

JOSUE SONCUYA, PLAINTIFF AND APPELLANT, VS. LA URBANA, MUTUAL BUILDING AND LOAN ASSOCIATION, CARMEN DE LUNA, IN HER OWN NAME AND AS CO-ADMINISTRATRIX OF THE INTESTATE ESTATE OF ...

G.R. No. 45306. April 12, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

The appeal before this court in the present case, taken by the plaintiff-appellant, seeks to have the following orders of the Court of First Instance of Manila declared contrary to law: (1) That of March 23, 1936 sustaining the demurrer to his complaint, interposed by defendant-appellee La Urbana; (2) that of April 3, 1936 denying his motion for new trial with respect to the order of March 23, 1936; (3) those of April 20 of the same year, one denying his motion to declare the defendant in default for failure to answer his complaint, and the other also denying his motion of the same month and year to withdraw the motion filed by him eleven days, before or on April 3, 1936, which had then been already decided against him; and (4) that of June 19, 1936 dismissing the case.

The appellant, to sustain his appeal, attributes to the lower court not less than twenty-five errors which may be reduced to raise only one question, namely, whether or not the appealed orders are in accordance with law.

- The demurrer of the appellee, La Urbana, sustained by the lower court, was based on the following grounds: (a) That the complaint does not allege facts sufficient to constitute a cause of action; and (b) that it is ambiguous, unintelligible and vague

We have carefully read the complaint and are convinced that it really contains no allegations that might be considered sufficient to justify appellant's action. Plaintiff alleges in said complaint that he, Librada Avelino and Carmen de Luna organized in 1910, for academic purposes, a nonstock corporation styled "Centro Escolar de Señoritas"; that from the time said institution was organized Librada Avelino was its directress; that the urban properties controverted in this case were registered in the name of Librada Avelino as "Directress of the Centro Escolar de Senoritas", for which reason the certificates of title covering said properties are now in her name as Directress of the Centro Escolar de Senoritas; and that Librada Avelino mortgaged the properties in favor of the appellee, La Urbana, and the latter accepted and authorized the mortgage knowing that the properties did not belong to her but to the Centro Escolar de Señoritas. These allegations are not, in our opinion, sufficient to justify appellant's inference that Librada Avelino executed the mortgage without the consent of the Centro Escolar de Senoritas and exclusively for her own use and benefit. On the other hand, since the certificates of title were in her name, no other person except herself could execute the deed in case the properties were mortgaged.

- The allegations of the complaint with respect to appellant's action to recover, by way of indemnity, the amounts mentioned in his so-called second and third causes of action, are not sufficient to sustain him or even to show that he has any right to such indemnity. Supposing that the mortgage was authorized by the corporation "Centro Escolar de Señoritas", in the absence of any allegation to the contrary, the payments made by Librada Avelino to

the appellee La Urbana, for interest and other charges on the mortgage, should be held as valid payments. But even granting for a moment that the payments were not valid because the mortgage was not executed by the proper party, appellant had no cause of action for the simple reason that he is not the party affected but the Centro Escolar de Señoritas which, as a corporation, has a personality distinct from his own. Therefore, if there is any one who could or should institute an action against the appellee, it is not the appellant but the Centro Escolar de Señoritas.

- In sustaining the demurrer of the appellee aforementioned, the lower court, by its order of March 23, 1936, granted the appellant, in conformity with the practice followed in such cases, the reglementary period within which to amend his complaint. The appellant elected not to amend his complaint as shown by his pleading of April 1, 1936. Vitiating as the complaint is by the failure to allege facts sufficient, to constitute a cause of action, the lower court naturally had no other alternative but to dismiss the case, which it did by its order of June 19, 1936.

- Appellee's demurrer to plaintiff's complaint having been sustained and the motion for new trial denied and the plaintiff having failed to amend his complaint, it is evident that there was no ground for the motion to declare the defendant-appellee in default for not answering a complaint which did not really exist.

For the foregoing reasons, our conclusion is that there is no merit in plaintiff's appeal.

Wherefore, the appealed orders are affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Concepcion, JJ., concur.

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