

BARTOLOME GUIRAO, PLAINTIFF AND APPELLANT, VS. EVARISTO VER, DEFENDANT AND APPELLEE.*G.R. No. 18570. April 29, 1966*

Ponente: MAKALINTAL, J.

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Plaintiff-appellant, a practicing lawyer, brought an action for recovery of his fees from defendant-appellee for professional services rendered to the latter in a certain civil case in Ilocos Norte. The complaint, docketed on April 11, 1957, alleged that the services were rendered from January 9, 1948 to January 31, 1950, and had a reasonable value of P2,995.00.

Defendant moved to dismiss on the ground that the cause of action was barred by the statute of limitations, citing Article 1145 of the Civil Code which provides that an action upon an oral contract must be commenced within six (6) years. The motion was posted as registered mail in Manila on May 6, 1957, and was received by the Court in Laoag, Ilocos Norte, the following May 10, on which date also plaintiff received the copy sent to him. At the hearing of the motion on May 11, as set by defendant himself, plaintiff did not appear; and on the same day the Court issued an order dismissing the complaint on the ground relied upon by defendant. Copies of the order, however, were received by plaintiff on May 23, 1957, and by defendant on or about the same date, or at any rate after May 20.

Without knowledge that such order had been issued, plaintiff filed on May 16, 1957 an opposition to the motion to dismiss, and on May 17 a motion for leave to file an amended complaint, followed by the amended complaint itself on May 18. The principal amendments consisted in the new allegations "that the payment of the professional fees of the plaintiff is premised on the basis of a contingent fee, depending upon the successful termination of the case; and that said case had been finally decided in favor of the defendant on or about October 1956."

The amended complaint would thus remove the cause of action from the operation of the statute of limitations. On May 20, 1957 defendant moved to strike it out as having been prematurely filed, since his motion to dismiss the original complaint was still pending resolution, (Actually the order of dismissal had been issued as early as May 11, but as already observed the parties received no notice thereof until May 23.) Nevertheless the court denied the motion for leave to file the amended complaint on the ground that it had "no more jurisdiction to entertain the same in view of the fact that the original complaint had already been previously dismissed." Plaintiff's subsequent motion to reconsider both the order of dismissal and the order rejecting the amended complaint having been denied, he appealed to the Court of Appeals, which thereafter certified the case to Us, the question involved being purely legal.

The appeal is manifestly meritorious for several reasons: (1) The court a quo had not lost jurisdiction over the case simply because it had issued the order of dismissal dated May 11, 1957. The parties had not yet received copies of said order; and even after such receipt the order would become final only upon the expiration of the period of thirty days within which to appeal therefrom, expired (Rule 36, sec. 2, in relation to Rule 41, sec. 3).

Within such period the court could still reconsider its order. (2) Under Rule 10, sections 1 and 2, a pleading may be amended by correcting a mistaken or inadequate allegation or description so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner; and a party may amend his pleading once as a matter of course at anytime before a responsive pleading is served. A motion to dismiss is not a responsive pleading within the meaning of this rule, and the pendency of such motion does not affect plaintiff's right to amend his complaint. (3) The amendments sought to be introduced by plaintiff were not inconsistent with the allegations in his original complaint, but were obviously intended to clarify the intrinsic ambiguity in them with respect to the time of the accrual of his cause of action, For to say, as plaintiff did, that he rendered professional services to defendant from 1948 to 1950 did not necessarily mean that he could have demanded payment therefor immediately so as to warrant judicial redress in case of defendant's refusal to pay. His right to such fees being contingent in nature, it depended upon the final result of the litigation, which according to the amended complaint terminated only in 1956.

The orders appealed from are set aside and the case is remanded to the Court a quo for further proceedings on the basis of plaintiff-appellant's amended complaint dated May 18, 1957. Cost against defendant-appellee.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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