culminated in this case started with dreams and hopes, followed by appropriate planning and serious endeavors, but terminated in frustration and, what is worse, complete public humiliation.

Francisco X. Velez and Beatriz P. Wassmer, following their mutual promise of love, decided to get married and set September 4, 1954 as the big day. On September 2, 1954 Velez left this note for his bride-to-be:

"Dear Bet-

Will have to postpone wedding. My mother oppose it. Am leaving on the Convair today.

"Please do not ask too many people about the reason why. That would only create a scandal.

Paquing"

But the next day, September 3, he sent her the following telegram:

"NOTHING CHANGED REST ASSURED RETURNING VERY SOON APOLOGIZE MAMA PAPA

LOVE

PAKING"

Thereafter Velez did not appear nor was he heard from again.

Sued by Beatriz for damages, Velez filed no answer and was declared in default. Plaintiff adduced evidence before the clerk of court as commissioner, and on April 29, 1955, judgment was rendered ordering defendant to pay plaintiff P2,000.00 as actual damages; P25,000.09 as moral and exemplary damages; P2,500.00 as attorney's fees; and the costs.

On June 21, 1955 defendant filed a "petition for relief from orders, judgment and proceedings and motion for new trial and reconsideration." Plaintiff moved to strike it out. But the court, on August 2, 1955, ordered the parties

and their attorneys to appear before it on August 23, 1955 "to explore at this stage of the proceedings the possibility of arriving at an amicable settlement." It added that should any of them fail to appear "the petition for relief and the opposition thereto will be deemed submitted for resolution."

On August 23, 1955 defendant failed to appear before the court. Instead, on the following day his counsel filed a motion to defer for two weeks the resolution on defendant's petition for relief. The counsel stated that he would confer with defendant in Cagayan de Oro City-the latter's residence-on the possibility of an amicable settlement. The court granted two weeks counted from August 25, 1955.

Plaintiff manifested on June 15, 1956 that the two weeks given by the court had expired on September 8, 1955 but that defendant and his counsel had failed to appear.

Another chance for amicable settlement was given by the court in its order of July 6, 1956 calling the parties and their attorneys to appear on July 13, 1956. This time, however, defendant's counsel informed the court that chances of settling the case amicably were nil.

On July 20, 1956 the court issued an order denying defendant's aforesaid petition. Defendant has appealed to this Court.

In his petition of June 21, 1956 in the court a quo defendant alleged excusable negligence as ground to set aside the judgment by default. Specifically, it was stated that defendant filed no answer in the belief that an amicable settlement was being negotiated.

A petition for relief from judgment on grounds of fraud, accident, mistake or excusable negligence, must be duly supported by an affidavit of merit stating facts constituting a valid defense. (Sec. 3, Rule 38, Rules of Court.) Defendant's affidavit of merits attached to his petition of June 21, 1955 stated: "That he has a good and valid defense against plaintiff's cause of action, his failure to marry the plaintiff as scheduled having been due to fortuitous event and/or circumstances beyond his control". An affidavit of merits like this, stating mere conclusions or opinions instead of facts is not valid. (Cortes vs. Co Bun Kim, 90 Phil., 167; Vaswani vs. P. Tarachand Bros., 110 Phil., 521.)

Defendant, however, would contend that the affidavit of merits was in fact unnecessary, or a mere surplusage, because the judgment sought to be set aside was null and void, it having been based on evidence adduced before the clerk of court. In *Province of Pangasinan vs. Palisoc*, L-16519, October 30, 1962, this Court pointed out that the procedure of designating the clerk of court as commissioner to receive evidence is sanctioned by Rule 34 (now Rule 33) of the Rules of Court. Now as to defendant's consent to said procedure, the same did not have to be obtained for he was declared in default and thus had no standing in court (*Velez vs. Ramas*, 40 Phil., 787; *Alano vs. Court of First Instance*, 106 Phil., 445).

In support of his "motion for now trial and reconsideration," defendant asserts that the judgment is contrary to law. The reason given is that "there is no provision of the Civil Code authorizing" an action for breach of promise to marry. Indeed, our ruling in *Hermosisima vs. Court of Appeals*, 109 Phil., 629, as reiterated in *Estopa vs. Piansay* (109 Phil, 640), is that "mere breach of a promise to marry" is not an actionable wrong. We pointed out that Congress deliberately eliminated from the draft of the new Civil Code the provisions that would have it so.

It must not be overlooked, however, that the extent to which acts not contrary to law may be perpetrated with impunity, is not limitless for Article 21 of said Code provides that "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage".

The record reveals that on August 23, 1954 plaintiff and defendant applied for a license to contract marriage, which was subsequently issued. (Exhs. A, A-1). Their wedding was set for September 4, 1954. Invitations were printed and distributed to relatives, friends and acquaintances (Tsn., 5; Exh. C). The bride-to-be's trousseau, party dresses and other apparel for the important occasion were purchased (Tsn., 7-8). Dresses for the maid of honor and the flower girl were prepared. A matrimonial bed, with accessories, was bought. Bridal showers were given and gifts received (Tsn., 6; Exh. E). And then, with but two days before the wedding, defendant, who was then 28 years old, simply left a note for plaintiff stating: "Will have to postpone wedding-My mother opposes it . . ." He enplaned to his home city in Mindanao, and the next day, the day before the wedding, he wired plaintiff: "Nothing changed rest assured returning soon". But he never returned and was never heard from again.

Surely this is not a case of mere breach of promise to marry. As stated, mere breach of promise to marry is not an actionable wrong. But to formally set a wedding and go through all the above-described preparation, and publicity, only to walk out of it when the matrimony is about to be solemnized, is quite different. This is palpably and unjustifiably contrary to good customs, for which defendant must be held answerable in damages in accordance with Article 21 aforesaid.

Defendant urges in his afore-stated petition that the damages awarded were excessive. No question is raised as to the award of actual damages. What defendant would really assert hereunder is that the award of moral and exemplary damages, in the amount of P25,000.00, should be totally eliminated.

Per express provision of Article 2219 (10) of the new Civil Code, moral damages are recoverable in the cases mentioned in Article 21 of said Code. As to exemplary damages, defendant contends that the same could not be adjudged against him because under Article 2232 of the new Civil Code the condition precedent is that "the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner". The argument is devoid of merit as under the above-narrated circumstances of this case defendant clearly acted in a "wanton . . . reckless [and] oppressive manner." This Court's opinion, however, is that considering the particular circumstances of this case, P15,000.00 as moral and exemplary damages is deemed to be a reasonable award.

Premises considered, with the above-indicated modification, the lower court's judgment is hereby affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, and Zaldivar, JJ., concur.

RESOLUTION

February 26, 1965

Bengzon, J. P., J.:

Defendant-appellant has filed a motion for reconsideration of this Court's decision promulgated December 26, 1964. The only point movant raises is the alleged validity of his affidavit of merits attached to his petition for relief in the lower court.

The affidavit of merits in question states "that he (defendant) has a good and valid defense, his failure to marry plaintiff as scheduled having been due to a fortuitous event and/or circumstances beyond his control." The movant contends that this is not a mere opinion or conclusion but positive and categorical statement of a valid defense; that it states there are fortuitous events, i.e., fortuitous facts, which defendant puts forward as a valid defense. The previous rulings of this Court, movant further contends, held invalid only affidavits of merits that disclosed no

defense.

The rulings of this Court require affidavits of merits to state not mere conclusions or opinions but facts (*Vaswani vs. Tarachand Bros.*, 110 Phil., 521). An affidavit is a statement under oath of facts. Defendant's affidavit of merits stated no facts, but merely an inference that defendant's failure was due to fortuitous events and/or circumstances beyond his control. This is a conclusion of fact, not a fact.

An affidavit of merits is required to avoid waste of the court's time if the defense turns out to be ineffective (*Vda. de Yulo vs. Chua Chuco*, 87 Phil., 448; 48 Off. Gaz., 554, 555). Statements too vague or merely general do not-as movant admits-serve the afore-stated purpose.

Defendant's affidavit of merits provides no means for the court to see the merits of his defense and determine whether reopening the case would be worth its time. Said affidavit revealed nothing of the "event" or "circumstances" constituting the defense. It stated, in substance, only defendant's opinion that the event was "fortuitous" and that the circumstances were "beyond his control"; and his conclusion that his failure to marry plaintiff on schedule was "due to" them. The court, not the defendant, should form such opinions and draw such conclusions on the basis of facts provided in the affidavit. As it is, defendant's affidavit leaves the court guessing as to the facts.

Conformably to previous rulings of this Court, therefore, the affidavit of merits aforementioned is not valid. To repeat, it states a conclusion of fact, not facts themselves; it leaves the court guessing as to the facts; it provides no basis for determining the probable merits of the defense as a justification for reopening the case.

WHEREFORE, the motion for reconsideration is hereby denied.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

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