

LIM GIOK, PLAINTIFF AND APPELLEE, VS. BATAAN CIGAR AND CIGARETTE FACTORY, INC., DEFENDANT AND APPELLANT.

G.R. No. 15861. April 15, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On September 27, 1958, plaintiff brought an action against defendant before the Court of First Instance of Manila to recover the sum of P6,032.02, plus damages and attorney's fees.

On November 3, 1958, defendant filed its answer setting up certain defenses and a counterclaim. It averred that while it admits that plaintiff is entitled to the sum of P5,250.12 for which it prepared a check in his behalf, however, plaintiff submitted an accounting of his cash collections between July 28, 1958 and August 1, 1958 showing that he had in his possession the amount of P74,298.80 which he has so far failed to turn over to defendant, for which reason, defendant claims, plaintiff has no cause of action.

In view of the admission of defendant that it owes plaintiff the sum of P5,250.12 which it was ready to turn over to him any moment, the latter filed a motion for judgment on the pleadings praying that defendant be ordered to pay him said amount of P5,250.12. Defendant objected to the motion contending that a judgment on the pleadings is not proper when the answer tenders a genuine issue which is controvertible in nature, but overruling this objection, the court rendered judgment ordering defendant to pay plaintiff the sum of P5,250.12 without costs.

Defendant now comes on appeal raising as main issue that the trial court erred in rendering judgment on the pleadings notwithstanding that the material allegations of the complaint are disputed in the answer of defendant.

There is merit in this appeal. Under our rule, "where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint should always be proven." (Section 10, Rule 35)[1] but where defendant's answer tender an issue judgment on the pleadings cannot be rendered.[2] Specifically, this Court held that judgment on the pleadings can only be rendered when the pleading of the party against whom the motion is directed, be he plaintiff or defendant, does not tender any issue, or admits all the material allegations of the pleading of the movant. Otherwise, judgment on the pleadings cannot be rendered.[3]

In the case at bar, there is no occasion for rendering such judgment considering that defendant tenders an issue which cannot be brushed aside without presentation of evidence. An examination of the complaint will disclose that plaintiff seeks to collect the sum of P6,032.02 which it is claimed, defendant refused to pay in spite of repeated demands. This allegation, it is true, is admitted in the answer, but the admission is qualified. Defendant stated that plaintiff rendered an accounting of his cash collections showing that he had in his possession the sum of P74,298.18 which he has failed to deliver to defendant, and that unless this matter is clarified plaintiff has no cause of action against defendant. Verily, this is an issue which cannot be brushed aside. It can only be threshed out upon presentation of appropriate evidence, or when the case is decided on the merits.

Wherefore, the decision appealed from is reversed. The case is remanded to the lower court for further proceedings. No costs.

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

[1] *Aleman vs. Sweeney*, 3 Phil., 114.

[2] *Ongsin vs. Riarte*, 81 Phil., 184.

[3] *Fabella vs. Provincial Sheriff of Rizal*, 94 Phil., 35; *Santiago vs. Conde*, 105 Phil., 298.

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