

RAFAEL P. BELLEZA, PLAINTIFF AND APPELLANT, VS. IRVING C. HUNTINGTON, DEFENDANT AND APPELLEE.

G. R. No. L-3319. August 16, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila dismissing the complaint and sentencing the plaintiff to pay to the defendant the sum of P195,000 with legal interests thereon from August 25, 1948, and to pay the costs of action.

On December 26, 1946, plaintiff filed an action against the defendant praying that the latter be ordered to pay him the sum of P62,000, with legal interests thereon, because of defendant's failure to comply with the contract entered into between them on November 20, 1946, relative to the purchase and sale of 3,000 tons of copra at the rate of P280 per ton, and to pay to the plaintiff 95 per cent of the total price of copra before its shipment which the plaintiff was ready to load on board SS Kendall Fish at Hondagua, Quezon, on December 4, and 5, 1946, in accordance with their understanding, for which reason plaintiff was not able to load the copra in said ship as agreed upon, and as a result plaintiff suffered damages in the amount of P86,000, from which amount the sum of P24,000 advanced by the defendant should be deducted, leaving a balance of P62,000 as demanded in the complaint.

While the complaint was filed on December 26, 1946, as above stated, the summons was not served upon the defendant until August 9, 1948. On August 25, 1948, defendant answered the complaint traversing its allegations and alleging as a defense that plaintiff did not have a piece of copra at the port of Hondagua, Quezon, which he agreed to have ready for shipment under the terms of the contract; that he never agreed with the plaintiff to pay him 95 per cent of the purchase price of the copra before its shipment, their agreement being the plaintiff would take charge of loading the copra on board the ship at his cost (f.o.b.) ; and that he made an advance payment to plaintiff of the sum of P24,000 in order to enable him to purchase the jute bags that may be required as containers of the copra, but the plaintiff bought only 3,250 jute bags costing P5,000, keeping the rest for his use. And as a counterclaim, defendant alleged that on December 5, 1946, he had at the port of Hondagua SS Kendall Fish ready to load the copra he agreed to purchase under the contract, but the plaintiff failed to produce the copra he agreed to sell; that by reason of the failure of the plaintiff to comply with the contract, he was not able to consummate the deal with his buyer in the United States who has perfected for this transaction a letter of credit in the amount of \$396,000 drawn in favor of the defendant and deposited with the Nederlands Indies Handelsbank, and as a result he suffered damages in the amount of P171,000, aside from the amount of P24,000 he advanced to plaintiff for the purchase of the 15,000 jute bags needed to contain the copra.

To this counterclaim plaintiff answered alleging that while it is true that defendant's vessel arrived at the port of Hondagua as alleged in the counterclaim, he denies that he failed to produce the amount of copra agreed upon, the truth being that he had before and after the arrival of said vessel all the copra called for in the contract but that he refused to load the copra because of defendant's failure to advance 95 per cent of the total purchase price of the

copra in accordance with their agreement; that the court has no jurisdiction to entertain the counterclaim because of the allegation that the defendant's buyer is in the United States and his presence as party is essential to the adjudication of the counterclaim, and there is no showing that the Banks mentioned in the counterclaim are within the jurisdiction of the court since their presence is also essential to said adjudication; and that plaintiff has suffered damages in the amount of P150,000 in the form of unrealized profit arising from the sale which was not carried out due to the fault of the defendant.

This case was set for trial for the first time on December 2, 1948, but the trial was not carried out and has been postponed several times, always at the instance of the plaintiff, who apparently has been lukewarm to have his case tried on the merits in striking contrast to the attitude of the defendant who had always shown great interest in having the case tried and terminated. The incidents and the several postponements and concessions granted by the court to the plaintiff in spite of his reluctance to have his own case tried on the merits, are well narrated in the decision of the lower court. Because of the importance these incidents bear on the determination of the questions herein involved, we are quoting hereunder the pertinent parts of the decision of the lower court:

"Señalada a vista la causa el 2 de diciembre de 1948, el Juzgado la transfirió para el día 17 de dichos mes y ario, a petición del abogado del demandante.

"Llamada a vista la causa en el citado día, 17 de diciembre de 1948, el mismo Juzgado volvió a transferirla para el 22 del mismo mes, a petición del mismo abogado del demandante.

"Vuelta a llamarse a vista la causa el 22 de diciembre de 1948, el mismo abogado del demandante pidió verbalmente la suspensión indefinida de la vista, hasta el fallo definitivo de la causa criminal No. 2571 del Juzgado de Primera Instancia de Manila, P. F. vs. Rafael P. Belleza (el aquí demandante, por estafa de la cantidad de P24,000 alegando como fundamento que, siendo una acción civil la contrademanda interpuesta por el demandado, basada en la misma transacción objeto de dicha causa criminal incoada por el mismo demandado, dicho acción civil debía suspenderse en cualquier estado del procedimiento, hasta el fallo definitivo de la acción criminal, de acuerdo con los párrafos (b) y (c) del artículo 1, regla 107, de los Reglamentos. Y el Juzgado hubo de suspender la vista hasta nueva orden, dando al demandante plazo de 24 horas para someter por escrito su petición.

"El 23 de Diciembre de 1948, el demandante sometió su moción por escrito, pidiendo, como se ha dicho, la suspensión de la acción civil hasta el fallo definitivo de la referida causa criminal No. 2571, P. F. vs. Rafael P. Belleza, por estafa.

"El 5 de Febrero de 1949, el Juzgado dictó orden denegando la petición del demandante que se refiere el párrafo anterior, u ordenando el señalamiento de vista de la causa.

"Señalada y llamada a vista la causa el 3 de Marzo de 1949, el Juzgado volvió a posponerla para el 18 de Marzo de 1949, a petición del demandante.

"El 18 de Marzo de 1949, el demandante sometió al Juzgado una moción por escrito, pidiendo el sobreseimiento de la demanda sin perjuicio, acogiendo al artículo 2, regla 30, de los Reglamentos. Resolviendo esta moción, el Juzgado dictó en la misma fecha una orden, dando al demandante oportunidad a ser oído antes de dictarse la orden de sobreseimiento de su demanda, y ordenando la comparecencia de dicho demandante para el día 22 de Marzo de 1949, a fin de que el mismo pudiese presentar sus pruebas, si las tuviese, en apoyo de su demanda; en caso contrario, el Juzgado sobreseería dicha demanda y permitiría al demandado a sustanciar las alegaciones de su contrademanda.

"Y el 22 de Marzo de 1949, al llamarse la causa a vista, el abogado del demandante sometió a consideración del Juzgado su moción de sobreseimiento sin perjuicio, y el Juzgado dictó su resolución, estimando la oposición del demandado a la petición de sobreseimiento de la demanda sin perjuicio, y, considerando que el

demandante, no obstante su presencia en el Juzgado, no quiso entrar en vista ni practicar ninguna prueba en apoyo de su demanda, el Juzgado sobreseyo la demanda y senalo a vista la causa para el 26 de Marzo de 1949, para la recepcion de las pruebas del demandado en apoyo de su contrademanda, ordenando al propio tiempo que se sirviera al demandante una copia de la orden, a fin de que el mismo pudiese comparecer en dicha vista si asi lo deseara.

"El 23 de marzo de 1949, el abogado del demandante recibio copia de esta orden dirigida al demandante; y el 25 de marzo de 1949, el mismo demandante presento un escrito titulado 'Alternative petition for Reconsideration of the Order of March 22, 1949, or for Withdrawal of Petition for Dismissal of March 18, 1949, filed by the Plaintiff.'

"El 26 de marzo de 1949, al llamarse a vista la causa, el Juzgado dicto una orden, reconsiderando su orden de fecha 22 de marzo de 1949 que subresea la demanda del demandante, y disponiendo la posposicion de la vista senalada en dicho dia para el 4 de Abril de 1949, con el apercibimiento de que ninguna peticion ulterior de transferencia seria accedida.

"En la misma fecha de marzo de 1949, el demandante presento otro escrito titulado 'Petition to Dismiss or, at least, Suspend Counterclaim, Civil Action of Irving C. Huntington,' pidiendo el sobreseimiento de la contrademanda, o la suspension de la misma hasta que recayese sentencia firme en la causa criminal No. 2571 del Juzgado de Primera Instancia de Manila, P. F. vs. Rafael P. Belleza por estafa.

Llamada por fin a vista la causa el 4 de abril de 1949, y resolviendo la peticion del demandante referente al sobreseimiento o suspension de la contrademanda del demandado hasta el fallo definitivo de la causa criminal No. 2571, incoada contra el demandante, el Juzgado dicto orden denegandola y ordenando que se procediera con la vista, pudiendo el demandado practicar sus pruebas en apoyo de su contrademanda. En esta vista el demandante no comparecio ni su abogado, ya para presentar pruebas para refutar y contradecir las pruebas del demandado en apoyo de su contestacion y contrademanda, no obstante haberse recibido por el abogado del demandante el 2 de Abril de 1949 copia de la orden del Juzgado senalando dicha vista."

After receiving the evidence of the defendant relative to his counterclaim following the failure of the plaintiff to appear on the last date of the trial set by the court, in spite of the admonition given him that it would be the last postponement the court would grant in the case, the court rendered judgment, as stated in the early part of this decision. From this judgment, the plaintiff has appealed, and now assigns nine (9) errors allegedly committed by the lower court.

Considering that these errors are interrelated, and refer to the same questions at issue, to avoid repetition, they will be jointly discussed in this decision.

On December 23, 1948, Plaintiff, now appellant, filed a petition with the trial court praying that this case be suspended in view of the criminal action which defendant Irving C. Huntington, now appellee, had filed against appellant for estafa for the sum of P24,000 in the Court of First Instance of Manila (Crim. Case No. 2571), which it is claimed bears a direct relation with the counterclaim set up by appellee for the same amount in the answer he has filed in this case, invoking in support of his petition section 1 (b and c), Rule 107, of the Rules of Court. This petition met a vigorous objection on the part of counsel for the appellee contending that the rule invoked by appellant to suspend the civil case is not pertinent nor applicable for the reason that it is the same plaintiff who is the defendant in the criminal case for estafa adverted to and the suspension is invoked by him and not by the offended party. The lower court found the opposition well taken and denied the petition of appellant. This is now assigned as error.

We agree to the finding of the trial court. Section 1, of Rule 107, only applies when the claimant in the civil case is the same offended party in the criminal action and both cases arise from the same offense or transaction, and

the rule requires that after the criminal action has been commenced the civil action shall be suspended until the final termination of the criminal action. This situation does not obtain in the present case. Here plaintiff, now appellant, is the accused in the criminal case and the defendant, now appellee, is the complainant. Moreover, the counterclaim covers not only the sum of P24,000 advanced to the appellant to purchase 15,000 jute bags but also the sum of P171,000, representing damages which appellee claims to have sustained, whereas the information in the criminal case is merely confined to the former sum and both transactions are based on a different set of facts. We therefore, believe that the lower court did not commit the error assigned in this respect.

When appellant failed in his attempt to have the civil action suspended as above stated, he prayed that it be dismissed on the ground of lack of jurisdiction for the reason that the alleged buyer of appellee, The American Trading Company, of San Francisco, California, was in the United States and, therefore, beyond the jurisdiction of the court, and that inasmuch as said buyer is an indispensable party to the adjudication of the counterclaim and its presence in this case is essential, the court, it is claimed, can not entertain such counterclaim. While the presence of said buyer is necessary in order that the appellant may cross-examine it with respect to the alleged purchase of copra, it is not, however, indispensable within the meaning of the rule of court as to deprive the court of its jurisdiction to pass upon the counterclaim (Sec. 8, Rule 3). That company is not a party to the transaction involved in this case. This matter depends solely upon the evidence the counter-claimant may present in due time which is open to scrutiny and examination of appellant. We see also no error in this respect.

The next move of appellant was to pray for the dismissal of his own complaint without prejudice due to his inability to get his witnesses ready for trial, which the court likewise denied, and this action is also assigned as error. We take note of the fact that the motion was filed in accordance with section 2, Rule 30 of the Rules of Court, which provides that "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court." Here defendant set up a counterclaim and it is apparently for this reason why the court did not grant the motion to dismiss. But we note that said counterclaim "can remain pending for independent adjudication" as shown by its result when the court dismissed the case, not without prejudice, but for failure of appellant to appear for trial of the case on the merits, and the trial was continued as regards the counterclaim of defendant. We are of the opinion that, considering the independent character of the counterclaim, the court should have allowed the dismissal of the case without prejudice as prayed for by appellant.

We notice, however, that while the lower court dismissed the complaint outright, and not without prejudice as prayed for by appellant, that action was reconsidered upon his petition and the case was once again set for trial on April 4, 1949, in order that he may present his evidence, if any, in support of his complaint, with the warning that no further postponement would be entertained by the court. And when said date arrived the plaintiff again failed to appear, and making good its warning, the court allowed the defendant to present his evidence in support of his counterclaim, and thereafter rendered judgment as stated in the early part of this decision. And when plaintiff moved to set aside the judgment, explaining his failure to appear and attaching to his motion the affidavit of his physician as an integral part thereof, the motion was denied by the court. This is likewise assigned as error.

The lower court, in denying the motion to set aside the judgment, made the following findings:

"After carefully considering the petition, the Court is of the opinion that the same is not well taken. The records of the case will show that the hearing was postponed several times upon the petition of plaintiff, and on April 4, 1949, when the case was called again for trial nobody appeared in representation of said plaintiff notwithstanding the fact that his lawyer was duly notified of said hearing. If it were true that the aforesaid

plaintiff was sick on April 2, 1949, he should have notified his attorney in order that the latter might ask for the postponement of the hearing."

We do not find any plausible reason to disturb these findings of the trial court considering the many moves for postponement made by the plaintiff, always over the objection of the defendant, which were always granted by the court in its desire to serve the interests of justice, which shows either lack of interest on the part of the plaintiff, or lack of evidence on his part to substantiate his claim.

As regards the claim that the lower court erred in not allowing the plaintiff to present his witnesses to prove the true intention of the parties relative to the payment in advance of the 95 per cent of the purchase price of the copra by defendant Huntington before he may be obligated to load it on board the vessel as agreed upon, we find it without merit considering that his (plaintiff) complaint was dismissed and the counterclaim was tried in his absence. This was due to his own failure to appear either personally or through counsel as stated by the lower court.

Finally, with respect to the merits of the counterclaim, there is nothing that we can detract from the decision, it appearing that the same contains a full and exhaustive discussion of the evidence presented by the defendant. The decision is mostly predicated on documentary evidence the contents of which appear quoted therein. And as said evidence stands uncontradicted, there is nothing to consider to negative its effect. We have no other alternative than to confirm said decision.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellant.

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

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