

LINO GUTIERREZ, PLAINTIFF AND APPELLEE, VS. LUCIANO L. MEDEL AND LUZ F. MEDEL, DEFENDANTS AND APPELLANTS.*G.R. No. L-14455. April 26, 1962*

Ponente: PAREDES, J.

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Plaintiff Lino Gutierrez, on December 20, 1957, alleging repeated refusal and failure to pay a loan of P10,000.00, which was due and demandable, instituted with the CFI of Manila, a complaint with preliminary attachment, against defendants Luciano L. Medel and Luz P. Medel, for the recovery of said amount, together with 12% interest per annum from September 24, 1957, and attorney's fees in the sum of P1,500.00. The obligation is evidenced by a deed of second real estate mortgage, with conditional assumption of pre-existing first mortgage executed by the defendants in favor of the plaintiff.

Defendants filed their Answer on January 6, 1958, admitting the existence of the loan and the deed of mortgage and interposed as their only defense, a verbal extension until May 5, 1958, allegedly granted them by plaintiff, within which to pay the indebtedness.

Upon motion of plaintiff, the case was set for hearing on February 4, 1958. On January 30, 1958, counsel for defendant, Atty. Apolinario R. Billostas, presented a motion for postponement of the scheduled hearing. The plaintiff did not object and a new date was set, February 25, 1958. On said date, plaintiff presented his evidence, oral and documentary, and rested his case. Atty. Billostas asked for another continuance alleging that he was not prepared to present his evidence. Trial was again set for March 28, 1958, for the reception of defendants' evidence.

On the March 28, 1958 hearing, and upon motion of defendants' counsel, the court a quo handed down an order of the following tenor—

"Upon verbal motion of defendants without objection from plaintiff, the hearing of this case is postponed to May 16, 1958, at 8:30 a.m. for the last time, with the understanding that if on said date defendants are not prepared to present their evidence, the case will be considered submitted for decision."

On May 13, 1958, a new additional counsel, Atty. Arturo M. Tolentino, for defendants, filed an Urgent Motion For Transfer of the May 16 hearing (4th extension) claiming that "he has just been retained" and "he will appear in Quezon City in case of 'People vs. Jovita Lescano' (Estafa). The motion which did not give the number of the case, the court and branch thereof, was signed by Atty. Antonio Z. Galsim for Atty. Tolentino. When the case was called for hearing on May 16, 1958, neither Atty. Tolentino, Atty. Galsim, Atty. Billostas, the old counsel, or the defendants appeared in court. Counsel for plaintiff objected to any further postponement and moved that the case be submitted for decision on plaintiff's evidence. Thereupon (same date), the trial court issued the following order:—

"Counsel for plaintiff having verbally objected to the further postponement of the trial of this case and moves that it be considered submitted for decision on plaintiff's evidence, defendants' Urgent Motion For Transfer

filed on May 13, 1958, is hereby denied, and let this case be submitted on plaintiffs' evidence."

No motion for reconsideration of the above Order was presented by defendants. On July 12, 1958, 1% months after the promulgation of said order, the lower court rendered judgment in favor of plaintiff, ordering the defendants to pay him F10,000.00 with 12% interest per annum, from September 24, 1957, P500.00 as attorney's fees and the costs.

On August 15, 1958, ninety (90) days after the order of May 16, which considered the case submitted for decision on plaintiff's evidence, or more than one (1) month after the rendition of the decision, defendants, for the first time, presented a pleading designated as Motion for Reconsideration, but which in effect was directed to the order of May 16, 1958, praying that the decision be set aside and defendants be allowed to present their evidence. The motion was opposed by plaintiff and on August 25, 1958, the lower court denied the same for lack of merits.

The case is now before Us, defendants-appellants claiming that the lower court erred in denying their motion for transfer, thus depriving them of their day in court.

The only basis of defendants in claiming that they were not given their day in court, is the denial of their fourth motion for postponement. The trial court was most liberal and generous in granting them three (3) postponements. In one of its orders granting continuance (March 28, 1958), the lower court made it clear to the defendants that if on said date (May 16), they (defendants), were not prepared to present their evidence, the case would be considered submitted for decision. From March 28, 1958 to May 16, the defendants were afforded enough time to engage the services of a new attorney, or to have Atty. Billostas prepare their evidence. Sufficient warning was given them. They have now no reason to complain.

"The defendants cannot be heard to say that because trial was not postponed they were deprived of their day in court. No one deprived them of their day in court. Of their own volition they preferred not to come to the Hearing on the day set presumably assuming that their motion for continuance would be granted. Defendants have no right to make such assumption, for continuance are granted for good cause alleged and proved and not merely at the will of either or both of the parties to the case." (Cruz vs. Malabayasbas, et al., 105 Phil., 708).

Furthermore, since no resolution on the Urgent Motion to Transfer was issued before the scheduled date of hearing (May 16), defendants or any of the three lawyers, should, at least, have presented themselves in court and not merely take for granted that their motion will be favorably entertained.

"And a party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court or on the generosity of the adverse party (I Moran, Comments on Rules of Court, citing Macondary & Co. vs. Paradies, G.R. No. 38255, Sept. 5, 1933, and Sunico vs. Villapando, 14 Phil., 352.)"

"But, an attorney retained in a case the trial of which is set for a date on which he knows he cannot appear because of his engagement in another trial set previously on the same date, has no right to presume that the court will necessarily grant him continuance. The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retain the attorney, he assumes the risk himself and cannot complain of the consequences if the postponement is denied and finds himself without attorney to represent him at the trial (I Moran, Comments on the Rules of Court, 1952 Ed., p. 652, citing Linis vs. Rovira, 61 Phil., 137)".

Whether the additional counsel was appearing in another case or not, would not have been a ground for postponement, since Atty. Billostas, the original counsel, as far as the records is concerned, was still representing defendants. He had not withdrawn from the case.

The repeated requests for continuance appear to be a delaying tactic. The defendants have really no valid defense

to offer. Having admitted the indebtedness and the second mortgage, We fail to perceive how they could escape liability. Of course, in their Answer, they allege that an extension (verbal) was granted them to expire on May 5, 1958. But the record discloses that the only extension given the defendants was up to September 23, 1957 (Exhibits D & E).

Finding that the error assigned by defendants-appellants was not committed by the court a quo, the decision appealed from, hereby is affirmed, with costs against appellants, in both instances.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Dizon, JJ., concur.

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