

UNITED STATES SHOE COMPANY, PLAINTIFF AND APPELLEE, VS. LOURDES CATALA Y MARTINEZ, DEFENDANT AND APPELLANT.

G. R. No. 40763. August 10, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

On November 14, 1932, the plaintiff, the United States Shoe Company, filed suit against the defendant asking for judgment in the sum of P17,000 together with interest and costs on a certain promissory note signed by the defendant. They also prayed for the foreclosure of a mortgage securing said indebtedness.

The original payee in said note was Frank B. Ingersoll who assigned and transferred the same to the plaintiff.

On December 12, 1932, the defendant filed a demurrer in which she contended that the facts alleged in the petition did not state a cause of action and that the petition was vague, ambiguous and unintelligible. The bill of exceptions does not show what ruling if any was made on this demurrer.

On March 16, 1933, the defendant filed an amended answer which consists of a general denial and of certain special defenses, namely, that the note and the mortgage securing the same have not matured; second, that before the transfer of the note to the plaintiff, the former creditor (Frank B. Ingersoll) had agreed to extend the said note and mortgage for an additional year; that the defendant, upon receiving from the plaintiff a demand for payment of the said note, appeared at the office of the plaintiff and tendered payment of the entire principal and interest but that plaintiff refused to accept same as full satisfaction of the debt claiming that the defendant should also pay P1,700 as penalty for the breach of the mortgage; that the transfer of the mortgage by Mr. Ingersoll to the plaintiff was made with the sole purpose of collecting the penalty of P1,700.

On June 27, 1933, the court entered the following decision which is the subject matter of this appeal:

"The above entitled case was duly heard by this court and the parties were allowed to present their written memoranda.

"After the court has finished studying all the evidence presented in this case and was about to decide the matter on the merits, an important question of law was noticed, and that is, the fact that the defendant insists that the case be dismissed because the plaintiff failed to prove the corporate existence of the plaintiff 'United States Shoe Company'. In answer to this argument, plaintiff's attorney argues that the plaintiff's complaint was verified, whereas the answer of the defendant which is a general denial is not under oath. Under the circumstances plaintiff's attorney claims that the unverified general denial raises no issue. Plaintiff's attorney further argues that Exhibit C of the plaintiff contains a statement that the said plaintiff is a Philippine Corporation.

"The court has carefully studied the question of law involved herein and is convinced that nothing can be found in the law that requires that a defendant in a civil case must file an answer under oath in a case of this kind in order to raise an issue. After examining carefully the evidence presented, the court finds that there is really no proof as to the corporate existence of the said plaintiff and as to whether said corporation still exists

up to the present. Plaintiff's last paragraph in his brief states as follows:

" 'Finally, it is urged to the court that if the court should decide that the defendant is entitled to have this case dismissed upon the technical claim of the defendant that plaintiff has failed to prove its corporate existence, since such a judgment will not at all be based upon the merits of the case, the court must, as a matter of course, order such dismissal without prejudice to another action being brought for the same cause.'"

"In view of all the foregoing, the court hereby orders the dismissal of the above entitled cause, without prejudice to the filing of a subsequent action by said plaintiff and without special pronouncement as to the costs, It is so ordered."

It is the contention of the defendant-appellant that the trial court erred in dismissing the case without prejudice and leaving to the plaintiff the option of filing a new suit. The appellant contends that the court should have decided the case on the merits and rendered final judgment in favor of the defendant on the ground that the note and mortgage had not yet matured. The appellee asks this court in effect to reverse the judgment and to grant it affirmative relief on this appeal. As to the latter, we cannot find that this court in the present case could grant said relief conformably with proper appellate procedure.

We think the learned trial judge erred in the final order he entered in this case. If the corporate existence of the plaintiff is a material allegation, which must necessarily, be proven to sustain a judgment, and if no proof of such corporate existence appears in the record, the logical result would be a judgment on the merits for the defendant.

Let it be noted at the outset that the bill of exceptions does not show that the defendant ever raised any question before the case was closed as to the corporate existence of the plaintiff. It is alleged in the original petition "that plaintiff is a corporation organized and existing under the laws of the Philippine Islands." This petition is verified under oath by R. A. McGrath who states that the plaintiff is "a corporation organized and existing under the laws of the Philippine Islands." In the demurrer and argument in support thereof filed by the defendant no question was raised as to the corporate existence of the plaintiff although the assignment and transfer of the mortgage to the plaintiff was attacked on other grounds. In a motion filed on December 31, 1932, in which it was prayed that Mr. Ingersoll be made a party, it is admitted that he had transferred and assigned the said mortgage to the plaintiff and that the defendant, in open court on December 27, 1932, through her counsel, stated to the court that she was ready and willing to deposit in the court the amount of the mortgage and interest but without the penalty claimed by the plaintiff. In her answer filed January 14, 1933 (page 30, Bill of Exceptions), she again states that she offered to pay the plaintiff the full amount of the obligation less the penalty and the offer is restated in the amended answer of the defendant filed March 16, 1933.

When Exhibit C which is the assignment and transfer of the mortgage to the plaintiff was offered in evidence, no objection was made although, this exhibit recites that the United States Shoe Company, the assignee, is a Philippine corporation. Upon the trial no issue as to the corporate (existence of the plaintiff was raised by the defendant. She stipulated that she had received from the plaintiff due notice that the mortgage had been transferred to it and that payment should be made accordingly. It was after receipt of this notice that the defendant entered into negotiations with the plaintiff for the payment of the debt as testified to by her. The secretary of the United States Shoe Company testified without objection to resolutions adopted by the "Board of Directors" of the said company and other matters indicating a Philippine corporation. He was asked the following question: "Is the United States Shoe Company a United States or Philippine corporation?" to which counsel for the defendant objected on the ground that the question is "immaterial". The objection was sustained by the court.

Upon this record we have come to the conclusion that the alleged lack of proof as to the corporate existence of the plaintiff corporation cannot serve as the basis of the decision rendered by the trial court. In view of the admissions

of the defendant which contradict the general denial of her answer, it is unnecessary to decide in this case the abstract question whether a general denial is sufficient to put the plaintiff upon proof of its corporate existence. The judgment is, therefore, reversed with costs against the appellant, and the cause remanded with directions to the trial judge to render a decision on the merits upon the record as made up and submitted when the decision herein appealed from was rendered.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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