

CLARO CORTES, PLAINTIFF AND APPELLEE VS. CO BUN KIM, DEFENDANT AND APPELLANT.

G.R. No. L-3926. October 10, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from an order of the Court of First Instance of Rizal, Pasay City Branch, denying defendant's motion to set aside a decision rendered against him.

It appears that the plaintiff-appellee had brought this action to recover the sum of P5,545.55, interest and attorney's fees. The principal amount was alleged to be the balance of the defendant's account for construction materials bought on credit from the plaintiff, who was running a hardware store.

For answer the defendant "partly admits and partly denies" all the allegations, except a minor one, in the complaint without specifying which allegations were admitted and which were denied. And as affirmative defense, he alleged that "the goods delivered by plaintiff were in the majority of cases second hand and not up to specifications and the invoice price should be reduced 30 per cent at least."

The trial had been set for December 20, 1949, at 8:00 a.m., of which both parties received notice on December 14, 1949. When the case was called on the date and hour fixed, the plaintiff and his counsel appeared but not the defendant or his attorney. Forthwith Judge Tan heard the plaintiff's evidence and thereafter entered judgment sentencing the defendant to pay the plaintiff the principal amount of the demand, interest at the rate of 6 per cent per annum from the date of the filing of the complaint, P300 as attorney's fees, and the costs of suit.

The defendant and his attorney arrived in court at 8:30, after the above decision had been dictated, and then and there filed a "motion to set aside order of default," in which they explained that their tardiness had been due to "over-crowded traffic beyond their control and defective motor which developed on the way." It was also alleged that "the defendant had a good and valid defense if allowed a day in court."

That motion was opposed by the adverse party, who asserted that "the defendant's real intention in filing this motion is to delay the course of justice and that defendant has no good and valid defense." Attached to the opposition was a sworn statement of the plaintiff stating that at 8:00 a.m. on December 21, the day following the hearing, the defendant came to plaintiff's store and requested for more time to pay his debt; that in plaintiff's presence the defendant told Attorney Guerrero, plaintiff's attorney, that "he purposely did not appear in the hearing of the case the day before (December 20, 1949) to avoid seeing Mr. Claro Cortes and also to avoid alienating the feelings of Mr. Cortes against him any further;" that the defendant further told Attorney Guerrero that if the plaintiff would help him negotiate a loan in a bank, he would mortgage his house in San Andres, Manila; that Cortes having agreed to help the defendant secure a loan, the defendant promised to come back in the afternoon with his certificate of title; that Cortes waited but the defendant did not show up.

Motions like that filed by the defendant are governed by Section 2 in relation to section 1 of Rule 37 of the Rules

of Court. Section 1 provides that the aggrieved party may move the trial court to set aside the judgment and grant a new trial on the ground of "fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;" and section 2 requires in that case that affidavit or affidavits of merits be attached to the motion.

No such affidavit accompanied the motion. Not even in the motion itself was there a clear statement of the facts which the defendant intended to prove if given a chance to introduce evidence. The allegations in his motion were conclusions which did not provide the court with any basis for determining the nature and merit of his probable defense.

Vagueness and generalities characterized the answer also. As has been seen, although traversing some of the allegations in the complaint, the defendant did not point out what allegations he referred to. This answer was not only not a defense but operated as an admission of the plaintiff's averments. By sections 7 and 8, Rule 9, of the Rules of Court, the allegations of the main cause of action of the plaintiff are deemed admitted if they are not specifically denied. And a denial is not specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word "specifically." (I Moran, Comments on the Rules of Court, pp. 160, 161, 1950 ed.)

On the other side, the evidence for the plaintiff seems clear and unassailable. It consists of invoices duly signed by the defendant and entries made in the course of business. The general allegation that the goods delivered were not up to the specifications impliedly admitted the genuineness of these invoices and entries. Certainly they did not induce the belief that he had been prejudiced by his absence from the trial. By profession a doctor, defendant did not deny that he had seen the materials before they were used in his house, or allege that he had objected to their quality.

The contention that the trial was illegal and void because it was held at 8:00 a.m. need not detain us long.

Although Section 58 of Republic Act No. 296 provides that "the hours for the daily session of Courts of First Instance shall be from nine to twelve in the morning, and from three to five in the afternoon," the same section, in the following sentence, also provides that "the judge holding any court may also, in his discretion, order that but one session per day shall be held instead of two, at such hours as he may deem expedient for the convenience both of the Court and the public." The first clause is directory. It has for its sole object the fixing of the minimum number of hours which judges should devote to the transaction of business. This is implied from the last clause of the same section, which enjoins that the court shall be in session not less than five hours a day. The good of the service demands more toil and less idleness, and the limitations imposed by the above enactment are aimed at indolence and not the other way around.

The appealed order is affirmed with costs against the appellant.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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