

**PHILIPPINE ADVERTISING COUNSELORS, INC., PETITIONER, VS.
HONORABLE PEDRO A. REVILLA, SOUTHERN INDUSTRIAL
PROJECTS, INC., AND THE HONORABLE COURT OF APPEALS,
RESPONDENTS.**

G.R. No. L-31869. August 08, 1973

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ANTONIO, J.:

Appeal from the decision of the Court of Appeals in CA-G.R. No. 43345-R dismissing the petition for certiorari, prohibition and mandamus, and from the resolution denying the petitioner's motion for reconsideration.

In a complaint filed on June 21, 1968 by petitioner against respondent Southern Industrial Projects, Inc. with the Court of First Instance of Rizal (Civil Case No. 10958), it alleged that from July 1, 1962 up to November 1, 1963, respondent corporation engaged petitioner's services in promoting and advertising the former's products; that as of July 20, 1965, said respondent had accumulated unpaid accounts with petitioner in the total amount of P97,952.08, as per letter of respondent to petitioner a copy of which was attached to and made part of said complaint as "Annex A"; that respondent admitted its indebtedness to petitioner in the sum of P97,952.08 and undertook to pay the same in periodic amortizations, as per its letter of August 18, 1965, a copy of which was attached to said pleading as "Annex B" thereof; that respondent corporation thereafter made partial payments to petitioner reducing its account to P89,100.03 as of December 31, 1967; that since then, respondent had not made any payment in spite of repeated demands therefor by petitioner; and that by reason of respondent corporation's unjustified refusal to pay its just and plainly valid obligation, petitioner was constrained to hire the services of a lawyer, to whom it obligated itself to pay 10% of whatever amount would be collected. It therefore prayed that respondent be ordered to pay petitioner the sum of P89,100.03 with interest at the rate of 12% per annum from July 20, 1965 until fully paid, together with attorney's fees and costs. The two letters, annexed to the complaint, were those of respondent's lawyer addressed to petitioner's lawyers, one (Annex "A") dated July 20, 1965, alleging that respondent corporation had referred to him the letter of petitioner in connection with the account of respondent with petitioner, but due to respondent's tight financial situation, it would not be possible for respondent to settle in full its account of P97,952.08 in one payment and suggested that respondent corporation be allowed to settle its account by "periodic amortization"; and the other (Annex "B") dated August 18, 1965, stating that respondent corporation had included petitioner in its list of creditors "to whom payments are regularly scheduled."

Respondent corporation moved for a bill of particulars, alleging that parts of the account were chargeable to its sister companies, there being among them, during the period mentioned in the complaint, a pool of purchases and services, including the promotion and advertisement of their products; and that since the said companies had separated from respondent corporation, there was need to itemize the account. Petitioner opposed on the grounds that the cause of action as set forth in the complaint was clear, that the details sought by the motion were evidentiary, and that the matters sought were within respondent corporation's knowledge. The court denied respondent's motion for bill of particulars.

An answer was then filed by respondent corporation, the entire averments of which read as follows:

"1. That it admits the allegations in paragraph 1 insofar as its personality is concerned but is without sufficient information to form a belief as to the truth of the rest of the allegations.

"2. That defendant is without sufficient knowledge or information to form a belief as to the truth, correctness or accuracy of the allegations set forth in paragraphs 2 to 6 of plaintiff's complaint."

Respondent corporation prayed for the dismissal of the complaint.

Petitioner filed a motion for judgment on the pleadings as the answer failed to tender an issue or "otherwise admits the material allegations of the complaint" Respondent corporation did not file an opposition to this motion. In his order dated October 8, 1968, respondent Judge denied the motion for judgment on the pleadings and set the case for pre-trial on November 11, 1968. When the parties failed to come to an agreement, the case was set for trial on the merits on December 4, 1968, on which date nobody appeared for respondent corporation. Consequently, petitioner was allowed to present evidence on its claim for attorney's fees before the branch clerk of court. While petitioner was presenting its evidence, counsel for respondent corporation arrived in court, but he did not cross-examine petitioner's witness. Petitioner thereafter rested and submitted its case on the basis of the admissions in the pleadings and its evidence on attorney's fees, reserving its right to file a memorandum. On its part, respondent corporation submitted its case without evidence, and manifested that it would also file a memorandum.

Both parties subsequently filed their respective memoranda. In its memorandum, petitioner dwelt solely on its position that respondent corporation's answer failed to tender an issue as said party "could not have denied knowledge of the account in the face of its written admissions," hence, judgment on the pleadings was proper, especially when respondent corporation also interposed no objection to the motion for judgment on the pleadings, practically in effect assenting thereto. On its part, respondent corporation contended in its memorandum that under Section 10, Rule 8 of the Rules of Court, its answer had sufficiently denied the allegations of the complaint and placed them in issue, so that it became incumbent upon petitioner to prove its allegations, and since petitioner failed to introduce any evidence to establish the truth of its averments in the complaint, it must be deemed to have failed to prove its case; that petitioner could not properly rely upon the two annexes in its complaint, because the same were not formally presented and identified; and that a denial for "lack of sufficient knowledge or information to form a belief as to the truth" of the averments of the complaint is a specific denial and as such places in issue the allegations of the complaint so denied.

On February 18, 1969, decision was rendered by the trial court wherein it stated, among others, that upon "considering the allegations of the complaint and the annexes thereto and in the light of the general denial raised in defendant's answer, the court reconsiders its previous ruling and declares that said answer really failed to tender any issue and that the claims alleged in the complaint are, therefore, deemed admitted." The court therefore ordered respondent corporation to pay petitioner the sum of P89,100.03 with legal interest thereon from July 20, 1965, another sum equivalent to 10% of the principal sum due by way of attorney's fees, and the costs of suit.

Respondent corporation filed a motion for reconsideration under date of March 19, 1969, alleging as follows:

"2. That the said decision makes mention of the fact that the defendant did not submit any memorandum when

the undersigned counsel submitted his memorandum on February 13, 1969, or five days before the promulgation of the decision;

"3. That the decision is contrary to the express provisions of Rule 8, Sec. 10 of the Rules of Court which specifically states that a denial in an answer for 'lack of knowledge or information sufficient to form a belief as to the truth of the allegations' is not a general denial but a specific denial and therefore the allegations so denied are placed in issue."

The motion contained a request addressed to the Clerk of Court to set the motion for the court's consideration and approval immediately upon receipt thereof.

On April 7, 1969, respondent Judge issued an order setting the motion for reconsideration for hearing on May 3, 1969, there being no proof that the petitioner was duly served with a copy of said motion, and it appearing that the motion was not set for hearing on a definite date.

Petitioner filed an opposition to the motion for reconsideration on the grounds that the decision was in accordance with law and the evidence; that the fact that respondent corporation had really filed a memorandum was not a legal ground for reconsidering the decision; and that the motion for reconsideration was pro forma and therefore did not interrupt the running of the period for appeal.

On May 5, 1969, respondent Judge issued an order to the effect that "[i]n the interest of justice, the Court resolves to grant the motion for reconsideration, setting aside the decision of this Court dated February 18, 1969 and sets this case for hearing on the merits on June 11, 1969 at 8:30 A.M."

Petitioner, on May 26, 1969, filed an omnibus motion for reconsideration and for execution, contending in the main that the motion for reconsideration being pro forma, did not interrupt the running of the period for appeal, and since respondent corporation received notice of the decision on March 17, 1969, the judgment became final and executory on April 16, 1969, and consequently it could no longer be modified, much less set aside. The said omnibus motion was denied by respondent Judge in his order of June 2, 1969.

A petition for certiorari, prohibition and mandamus, with prayer for preliminary injunction, was filed by petitioner with respondent Court of Appeals, which gave due course to the petition and issued a writ of preliminary injunction. On February 11, 1970, respondent Court of Appeals rendered judgment dismissing the petition and dissolving the writ of preliminary injunction. A motion for reconsideration was filed by petitioner, but the same was denied in a resolution dated March 18, 1970. Hence, this appeal.

The question posed by the petition filed with respondent Court of Appeals was whether the respondent court a quo committed grave abuse of discretion in granting private respondent's motion for reconsideration, setting aside its decision of February 18, 1969, denying petitioner's omnibus motion for reconsideration and for execution and re-setting the case for hearing. The said petition was predicated on the theory that private respondent's motion for reconsideration of March 19, 1969 was pro forma as (a) it fell short of the requirements of Section 2, Rule 37 of the Rules of Court, for its failure to point out specifically the findings or conclusions in the decision alleged to be contrary to law, and to state in detail the reasons, if any, for such claim, and (b) private respondent's failure to set the motion for reconsideration for hearing at a definite date and time.

In brushing aside petitioner's arguments, respondent Court of Appeals said that since there were no findings or other conclusion to which it could have demurred, private respondent could do no more than claim in its motion for reconsideration that the judgment of the trial court was contrary to Rule 8, Section 10, of the Rules of Court; that the motion, although styled as one for reconsideration, may be considered a motion for new trial, praying as it

did for the setting aside of the decision, and this is what the trial court apparently considered it to be when it set aside the decision and scheduled the case for hearing on the merits; that although the motion did not set a date for its hearing, it contained a request to the clerk of court "to set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof," and when the court set the consideration of the motion for May 3, 1969, on which date petitioner received a copy of the motion and filed a written opposition, the omission in the motion was cured, and, what is more, petitioner was duly heard.

Among the ends to which a motion for reconsideration is addressed, one is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence, and in so doing, the movant has to dwell of necessity upon the issues passed upon by the court.[1] The disallowance of pro forma motions for reconsideration or new trial is mainly predicated upon their being resorted to solely to gain time and delay the proceedings.[2] in this connection, We have already held that "it is not enough that a motion should state what part of the decision is contrary to law or the evidence; it should also point out why they are so * * * "[3] Private respondent's motion for reconsideration must be tested against these criteria.

Petitioner's complaint for recovery of a sum of money is supported by two documents attached to and forming part of the complaint. These documents are written admissions of private respondent, thru its lawyer, of its indebtedness, which indebtedness was precisely the subject matter of the complaint. Annex "A" reads in part:

"This is in connection with your letter of June 3, 1965 which has been referred to us recently regarding the above account of Southern Industrial Projects, Inc. with your client, The Philippine Advertising Counselors, Inc. The company has not been negligent in the settlement of its account and has in fact included the above account in its review of those to be liquidated. However, it has been caught, like most other companies, in the tight squeeze prevailing in the business field today.

"In view of this, it would not be possible for it to settle in full the amount of P97,952.08. Consequently, a settlement by periodic amortization would be the only way to prevent you from filing a collection suit. The Company would therefore like to request for a conference with your client for the purpose of arriving at a satisfactory manner of settling the said account."

The other document, Annex "B", reads as follows:

"I refer to your letter of August 10, 1965 regarding the account of Southern Industrial Projects, Inc. with your client PAC.

"I have been informed by Mr. Oscar H. Manuel of SIP that he has included your client in his list of creditors to whom payments are regularly scheduled.

"Kindly pass on this information to your client so as to assure proper scheduling of payments."

The case of Capitol Motors Corporation vs. Yabut[4] stands foursquare with the present case. In said case the defendant's answer was as follows: "Paragraphs 2, 3, 4, 5, 6 and 7 of the complaint are specifically denied for lack of knowledge sufficient to form a belief as to the truth thereof." We there held that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an

averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In the said case a copy of the promisory note sued upon was attached to the complaint. We there cited the case of Warner Barnes & Co., Ltd. vs. Reyes et al.,[5] where the action was for foreclosure of mortgage, and a copy of the deed of mortgage was attached to the complaint. In that case, citing Dahlstrom vs. Gemunder, 92 N.E. 106, this Court said "an unexplained denial of information and belief of a matter of records, the means of information concerning which are within the control of the pleader, or are readily accessible to him, is evasive and is insufficient to constitute an effective denial." We likewise cited therein the case of Sy-Quia, et al. vs. Marsman, et al.,[6] where We said that so lacking in sincerity and good faith was the defendants' answer that they went to the extent of denying knowledge or information as to whether they were in the premises of Marsman on January 4, 1961, as averred in the complaint, although, whether such a fact was or was not true, could not be unknown to the defendants. The rule We enunciated in the aforecited cases that a mere allegation of ignorance of the facts alleged in the complaint is insufficient to raise an issue, for the defendant must aver positively or state how it is that he is ignorant of the facts so alleged, must be applied in this case, for petitioner's complaint explicitly averred that Annexes "A" and "B" thereof were written by private respondent, albeit thru its lawyer. Whether or not the said averments in the complaint were true, could not conceivably be unknown to private respondent. As a matter of fact it has never been denied by private respondent that it was indebted to petitioner, much less has it been asserted that the letters attached as Annexes "A" and "B" to the complaint which were sent to petitioner by the counsel of private respondent were not authorized by the latter. There was thus a failure on private respondent's part to deny the material averments of the complaint. Consequently, the same, including the contents of Annexes "A" and "B", which formed part of the complaint, and in which the existence and validity of petitioner's claim were unequivocally conceded, must be deemed to have been admitted. Although sanctioned by the rules, the form of denial adopted by private respondent must be availed of in good faith and with sincerity and not resorted to merely for the purpose of delay or to confuse the adverse party as to what averments in the complaint are actually put in issue.

Moreover, private respondent never opposed petitioner's motion for judgment on the pleadings. As We held in a previous case[7] (also cited in Capitol Motors Corporation), when the plaintiff moves for judgment on the pleadings, and the defendant interposes no objection thereto, the latter is deemed to have admitted the truth of the allegations of the complaint, so that there is no longer any necessity for the plaintiff to submit evidence of his claim. It is obvious that private respondent did not have any meritorious defense. The principle expressed above is clearly apposite.

In the light of these doctrinal considerations, it is apparent, on the basis of the undisputed facts appearing from the pleadings, that private respondent was indebted to petitioner in the sum of P89,100.03, which debt was already overdue; petitioner was, therefore, entitled to a judgment as a matter of law.

Considering that private respondent has not shown that it has a good and substantial defense which it may prove before the court a quo, a re-hearing of the case by the trial court would be an exercise in futility, for, then, the issue whether private respondent's answer failed to tender an issue will again be laid before the court; and, as We have already said, it is quite clear that the said issue must have to be resolved in the negative.

Finally, Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place for the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper.[8] In the instant case, there was,

according to the trial court in its Order of April 7, 1969, "no proof that plaintiff was duly served with a copy of the motion for reconsideration." Moreover, the motion did not contain a notice of hearing directed to petitioner stating the time and place of the hearing. The notice was addressed to the Clerk of Court requesting the latter to "set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof." The notice of hearing -caused to be issued by the trial court did not cure the defect of lack of notice, for the duty to give such notice devolves upon the movant, not upon the court.[9]

It thus results that the filing of the motion for reconsideration did not suspend the running of the period within which to perfect an appeal. The trial court, therefore, exceeded its jurisdiction when it granted the motion, set aside its decision and scheduled the case for hearing on the merits.

PREMISES CONSIDERED, the appealed judgment is reversed and set aside, and another is hereby entered ordering respondent Southern Industrial Projects, Inc. to pay petitioner Philippine Advertising Counselors, Inc. the amount of P89,100.03, with legal interest thereon from July 20, 1965 until fully paid, plus 10% of the principal amount due by way of attorney's fees, and costs.

Makalintal, Acting. C.J, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Esguerra, JJ., concur.

Zaldivar, J., is on leave.

[1] Guerra Enterprises Company, Inc. vs. CFI of Lanao del Sur, Branch I, et al., L-28310, April 17, 1970, 32 SCRA 314, 317.

[2] Ibid.

[3] Luzon Stevedoring Co., Inc., et al. vs. CIR, et al., L-16682, July 26, 1963, 8 SCRA 447, 450, 454.

[4] L-28140, March 19, 1970, 32 SCRA 1. See also J.P. Juan & Sons, Inc., etc. vs. Lianga Industries, Inc., L-25137, July 28, 1969, 28 SCRA 807, 810-813.

[5] 103 Phil. 662.

[6] L-23426, March 1, 1968, 22 SCRA 927, 931.

[7] Santiago vs. Basilan Lumber Company, L-15532, October 31, 1963, 9 SCRA 349, 353.

[8] Manila Surety and Fidelity Co., Inc. vs. Bath Construction Company, et al., L-16636, June 24, 1965, 14 SCRA 435, 437, citing PNB vs. Donasco, L-18638, February 28, 1963; Manakil vs. Revilla, 42 Phil. 81; Roman Catholic Bishop of Lipa vs. Municipality of Unisan, 44 Phil. 866; and Director of Lands vs. Sanz, 45 Phil. 117.

Sebastian vs. Cabal, etc., et al., L-25699, April 30, 1970, 32 SCRA 453, 454-455.

Cledera, etc., et al., vs. Sarmiento, etc., et al., L-32450-51, June 10, 1971, 39 SCRA 552, 562-576.

[9] Magno vs. Ortiz, etc., et al., L-22670, January 31, 1969, 26 SCRA 692, 695, citing Fulton Insurance Company vs. Manila Railroad Co., et al., L-24263, Nov. 18, 1967, 21 SCRA 974.

Cledera, etc., et al. vs. Sarmiento, etc., et al., *ibid.*

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