

PHILIPPINE PRYCE ASSURANCE CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, (FOURTEENTH DIVISION) AND GEGROCO, INC., RESPONDENTS.*G.R. No. 107062. February 21, 1994*

Ponente: NOCON, J.

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Two purely technical, yet mandatory, rules of procedure frustrated petitioner's bid to get a favorable decision from the Regional Trial Court and then again in the Court of Appeals.[1] These are non-appearance during the pre-trial despite due notice, and non-payment of docket fees upon filing of its third-party complaint. Just how strict should these rules be applied is a crucial issue in this present dispute.

Petitioner, Interworld Assurance Corporation (the company now carries the corporate name Philippine Pryce Assurance Corporation), was the butt of the complaint for collection of sum of money, filed on May 13, 1988 by respondent, Gegroco, Inc. before the Makati Regional Trial Court, Branch 138. The complaint alleged that petitioner issued two surety bonds (No. 0029, dated July 24, 1987 and No. 0037, dated October 7, 1987) in behalf of its principal Sagum General Merchandise for FIVE HUNDRED THOUSAND (P500,000.00) PESOS and ONE MILLION (P1,000,000.00) PESOS, respectively.

On June 16, 1988, summons, together with the copy of the complaint, was served on petitioner. Within the reglementary period, two successive motions were filed by petitioner praying for a total of thirty (30) days extension within which to file a responsive pleading.

In its Answer, dated July 29, 1988, but filed only on August 4, 1988, petitioner admitted having executed the said bonds, but denied liability because allegedly 1) the checks which were to pay for the premiums bounced and were dishonored hence there is no contract to speak of between petitioner and its supposed principal; and 2) that the bonds were merely to guarantee payment of its principal's obligation, thus, excussion is necessary. After the issues had been joined, the case was set for pre-trial conference on September 29, 1988. The petitioner received its notice on September 9, 1988, while the notice addressed to its counsel was returned to the trial court with the notation "Return to Sender, Unclaimed." [2]

On the scheduled date for pre-trial conference, only the counsel for petitioner appeared while both the representative of respondent and its counsel were present. The counsel for petitioner manifested that he was unable to contact the Vice-President for operations of petitioner, although his client intended to file a third party complaint against its principal. Hence, the pre-trial was re-set to October 14, 1988.[3]

On October 14, 1988, petitioner filed a "Motion with Leave to Admit Third-Party Complaint" with the Third-Party Complaint attached. On this same day, in the presence of the representative for both petitioner and respondent and their respective counsel, the pre-trial conference was re-set to December 1, 1988. Meanwhile on November 29, 1988, the court admitted the Third Party Complaint and ordered service of summons on third party defendants.[4]

On the scheduled conference in December, petitioner and its counsel did not appear notwithstanding their notice in open court.[5] The pre-trial was nevertheless re-set to February 1, 1989. However, when the case was called for pre-trial conference on February 1, 1989, petitioner was again not represented by its officer or its counsel, despite being duly notified. Hence, upon motion of respondent, petitioner was considered as in default and respondent was allowed to present evidence ex-parte, which was calendared on February 24, 1989.[6] Petitioner received a copy of the Order of Default and a copy of the Order setting the reception of respondent's evidence ex parte, both dated February 1, 1989, on February 16, 1989.[7]

On March 6, 1989, a decision was rendered by the trial court; the dispositive portion reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Interworld Assurance Corporation to pay the amount of P1,500,000.00 representing the principal of the amount due, plus legal interest thereon from April 7, 1988, until date of payment: and P20,000.00 as and for attorney's fees." [8]

Petitioner's "Motion for Reconsideration and New Trial" dated April 17, 1989, having been denied, it elevated its case to the Court of Appeals which, however, affirmed the decision of the trial court as well as the latter's order denying petitioner's motion for reconsideration.

Before us, petitioner assigns as errors the following:

- The respondent Court of Appeals gravely erred in declaring that the case was already ripe for pre-trial conference when the trial court set it for the holding thereof.
- The respondent Court of Appeals gravely erred in affirming the decision of the trial court by relying on the ruling laid down by this Honorable Court in the case of Manchester Development Corporation v. Court of Appeals, 149 SCRA 562, and disregarding the doctrine laid down in the case of Sun Insurance Office, Ltd. (SIOL) v. Asuncion, 170 SCRA 274.
- The respondent Court of Appeals gravely erred in declaring that it would be useless and a waste of time to remand the case for further proceedings as defendant-appellant has no meritorious defense.

We do not find any reversible error in the conclusions reached by the court a quo

Relying on Section 1, Rule 20 of the Rules of Court, petitioner argues that since the last pleading, which was supposed to be the third-party defendant's answer, has not been filed, the case is not yet ripe for pre-trial. This argument must fail on three points. First, the trial court asserted, and we agree, that no answer to the third party complaint is forthcoming as petitioner never initiated the service of summons on the third party defendant. The court further said

"x x x Defendant's claim that it was not aware of the Order admitting the third-party complaint is preposterous. Sec. 8, Rule 13 of the Rules, provides.

'Completeness of service - x x x Service by registered mail is complete upon actual receipt by the addressee, but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time.'" [9]

Moreover, we observed that all copies of notices and orders issued by the court for petitioner's counsel were returned with the notation "Return to Sender, Unclaimed." Yet when he chose to, he would appear in court despite supposed lack of notice.

Second, in the regular course of events, the third-party defendant's answer would have been regarded as the last pleading referred to in Sec. 1, Rule 20. However, petitioner cannot just disregard the court's order to be present during the pre-trial and give a flimsy excuse, such as that the answer has yet to be filed.

The pre-trial is mandatory in any action, the main objective being to simplify, abbreviate and expedite trial, if not to fully dispense with it. Hence, consistent with its mandatory character the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court[10] and when a party fails to appear at a pre-trial conference he may be non-suited or considered as in default.[11]

Records show that even at the very start, petitioner could have been declared as in default since it was not properly represented during the first scheduled pre-trial on September 29, 1988. Nothing in the record is attached which would show that petitioner's counsel had a special authority to act in behalf of his client other than as its lawyer.

We have said that in those instances where a party may not himself be present at the pre-trial, and another person substitutes for him, or his lawyer undertakes to appear not only as an attorney but in substitution of the client's person, it is imperative for that representative or the lawyer to have "special authority" to enter into agreements which otherwise only the client has the capacity to make.[12]

Third, the Court of Appeals properly considered the third-party complaint as a mere scrap of paper due to petitioner's failure to pay the requisite docket fees. Said the court a quo:

"A third-party complaint is one of the pleadings for which Clerks of Court of Regional Trial Courts are mandated to collect docket fees pursuant to Section 5, Rule 141 of the Rules of Court. The record is bereft of any showing tha(t) the appellant paid the corresponding docket fees on its third-party complaint. Unless and until the corresponding docket fees are paid, the trial court would not acquire jurisdiction over the third-party complaint (Manchester Development Corporation vs. Court of Appeals, 149 SCRA 562). The third-party complaint was thus reduced to a mere scrap of paper not worthy of the trial court's attention. Hence, the trial court can and correctly set the case for pre-trial on the basis of the complaint, the answer and the answer to the counterclaim." [13]

It is really irrelevant in the instant case whether the ruling in Sun Insurance Office, Ltd. (SIOL) v. Asuncion[14] or that in Manchester Development Corp. v. C.A.[15] was applied. Sun Insurance and Manchester are mere reiteration of old jurisprudential pronouncements on the effect of non-payment of docket fees.[16] In previous cases, we have consistently ruled that the court cannot acquire jurisdiction over the subject matter of a case, unless the docket fees are paid.

Moreover, the principle laid down in Manchester could have very well been applied in Sun Insurance. We then said:

"The principle in Manchester [Manchester Development Corp. v. C.A., 149 SCRA 562 (1987)] could very well be applied in the present case. The pattern and the intent to defraud the government of the docket fee due it is obvious not only in the filing of the original complaint but also in the filing of the second amended complaint.

x x x

"In the present case, a more liberal interpretation of the rules is called for considering that, unlike Manchester, private respondent demonstrated his willingness to abide by the rules by paying the additional docket fees as required. The promulgation of the decision in Manchester must have had that sobering influence on private respondent who thus paid the additional docket fee as ordered by the respondent court. It triggered his change of stance by manifesting his willingness to pay such additional docket fees as may be ordered." [17]

Thus, we laid down the rules as follows:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may

allow payment of the fee within a reasonable time, but in no case beyond the applicable prescriptive or reglementary period.

2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee, but subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has not been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the clerk of court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[18]

It should be remembered that both in *Manchester* and *Sun Insurance*, plaintiffs therein paid docket fees upon filing of their respective pleadings, although the amounts tendered were found to be insufficient considering the amounts of the reliefs sought in their complaints. In the present case, petitioner did not and never attempted to pay the requisite docket fee. Neither is there any showing that petitioner even manifested to be given time to pay the requisite docket fee, as in fact it was not present during the scheduled pre-trial on December 1, 1988 and then again on February 1, 1989. Perforce, it is as if the third-party complaint was never filed.

Finally, there is reason to believe that petitioner does not really have a good defense. Petitioner hinges its defense on two arguments, namely: a) that the checks issued by its principal which were supposed to pay for the premiums, bounced hence there is no contract of surety to speak of; and 2) that as early as 1986 and covering the time of the Surety Bond, Interworld Assurance Company (now Phil. Pryce) was not yet authorized by the Insurance Commission to issue such bonds.

The Insurance Code states that:

"SECTION 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety. x x x" (emphasis added)

The above provision outrightly negates petitioner's first defense. In a desperate attempt to escape liability, petitioner further asserts that the above provision is not applicable because the respondent allegedly had not accepted the surety bond, hence could not have delivered the goods to Sagum Enterprises. This statement clearly intends to muddle the facts as found by the trial court and which are on record.

In the first place, petitioner, in its answer, admitted to have issued the bonds subject matter of the original action.[19] Secondly, the testimony of Mr. Leonardo T. Guzman, witness for the respondent, reveals the following:

Q.

What are the conditions and terms of sales you extended to Sagum General Merchandise?

A.

First, we required him to submit to us Surety Bond to guaranty payment of the spare parts to be purchased. Then we sell to them on 90 days credit. Also, we required them to issue post-dated checks.

Q.

Did Sagum General Merchandise comply with your surety bond requirement?

A.

Yes. They submitted to us and which we have accepted two surety bonds.

Q.

Will you please present to us the aforesaid surety bonds?

A.

Interworld Assurance Corp. Surety Bond No. 0029 for P500,000 dated July 24, 1987 and Interworld Assurance Corp. Surety Bond No. 0037 for P1,000,000 dated October 7, 1987."[20]

Likewise attached to the record are exhibits C to C-18[21] consisting of delivery invoices addressed to Sagum General Merchandise proving that parts were purchased, delivered and received.

On the other hand, petitioner's defense that it did not have authority to issue a Surety Bond when it did is an admission of fraud committed against respondent. No person can claim benefit from the wrong he himself committed. A representation made is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.[22]

WHEREFORE, in view of the foregoing, the decision of the Court of Appeals dismissing the petition before them and affirming the decision of the trial court and its order denying petitioner's Motion for Reconsideration are hereby AFFIRMED. The present petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Gegroco, Inc. v. Phil. Pryce Assurance Corp., CA-G.R. CV No. 25539, Justice Eduardo R. Bengzon, ponente, Justices Lorna Lombos-de la Fuente and Quirino Abad Santos, Jr., concurring.

[2] see attached notice on p. 29, Original Record.

[3] Order of the Court dated September 29, 1988, p. 33 of the Original Record.

[4] Original Record, p. 45.

[5] Id., p. 43.

[6] Id., p. 52.

[7] see attached return slip on p. 52, Original Record.

[8] Original Record, p. 108.

[9] Order of the Court dated September 29, 1989, Original Record, p. 120

[10] Sec. 1. Rule 20, Rules of Court.

[11] Development Bank of the Philippines v. Court of Appeals, G.R. No. 49410, 169 SCRA 409 (1989).

[12] Home Insurance Co. v. U.S. Lines Co., G.R. No. L-25593, 21 SCRA 863; Barrera v. Militante, G.R. No. L-54681, 114 SCRA 323.

[13] Rollo, p. 27.

[14] G.R. No. 79937, 170 SCRA 274 (1989).

[15] G.R. No. L-75919, 149 SCRA 562 (1987).

[16] Lazaro v. Endencia and Andres, 51 Phil. 552 (1932); Lee v. Republic, 10 SCRA 65 (1964); Malimit v. Degamo, 12 SCRA 450 (1964); Garcia v. Vasquez, 28 SCRA 330 (1969); Magaspi v. Ramolete, 115 SCRA 193 (1982).

[17] Sun Insurance Office, Ltd. (SIOL) v. Hon. Maximiano Asuncion, G.R. No. 79937-38, 170 SCRA 274 (1989).

[18] Sun Insurance, *supra*, at p. 285.

[19] Rollo, p. 68.

[20] TSN of February 24, 1989, p. 2, Original Record, p. 55.

[21] Original Record, pp. 67-85.

[22] Article 1431, New Civil Code.

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