

FAUSTO AUMAN, LIBRADO AUMAN, JORGE AUMAN, GREGORIO AUMAN, ERNESTO AUMAN, VICENTA AUMAN, CONCEPCION A. LUMAPAS, AND CARLOS AUMAN, PETITIONERS, VS. HON. NUMERIANO G. ESTENZO, JUDG...

G.R. No. L-40500. February 27, 1976

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

Did respondent Judge, Hon. Numeriano G. Estenzo, of the Court of First Instance of Leyte, Branch V, err and gravely abuse his discretion when he rendered a Summary Judgment in Civil Case No. 1395-O on February 25, 1975, in favor of private respondents herein and against petitioners, and issued the order dated March 24, 1975, denying the latter's motion for reconsideration of said judgment?[1]

On January 14, 1975, spouses Geronimo and Encarnacion Capahi who are now the private respondents filed a complaint with the Court of First Instance of Leyte (Ormoc Branch) against Fausto Auman and others, now petitioners, for an easement of right-of-way and damages, docketed as Civil Case No. 1395-O, substantially alleging that spouses Capahi are the lessees of five parcels of land (Lots Nos. 6703-B-1, 6701, 6708, 6707 and 6705 with an approximate area of 11.9311 hectares, more or less), located in Barrio R. M. Tan, Ormoc City, belonging to one Eulogio Simon, while Fausto Auman and his co-defendants are the co-owners a four parcels (Lots Nos. 6696, 6700, 6702 and 6603-part) also located in the same barrio; that the lots leased to spouses Capahi have no adequate outlet to a public highway except through the lands of the Aumans, hence, the necessity for an easement of right-of-way, as shown in the sketch plan attached to the complaint, limited to the necessary passage of the vehicles of the Capahis and the transportation on of their sugarcane through the servient estate to the public highway and to the sugar mills.[2]

Petitioners, as defendants, answered the complaint specifically denying the material allegations thereof and setting up in turn the following special and affirmative defenses:

"8. That no easement of whatever kind exists on the land of defendants in favor of either Eulogio Simon or plaintiffs, and none could be declared by this Honorable Court;

"9. That no easement of right of way has been provided for and included in the alleged contract of lease;

"10. That plaintiffs have not asked Eulogio Simon, the owner of the lands, to demand from defendants and other adjoining owners right of way in favor of Simon's lands;

"11. That the complaint has failed to establish that plaintiffs have complied with the preconditions for the grant of the easement of right of way fixed by Articles 649 and 650 of the new Civil Code, namely, (a) that the leased lands are surrounded by other immovables and have no adequate outlet to a public highway, (b) that proper indemnity for the value of the lands to be occupied and the amount of the damage caused to the said lands and their improvements has been pre-paid, (c) that the isolation was not due to plaintiffs' own acts, and (d) that the right-of-way claimed is at the point least prejudicial to the defendants' lands and that the distance

from Simon's lands to the public highway is the shortest;

"12. That the easement claimed is not com-pulsory;

"13. That plaintiffs have no cause of action against defendants, nor the complaint has stated any;

"14. That plaintiffs' own sketch, Annex B, unmistakably shows that the right-of-way deman-ded is the most prejudicial, most onerous, and most burdensome imposition upon defendants' lands causing defendants the maximum incon-venience, and covers the longest and most circuitous route from Simon's lands to the public highway." (pp. 36-37, rollo)

In an Order dated February 5, 1975, the case was set for a pre-trial for February 17, 1975, and parties were ordered to submit on said date the following:

- (a) a list of witnesses and documents supporting their action or defense;
- (b) affidavits of the witnesses to serve as direct examination; and
- (c) their respective memoranda in support of the parties' respective contentions.

The Order also warned that any party who failed to submit on said date and time, a list of witnesses with affidavits as aforesaid or documents, which affidavits or documents should be attached to said list would be non-suited or defaulted as the case may be, for failure to prosecute his claims or defenses.[3]

On February 17, a copy of their reply dated February 14, 1975, was furnished by respondents-spouses to petitioners together with a new sketch plan of the lands involved with the explanation that the new sketch showed the Pagsanga-an river which traversed the lands leased by respondents-spouses. The same reply also contained an answer to the counterclaim.[4]

On the same date, February 17, a list of exhibits and of the witnesses was submitted by private respondents to the trial court, in partial compliance with the order of February 5.[5] On their part, petitioners herein submitted their Memorandum dated February 15, 1975, giving the names of their witnesses and the substance of their testi-monies, together with affidavits of said witnesses, and a brief statement as to why the right-of-way should not be granted.[6]

When the case was called for pre-trial, the petitioners were ready to proceed but the private respondents were not as they did not have the required affidavits of their witnesses, and upon their request the Judge reset the case for February 26, 1975 for the submission of said affidavits. On February 24, 1975, petitioners' counsel received a telegraphic notice from the trial court that the case had to be reset for February 25 since the original date of February 26 had been declared a special public holiday.[7]

On February 25, 1975, petitioners however filed by registered mail a "Motion to Admit Amended Answer" to which was attached the Amended Answer dated February 24, 1975. Petitioners alleged in their motion that since the reply of private respondents presented a sketch different from that attached to the complaint and in order that the issues would be dealt with squarely, it was necessary and expedient that the answer of petitioners be amended accor-dingly without altering the theory of their defense.[8] Petitioners' counsel also wired the Clerk of Court asking that the Motion to Admit Amended Answer be set for hearing on March 6 instead or May 6 as stated in the motion.[9]

On March 5, a wire was received by petitioners prom Judge Estenzo to the effect that the Motion to Admit Amended Answer had become moot and academic because a Summary Judgment had been rendered by him.[10] On March 7, petitioners' counsel received a copy of the Summary Judgment dated February 25, 1975, with the

following dispositive portion:

"WHEREFORE, summary judgment is here-by rendered in favor of the plaintiffs and against the defendants ordering the latter to open a road right-of-way on Lots 6696, 6700, 6703 of the Ormoc Cadastre, necessary for sugarcane trucks to pass, upon plaintiffs' payment to the defendants of a rental at the rate of P400.00 per hectare of sugar harvest, or of the amount at the rate of P4,000.00 per hectare as a sale of what maybe used as a road right of way, with the plaintiffs obligation of maintaining the road right of way after such payment, for both the plain-tiffs and the defendants to use said road right of way as indicated in Annex 'B-1', without pronouncement as to costs." (p. 79, rollo)

Petitioners moved for a reconsideration of the fore-going summary judgment principally on the ground that it was prematurely rendered and prayed that their amended answer be admitted and the case set for pre-trial and trial.[11] The Motion for Reconsideration was denied in an Order dated March 24, 1975.[12] Hence, this appeal on certiorari.

We find merit in this petition.

Rule 34 of the Rules of Court covers summary judgments and sets down the procedure to be taken in order that a summary judgment may be issued by a trial court.

Briefly stated, a summary judgment is one granted by the court, upon motion by any of the parties, for the prompt and expeditious settlement of the case, after both parties have pleaded, the motion to be supported by affidavits, depositions, or other documents, after notice thereof had been served upon the adverse party, who in turn may oppose the motion with supporting affidavits and other documents and, after hearing, it appears that there is no genuine issue as to any material fact, except as to the amount of damages, and that the movant or the moving party is entitled to a judgment as a matter of law.[13]

The summary judgment rendered by respondent Judge Estenzo was in violation of the foregoing basic rule.

1. There was no motion for a summary judgment with supporting affidavits and/or depositions that was ever filed by respondents Capahi and served on petitioners herein.

As enumerated and reproduced in the summary judgment itself, all that respondent Judge had before him on February 25, 1975, the date when the judgment was rendered, were the following: complaint for easement of right-of-way; answer of the defendants; Order dated February 25, 1975, setting the case for pre-trial and trial and requiring the parties to submit their respective list of witnesses and corresponding affidavits, documentary evidence, etc.; list of exhibits of plaintiffs Capahi and the latter's witnesses; and defendants' Memorandum containing a list of witnesses and their respective affidavits.

Respondents Capahi did not submit on or before February 25, 1975, the affidavits or depositions of their witnesses as they now claim in their memorandum filed before this Court on September 10, 1975, for had they done so, those documents would have been mentioned and reproduced in the summary judgment as was done with the affidavits of petitioners' witnesses. We believe, therefore, petitioners' contention that respondent Judge rendered his summary judgment without any supporting documents from respondents Capahi in whose favor the judgment was rendered.

The purpose of a motion for summary judgment[14] is to enable the trial court to determine whether or not a bona fide issue exists between the parties, and if none, for the court to render a summary judgment as prayed for. This the court can do only after proper notice to the adverse party who has to be served with a copy of the motion for summary judgment with its supporting affidavits at least ten days before the specified date of the hearing of the motion (Sec. 3, Rule 34). The adverse or opposing party is given by the Rules sufficient time to prepare and

submit on the date of the hearing his own counter-affidavits, depositions, or other documents to show that it has a real and valid defense which raises a genuine issue of fact proper for trial. (id.)

Quite obviously, petitioners herein were denied the right accorded them by Section 3, Rule 34, and respondent Judge rendered judgment against them without proper hearing.

Private respondents assert, however, that there was substantial compliance with the Rules when the trial court included in its Order of February 5, 1975, setting the case for pre-trial, the following statement:

"Both parties are granted until February 17, 1975, at 7:30 A.M. to submit their respective memorandum in support of their respective contentions in their pleadings as may be supported by the affidavits of their witnesses and exhibits, at which time the incident will be heard and thereafter submitted for a judgment on the pleadings or a summary judgment pursuant to Section 3, Rule 20 of the Revised Rules of Court should this Court find that acts and facts exist which would warrant such judgment." (p. 41, rollo)

The above statement of the court a quo did not preclude the necessity of hearing the parties on the propriety of a summary judgment. A hearing was an invariable prerequisite, as its essence was to inquire into the existence of a genuine controversy, especially since in the instant case there was lack of the necessary documents such as affidavits and/or depositions of the witnesses of the plaintiffs, now respondents, Capahi, or even admissions of the defendants, now petitioners. As adverted to earlier, all that respondent Capahi submitted at the pre-trial was a list of their exhibits and witnesses, but that no affidavits of the latter were presented to form a basis for a summary judgment in their favor.

Strangely enough, as petitioners now maintain, notwithstanding the fact that they were the very ones who had presented affidavits of their witnesses showing the presence of real issues of fact which needed to be tried, the summary judgment rendered by respondent Judge was adverse to them.

2. The answer of petitioners herein as defendants in the court below as well as the affidavits of their witnesses submitted on February 17, 1975, raised genuine issues which could be resolved only after an appreciation of the evidence of the parties.

Petitioners resisted the complaint for an easement of right-of-way over their lands on various grounds: first, that the lands of Capahi had an outlet to the public highway other than through the lands of the Aumans, that is, to the east where a road built by plaintiff's older brother is being used to transport sugar cane; second, that the proposed road right-of-way which measures 5 meters wide and 246 meters long is the longest, most circuitous and burdensome, as it passes through all the four lots of Fausto Auman, although it is possible to construct a road right-of-way through only one of the lots, lot No. 6703, which would be the shortest and nearest exit to the public road; and third, that the right-of-way could start from Capahi's lot 6705 which adjoins Auman's lot 6703 where the R.M. Tan road ends, thereby involving only a portion of 12 meters. (Joint affidavit of Nicolas Escototo and Normerto Andrin, Affidavit of Fausto Auman, Defendant's Memorandum, Amended Answer, pp. 49-50, 57, rollo)

To substantiate the merits of their defense, petitioners invoked Article 649 of the Civil Code which expressly provides that the owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right-of-way through the neighboring estates, after payment of the proper indemnity, and Article 650 which states that the easement of a right-of-way shall be established at the point least prejudicial to the servient estate and insofar as not in conflict with this rule, where the distance from the dominant estate to a public highway may be the shortest.

Among the issues of fact therefore which were to be resolved and could be resolved by the trial court only on the

basis of the evidence of the parties, were: (1) did the lands of Capahi have adequate outlet to the public high-way; (2) was the proposed road the only possible exit; and (3) was it the least prejudicial to the owners of the servient estate?

Without resolving these issues, or worse still, deciding them without receiving evidence on the matter, respondent Judge pronounced judgment against petitioners granting the proposed right-of-way, fixing the amount of P400.00 as rental to be paid by Capahi, and even allowing the latter to buy the portion of land to be used as the road right-of-way at P4,000.00 a hectare.

Undoubtedly, respondent Judge is misguided in his concept of a summary judgment.

It is settled that Rule 34 of the Rules of Court

"* * * does not vest in the court jurisdiction summarily to try the issues on depositions and affidavits, but gives the court limited authority to enter summary judgment only if it clearly appears that there is no genuine issue of material fact. Upon a motion for summary judgment the Court's sole function is to determine whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved against the moving party. On a motion for summary judgment the court is not authorized to decide an issue of fact, but is to determine whether the pleadings and record before the court create an issue of fact to be tried. In other words, the rule (Rule 34, sec. 3) does not invest the court with jurisdiction summarily to try the factual issues on affidavits, but authorizes summary judgment only if it clearly appears that there is no genuine issue as to any material fact." (Moran's Comments on the Rules of Court, Vol. 1, p. 600, 2nd Ed. (*Italics Ours*))

Judge Estenzo's reference to the case of *Taleon vs. Secretary of Public Works*, L-24281, May 16, 1967, 20 SCRA 69, as his authority (p. 83, rollo) is untenable. In *Taleon* a summary judgment was rendered by the trial court and upheld by this Court for only purely questions of law were involved which did not require a full trial. Thus this Court held:

"Appellants' contentions are without merits. First of all, a full trial was not needed. The issues raised before the court a quo were all purely legal and thus could be resolved on the basis of the pleadings and memoranda filed and the administrative records sent up to it. No necessity was there for further reception of evidence." (20 SCRA 73)

What should have guided respondent Judge is, among others, *Ibañez vs. North Negros Sugar Co., Inc., et al.*, L-6790, March 28, 1955, where this Court emphasized the rule that a summary judgment can only be rendered where there are no questions of fact at issue, or where the material allegations of the pleadings are not disputed, and that it is error for a trial court to grant a motion for summary judgment in spite of the controversial nature of the case involved. Likewise in *Gatchalian vs. Pavilin, et al.*, L-17619, October 31, 1962, 6 SCRA 509, this Court annulled and set aside a summary judgment rendered by the Court of First Instance of Isabela in its civil case No. 385 which declared plaintiff-appellee, Francisca Gatchalian, owner of the property under litigation and ordered defen-dant-appellants to vacate the same, the Court finding that from the pleadings and affidavits submitted by the defen-dants in opposition to a motion for summary judgment, there were genuine issues of fact which made a trial indispensable and a summary judgment improper. In *Agcanas vs. Nagum*, L-20707, March 30, 1970, 32 SCRA 298, 299, this Court, with Justice Claudio Teehankee as the writer of the Opinion, reiterated once again "the established precept that trial courts have but limited authority to render summary judgments and may do so only in cases where there is clearly no genuine issue as to any material fact." [15]

In closing, it may be well to restate what this writer said for the Court in *Constantino vs. Hon. Estenzo, et al.*, L-40403, July 31, 1975:

"* * * The demands of a fair, impartial, and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in their respective pleadings. 'Short-cuts' in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice." (65 SCRA 675, 679)

In view of all the foregoing, We hereby set aside the summary judgment in Civil Case No. 1395-O dated February 25, 1975, as well as the order of respondent court dated March 24, 1975, and order respondent Judge to admit the amended answer of petitioners herein in the aforesaid case, to set the case for pre-trial, and a trial on the merits, pursuant to law. With costs against private respondents. So Ordered.

Teehankee (Chairman), Makasiar, Esguerra, and Martin, JJ., concur.

[1] In its Resolution dated July 23, 1975, the Court resolved to treat this Petition as a special civil action, to consider respondents' Comment as their Answer and to decide the same upon submission by the parties of their memoranda. (p. 136, rollo)

[2] Complaint, pp. 27-34, rollo.

[3] pp. 40-41, *ibid.*

[4] pp. 42-44, *ibid.*

[5] pp. 45-46, *ibid.*

[6] pp. 47-51, *ibid.*

[7] p. 52, *ibid.*

[8] pp. 53-62, *ibid.*

[9] pp. 64-65, *ibid.*

[10] p. 66, *ibid.*

[11] pp. 80-89, *ibid.*

[12] p. 97, *ibid.*

[13] Rule 34, Sections 1, 2, 3, Rules of Court; Moran, Comments on the Rules of Court 1970 Edition, Vol. II, pp. 175-176.

[14] Section 1, Rule 34, Rules of Court. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits for a summary judgment in his favor upon all or any part thereof. (*Italics Ours*)

Section 2, Rule 34, Rules of Court. Summary judgment for defending party. - A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof. (*Italics Ours*)

[15] see also *Philippine National Bank vs. Puruganan, et al.*, L-25472, Jan. 31, 1968, 22 SCRA 468; and *Consing vs. Jamandre*, L-27674, May 12, 1975, First Division, 64 SCRA 1.

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