

WALTER A. SMITH CO., INC., PLAINTIFF AND APPELLEE, VS. J. W. FORD, DEFENDANT AND APPELLANT.

G. R. No. 42420. November 20, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant J. W. Ford appeals to this court from the judgment of the Court of First Instance of Manila the dispositive part of which reads:

"Wherefore, the court orders the herein defendant to pay to the plaintiff Walter A. Smith Co., Inc., the sum of two thousand four hundred eighty-nine pesos and ninety-two centavos (P2,489.92), with interest thereon at 1 per cent a month from the dates of the invoices in question, with costs. So ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision in question, to wit:

- In overruling defendant's demurrer and motion to dismiss.
- In declaring that defendant had not only failed to deny but had admitted that he had received all the merchandise described in the invoices.
- In condemning the defendant to pay plaintiff the sum of P2,489.92 with interest thereon at 1 per cent per annum from the respective dates of the invoices, and to pay the costs.
- In not absolving the defendant from the complaint particularly for the reason that plaintiff no longer has any claim against said defendant.
- In denying defendant's motion for a new trial."

From the record the following facts may be inferred:

By resolution of December 31, 1931, of the board of directors of the corporation, Walter A. Smith Co., Inc., with official residence in Iloilo, Iloilo, the president thereof, Walter A. Smith, was authorized to open and he did open a branch of the corporation in the City of Manila. From December 6, 1927, to May 17, 1930, both dates inclusive, there were delivered on different dates at the defendant's address in Iloilo, Iloilo, various kinds of lumber the total value of which amounted to P2,489.92 (Exhibits A, A-3, B, B-3, C, C-2, C-4, D, E, E-2, E-4, F, F-3, G, H, I, J, J-3, K, K-3, K-6 and L-1), the corresponding receipts having been signed as follows: Exhibit A-1 by Nicolas Dignadice, Exhibit A-4 by Manuel Solatorio, Exhibit B-1 by Manuel Solatorio, Exhibit B-4 by Geo. G. Martin, Exhibit C-1 by J. W. Ford, Exhibit C-3 by a person the signature of which is illegible, Exhibit C-5 by Andres Velez, Exhibits D-1, E-1, and E-3 by J. W. Ford himself, Exhibit F-2 by Frank Ford, Exhibit F-4 by J. W. Ford himself, Exhibit F-5 by Cornelio Flores, Exhibit H-1 by J. W. Ford himself, Exhibit I-1 by Thick Ford, Exhibit I-2 by Frank F. Ford, Exhibits J-1 and EJ-4 by Gabino Pullantis, Exhibit K by Frank Ford, Exhibit K-4 by Juan Salazar, Exhibit K-7 by Mariano Moquera, Exhibit L-1 by Mrs. Marcela Ford. Some of said receipts, those signed by the defendant J. W. Ford, bear under the signature thereof the words "on account" (Exhibit E-1), "Act. Loan & Asia Lumber Co." (Exhibit E-3), "On Act." (Exhibit F-1), "On

Act. Note from Asia Lumber Co." (Exhibit H-1). The value of said lumber had not yet been paid either totally or partially on the date of the filing of the amended complaint.

The defendant J. W. Ford denies having received all said lumber. He admits having received only that appearing in Exhibits A-1 signed by Nicolas Dignadice; A-4 signed by Manuel Solatorio; B-1 also signed by Manuel Solatorio; B-4 signed by Geo. G. Martin; C-1 signed by J. W. Ford; C-5 signed by Andres Velez; D-1, E-1 and E-3 signed by J. W. Ford; E-5 signed by Frank Ford; F-1 signed by J. W. Ford; FT2 signed by Frank Ford; F-4 signed by J. W. Ford; F-5 signed by Cornelio Flores; H-1 signed by J. W. Ford; 1-2 signed by Frank F. Ford; J-1 signed by Gabino Pullantis; K signed by Frank Ford; K-7 signed by Mariano Moquera; L-1 signed by Marcela de Ford. The lumber consigned in the receipts Exhibits C-3 with an illegible signature; G and G-1 which are unsigned; J-3 also unsigned; J-4 signed by Gabino Pullantis, and K-3 and K-4 signed by Juan Salazar, was not received by him inasmuch as he does not know the persons whose signatures appear in said receipts. Upon being questioned by his attorney regarding the signature of Nicolas Dignadice in Exhibit A-1, the defendant J. W. Ford stated that he did not remember said name but that it must be that of one of his employees. With respect to Manuel Solatorio whose signature appears in the receipt Exhibit A-4, Geo. G. Martin whose signature appears in the receipt Exhibit B-4; and Andres Velez whose signature appears in Exhibit C-5, the defendant J. W. Ford, upon being asked if he had had employees by those names, answered that he did not know or that he did not remember.

In view of the foregoing facts, the first question to be decided is that procedural question raised by the appellant in his first assignment of alleged error, consisting in that the court a quo erred in overruling the demurrer filed by him and denying his motion to dismiss on the ground of improper venue.

Even granting that the plaintiff company had no branch in the City of Manila at the time of the filing of the complaint, the existence thereof not having been conclusively proven, the Court of First Instance of Manila did not thereby lack jurisdiction to take cognizance of said complaint because when said defendant's demurrer had been overruled and he was ordered to answer the complaint, he filed an answer wherein, aside from denying generally and specifically the allegations, contained in each and every paragraph of the complaint in question, he interposed two special defenses one of which is that all the items enumerated in said complaint, with the exception of the last two amounting to P278.40, have already prescribed; the other being that Walter A. Smith, the biggest stockholder of the plaintiff corporation was indebted and continued to be indebted to the defendant for a considerable amount of money the total of which is very much more than that claimed by the plaintiff entity, which amount must be applied to the payment of Walter A. Smith's debt to said defendant, and he prays for the dismissal of the complaint. All of this is equivalent to a waiver of his right to object to the jurisdiction of the court a quo over his person and a submission to the jurisdiction of said court (67 Corpus Juris, 131). The facts of the case of Cohen and Cohen vs. Benguet Commercial Co. (34 Phil., 526), cited by the appellant, are that the defendant company appeared specially and objected to the jurisdiction of the Court of First Instance of Manila over the company in question and the subject matter of the action on the ground that the venue had been improperly laid by the plaintiff as the trial, under the provisions of the Code of Civil Procedure, must take place in the province where either the plaintiff or the defendant resided or was found at the time the summons was served. The prayer of the motion was that the above entitled cause be dismissed. The motion was denied by the court on the ground that the motion, especially the prayer, constituted a voluntary general appearance in the action, and that such an appearance was a waiver of the objection to the venue. The motion filed by the defendant company, Benguet Commercial Co., Ltd., reads: "Now come the undersigned attorneys appearing specially in behalf of the defendant in the above entitled case for the sole purpose of objecting to the venue of the action." This court, through Justice Moreland, said:

"This limited the character of the appearance in that motion unless, by some subsequent act, the defendant waived the limitation or exceeded it by acts which constitute a general appearance. The mere fact that the

prayer of the motion was for a dismissal of the action is not sufficient to constitute such waiver, or even a general appearance, having in mind the limitation stated in the body of the motion. A prayer in a motion, like a prayer in a complaint, is not conclusive as to the character of the motion. Indeed, under the Code of Civil Procedure dismissal of the action is one of the remedies for an improper venue. Improper venue is a ground of demurrer and it may be made the basis of a plea in abatement; and, as the ordinary effect of sustaining a demurrer is to dismiss the complaint, if it is not amended, and, as the result of a plea in abatement is to terminate the action, it necessarily follows that the remedy prayed for was one of the remedies to which defendant was entitled if its motion was proper.

"Section 377 provides that the defendant may enter a general appearance in the action without waiving his rights, even where the venue is improperly laid, provided he, at the same time, files an objection to the venue. The distinction between a general and special appearance does not seem to have been preserved, at least in words, by the Code of Civil Procedure, it appearing to have been the purpose of the legislature, in enacting section 377, to require the courts to look at the intent and purpose of the appearing party and to deal with him accordingly, leaving out of account all technicalities which would deprive him of that which he really desired to secure by his appearance. Furthermore, there does not seem to be any provision in the Code of Civil Procedure with respect to change of venue in cases like the present, the remedy appearing to be a dismissal of the action on the ground that the jurisdiction, if any, which the court obtained over the person of the defendant by the service of the summons within the jurisdiction of the court, is divested by objection in conformity with the provisions of section 377."

It will be seen that in said case the defendant company only appeared specially to object to the jurisdiction of the court as to the place where the complaint was filed and its person. It neither filed any answer, nor set up any defense whether general or special with a prayer for relief. In the present case the defendant answered the complaint by denying generally and specifically all the allegations contained therein and interposed special defenses praying that the plaintiff company's claim against him be compensated by what the manager of the company, Walter A. Smith, owed him. In the case of *Marquez Lim Cay vs. Del Rosario* (55 Phil., 962), this court laid down the following doctrine:

"The filing of a demurrer on the ground that the complaint does not allege facts sufficient to constitute a cause of action; the filing of a motion praying for the dissolution of an attachment without objecting to the jurisdiction of the court over the place where the property is situated, by means of a special appearance; the giving of a bond for the dissolution of said attachment; and the filing of a motion praying for the assessment of damages caused by the undue and unjust issuance of said attachment, imply a submission to the jurisdiction of the court and a waiver of the privilege to impugn such jurisdiction. (*Manila Railroad Company vs. Attorney-General*, 20 Phil., 523.)" (See also *Samson vs. Carratala*, 50 Phil., 647.)

As to the second assignment of alleged error, while it is true that not all the receipts for delivery of lumber were signed by the defendant, upon being asked by his own attorney whether those who signed the other receipts of delivery were his employees, he answered that he did not know or that he did not remember. It having been proven that all the lumber the value of which is claimed by the plaintiff company was invoiced in the name of the defendant or delivered at his address, the mere answer that he neither knew nor remembered whether or not some of those who signed the receipts for delivery thereof were his employees cannot overcome the evidence for the plaintiff.

With respect to the question whether or not the defendant is entitled to the compensation of the amount claimed by the plaintiff company by the alleged indebtedness to him of the president and manager thereof, Walter A. Smith, it not appearing that the amounts which the defendant claims Walter A. Smith owes him were invested or used in connection with the business of said corporation, the corporation cannot be held responsible for the payment thereof as the mere fact that Walter A. Smith is president and manager of Walter A. Smith Co., Inc., does

not make the latter responsible for any personal obligation contracted by said manager.

As to the question raised in the fourth assignment of alleged error that the court a quo erred in not absolving the defendant from the complaint inasmuch as said plaintiff no longer has any claim against said defendant, Exhibit LL provides that the Manila Lumber Inc. would take charge of collecting certain accounts due Walter A. Smith Co., Inc., with official residence in the City of Iloilo, on condition that said Manila Lumber Inc. should defray all expenses incurred in the collection of the accounts delivered to it for collection and that 10 per cent of the amount collected, after deducting all the expenses for collection including costs, sheriff's fees and attorney's fees, would be delivered to said Walter A. Smith Co., Inc., said Manila Lumber Inc., retaining 90 per cent of the net amount collected. It will be seen that under said contract Walter A. Smith Co., Inc., has not transferred its rights over its uncollected accounts to the Manila Lumber Inc., but simply entrusted the collection thereof from its debtors. The fact that the Manila Lumber Inc. retained 90 per cent of the net amount of the collections, delivering only 10 per cent thereof to Walter A. Smith Co., Inc., has nothing to do with Walter A. Smith's personal debt which, as already stated, cannot be imputed to Walter A. Smith Co., Inc., on the ground that Walter A. Smith's personality is separate from and independent of the juridical personality of Walter A. Smith Co., Inc., notwithstanding the fact that Walter A. Smith is the biggest stockholder of the corporation.

In view of the foregoing considerations, and not finding any error in the appealed judgment, it is affirmed in toto with costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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