

THE ASIATIC PETROLEUM CO. (P. I.), LTD., PLAINTIFF AND APPELLANT, VS. BUENAVENTURA M. VELOSO, DEFENDANT AND APPELLANT.*G.R. No. 42779, December 21, 1935*

Ponente: IMPERIAL, J.

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On December 18, 1929, the plaintiff and the defendant entered into a written contract whereby, the latter was appointed as agent to sell the former's gasoline and oil products in the City of Cebu, and to manage the office in the gasoline station or building constructed for the purpose. The defendant, under the terms of the contract of agency, was obliged to render an account of the sales. However, he failed to live up to this stipulation and retained the proceeds of such sales in his possession. A liquidation on December 6, 1932, disclosed the fact that the defendant had not turned over to the plaintiff the sum of P25,557.62 representing such proceeds, and on the same date the defendant executed in favor of the plaintiff the promissory note Exhibit C for P25,000, payable in installments of P500 on the 10th and 25th of each month from January 25, 1933. The defendant paid seven (7) installments, or P3,500, but defaulted as to the remainder. Repeated breach by the defendant eventuated in 'his voluntary surrender to the plaintiff of the building or gasoline station leased to him, including the stock on hand. From the second default up to the rescission of the contracts of agency and of lease and the return of the gasoline station as stated, the defendant sold gasoline in the amount of P4,414.83, of which he turned in only P16.80, leaving a balance of P4,398.03 against him. For purchases of other products by chits, payable within thirty (30) days, the defendant also became indebted in the sum of P335.92. The defendant failed to return empty barrels worth P151. He purchased oil on credit for P72.56, of which he paid only P14.94, with the resulting difference of P57.62 against him. For non-payment, upon demand, of the amounts owing from the defendant, the plaintiff brought this action. Both the plaintiff and the defendant appealed from the judgment ordering the defendant to pay to the former the sum of P8,182.51, with legal interest thereon from August 9, 1933, and the costs.

The defendant's answer set up special defenses, counterclaim and cross-complaint, and asked that the plaintiff be ordered to pay him P10,000 for having obtained the attachment of his properties without just cause; the further sum of P15,000 as damages for plaintiff's breach of the contract of lease of the building or gasoline station; P1,500 as cost of the storehouse constructed by him in the rear of plaintiff's gasoline station, and P1,000 as the value of his personal property left therein.

The plaintiff, before judgment was rendered by the court, filed a supplemental complaint, alleging that other portions of the aforesaid note had become due and had not been paid by the defendant, and asking that judgment be rendered against the latter, on account of the note, for P15,000, with interest thereon, and for the remaining installments thereof as they fell due and were not paid by the defendant.

As errors committed by the court, the plaintiff assigns (1) the non-admission of the supplemental complaint, and (2) the failure to render judgment in its favor, ordering the defendant to pay the installments due and claimed in

the supplemental complaint as well as all the remaining installments of the note, with interest, as they fell due.

The court rejected the supplemental complaint, in view of the fact that the plaintiff could not recover the installments that had not yet become due when the complaint was filed on August 9, 1933. The plaintiff vigorously contends that the supplemental complaint should have been received under authority of section 105 of the Code of Civil Procedure allowing like pleadings. We are of the opinion that, while under said section, it was discretionary with the court to admit the supplemental complaint, nevertheless, it should have been admitted because when it was filed, the alleged installments which formed part of the others sued upon by the plaintiff, had already become due. Thus viewed, the decision in *Limpangco vs. Mercado* (10 Phil., 508), cited by the court, is not applicable, because it was sought therein to bring in the supplemental complaint in an action that had not yet accrued when the complaint was filed, wherefore, it was held that the supplemental complaint was inadmissible where, as in that case, no cause of action existed when the original complaint was filed. Nor was the nonadmission of the supplemental complaint justified by the reasoning that its admission would involve the reopening of the trial to enable the parties to adduce their evidence. Undoubtedly its admission would have meant a retrial, but this should have been done in furtherance of justice and to settle all the rights of the parties in the same litigation.

We cannot agree with the plaintiff that in this case judgment can be rendered against the defendant for all the installments of the note, including those which became due after the presentation of the complaint. It is already a settled doctrine in this jurisdiction that in actions for the recovery of debts payable in installments, those not yet due and payable cannot be demanded in the complaint. (Art. 1125, Civil Code; *Compania General de Tabacos vs. Araza*, 7 Phil., 455; *Artadi & Co. vs. Chu Baco*, 8 Phil., 677; *La Yebana Co. vs. Sevilla*, 9 Phil., 210.) In order that the plaintiff may recover all the installments due to date, which appear to be all those contained in the note which the defendant had not paid when they became due, it is first necessary to admit the supplemental complaint and to give the plaintiff an opportunity to file another alleging the maturity of the remaining installments and the non-payment thereof by the defendant.

The plaintiff asks in its brief to set aside the judgment as to the installments of the note that have become due, which now turn out to be all, and which have not been paid by the defendant; to remand the case with instructions to admit the supplemental complaint to be filed, and, after the new trial, to render another judgment ordering the defendant to pay his entire indebtedness. We understand and so hold, that the remedy prayed for is the most just and practicable, because multiplicity of actions may thus be avoided.

We shall now consider the defendant's defenses, counterclaim and cross-complaint which are the bases of his assignments of error. He alleges that he did not violate the contracts of agency and of lease and, therefore, is entitled to the indemnity claimed in his answer. The evidence is conclusive that he repeatedly infringed the contract of agency by failing to turn over to the plaintiff the proceeds of his gasoline sales. The note, Exhibit C, did not novate the contract, but is merely a statement of the amounts due from him after the liquidation was made. After the defendant violated the terms of the contract of agency as aforesaid, the plaintiff was entitled to rescind the contract of agency as well as that of lease of the gasoline station which was only a complement of the former. As to the attachment obtained by the plaintiff, it appears that when it was granted by the court there was justification therefor, because aside from other transactions involving his other real property, the defendant had purchased for cash an interest in the Sun Yat Sen School for the sum of P35,000, which he pledged on the third day without the knowledge or consent of the plaintiff. There are convincing circumstances that the defendant was disposing of his property to the prejudice and without the acquiescence of the plaintiff, from which we conclude that the court properly disallowed him the damages claimed on this ground.

The court adjudicated to the defendant the sum of 1N505.62 as the costs of his storehouse constructed in the rear

of the gasoline station, and deducted it from the amounts which plaintiff is entitled to recover from the said defendant. The plaintiff neither appealed from this part of the judgment nor took it up in its brief. Said sum should be deducted from what the plaintiff should recover on the note Exhibit C.

The amounts awarded by the court to the plaintiff, independently of those appearing in the note Exhibit C, are as follows:

For gasoline

P4,398.03

For chits of other articles

335.92

For empty barrels

151.00

For oil

57.62

Ten percent (10%) of P4,398.03 and P57.62 as attorney's fees

445.56

Total

5,388.13

This amount being unrelated to the note Exhibit C, should be paid by the defendant notwithstanding the new trial presently to be decreed.

For the foregoing considerations, the appealed judgment is affirmed as to the sum of P5,388.13, to be paid by the defendant and for which a writ of execution may issue, if necessary, as well as to that part thereof dismissing the defendant's counterclaim and cross-complaint and, in other respects, said judgment is set aside, and it is ordered that the court admit the supplemental complaint which the plaintiff may desire to file for the recovery of all the installments of the note which have already become due, as well as the answer the defendant may interpose, and that a new trial be held at which the parties may adduce such material and admissible evidence as they deem proper, without special pronouncement as to costs in both instances. So ordered.

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

Judgment partly set aside and case remanded for further proceedings.

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