

GENERAL SHIPPING CO., INC., PLAINTIFF AND APPELLEE, VS. SATURNINO C. PINOON, DEFENDANT AND APPELLANT.

G.R. No. 15123. April 25, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Manila ordering Saturnino C. Pinoon to pay the General Shipping Company, Inc. the sum of P12,012.33, lawful interest thereon from 28 November 1955, when demand for payment was made, until the amount is fully paid, P500 as attorney's fees, and the costs of the suit (civil No. 28906).

On 20 January 1956 the appellee brought an action in the Court of First Instance of Manila against the appellant alleging that during the period from June 1954 to 15 November 1955, the appellant, as its agent in Coron, Palawan, collected and received from its shippers and passengers sums of money for freight and fare on board its vessels amounting to P13,873.38, with the duty to remit the amount to the appellee; that the appellant failed to remit the said amount to the appellee; that on 15 November 1955 the appellant executed a promissory note acknowledging his accountability to the appellee for the said amount and promising to pay it in full upon demand unless granted an extension (Annex A); that the appellant had paid only the amount of P1,861.05, thereby leaving a balance of P12,012.33 which despite repeated demands he had refused and failed to pay; and that for bringing this action for recovery of the balance of the indebtedness, the appellee had incurred expense for attorney's fees amounting to P1,000, and praying that after hearing, judgment be rendered ordering the appellant to pay to the appellee the sum of P12,012.33 with legal interest thereon from 28 November 1955, the date of demand for payment, until the said amount is fully paid; P1,000 as attorney's fees, the costs of the suit, and for other just and equitable relief.

On 27 March 1956 the appellant filed an answer, on 20 April 1956 an amended answer, and on 13 April 1957, a motion for leave to file a second amended answer, which he attached to the motion. In his answer and first amended answer, the appellant admitted the material averments of the appellee's complaint except that on the expense incurred by it for attorney's fees in the sum of P1,000, of which he disclaimed knowledge or information to form a belief as to the truth thereof and claimed that the same was not recoverable because there was neither stipulation in their contract nor provision of law providing that the appellee could recover from the appellant such fees. He prayed the Court to grant him a period of two years within which to pay the amount he owed the appellee; that the claim for attorney's fees be denied; and that judgment be without costs. In the second amended answer attached to his motion for leave to file it, the appellant alleged that the sum of P10,240.62 only had actually been collected and received by him; that deducting therefrom the sum of P1,861.05 he had paid to the appellee, only the sum of P8,379.57 was due from him; and reiterated what he had prayed in his answer and first amended answer.

On 16 April 1957, the appellee filed an "opposition to the motion to allow and admit second amended answer and motion for judgment on the pleadings." According to the appellee, since the appellant already had admitted the

material averments of its complaint, all that remained for the Court to determine was the amount of the attorney's fees to which it was entitled and which it left to the sound discretion of the court. It prayed the Court to "deny the Motion to Allow and Admit the Second Amended Answer" and to render judgment upon the facts set forth in the complaint and admission in the answers filed by the appellant. The Court granted the leave prayed for and admitted the second amended answer.

On 5 July 1957, pursuant to the provisions of section 10, Rule 35, of the Rules of Court, the Court rendered judgment on the pleadings, the dispositive part of which is set out at the beginning of this opinion. Hence this appeal which the Court of Appeals forwarded to this Court for only questions of law are involved.

Section 9, Rule 9, provides:

The defendant may set forth by answer as many affirmative defenses as he may have. All such grounds of defense as would raise Issues of fact not arising upon the preceding pleading must be specifically pleaded, including fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way of confession and avoidance. When a party has mistakenly designated a defense as a counterclaim, or a counterclaim as a defense, the court may treat the pleading as if it had been properly designated without requiring repleading.

Section 5, Rule 8, provides:

If no motion to dismiss has been filed, any of the grounds therefor as provided in this rule (Rule 8, providing for the grounds upon which a motion to dismiss may be filed), may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss has been filed.

Pursuant to the foregoing provisions of the Rules, a defendant may set up in his answer as many affirmative defenses as he may have, including fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way, of confession and avoidance, aside from those grounds upon which a motion to dismiss may be filed.

It is true that the appellee's cause of action is based upon a promissory note executed by the appellant acknowledging his indebtedness to the appellee in the sum of P13,873.38 (Annex A to the complaint) and the appellant did not deny under oath its genuineness and due execution. But in his second amended answer filed on 13 April 1957, before hearing, and allowed by the court, the appellant made and set up the following specific denials and defenses:

- That defendant specifically denies the allegation in paragraph 3 of the complaint that he had collected and received from shippers and passengers during the period from June, 1954 to November 15, 1955, sums of money due to plaintiff on account of freight and/or passengers on board plaintiff's vessels in the total amount of P13,873.38, the truth of the matter being that defendant had collected and received the amount of P10,240.62;
- That defendant admits the allegation in paragraph 4 of the complaint in that he executed a promissory note (Annex A) to cover the amount of P13,873.38 acknowledging therein and assuming the obligation due to the herein plaintiff, but specifically denies that the amount stated therein is correct, the truth of the matter being that after a subsequent check, defendant found out that he is indebted to the plaintiff in an amount lesser than aforementioned. To be specific only in the amount of P10,240.62;
- That defendant admits that part of paragraph 5 of the complaint which alleges that he has paid P1,861.05, but specifically denies that the balance of his indebtedness to the plaintiff is in the amount of P12,012.33, the truth of the matter being that the balance should only be P8,379.57, and likewise denies that he has failed and refused to pay his indebtedness as to the plaintiff, the truth of the matter being that he had made a partial

payment already as mentioned in the complaint and that if ever he had failed to pay it was because the plaintiff had asked for conditions for payment which defendant under the circumstances could not meet or fulfill; (pp. 9-10, rec. on app.)

As the appellant denied the correctness of the amount of his indebtedness to the appellee, he should have been afforded an opportunity to prove it.

The trial court is of the opinion that as the action is founded upon a promissory note executed by the appellant on 15 November 1955 attached to the complaint whereby he undertook to pay the appellee the sum of P13,873.38, the appellant is liable to pay the sum, which includes the uncollected accounts amounting to P3,632.76, for the reason that when he signed the note he was aware of such uncollected accounts. The inference may no longer be drawn in view of the appellant's claim and defense set up in the second amended answer allowed by the Court to the effect that after a subsequent check, he found out that he was indebted to the appellee in an amount lesser than that appearing in the promissory note, because uncollected accounts were included therein. Moreover, if the appellant's claim and defense set up in his last amended answer allowed by the court be taken into account, such inference runs counter to the appellee's claim, as alleged in his complaint, that the sum appearing in the note had been collected and received by the appellant. The second amended answer allowed by the trial court having tendered an issue as to the amount of the appellant's indebtedness to the appellee, without denying the genuineness and due execution of the note upon which the action is founded (section 8, Rule 15), a judgment on the pleadings, as provided for in section 10, Rule 35, can no longer be had.

The judgment appealed from is set aside and the case remanded to the court from whence it came for further proceedings, without pronouncement as to costs.

Bengzon, Acting C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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