

BLUE BAR COCONUT COMPANY, PLAINTIFF AND APPELLEE, VS. ISABELO S. HILARIO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 12699. May 31, 1961

Ponente: DIZON, J.

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DIZON, J.:

On March 16, 1955 Blue Bar Coconut Company, hereinafter referred to as Blue Bar, commenced this action in the lower court against the spouses Isabelo S. Hilario and Encarnacion Gozum, to foreclose: (1) a real estate and chattel mortgage (Exhibit A) executed on March 31, 1948 by said spouses and (2) a chattel mortgage executed on December 12, 1947 by Isabelo S. Hilario (Exhibit F). In view of the latter's death after the filing of the complaint, he was substituted as party-defendant by his children; and as some of them were minors at the time, they were, in turn, represented in the case by their, mother as guardian ad litem.

On May 10, 1955 appellants filed their answer virtually admitting all the material allegations of the complaint, alleging, however, that they failed to comply with their obligation under the mortgage contract Exhibit A because Blue Bar had violated the terms and conditions of a certain agreement (Annex 1 attached to their pleading) entered into on January 27, 1948 between Isabelo S. Hilario, on the one hand, and on the other, not Blue Bar but the Philippine Desiccated Coconut Corporation, a corporation duly organized and existing under and by virtue of the laws of Delaware, U.S.A., and duly authorized to do business in the Philippines. They likewise interposed a counterclaim to recover from Blue Bar considerable sums of money by reason of the latter's alleged failure to comply with the aforesaid agreement.

On May 24, 1955 Blue Bar filed a reply which also contained its answer to the counterclaim. The latter alleged that the facts set forth in the counterclaim did not constitute a cause of action against Blue Bar.

On August 13, 1955 appellants filed a motion to include the Philippine Desiccated Coconut Corporation as a third-party plaintiff or third-party defendant. Blue Bar objected to the motion, and on August 20 the trial court denied it. Appellants' motion for reconsideration suffered the same fate.

When the case was called for trial on August 10, 1955 appellants' counsel informed the court that "The only controverted fact was the exact amount of the indebtedness" (trans. p. 6, August 10, 1955), and thereafter they submitted to the court the following partial stipulation of facts:

"Come now the parties, assisted by their respective attorneys, and to this Honorable Court respectfully submit for approval the following stipulation of facts:

- That under date of May 31, 1948, the spouses, Isabelo S. Hilario and Encarnacion Gozum de Hilario as mortgagors, executed that certain mortgage of even date in favor of the Blue Bar Coconut Company and the Philippine Desiccated Corporation under the terms and conditions therein contained. Said mortgage contract is submitted herewith as Exhibit A.
- That as part of the said mortgage was that certain real estate and chattel mortgage executed by the said

spouses in favor of the Hongkong and Shanghai Banking Corporation dated November 17, 1947, with its corresponding annexes consisting of the list of machineries. The real estate mortgage executed in favor of the Hongkong and Shanghai Banking Corporation is marked as Exhibit A-2, and the inventory of machineries as Exhibits A-3 and A-4. Paragraph 4 of Exhibit A, which has been marked as Exhibit A-1 to show the rights of Blue Bar Coconut Company to institute the present action in its sole capacity.

The mortgage executed by the said spouses in favor of the Hongkong and Shanghai Banking Corporation was on December 20, 1949, cancelled as evidenced by Exhibits B and B-1. Consequently, the Blue Bar Coconut Company became the first mortgagee of all the properties mentioned in Exhibit A-2.

- That with respect to the indebtedness referred to and the object of the present complaint, secured by the mortgagee, Exhibit A, the deceased Isabelo S. Hilario admitted under date of September 12, 1951, that there was the total amount due by him on his mortgage debt aforesaid, the sum of P316,122.78, as evidenced by the document attached hereto and marked as Exhibit C, which bears the signature of John D. McCord and Isabelo S. Hilario.

- That under date of June 27, 1952, by virtue of certain advances made by the plaintiff to the defendants, said mortgage indebtedness was increased by a few pesos, as of said date, June 27, 1952, to P316,851.75, as evidenced by the document marked Exhibit D, which bears at the bottom thereof the signature of Esperanza Gozum de Hilario, surviving spouse of the deceased Isabelo S. Hilario.

- That on July 21, 1953, in a communication addressed by counsel for Blue Bar Coconut Company to Isabelo S. Hilario, hereto attached as Exhibit E, the latter again acknowledged his indebtedness to be P316,871.75 as of March 5, 1952.

- That the aforesaid indebtedness is exclusive of stipulated interest as contained in the deed of mortgage and the corresponding attorney's fees likewise as stipulated in the deed of mortgage, Exhibit A.

- That independent of the real estate mortgage above referred to; Isabelo S. Hilario likewise executed in favor of the plaintiff a chattel mortgage on a certain landing barge, as evidenced by the document, Exhibit F, to secure the payment of the sum of P7,000.00.

- That the sum of P7,000.00 referred to in Exhibit F, has already been consolidated in the amount of P316,871.75 referred to in Exhibit E.

- That Isabelo S. Hilario having died on June 24, 1954, he is substituted herein by his children whose names are already placed as party defendants herein together with their mother, Esperanza Gozum de Hilario.

- That neither the deceased Isabelo S. Hilario nor the defendants herein above have effected payment of the total amount due by them in favor of the plaintiff in the total sum of P316,871.75 aside from interests, costs and attorney's fees."

The case was set for the continuation of the trial on November 28, 1955. On that date Blue Bar presented George N. Ivory as witness and made a formal offer of its documentary evidence, which was admitted without opposition. Thereafter Blue Bar rested its case. Thereupon appellants' counsel made an oral motion for the postponement of the trial upon the ground that he had just received a note to the effect that their principal witness—a certain Mr. Gozum—was in Bayambang, Pangasinan. When the court asked him what was going to be the testimony of said witness, he stated that Gozum would testify "on the substance of our counterclaim". Asked again what would be the nature of such testimony, appellants' counsel stated:

"He will testify that the Bayambang Desiccated Coconut Company was going in full production pursuant to the contract entered into "between the Philippine Desiccated Coconut Company and Mr. Hilario. Then suddenly the Blue Bar Coconut Company told them to stop because of the low price of copra in the United States without consulting Mr. Hilario, and as a result of the stoppage of work the factory collapsed and that was the

direct reason of our inability to comply with the obligation." (Transcript of Nov. 28, 1955, pp. 24-25)

Counsel for Blue Bar, for his part, made the following statement:

"Precisely he asked the Court in a formal motion to include the Philippine Desiccated Coconut Company to sustain the defense he has alleged, and the Court denied that motion to include the Philippine Desiccated Coconut Corporation for the reason that the contract alleged by them partly includes the present contract and has no relationship whatsoever for the present case is one for foreclosure of mortgage. Secondly, the Philippine Desiccated Coconut Corporation is not a party to this action. In view of these grounds which we have presented in our opposition, the Court denied the motion to include the Philippine Desiccated Coconut Corporation." (Id. pp. 25-26)

After considering the contentions of the parties, the court made the following ruling:

"This case was set for hearing this morning and the parties were duly notified of the hearing of this case since November 9, 1955. Therefore, the defendants have had sufficient time to prepare their evidence in this case. The motion for transfer based on information without supporting affidavits is therefore denied, and for the reason that whatever supposed evidence to be presented by the witness who is not here now is highly speculative and does not constitute that defense." (Id. p. 26)

On December 5, 1955 the trial court rendered the decision appealed from, the dispositive part of which reads as follows:

"Wherefore, judgment is hereby rendered:

- Ordering the defendants to pay to the plaintiff, within the period of ninety (90) days, the total sum of P316,871.75 with 6% interests thereon per annum, computed as follows:

(a) On the sum of P148,466.58, representing the original mortgage debt of the defendants; interests at the rate of 6% per annum from May 31, 1948, date of the mortgage deed, Exhibit 'A' until fully paid.

(b) On the sum of P161,405.17, representing advances made by the plaintiff to the defendants, from May 31, 1948, until September 12, 1951 date of liquidation (See Exhibit C); interests at the rate of 6% per annum from September 12, 1951, until fully paid.

(c) On the sum of P7,000.00, representing the chattel mortgage Exhibit F, covered by the second cause of action; interests at the rate of 6% per annum, from the date of filing this action, i.e., March 16, 1955, until fully paid.

- Ordering the defendants to pay to the plaintiff a sum equivalent to 10% of the total indebtedness, principal and interests, as aforesaid as stipulated attorney's fees; and

- For the costs of this action.

In default of payment as hereinabove ordered, the properties, real and personal, referred to and covered by the deed of real and chattel mortgage Exhibits 'A', 'A-3' and 'A-4' (except the properties covered by Transfer Certificate of Title Nos. 45079 and 59669 of the Register of Deeds of Manila), and the landing barge referred to and covered by the deed of chattel mortgage, Exhibit "F", be ordered sold and the proceeds of sale applied to the payment of the amounts adjudged plaintiff herein and that said defendants and all persons claiming under them subsequent to the execution of the said mortgagees be barred and foreclosed of all rights, claim or equity of redemption over said properties. And in the event that the proceeds of the sale of the said properties be insufficient to satisfy the judgment herein rendered the Court hereby orders defendants jointly and severally to pay whatsoever balance or deficiency remaining on the mortgage indebtedness that may be unsatisfied, out of their other properties, if any, derived from the estate of the spouses Isabelo S. Hilario and Encarnacion Gozum de

Hilario, until the total amount due plaintiff is fully and finally satisfied.

The counterclaim of defendants is hereby dismissed for lack of merit.

So Ordered.

We are now urged by appellants to reverse the above decision upon the ground that the lower court erred: (1) in denying their motion to include the Philippine Desiccated Coconut Corporation as a third-party plaintiff or third-party defendant; (2) in dismissing their counterclaim; (3) in rendering judgment for appellee and against them for the full amount demanded in the complaint, and (4) in denying their motion for postponement made in open court.

We may summarize the facts stipulated by the parties as follows: on May 31, 1948 the Hilario spouses executed the deed of second mortgage Exhibit A to secure the payment of the sum of P148,466.58, plus 6% interest per annum thereon, which they owed Blue Bar and its sister corporation, the Philippine Desiccated Coconut Corporation, including any other amount which said corporations may thereafter advance or pay for the account and benefit of said spouses to the Hongkong and Shanghai Banking Corporation or to any other party. As the properties covered by Exhibit A were already mortgaged to the Hongkong and Shanghai Banking Corporation, it was agreed that said second mortgage shall automatically become first mortgage upon payment by said corporations or either of them of the mortgaged debt owing to said bank. This was done on December 20, 1949 and the bank executed the corresponding release of its first mortgage. The mortgage Exhibit A was duly registered.

On December 12, 1947 Isabelo S. Hilario also executed in favor of Blue Bar the chattel mortgage Exhibit F to secure payment of the sum of P7,000.00 he owed said mortgagee.

Blue Bar and the Philippine Desiccated Coconut Corporation had made advances for the account of appellants pursuant to the mortgage contract Exhibit A in the total sum of P316,851.75. This amount already included the original P148,466.58 mentioned in said mortgage contract, as well as the P7,000.00 secured by the chattel mortgage Exhibit F, but it did not include stipulated interests and attorney's fees. The total amount constituting the mortgage debt had been long overdue and had not been paid notwithstanding corresponding demands when the present action was commenced.

In the light of the facts above set forth, it is obvious that appellants' third assignment of error is entirely without merit.

Neither did the trial court err in denying appellants' motion to include the Philippine Desiccated Coconut Corporation as a third-party plaintiff or as a third-party defendant.

Although the money constituting the mortgage debt was advanced by Blue Bar and the Philippine Desiccated Coconut Corporation, the mortgage contract Exhibit A expressly provided that the mortgage was solely in favor of Blue Bar instead of being in favor of both corporations. It also provided that "for the purposes of the said mortgage and all legal incidents in relation therewith, the obligations of the mortgagors shall be deemed and considered joint and several and consolidated in favor of Blue Bar as sole mortgagee." Blue Bar, therefore, had the perfect right to sue alone for the foreclosure of the mortgage.

If the Philippine Desiccated Coconut Corporation was not an indispensable party plaintiff, neither could it be considered as an indispensable third-party defendant for the reasons advanced in appellants' motion appearing at pages 128-129 of the Record on Appeal, namely: that there are common questions of law or fact arising between said corporations in connection with the action before the court, and that its inclusion as third-party defendant

would avoid multiplicity of suits and save time. In their motion appellants did not allege that they were entitled, as against the Philippine Desiccated Coconut Corporation, which was not a party to the action, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. It was, therefore, right for the lower court to deny its inclusion as third-party defendant.

It appears, however, that appellants' counterclaim alleged, inter alia, that Blue Bar and the Philippine Desiccated Coconut Corporation had failed to comply with the terms and conditions of the agreement attached to their pleading as Annex 1, executed on January 27, 1948 by and between Isabelo S. Hilario, on the one hand, and the Philippine Desiccated Coconut Corporation only, on the other. Under this agreement, Hilario agreed to sell and the Philippine Desiccated Coconut Corporation to buy, under the terms therein set forth, all the desiccated coconut manufactured by Hilario in his factory at Bayambang, Pangasinan. On the assumption that said agreement was in respect of, or related to the mortgage contract Exhibit A the Philippine Desiccated Coconut Corporation could have been included, as third-party defendant. This matter, however, was one purely within the sound discretion of the trial court and we cannot now hold that it abused such discretion in any serious manner because the denial of appellants' motion does not bar them from suing the Philippine Desiccated Coconut Corporation in a separate case to recover damages for breach of contract, and because appellants' motion for the inclusion of said corporation as a third-party defendant was fatally defective in that it did not allege any of the grounds that, according to Rule 12, Rules of Court, would justify such inclusion.

The dismissal of appellants' counterclaim was also in order in view of the lack of evidence to sustain it. As stated heretofore, appellants' motion for postponement of the trial made in open court was denied and the case was submitted for decision without their presenting any evidence. On the other hand, there is absolutely nothing in the stipulation of facts to support their counterclaim.

Appellants' last contention that the trial court erred in denying their motion for postponement is also untenable.

In the first place, the record shows that appellants had more than ample time to come to court on the last day of trial with all their witnesses. In the second place, appellants' counsel could not even give clear and categorical statement as to what his alleged witness, Mr. Gozum, would testify. It is true that he stated that he expected the witness to testify on their counterclaim, but according to the record, Blue Bar was not a party to the contract on the breach of which appellants based their counterclaim. Such being the case the trial court correctly found that Blue Bar could not be held liable in damages for committing a breach thereof.

Besides, it is already settled law that the granting of a motion for postponement being one directed to the sound discretion of the trial court, its resolution on the matter will not be interfered with by a higher court unless it was rendered with grave abuse of discretion prejudicial to the rights of the movant. In this case appellants have not made any satisfactory showing that there has been such grave abuse of discretion.

Wherefore, the decision appealed from is hereby affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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