

FIRESTONE TIRE & RUBBER CO., (P.I.), PLAINTIFF AND APPELLEE, VS. MARIO DELGADO AND LEONOR DELGADO DEE, DOING BUSINESS UNDER THE TRADE NAME OF CALTEX QUICK SERVICE STATION, CEBU ...

G.R. No. L-11162. December 04, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by the defendants directly to this Tribunal from the decision of the Court of First Instance of Manila, the dispositive part of which reads:

"In view of all the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay to the former the sum of P4,915.62 and with 12% interest per annum thereon from November 1, 1953 until full payment is made, plus 25% of the said amount and its corresponding interest as and for attorney's fees and liquidated damages, and the costs¹." (Record on Appeal, p. 95)

The salient facts in this case are not disputed. On September 22, 23, and 25, 1953, the defendants, Mario Delgado and Leonor Delgado Dee, doing business under the trade name of Caltex Quick Service Station, in Cebu City, received from the plaintiff Firestone Tire Rubber, Co., goods and merchandise valued at P6,966.73, payable on October 31, 1953, subject to the condition that in case of default, defendants would pay interest of 12 per cent a year from the date of default, plus 25 per cent of the said amount as attorney's fees and liquidated damages in case of suit. Demand for payment was duly made by the plaintiff, and defendants in a letter dated May 21, 1954, proposed to pay the outstanding balance of P5,865.00 according to the following schedule:

May P500.00

June 500.00

July 500.00

August 1,500.00

September 1,600.00

October 1,265.00

In a letter dated June 12, 1954, plaintiff accepted the proposal on the condition, however, "that if you fail to comply with your schedule, we will immediately refer the balance of your account to our lawyer for collection without further notice." Defendants paid the May installment of P500.00 on May 16, 1954. On account of the June installment, they paid P200.00 on June 25, 1954 and P250.00 on July 10, 1954, or a total of F450.00. After said payments, there remained a balance of P4,915.62, which the defendants had not paid up to the present time. In view of said failure, plaintiff brought the present action on July 19, 1954 to collect said unpaid balance.

The case was set for hearing, but defendants moved for postponement, and later duly notified the plaintiff that the deposition of their two witnesses, Jose Delgado and Restitute Olandres, would be taken in Cebu City on November 1, 1954. For the reason that said date, November 1, had been declared an official holiday, plaintiff did not attend the taking of the deposition. Later on, plaintiff filed a motion for the suppression of said deposition which had been filed in court. On the day of the hearing, the trial judge granted said motion and did not allow the defendants to introduce the same. Inasmuch as the defendants informed the court that they had nothing to submit as evidence, except the depositions, the case was submitted for decision on evidence presented by the plaintiff.

In their appeal, defendants assigned the following errors:

- "1. The trial court committed an error of law in not dismissing the case on the ground of lack of jurisdiction.
2. The trial court committed an error of law in ordering the annulment, cancellation, and suppression from the record, of the oral depositions of witnesses Jose Delgado and Restitute Olandres taken in Cebu City on November 1, 1954 on the sole ground that said date was declared a special legal holiday by the President of the Philippines.
3. The trial court committed an error of law in refusing to admit in evidence said oral depositions of witnesses Jose Delgado and Restituto Olandres.
4. The trial court committed an error of law in not declaring that the plaintiff-appellee has waived objections to errors and irregularities in the taking of said oral depositions.
5. The trial court committed an error of law in not declaring that the acceptance twice by the plaintiff-appellee of amounts each less than the amount for the corresponding installment, with the statement by said plaintiff-appellee that 'delay in payment did not matter provided continuous payments are made amounted to a waiver of its right to enforce payment of the installments strictly on the 16th of each month under the new schedule of payments novating the old one and agreed to by both parties.
6. The trial court committed an error of law in not declaring that the defendants-appellants did not incur delay in complying with their obligations.
7. The trial court committed an error of law in rendering judgment in favor of the plaintiff-appellee and against the defendants appellants, ordering the latter to pay to the former the sum of P4,915.62 with interest at 12% per annum from November 1, 1953 until full payment is made, plus 25% of the said amount and its corresponding interest as and for attorney's fees and liquidated damages, and the costs.
8. Assuming arguando that the trial court has jurisdiction over the subject matter of this action and that no demand is necessary to entitle plaintiff-appellee to recover by court action the amount due under the novated agreement, still the trial court committed an error of law in sentencing defendant-appellants to pay plaintiff-appellee the entire amount of obligation instead of ordering the former to pay to the latter the installments that fell due on June 16 and July 16, 1954, the remaining installments not being as yet due and demandable when the complaint was filed in court."

Although defendants failed to raise the question of jurisdiction in the trial court, they now contend in their appeal before us that inasmuch as at the time of the filing of the complaint, the sum which they failed to pay according to

the schedule of payments was only P500.00, corresponding to the month of July, and P50.00 for the month of June, the Court of First Instance of Manila had no jurisdiction over the case. There is no merit to this contention. The jurisdiction of a court is determined by the amount claimed in the complaint, not by the sum which plaintiff may recover under it.¹ It will be seen from the complaint that the amount demanded was P4,915.62, with interest from November [1], 1953 plus 25 per cent of said amount as attorney's fees and liquidated damages, the total of which was well within the jurisdiction of the Court of First Instance.

As regards the taking of a deposition on a holiday, we find that the authorities are conflicting. While it has been held that a deposition may ordinarily be taken on a holiday,^[2] it has also been held that the taking of a deposition on a holiday is within a prohibition of judicial business on such day (50 Am. Jur. 863). Under this latter rule, depositions taken on a legal holiday, under notice specifying that day, without the consent of the parties, should be suppressed upon motion of the opposing party.^[3]

"Sundays and Holidays.—Generally, depositions should not be taken on Sunday. Also, they should not ordinarily be taken on a legal holiday, and deposition taken on a legal holiday, under a notice specifying that day, cannot be read, except by consent of the parties, where by statute such a notice is taken to intend the following day, or where the act of taking is in contravention of the provisions of the statute in relation to legal holidays. On the other hand, it has been held that a deposition may properly be taken on a public holiday, and a deposition which was taken in another state on a day made a legal holiday in the forum, will not be excluded in the absence of a statute so providing." (26A C. J. S. p. 369).

The authorities as to the admissibility in evidence of a deposition taken on a legal holiday appear to be equally divided. Giving the defendants the benefit of the doubt and assuming that the depositions of their two witnesses should have been allowed and admitted in evidence, nevertheless, after reading said depositions, we find that they do not and cannot affect the result. The burden of the depositions is to the effect that, when for the month of June, only F200.00 was paid within that month, and P250.00 in the month of July, which did not even complete the installment for June, one Mr. Ubari, one of the top officials of plaintiff in its branch in Cebu City, gave them assurance that delays in payment did not matter, provided that continuous payments were made. It is doubtful whether Ubari, who was not even the manager of the Cebu Branch of plaintiff, could bind his employer by the alleged assurance, assuming that he made the same. In Exhibit E-8, a letter of the Cebu Branch manager to the home office in Manila, he said:

"* * * we did not commit anything to Mr. Delgado regarding extension of his payment. Subject account has for several times approached us for consideration in paying his behind accounts; but we informed him that we cannot do anything because our Manila Office is in charge of this account." Furthermore, as already stated, the acceptance by the plaintiff of the proposal of the defendants to pay the balance in six monthly installments was based on the condition that if defendants failed to comply with the schedule, plaintiff without further notice, would take the corresponding legal action.

We do not propose to discuss the other points raised in the appeal, especially about novation of the contract. To us, this case is a plain case of a debtor failing, without any valid reason, to pay for goods and merchandise bought and received by him on the date he promised to pay. He made a proposition to the vendor to pay the balance of the value of the goods in six monthly installments, and the vendor, out of consideration, granted the request, but with the condition that failure to strictly observe the installments payments would result in a judicial suit without further notice for the recovery of the whole amount.

After paying less than two monthly installments, and without any satisfactory explanation, the debtor simply failed and refused to pay the balance of over P4,000.00 up to the present time. The courts cannot look with favor upon such delinquency in the performance of a clear obligation, especially when, as in this case, a debtor

presumably a merchant and trader, received the goods bought and presumably had sold them and received the price and benefits of the sale.

The remaining question is whether interest will be paid on the balance from the time that the complaint was filed, or from November 1, 1953, as agreed upon by the parties. As correctly found and held by the trial court in its decision, the defendants in their original as well as their amended answers, admitted not only the amount of the balance to the plaintiff, but also the 12 per cent interest from November 1, 1953, alleged in paragraph 6 of the complaint, as shown in paragraph VI of both the original and amended answers.

In view of the foregoing, the appealed decision is hereby affirmed, with costs.

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

Judgment affirmed.

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