

MANILA SURETY & FIDELITY COMPANY, INC., PLAINTIFF AND APPELLEE, VS. VICENTE S. DEL ROSARIO, JUAN C. ZAMORA AND VICENTE TORRALBA LIM, DEFENDANTS. VICENTE S. DEL ROSARIO, DEFENDAN...

G. R. No. 10056. April 30, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

The Court of Appeals certified this case to this Court because the appeal involves only a question of law.

The plaintiff corporation, engaged in the surety and bonding business, appointed the defendant Vicente S. Del Rosario as its branch manager and attorney-in-fact in the province of Cebu (Exhibits A & C). To guarantee the faithful performance of the obligations required of him as branch manager and attorney-in-fact, the said defendant together with his co-defendants Juan C. Zamora and Vicente Torralba Lim executed in favor of the plaintiff an indemnity agreement (Exhibit B).

On 9 February 1950, the plaintiff filed a complaint, amended on 10 July 1951, against the defendants in the Court of First Instance of Manila to recover various sums of money, to wit: (1) unremitted balance of the plaintiff's share in the amount of premiums collected on bonds issued by the defendant Del Rosario—P3,245.16; (2) the latter's share in the losses due to forfeiture of surety bonds as agreed upon in paragraph 9 of the agreement (Exhibit A) —P9,751.35; (3) unremitted balance of premiums collected by the defendant Del Rosario on insurance—P751.15; (4) litigation expenses incurred as a result of the unauthorized issuance of a surety bond in favor of Aida Young to guarantee the payment of a loan obtained from her by Jose Guevarra—P1,193.02; and (5) unremitted share of the plaintiff in the unreported amount of premiums on one fidelity and two surety bonds mentioned in the complaint and 50 per cent of the gross liability that the plaintiff might incur as a result of the issuance of said three bonds by the defendant Del Rosario, the same to be determined and paid after rendition of account by the said defendant, costs of the suit, and to secure and be granted such other remedy as may be just, equitable and proper.

On 7 August and 6 September 1950 the defendants Vicente S. Del Rosario and Juan C. Zamora, respectively, filed separate answers denying the plaintiff's claim. In addition, the defendant Del Rosario set up affirmative defenses and counterclaim in the sum of P50,000 as damages suffered by him as a result of his unjustified discharge or removal from office by the plaintiff. Both defendants did not answer the amended complaint. The defendant Vicente Torralba Lim failed to answer the original and amended complaint.

On 5 September, 1952, the first date set for the hearing of the case, the defendants and their respective counsel did not appear notwithstanding due notice. The plaintiff presented its evidence and thereafter submitted the case for decision.

Upon motion of the defendant Zamora, by an order entered on 21 October 1952, the Court reopened the case to

afford him' and his co-defendants an opportunity to cross-examine the plaintiff's witnesses and present evidence in their behalf, and set the resumption of the hearing of the case on 27 and 28 November 1952, which was transferred to 16 January and 9 May 1958. On the last mentioned date the defendant Zamora appeared assisted by counsel and the case as to him was heard. Attorney E. G. Gochico also appeared for the defendant Del Rosario and moved for continuance. Again, the hearing as to him was transferred to 14 May 1953. On this date the defendant Del Rosario dated 15 May the case was reopened by order of 27 May 1953. On the last mentioned date the defendant Del Rosario appeared and cross-examined the plaintiff's witnesses who had already testified on 5 September 1952 and 9 and 14 May 1953. The case was set for continuance the next day but transferred to 23 June 1953. On this date neither the defendant Del Rosario nor his attorney appeared. Whereupon the plaintiff moved that the case be deemed submitted for decision.

In 14 July 1953 the defendant Del Rosario, represented then by Attorney Pedro Lopez, in a pleading dated 13 July 1953, moved for the reopening of the case alleging that on 16 June 1953 he sent from Cebu to his attorney in Manila, through the Philippine Air Lines, Inc., a letter together with a draft of an amended answer requesting him to file it in court; that believing that by the filing of the said amended answer, the resumption of the hearing of the case on 23 June 1953 could not take place for the reason that the motion to allow the said amended answer had to be considered and decided by the court, he (defendant Del Rosario) did not appear at the resumption of the hearing of the case on said date; that on 11 July 1953 Attorney Pedro Lopez received a letter from the defendant Del Rosario informing him that the letter together with the amended answer had been sent to him five days before the resumption of the trial of the case set for 23 June 1953; that up to that time he (the attorney) had not yet received the envelope containing the letter and the amended answer; that immediately upon receipt of the defendant's letter on 11 July 1953, the attorney sent one of his clerks to the office of the Philippine Air Lines, Inc. in Manila to inquire about and claim the envelope containing the letter and amended answer of the defendant Del Rosario; that it was only then that he (the attorney) received them; and that the defendant Del Rosario had a good and valid defense. The motion was sworn to by the attorney for the defendant Del Rosario. The plaintiff objected to the motion.

On 29 September 1953, the Court denied the motion for the reopening of the case. The defendant Del Rosario filed a motion for reconsideration of the last order which was not acted upon. On 28 October 1953 the Court rendered judgment—

* * * * in favor of the plaintiff and against the defendants ordering the latter to pay the former jointly and severally the sum of P14,940.68 with interest at the rate of 6% per annum from the date of the filing of the complaint until fully paid.

The defendant, Vicente S. del Rosario, is ordered to submit his accounting on the premiums lie has collected on the surety bonds mentioned in paragraph 23 of the complaint under the fifth cause of action, within thirty days from date of the entry of this judgment. With costs against the defendants.

Only the defendant Vicente S. Del Rosario has appealed.

The appellant confines his appeal to assailing the refusal of the trial court to reopen the case to afford him the opportunity to present evidence in support of his defense and to prove his counterclaim. He contends that his failure to appear at the resumption of the hearing of the case on 23 June 1953 was due to accident, mistake or excusable neglect. He says nothing about the judgment on the merits of the case rendered against him and his: co-defendants.

The "motion for reopening" of the case, which may be deemed for relief under Rule 38, filed by the attorney for the appellant in the court below, does not satisfy and comply with the requirements of the Rule, because it is not

enough to state in the motion sworn to and filed by the attorney that the defendant had a good and valid defense. The facts constituting the movant's or petitioner's good and substantial defense, which he could prove if his petition should be granted must be pleaded under oath pursuant to section 3, Rule 38.[1] Also appellant's failure to appear on several dates set for hearing and resumptions of hearing of the case does not bolster up the claim that such failure was due to excusable neglect. The trial court was too lenient and generous to the appellant's motions for continuance. It twice reopened the case to afford the appellant the opportunity to cross-examine the plaintiff's witnesses who had already testified.

The order denying the reopening of the case appealed from is affirmed, with costs against the appellant.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

[1] Paz vs. Inandan, 75 Phil.,

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