

**UNITED STATES RUBBER CO., DOING BUSINESS UNDER THE TRADE
NAME OF UNITED STATES RUBBER INTERNATIONAL, PLAINTIFF
AND APPELLEE, VS. MARIANO MEDINA, DEFENDANT AND
APPELLANT.**

G. R. No. L-17153. May 18, 1962

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This action started with a complaint filed by the appellee United States Rubber Company against the appellant Mariano Medina in the Municipal Court of Manila (C.C. No. 71152) for the payment of the sum of P500, exclusive of interests and attorney's fees, as representing the balance of defendant's unpaid account with plaintiff on the price of tires and inner tubes ordered under Invoice No. 39371 on or about November 2, 1954. Defendant denied the alleged indebtedness, claimed that he had even made an overpayment of P1,869.24, and counterclaimed for the recovery of said overpayment and damages. After trial, the inferior court rendered judgment for the plaintiff and dismissed defendant's counterclaim.

Defendant Medina appealed to the Court of First Instance of Manila (C.C. No. 42228). There, after a pre-trial conference, plaintiff moved to amend its complaint so as to insert the clause "under an open account with the plaintiff" in paragraph 2 thereof, making said paragraph read:

"2. On or about November 2, 1954, the defendant, under an open account with the plaintiff, purchased and received from the plaintiff tires and inner tubes, all valued at P3,054.84, under Invoice No. 39371, a copy of which was furnished the defendant, subject to the conditions that said purchase would be paid within 30 days from date of purchase; that interest of 12% per annum will be charged on all overdue accounts; that the defendant expressly submits to the jurisdiction of the courts of the City of Manila in any legal action arising out of the transaction which is the subject matter of the complaint in this case; and that in case, of suit over the said account, the defendant agrees to pay an additional equivalent to 25% of the total amount due as attorney's fees."

(R. A. p. 13)

The defendant did not-interpose any objection to the admission of the above amended complaint, but left its admission to the sound discretion of the trial court. The amended complaint was, accordingly, admitted.

During the hearing, defendant objected to the introduction by plaintiff of any evidence showing that he had an outstanding unpaid balance on his open account prior to and before November 2, 1954, the date of Invoice No. 39371 mentioned in the complaint, on the ground that no allegations with respect thereto were made in the first amended complaint, but all his objections along this line were overruled by the trial court, so that plaintiff was able to present evidence showing, among other things, that at the time defendant purchased from plaintiff tires and inner tubes in the amount of P3,054.84 under his open account on November 2, 1954 per Invoice No. 39371, he had an unpaid balance in his account of P2,569.24, so that Invoice No. 39371 brought said balance to P5,624.08;

that thereafter, defendant made several payments on account, leaving thereon an unpaid balance of P550; that on June 8, 1959, plaintiff turned over this balance to its attorneys for collection; that after said attorneys had made several demands upon defendant for payment, defendant made a payment of P50 on account on September 17, 1959, bringing down his unpaid balance of account to F500; and that this is the indebtedness that is sought to be recovered in this action.

After the close of the trial, plaintiff moved for the admission of a second amended complaint so as to include therein issues that, although not raised before, were tried with the implied consent of the parties, and to make said pleading conform to the evidence. Defendant opposed the motion, calling attention to the objections made by him at the trial to the presentation by plaintiff of any evidence to show the outstanding balance of his open account prior to and outside of Invoice No. 39371 dated November 2, 1954. Nevertheless, the trial court admitted the second amended complaint, and thereafter, on April 23, 1960, rendered judgment ordering the defendant to pay plaintiff "the sum of P500.00, with interest at the stipulated rate of 12% per annum from December 2, 1954, until fully paid, plus 25% of said amount of P500.00 attorney's fees, and costs of suit in both instances". From this judgment, defendant filed notice to appeal to this Court on questions of law.

Appellant Medina now claims that the lower court erred (1) in allowing plaintiff-appellee to change its theory of the case to his prejudice; (2) in permitting plaintiff-appellee to introduce evidence to prove facts not alleged in its first amended complaint, and in subsequently allowing it to file a second amended complaint after trial to make the allegations thereof conform to the evidence presented by it at the hearing, over his (appellant's) objections; and (8) in rendering judgment for plaintiff-appellee.

We find no merit in the above contentions.

Actually, whether or not the second amended complaint was filed and admitted, the matter of the outstanding unpaid balance on defendant-appellant's open account with plaintiff-appellee before he made the purchase represented by Invoice No. 39371 on November 2, 1954 under the same open account, was well within the material allegations and theory of the first amended complaint.

The first amended complaint alleges:

"2. On or about November 2, 1954, the defendant, under an open account with the plaintiff, purchased and received from the plaintiff tires and inner tubes, all valued at P3,054.84, under Invoices No. 39371, a copy of which was furnished the defendant, subject to the conditions that said purchase would be paid within 30 days from the date of purchase; that interest of 12% per annum will be charged on all overdue accounts; that the defendant expressly submits to the jurisdiction of the courts of the City of Manila in any legal action arising out of the transaction which is the subject matter of the complaint in this case, and that in case of suit over the said account, the defendant agrees to pay an additional sum equivalent to 25% of the total amount due as attorney's fees.

3. On account of the said purchase in the amount of P3,054.84, the defendant has paid the sum of P2,554.84, leaving a balance of P500.00 which is now long overdue, and which the defendant failed and still fails to pay notwithstanding repeated demands for payment made by the plaintiff upon him and further notwithstanding defendant's repeated promises to pay.

4. That (sic) is now due the plaintiff from the defendant that sum of P500.00 with interest thereon at 12% per annum from December 2, 1954, until paid, plus 25% of the amount due as attorney's fees." (Rec. on Appeal, pp. 13-14)

The gist of the above allegations is that on November 2, 1954, defendant placed an order for tires and inner tubes

(Invoice No. 39371) under his open account with the plaintiff-appellee in the total amount of P3,054.84; that out of the said amount of P3,054.84 due under Invoice No. 39371, defendant had paid plaintiff the sum of P2,554.84, leaving an unpaid balance thereon of P500; and that said sum of P500 is now due the plaintiff, plus interests and attorney's fees.

The subject matter of the first amended complaint is not therefore, the original amount of Invoice No. 39371, as erroneously contended by defendant-appellant, but the total balance of said invoice in the amount of P500, exclusive of interests and attorney's fees. And in order to prove this existing unpaid balance, plaintiff was free to show by evidence that before the date of said Invoice No. 39371, defendant had already an existing outstanding unpaid balance under his open account, so that the payments he made to plaintiff after November 2, 1954, the date of Invoice No. 39371, although they exceeded the amount of said invoice, were applied first to defendant's unpaid balance existing prior to November 2, 1954, with the result that there still remained an unpaid existing balance on defendant's Invoice No. 39371 in the amount of P500 at the time suit was filed. Such evidence is, as plaintiff-appellee correctly points out, nothing more than the manner of computation adopted by it in order to arrive at the unpaid balance of P500 still due to it from defendant under Invoice No. 39371. This evidence did not, therefore, change the theory of plaintiff's first amended complaint, nor is it outside the material allegations 'thereof.

But even if the evidence adverted to did change the theory of plaintiff's first amended complaint or was not within the issues thereof, still we do not believe the lower court abused its discretion in allowing the further amendment of the complaint after the termination of the trial in order to make its allegations conform to plaintiff's evidence, in view of the provisions of section 4 of Rules of Court, that:

"If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits."

Since there is no question that defendant-appellant still owes the plaintiff the unpaid balance of P500 under his open account with said company, and his only defense against the complaint is the technical claim that plaintiff can not prove that he had any outstanding indebtedness on his open account prior to Invoice No. 39371 of November 2, 1954, because said indebtedness was not mentioned in the first amended complaint, the lower court properly allowed the second amendment of the complaint after trial in order that the ends of justice may be subserved and plaintiff may be able to prove and recover its just claim against defendant.

Wherefore, the appealed judgment is affirmed, with costs against defendant-appellant Mariano Medina.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes and Dizon, JJ., concur.

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