

HAP HONG HARDWARE CO., INC., PLAINTIFF AND APPELLEE, VS. PHILIPPINE MILLING COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 16778. May 23, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Manila, Hon. Bonifacio Ysip, presiding, sentencing the defendant Philippine Milling Company to pay the plaintiff Hap Hong Hardware Co., Inc. the sum of P2,084.90 plus legal interest, and the sum of P400.00 as attorney's fees.

The action was brought to recover the value of hardware materials ordered by the defendant from the plaintiff which it promised to pay upon delivery. The materials were delivered, but only P200.00 was paid at the time of the delivery, thus leaving a balance of P2,084.90. After a denial of a motion for a bill of particulars and of a motion to dismiss, the defendant filed an answer, admitting the purchase by it of the materials and the payment thereon of P200.00, but denying the allegation that the balance of P2,084.90 has not been paid. The answer also contains a counterclaim for attorney's fees and for moral damages in the amount of P5,000.00, alleged as a result of the filing of the action.

The original complaint bears date of April 3, 1956, and the answer to defendant's counterclaim was filed on May 29, 1956. On the same date, a motion to set the case for hearing was presented by attorney for the plaintiff, and in accordance therewith the court set the case for trial on July 19, 1956. However, the judge presiding in the sala in which the case was pending was on vacation, so counsel for the plaintiff again asked that the case be set for another hearing, and in accordance therewith the court set the case for trial on October 25, 1956. On October 22, 1956, counsel for the defendant moved for a postponement of the trial, which the court granted in open court on October 25, 1956, setting the trial on December 6, 1956.

On December 4, 1956, the defendant again filed a motion for postponement, alleging that the officers of the defendant company were attending another trial, of a criminal case, and that counsel had to attend also to a trial of another criminal case. The motion is sworn to, so the court postponed the hearing to January 3, 1957, in an order dated December 6, 1956.

On January 3, 1957, the date of the trial, the defendant again filed a petition for postponement, alleging that the defendant's witnesses, officers of the company, had not come because it was already the beginning of the milling season in the municipality of San Jose, Mindoro Occidental, and their presence in the central was very necessary. This motion is dated December 29, 1956 but a copy thereof was received by the attorney for the plaintiff only on January 2, 1957.

When the case was called for hearing on January 3, 1957, the defendant failed to appear, and so the court ordered the plaintiff to present its evidence. On that same date, the court rendered the judgment appealed from.

Appeal was taken directly to the Court of Appeals, which court endorsed it to Us for decision, as the appellant's

brief does not raise questions of fact, but only a question of law. It is its contention on this appeal that the lower court erred in not granting the postponement, as prayed for by the defendant, and in allowing the plaintiff to present its evidence, thus depriving appellant of its day in court.

We find the appellant's contention to be without merit. Various postponements were secured by the defendant prior to the last day set for the hearing, showing an intention of defendant's part to delay the termination of the case. Its answer shows that it has no apparent defense; it even admitted purchasing the materials and in paying only P200.00 upon delivery. The defense is a mere denial of the allegation of the plaintiff that the balance of the account has not been paid.

The reason adduced in support of the motion for postponement is not unavoidable and one that could not have been foreseen. Defendant ought to have known long before the date of trial that the milling season would start when the trial of the case would be held. The motion should have been presented long in advance of the hearing, so that the court could have taken steps to postpone the trial without inconvenience to the adverse party. As it is, however, the motion was presented on the day of the trial. Knowing as it should have known that postponements lie in the court's discretion and there being no apparent reason why the defendant could not have presented the motion earlier, thus avoiding inconvenience to the adverse party, the appellant can not claim that the trial court erred in denying postponement. Under all the circumstances we hold that the court was perfectly justified in denying the motion for postponement.

Wherefore, the appeal is hereby dismissed, and decision appealed from is hereby affirmed, with costs against the appellant.

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

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