

ZAMBALES COLLEGES, INC., PETITIONER AND APPELLANT, VS. THE HON. COURT OF APPEALS, ETC., ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 16371. March 28, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for certiorari against the decision of the Court of Appeals in its CA-G. R. No. 24617-R.

The Zambales Colleges, Inc. filed with the Court of First Instance of Zambales a suit for damages against Ciriaco Villanueva. In his answer dated 2 February 1956, defendant set up a counterclaim with three causes of action, to wit:

"FIRST CAUSE OF ACTION

12. That on February 24, 1951, plaintiff, acting thru its president, Ricardo Aguirre, maliciously filed criminal cases Nos. 1635 and 1636 in the Justice of the Peace Court of San Narciso, Zambales, charging him of estafa for allegedly certifying that a certain Jose Dumlao was qualified to teach and receive salary;

* * * * *

"SECOND CAUSE OF ACTION

17. That on August 3, 1955, plaintiff corporation filed an action for estafa with the Justice of the Peace Court of San Narciso, Zambales, against the defendant based on the same facts as alleged in the complaint;

* * * * *

"THIRD CAUSE OF ACTION

22. That on or about August 6, 1955, after the said estafa case mentioned in the second cause of action was filed, plaintiff with malice aforethought, took undue actions in the issuance and service of the warrant of arrest by causing its representatives to hand-carry the said warrant notwithstanding official regulations and orders against such practice, and in so doing managed to serve said warrant or caused to have it served shortly before noon on a Saturday when bonding companies were closing their offices for the weekend, plaintiff ('s) purpose being to detain the defendant until the following Monday;

23. That because of this act of the plaintiff, defendant was arrested scandalously in the presence of his many visitors and unceremoniously taken to police headquarters and treated like an ordinary criminal, thus causing him damages in the amount of P10,000.00."

On 16 February 1956, plaintiff filed a motion to dismiss the counterclaim alleging bar by prior judgment and lack of cause of action. Alleging that the motion to dismiss was filed out of time, defendant moved to declare the plaintiff in default as to the counterclaim. The trial court denied this motion for default by its order of 23 March 1956; but, on 31 August 1956, the court also denied plaintiff's motion to dismiss the counterclaim. It appears that

plaintiff's counsel was duly notified of the last denial on 1 September 1956. Because the plaintiff continued to ignore the counterclaim, on 20 March 1957, the trial court, upon defendant's motion, finally declared the plaintiff in default as to the counterclaim.

Evidence having been adduced, the trial court rendered its decision dated 24 June 1958, the dispositive portion of which reads:

"In view of the foregoing considerations, the court hereby renders judgment in favor of the defendant and against the plaintiff.

1. Dismissing the plaintiff's complaint.

2. Ordering the plaintiff to pay to the defendant the sum of P2,500.00 as moral damages and P1,000.00 as attorney's fees on the first cause of action of the latter's counterclaim; the amount of P5,000.00 as moral damages and P1,000.00 as attorney's fees on the second cause of action; and the sum of P5,000.00 as moral damages and P1,000.00 as exemplary damages on the third cause of action."

Plaintiff's appeal from this judgment to the Court of Appeals was given due course after the re-amended record on appeal was approved on 20 March 1959 and is now pending decision in that Court. However, before the perfection of the appeal and upon motion of the defendant, the trial court ordered on 15 August 1958, the execution of its decision as to defendant's counterclaim.

Alleging that the trial court issued the writ of execution without or in excess of its jurisdiction, the plaintiff filed with the Court of Appeals an original action for certiorari and prohibition designed to set aside and annul said order. On the theory, however, that the petitioner was not entitled to appeal on the counterclaim, the appellate tribunal denied the petition. Hence, this review.

Petitioner urges in this instance that respondent trial court committed a grave abuse of discretion and/or acted in excess of its jurisdiction in sustaining the counterclaim notwithstanding an utter lack of evidence in support of its allegation; that its order of declaring the petitioner (plaintiff therein) in default and judgment by default on the counterclaim are null and void; and, finally, that said court erred in ruling that a party in default has no right to appeal.

There is clearly no merit in the first contention. While an error of judgment might have been committed by the trial judge in his evaluation of the evidence in the damage suit (but this is just an assumption), we, nonetheless, do not find such exercise of discretion to be whimsical, arbitrary or capricious amounting to a virtual refusal to perform his bounden duty as a magistrate of justice. As to the first and second causes of action, the court, we note, took into consideration the criminal charges filed against the defendant, the findings of the criminal courts dismissing the same for want of substance, and testimonial evidence tending to show the lack of merit of the criminal imputations instituted by the plaintiff (herein petitioner), like, for instance, the absence of deceit on the part of accused Villanueva and damage on the part of complainant college. Coming specifically to the third cause of action, the trial court found, among other things, that the warrant for Villanueva's arrest was unduly hand-carried to Manila without the necessary indorsement of the justice of the peace court; that his arrest was so timed that defendant could not possibly procure immediately a bond for his provisional release, and that the warrant was served on him at his office at the Department of Education to unnecessarily embarrass, humiliate, and ridicule him before his visitors and co-employees. To accept petitioner's plea for a review of these findings and conclusion of the court would, in effect, amount to allowing the substitution of petitions for certiorari in lieu of appeals, which we are not in a position to do (see *Chua Ke vs. Abeto*, 63 Phil., 539, and cases cited therein).

Invoking the case of *Navarro and Binoya vs. Bello, et al.*, 102 Phil., 1019; 54 Off. Gaz., 6588, petitioner next

argues that the declaration of default is null and void, because the issues raised in the counterclaim, particularly those contained in the second and third causes of action, are so inextricably linked with those raised by the complaint, that an answer would merely require a repleading of the complaint.

The pertinent allegations of the complaint filed by the petitioner in the Court of First Instance of Zambales read:

"2. * * * (The defendant was, in the years from 1947 to 1950, the Director of the Zambales Academy, Inc. (now the Zambales Colleges, Inc.) in all its school departments, and a member of the Board of Trustees of the same corporation from 1948 to 1950;

3. * * * (The defendant, acting fraudulently and in abuse of the trust reposed in him as Director and member of the Board of Trustees, without the knowledge, consent and authority of the Board of Trustees of the Zambales Academy, Inc., and without the requisite permit and authority of the Bureau of Private Schools, clandestinely organized and operated fake branches or classes of the Zambales Academy Junior Normal Course in the municipality of Castillejos, Iba and Palauig, all within the province of Zambales, in the years from 1947 to 1950;

4. * * * (Under) the defendant's direction, tuition and other school fees were collected from students enrolled in this fake branches or classes, which money collections were not delivered to the Zambales Academy, Inc. but were appropriated to defendant's use and purchases known to and allowed only by himself."

Even the petitioner, however, does not pretend that defendant's initial cause of action in his counterclaim (malicious filing of criminal charges) is related to the allegations stated in the complaint. This is but to be expected, considering that the complaint never made the slightest reference to the matters averred in said portion of the counterclaim (see First Cause of Action, *supra*). That being the case, the plaintiff was still obligated under the Rules of Court to controvert or otherwise meet the new issues by filing the corresponding answer (see Sec. 7, Rule 10, Rules of Court). The same thing may be said of the third cause of action of the counterclaim, which only raised the propriety of the manner how the warrant for Villanueva's arrest was procured by the plaintiff and served upon said defendant. No further discourse is needed to show the already apparent disparity between the issues posed by the first and third causes of action of the counterclaim, on one hand, and the complaint, on the other.

Petitioner is, however, correct as to the second cause of action. The counterclaim itself recited that this particular cause of action is merely based on facts alleged in the complaint, and it thus had the effect only of restating the issues already raised by the plaintiff. Obviously, as far as this cause of action is concerned, there was no occasion to rule the plaintiff in default.^[1] Hence, the award of damages on the counterclaim's second cause of action has not become final, since the case was appealed on the merits. But this fact did not excuse the petitioner from meeting the different issues of the first and third causes of action, and as to them, it was properly declared in default.

Petitioner maintains that it has not lost its standing in court and is technically not in default because it filed a motion to dismiss the counterclaim. The records show, however, that said motion was denied by the trial court on 31 August 1956, and movant Zambales Colleges, Inc., was duly notified of this denial on 1 September 1956. Needless to say, a motion to dismiss cannot be a substitute for an answer, especially when it is denied.

Not having moved for the reconsideration or for the lifting of the order of default, petitioner itself has foreclosed its right to appeal from the portions of the judgment which considered it in default (see *Lim Toco vs. Go Fay*, 80 Phil., 166; *Samudio vs. Municipality of Gainza*, 100 Phil., 1013; 53 Off. Gaz., 3744; *Manila Motor Co., Inc. vs. San Juan*, G. R. No. L-9163, May 29, 1959).

Finally, petitioner contends that it would be unconstitutional to deprive a party of his opportunity to appeal. Suffice it to say in this regard, however, that petitioner was not denied or deprived of that right, but lost it due to

its own fault and negligence, for which it is exclusively to blame.

Wherefore, the judgment of the Court of Appeals appealed from is modified in the sense that the order of execution, dated 15 August 1959, issued by the trial court in its Civil Case No. 1760, shall be confined only to those portions of its judgment relating to the first and third causes of action of defendant Villanueva's counterclaim, to the exclusion of the P6,000.00—awarded on the second cause of action. The writ of preliminary injunction issued by this Court on 8 March 1960 to stay execution of judgment in said civil case is hereby lifted, and the trial court ordered to proceed in accordance with this opinion. No special pronouncement as to costs. So ordered.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

[1] A declaration of default under these circumstances is a nullity (see *Navarro and Binoya vs. Bello*, 102 Phil., 1019; 54 Off. Gaz., 6588).

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