

**RADIOWEALTH TRADING CORPORATION, PLAINTIFF-APPELLEE, VS.
AIDA L. ABASTILLAS, DOING BUSINESS UNDER THE NAME AND
STYLE OF AA GENERAL MERCHAN-DIZING,
DEFENDANT-APPELLANT.**

G.R. No. L-27022. May 28, 1970

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

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

This is an appeal from the orders of the Court of First instance of Manila, in its Civil Case No. 62587, issued subsequent to, and in compliance with, the judgment by compromise rendered upon the pre-trial the cases.

The following proceedings were had before the court a quo:

On 18 October 1965, plaintiff-appellee Radiowealth Trading Corporation filed amended complaint against the defendant-appellant Aida L. Abastillas, doing business under the name and style of AA General Merchandizing to recover, among other demands, the sum of P37,236.00, representing the value of goods delivered by the former to, and received by, the latter, pursuant to their dealership contract.

After the issues were joined, the parties were called for a pre-trial conference where the following entered their appearances: "(1) Atty. Isidoro Real, Jr., for the plaintiff, and Mr. Eugenic Elevado, chief accountant of plaintiff corporation, who presented to the court a power of attorney authorizing him to represent the plaintiff in the pretrial, and who promised to present within two (2) days the resolution of the board of directors of plaintiff corporation authority its vice-president and general manager Mr. Ramon P. Binamira, to execute said power of attorney (2) the defendant and her counsel Atty. Pospicio M. Velarde" (Record on Appeal, page 42.)

The court a quo succeeded later in bringing about a settlement of the case by the parties, who agreed to the following:

"A - - - Terms of Settlement

"1. That the defendant confesses judgment to the extent of P35,795.00;

"2. With aspect to the difference between plaintiff's claim of P37,236.00 and the confession of judgment in the sum of P35,795 or P1,441.00, the parties agreed to resolve the difference as follows:

"a. That plaintiff will submit to defendant its supporting statement;

"b. Defendant will go over the same and either accept or except to the items, if any;

"c. The parties will submit to the Court their respective claims and abide by the Court's determination thereof;

"3. That plaintiff agrees to give defendant a period of six (6) months from today, or up to 16 August 1966, within which defendant can mortgaged or sell the property mortgaged under Exhibit 3, on condition that after such mortgage or sale of the property, defendant will pay the plaintiff the amount due the plaintiff under 7 (2)

above;

"4. That defendant agrees to pay 12% interest on the amount determined by the Court, said interest to accrue from 15 September 1965 until the obligation is fully paid;

"5. That both parties agree to forego and drop other claims against each other;

"6. That the parties will bear their respective expenses and costs incident to these proceedings;

"7. That the plaintiff undertake to release the mortgage should the defendant present a sufficient guarantee from a banking institution, acceptable to plaintiff, that the account will be paid within 6 months;

"8. That should defendant fail to pay her account as determined herein within six (6) months from today, or 16 August 1965, plaintiff shall be entitled to a writ of execution to the extent of the entire obligation of defendant plus interests, to satisfy this judgment.

"9. That the parties and their respective counsel pray the Court that the foregoing terms and conditions be approved and that judgment be rendered in accordance therewith; and

"10. That in witness thereof, the parties and/or their representatives and their respective counsel signed the stenographic notes of these proceedings." (Record On Appeal, pages 48-50).

The court approved the above terms and conditions, incorporated them, and stated the following in its decision dated 16 February 1966:

10. SCOPE & EFFECTIVITY OF THIS DECISION - - - This pretrial having resulted in an amicable settlement between the parties under such terms and condition arrived, as above-indicated, this Decision is final and conclusive between the parties, subject - - - (1) to the submission by the plaintiff's representative of the resolution of its board of directors per Par. 1-a, 1) above; and (2) the determination of the dispute re conflicting claims on the difference of P1,441.00 by the Court.

"The plaintiff is hereby ordered to submit the resolution of the board of directors as directed above; and, the plaintiff is hereby given 2 days from notice of this Decision within which to submit to the defendant its supporting statement on the defendant's account; the defendant is hereby given 2 days from receipt and manifest her acceptance or exception thereto, or items thereof, and to submit the same to the Court for approval or determination.

"WHEREFORE, the Court, having approved compromise agreement as indicated in Paragraph 7 above, hereby renders judgment in accordance therewith, and enjoins the parties to comply with the terms and conditions thereof.

"SO ORDERED."

Plaintiff-appellee corporation, in compliance with the decision, submitted, on 24 February 1966, a detailed statement to support its claim for P37,236.00 and, on 1 March 1966, the excerpts from its amended by-laws and from the minutes of the meeting or its board electing Mr. Ramon Binamira as vice-president and confirming his designation as general manager, instead of the board resolution authorizing Mr. Binamira to execute the power of attorney in favor of Mr. Eugenio Elevado, as the latter had promised to present to the court.

On 3 March 1966, defendant-appellant Aida Abastillas received a copy of the decision (Record, page 2), and on 10 March 1966 filed a motion to declare plaintiff corporation non-suited for its failure to appear in the pre-trial because the power of attorney of Mr. Elevado to represent the corporation was invalid. This motion was denied on 12 March 1966.

On 12 May 1966, defendant-appellant filed a petition set aside judgment, which was denied in an order dated 14

May 1966. In the same order, defendant was ordered "either to except - - - submitting the basis for the exception; or to accept plaintiff's claim that she is indebted to plaintiff in the sum of P37,236.00" Defendant-appellant moved to reconsider, but her motion was denied on 4 June 1966.

Hence defendant-appellant interposed the present appeal from the order of 14 May 1965 denying her petition to set aside judgment, including the portion of the order ordering her to except or accept plaintiff claim in the sum of P37,236.00, and from the order of 4 June 1966 denying reconsideration.

Appellant's theory is that the by-laws of plaintiff corporation did not empower its vice-president and general manager to execute the power of attorney in favor of Mr. Elevado to represent said corporation in the pre-trial; that since Mr. Elevado lacked the authority to represent the corporation, the corporation was, therefore, absent during the pre-trial, and for such absence, it should have been non-suited, under Section 2, Rule 20 of the Rules of Court, which provides:

"SEC. 2. Failure to appear at pre-trial conference. -- A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

Appellant adds: that the submission by plaintiff of the excerpts from the bylaws of the corporation and from the minutes of the board meeting electing Mr. Binamira as vice president and confirming his designation as general manager is not a sufficient compliance with the condition provided for in the compromise judgment, which called for the board solution authorizing Mr. Binamira to execute the power of attorney, not the said excerpts; and that although the general manager has power to execute contracts binding upon the corporation, such power refers only to the business of trading merchandise and not to the "business of litigation at law" (per Reply Brief, page 12).

It does not appear from the "Terms of Settlement" that the matter of corporate representation in the pre-trial was a consideration - - - much less the controlling consideration - - - that impelled the parties to enter into the said settlement. Appellant, therefore, cannot claim that she would not have entered into the agreement had she known that accountant Elevado had no authority to represent the company. Her ground of fraud in her petition to set aside judgment is no fraud at all; she was not deceived into giving her consent to the agreement; the power of attorney was presented at the pre-trial conference (Record, page 107) and not kept off from her notice, or suppressed. She has not even alleged any prejudice, outside of the terms of the settlement, that accrued to her by reason of the supposed lack of authority of Mr. Elevado on the contrary, her bringing up the matter of corporate representation after she had consented to the agreement, has delayed, by a technicality, the satisfaction of them judgment. She could have withheld her consent had she been serous in her belief that the power of attorney was invalid.

Appellant's admission that the general manager has authority to execute contracts of trading binding upon the company (Reply Brief, page 12) implies, incidentally, if not necessarily, his power to seek judicial redress for non-fulfillment or breach of such contracts by parties with whom said general manager has contracted in behalf of the company, such as the present appellant. Assuming, for the sake of argument, that the power can not be delegated, the plaintiff corporation's act in sub-mitting the detailed statement of account called for in the compromise and decision constitutes an adoption and ratification of the compromise and a validation of accountant Elevado's act in entering the same, thereby curing whatever defect in authority existed heretofore.

The trial judge has the discretion to declare a party non-suited (*American Insurance Co. vs. Republic*, G.R. No. L-25478, 23 October 1967, 21 SCRA 464; *Home Insurance Co. v. U. S. Lines Co.*, G.R. No. L-25593, 15 November 1967, 21 SCRA 863), and, in this case, in view of the circumstances, he did not abuse such discretion.

But, if for one reason alone, the appellant's petition to set aside judgment was properly denied: the petition was filed late. She received a copy of the decision on 3 March 1966 and filed her petition on 12 May 1966. Section 3,

Rule 38, of the Rules of Court provides that such petition should be filed "within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken” Despite her having filed her petition within six (6) months, such time of filing did not satisfy the period of limitation because the filing was not made within sixty (60) days after she learned of the judgment. The second period mentioned in the aforequoted rule is a limitation to the first (2 Moran 222, and cases cited therein).

FOR THE FOREGOING REASONS, appealed orders are hereby affirmed. Treble costs in instance personally against counsel.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Castro, J., is on leave.

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