

GERMAN DE ORTUBE, PLAINTIFF AND APPELLEE VS. JUSTINIANO T. ASUNCION AND JACOBO R. ASUNCION, DEFENDANTS AND APPELLANTS.

G.R. No. L-15813. December 29, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

The defendants appealed to the Court of Appeals from the judgment-of Sorsogon court of first instance requiring them to pay the plaintiff P4,700,00 with interest at 12% plus costs. However, as the case disclosed no factual questions, it was forwarded to this Court.

It appears that in October 1957, German de Ortube filed his complaint to recover, from defendants, a debt of P4,700.00 evidenced by a promissory note payable on or before November 7, 1956, with interest as stated. The complaint copied the note, and alleged non-payment notwithstanding repeated demands.

The answer admitted the due execution of the note, but asserted that defendants "have paid on their obligation certain amounts, probably in full, and they will ascertain from their records the amount of such payments."

The hearing of the case was set for June 6, 1958. But on June 5, 1958, defendant Justiniano Asuncion sent a telegram to the court requesting postponement on the ground of sickness of his counsel, and promising submission of the medical certificate later. On the same date, he sent a similar telegram to his opponent's attorney.

On June 6, 1958, neither the defendants nor their counsel appeared in court. On the same day, the judge rendered the following decision:

"* * *"

"Del testimonio del demandante y del Exhibito A se desprende que el 7 de Noviembre de 1955, los demandados otorgaron y suscribieron mancomunada y solidariamente un pagaré por la suma de P4,700.00, con interes de doce por ciento (12%) anual y pagaderos al plazo de un año desde la fecha del pagare. No existe ninguna duda sobre la autenticidad y debido otorgamiento de dicho pagare puesto que en la contestacion de los demandados esta admitido expresamente tal hecho. Seguin el demandante, apesar de haber vencido el 7 de Noviembre de 1956, el pago no se ha verificado hasta el presente. He tratado de notificar a los demandados, pero las dos cartas certificadas que a este efecto se les han remitido, han sido devueltas por no haber sido recogidas.

Habiendose probado los hechos alegados en la demanda.

Por la Presente, se dicta sentencia condenando a los demandados a pagar * * *"

On June 12, 1958, defendants filed the medical certificate of illness which their telegram had promised to submit. And on July 8, 1958, they moved for the setting aside of the decision, copy of which they had received on June 12, 1958, reiterating the illness of their counsel and asserting a "good defense." Their motion was supported by an

affidavit of Jutiniano Asuncion, the material portion of which said "defendants have a good defense and the result of the case would probably be substantially changed if they were allowed to present evidence, primary and secondary, of certain payments made by them both on the interest and the principal obligation mentioned in the Complaint." As the court denied the motion, defendants appealed claiming error in the denial of their motion to postpone and of their set-aside petition.

The matter of affording relief from the failure of the party or his counsel to appear at the trial is largely discretionary with the judge. It should not be interfered with unless abuse is patent on the record.

In the case now before us, we note: first, the motion for postponement was not under oath nor supported by a medical certificate; second, it was signed by only one defendant; third, on the day appointed, none of defendants appeared to ratify under oath, the contents of the telegram; fourth, according to plaintiff, this was the second postponement on the ground of illness requested by defendants; fifth, and most important, the affidavit of merit supporting the motion for new trial did not specify the payments made, i.e., the amounts and dates thereof, although the defendants had more than six months to "ascertain from their records" as they had announced in their answer.[1] Even in their brief here, defendants make no specification.

Considering the admitted genuineness of the promissory note and the existence of the debt, the defendants' maneuvers smack of mere delay.

Judgment affirmed, with costs against appellants. So ordered.

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

Judgment affirmed.

[1] This is vital, for obviously, if defendants had made two five-peso payments, Justiniano would not have falsified the affidavit; but the matter would not be sufficient cause to re-open the court proceedings.

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