

NATIONAL MARKETING CORPORATION, PLAINTIFF AND APPELLEE, VS. JOSE, G. DE CASTRO, DEFENDANT AND APPELLANT.

G. R. No. 12357. December 29, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Jose G. de Castro appeals from a judgment of the Court of First Instance of Manila ordering him to pay the plaintiff the sum "of P30,547.71, with legal interest thereon from the filing of the complaint until fully paid, plus 10% of the total amount due as attorney's fees and costs of collection, and the costs." (Civil No. 27545.) In his notice of appeal, he states that he "appeals from the decision rendered on January 2, 1957, a copy of which was received on January 11 of the same year, to the Hon. Supreme Court of the Philippines as the issues involved herein are purely questions of law * * *."

The facts, as found by the trial court, are

* * * * That sometime on June 7, 1949, the defendant bought from the PRATRA, plaintiff's predecessor-in-interest, two International Model TD-18 Tractors with dozer, serial Nos. 6928 and 5642, for the total sum of P38,000.00; that plaintiff's evidence in support of this transaction consists of a copy of a letter (Exhibit B), dated June 8, 1949, of the General Manager of the PRATRA, authorizing E. S. Baltao & Company to deliver to defendant the aforesaid tractors; that defendant made a down payment of P15,200.00 on the said purchase, thereby leaving a balance of P22,800.00; that to secure payment of this latter amount, defendant executed a promissory note, dated June 7, 1949, for the said amount of P22,800.00 (Exhibit C); that as defendant failed to comply with the terms and conditions of the said promissory note, plaintiff's predecessor-in-interest sent to defendant demand letters dated May 2, 1953, June 14, 1954 and February 12, 1955 (Exhibits D, D-2 and D-4, respectively); that defendant's wife Miguela B. de Castro, answered the said letters on May 15, 1953, June 25, 1954 and July 18, 1955 (Exhibits D-1, D-3 and D-5); that in the exhibits just mentioned, said defendant's indebtedness is admitted and extensions of time were asked therein to pay the same on the ground of alleged financial reverses; that as of July 11, 1956, the principal of defendant's indebtedness was P22,800.00 and the stipulated interest thereon was P11,227.71 or a total of P34,027.71; that of the said amount, defendant has only paid P3,480.00; which was applied to the payment of interest, thus leaving an outstanding balance in the amount of P30,547.71 as of July 11, 1956 (Exhibit A), and that under the promissory note, Exhibit C, in case of default in the payment of the said principal and interest, defendant shall pay to plaintiff the additional sum of 10% of the total amount due as attorney's fees and costs of collection.

After plaintiff presented its evidence above summarized on July 11, 1956, it rested its case, and this Court re-set the continuation of the trial on August 10, 1956 to afford the defendant an opportunity to present his evidence. On this latter date, defendant failed to appear when the case was called for trial, so this Court considered the case submitted for decision on plaintiff's evidence. However, on subsequent motion of counsel for defendant to set aside the said order of this Court, on the ground that he is trying to settle this case amicably with plaintiff, which motion was opposed by counsel for plaintiff, this Court, on August 27, 1956, gave defendant a period of twenty days from notice to inform this Court of the status of his alleged negotiation with plaintiff for the amicable settlement of this case, failing which this Court will consider the case submitted for

decision on plaintiff's evidence. On September 17, 1956, counsel for defendant filed a manifestation that the said negotiation was still going on. On October 22, 1956, this Court issued another order giving the parties five days from notice to state whether or not the amicable settlement of the case would go through. On October 27, 1956, counsel for defendant filed another manifestation to the effect that he expects the amicable agreement to materialize, but on October 29, 1956, counsel for plaintiff also filed a manifestation to the effect that defendant's offer or settlement could not be accepted by plaintiff because said defendant was not even able to make partial payment of his indebtedness, so counsel for plaintiff prays that this case be decided on plaintiff's evidence. On November 7, 1956, counsel for defendant filed a motion asking that the parties be given further opportunity to compromise the case, and on November 10, 1956, this Court granted them twenty days for that purpose. On December 5, 1956, counsel for defendant asked for another period of time to submit the said compromise agreement, but in view of the fact that the said motion does not bear the conformity of counsel for plaintiff, and the further fact that his case has been dragging on for an unreasonable period of time, the said motion was denied and the case was considered submitted for decision upon plaintiff's evidence, hence this decision.

The Philippine Relief and Trade Rehabilitation Administration (PRATRA) was dissolved on 3 October 1950 and its "personnel, records, properties, equipment, assets, rights, choses in action, obligations, liabilities, and contracts were transferred to, vested in and assumed by the Price Stabilization Corporation (PRISCO)."[1] The latter was dissolved on 17 June 1955 and its "personnel, records, cash, such needed equipment, rights and contracts * * * involving real estate, fixed assets and stock in trade," were transferred to the National Marketing Corporation (NAMARCO).[2]

On 28 January 1957 the appellant filed a motion for new trial in the lower court on the ground that the judgment was rendered by mistake because he was deprived of the opportunity to present his evidence; and that he and his counsel failed to arrive in Court on time in the morning of 10 August 1956, the day set for the presentation of his evidence, because of heavy traffic on the way from Quezon City, where he resides, to Manila. As no affidavit of merit was attached to the motion for new trial, as provided for in sections 1 and 2 of Rule 37, the motion was correctly denied.

The Court has afforded the appellant the opportunity to present evidence in his behalf. On 27 August 1956, the Court, upon motion of the appellant, and over the objection of the appellee, set aside its verbal order of 10 August; considered the case submitted for decision on the basis of the appellee's evidence alone; and granted the appellant twenty days from receipt of notice to inform the Court of the status of his alleged negotiation with the appellee for an amicable settlement of the case. On 17 September the appellant filed a manifestation informing the Court that he was awaiting the favorable reply of the appellee to his proposals for amicable settlement of the case. On 22 October the Court entered an order directing the parties to state within five days from receipt of notice whether or not the proposed amicable settlement would materialize so that it could take the proper action to terminate the case. On 27 October the appellant filed a manifestation informing the Court that the proposed amicable settlement was still under negotiation and consideration by the appellee. On 29 October the appellee informed the Court that its Board of Directors had rejected the appellant's offer of amicable settlement because its terms were unacceptable and prayed that judgment be rendered on the basis of the evidence it has presented. According to the Court, on 7 November the appellant filed a motion praying that the parties be granted further opportunity to settle the case amicably and on 10 November it granted them twenty days for that purpose. On 5 December the appellant filed a motion praying that the period of twenty days set by the Court for the parties to settle the case amicably be extended to January 1957, because the amended proposal he had submitted was still under consideration by the appellee, and that as evidence of his sincerity to settle the case amicably, he had offered and the manager of the appellee had accepted payment of P2,000 pending acceptance and consideration of his offer. On 6 December the Court denied the appellant's motion for extension of the period to submit a

compromise agreement because it did not bear the consent of the appellee and considered the case submitted for decision upon the evidence already presented. On 2 January 1957 the Court rendered judgment which is now the subject of this appeal. It is not, therefore, correct to say that the appellee had been deprived of his day in court.

Furthermore, in his answer to the appellee's complaint, he merely alleged that "he has no knowledge or information sufficient to form a belief as to the truth of the matters contained in paragraphs 3, 4, 5 and 6 so much so that he denies specifically said allegations." A denial is not specific simply because it is so qualified.[(1)] Material averments in a complaint, other than those as to the amount of damage, are deemed admitted when not specifically denied.[(2)] The court may render judgment upon the pleadings if material averments in the complaint are admitted.[(3)]

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] Executive Order No. 350, series of 1950, 46 Off. Gaz., 4660-4664.

[2] Section 18, Republic Act No. 1345.

[(1)] Sections 6 and 7, Rule 9; *El Hogar Filipino vs. Santos Investments. Inc.*, 74 Phil., 79; *Baetamo vs. Amador*, 74 Phil., 735; *Dacanay vs. Lucero*, 76 Phil., 139; *Lagrimas vs. Lagrimas*, 95 Phil., 113.

[(2)] Section 8, Rule 9.

[(3)] Section 10, Rule 35; *Baetamo vs. Amador*, *supra*; *Lichauco vs. Guash*, 76 Phil., 5; *Lati vs. Valmores*, G. R. No. L-6877, 30 March 1954.

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