

F. Y A. GARCIA DIEGO (VELA HERMANOS), PLAINTIFF AND APPELLANT, VS. GLORIA DE ANTONIO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 45741. April 27, 1939

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DIAZ, J.:

This case involves an appeal taken by plaintiff from the order of the Court of First Instance of Camarines Sur dismissing the same for the following reasons: First, that from the terms of the documents transcribed in the complaint whereby plaintiff desires to prove the existence of the obligations whose fulfillment it is attempting to enforce against defendants it is deduced that a period has been given them for that purpose, which period must be previously fixed; and second, that the action instituted by plaintiff is, for that reason, premature.

The facts which may be gleaned from the allegations of the complaint in question are the following: Plaintiff filed an amended complaint against defendants on January 30, 1935 praying that they be sentenced to pay it the following sums: P1,070.90 and interest thereon at the rate of 1 per cent per month from March 23, 1931; and P279.37 and interest thereon at the rate of 1 per cent per month from February 5, 1932, plus an additional sum equivalent to 30 per cent of the aforesaid sum as attorney's fees and costs of collection. In the complaint referred to are embodied the documents on which plaintiff bases its alleged right to collect from defendants the sums above set forth. Said documents are of the following tenor:

"Our accounts having been fixed, I hereby state that I am on this date indebted to Messrs. F. and A. Garcia Diego in the amount of One thousand seventy pesos and ninety centavos (P1,070.90). This amount will earn an interest of one (1%) per cent per month.

"Iriga, March 23, 1931.

"ESTANISLAO AND GLORIA
DE ANTONIO

(Sgd.) "JUAN BARDAJI

"No.....

"I have received from the mercantile partnership, F. y A. Garcia Diego, styled Vela Hermanos, the sum of two hundred and seventy-nine and 37/100 pesos on account of the kilos of which I shall deliver at its store in Iriga on or before..... of....., 193.... at the price of P..... per

"This sum shall earn 1 per cent interest per month until fully paid and should recourse to the courts be necessary for the collection of the same or any part thereof, I shall pay..... besides the debt, interest and costs, an additional 30 per cent of this sum of P.....as fees for the attorney or person designated by the creditor to enforce collection.

"Iriga, February 5, 1932.

"ESTANISLAO AND GLORIA

DE ANTONIO

(Sgd.) "JUAN BARDAJI

"P279.37.

"In the presence of:

"....."

Juan Bardaji, whose signature appears on the documents referred to, was and is the agent and attorney-in-fact of Gloria de Antonio who is married to Francisco Royo, as well as of Felipa Rodriguez Narva and the latter's children named Ernesto, Enrique, Ester and Elena, surnamed Antonio. Joaquin Mendez and Jose Alvarez Ruibamba, who are respectively the third and second from the last of the defendants, are likewise agents and attorneys-in-fact of the aforementioned Felisa Rodriguez Narva and her four children.

After the defendants' answer to plaintiff's amended complaint had been filed, the lower court designated its clerk to receive the evidence which the parties might desire to adduce; and it did so because the parties expressly asked therefor. The clerk, after concluding his work as commissioner, rendered his report recommending therein that defendants be made to pay the sums claimed by plaintiff. Before the court could act on the report of said commissioner, defendants asked that all the actuaciones of the latter be declared void because, in the first place, he had not duly qualified by subscribing the corresponding oath; and in the second place, some of the defendants were minors and were not provided with a guardian. In view of this objection which the court considered to be of great weight, it disapproved the report referred to and ordered that the case be heard before him personally. However, before any other step could be taken defendants raised the questions which gave rise to the dismissal of the case.

In its brief plaintiff contends that the lower court committed the following errors: First, in failing to approve the report of the commissioner; second, in not rendering judgment in accordance with the recommendation made by said commissioner; third, in dismissing the case without having given plaintiff opportunity to amend its complaint; fourth, in finding that according to the nature of the obligations set forth in the complaint, there was an intention on the part of plaintiff to allow defendants a period within which to fulfill their obligations; fifth, in having applied the provisions of article 1128 of the Civil Code, instead of those of article 1113 of the same Code; and sixth, in finding that the action which ought to have been first instituted was for the purpose of asking the court to fix a period within which defendants should comply with their obligations.

- As to the first error which the appellant attributes to the lower court, it should be said that, even granting the commission of said error for the sake of argument, no substantial prejudice was caused to the appellant for the reason that the court considered it better to take cognizance of the case directly in order to do justice to the parties upon previous appointment of a guardian who might duly represent the defendants who were minors.

- The action taken by the lower court in dismissing the case after it had itself agreed to take direct cognizance of the case was undoubtedly an error because the reasons upon which it relied in so doing, cannot justify it. This appears clear because from the allegations of the complaint, those of the answer itself of defendants and even those found in their motion for dismissal it may be inferred that plaintiff was and is an entity engaged in commerce, and is, therefore, a merchant within the meaning of the law. If this is the case, then the action of plaintiff was not prematurely brought in view of the provisions of articles 62, 311, 325 and 2 of the Code of Commerce, and section 7 of the Negotiable Instruments Law (Act No. 2031), which read respectively as follows:

"Art. 62. Obligations which do not have a period previously fixed by the parties, or by the provisions of this Code, shall be demandable ten days after having been contracted, if they can only be the basis for an ordinary action, and on the next day if execution lies."

"ART. 311. A loan shall be considered commercial when the following conditions are present:

"1. If one of the contracting parties is a merchant.

"2. If the articles loaned are destined to commercial transactions."

"Art. 325. A purchase and sale of personal property for the purpose of resale, either in the form purchased or in a different form, for the purpose of deriving profit in the resale, shall be considered commercial."

"Art. 2. Commercial transactions, be they performed by merchants or not, whether they are specified in this Code or not, shall be governed by the provisions contained in the same; in the absence of such provisions, by the commercial customs generally observed in each place; and in the absence of both, by those of the common law.

"Commercial transactions shall be considered those enumerated in this Code and any others of a similar character."

"Sec. 7. When payable on demand.—An instrument is payable on demand—

"(a) Where it is expressed to be payable on demand, or at sight, or on presentation; or

"(b) In which no time for payment is expressed.

"Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand."

In the case under consideration there was surely no necessity for the plaintiff to ask the courts to fix the period within which defendants should pay their pending obligations to it. Said period expired after ten days from the execution of the documents aforementioned. And on the other hand, before plaintiff instituted its action, it required defendants at one time or another, according to the complaint, to pay the amount set forth therein.

Having arrived at the foregoing conclusion, we find no occasion to go further into the other alleged errors assigned by plaintiff. In the circumstances in which the case was found, ready as it was to be heard by the same judge who rendered the appealed order, because of the disapproval of the report of the commissioner before whom the parties adduced their evidence, he should have heard the same as if he had not previously taken cognizance thereof, received the evidence and rendered judgment thereafter according to the evidence and the law.

In view of all the foregoing, we find that the order appealed from should be, as it is hereby, reversed, and it is ordered that the case be remanded to the lower court in order that it may proceed with the corresponding trial, receiving the evidence which the parties may adduce and thereafter rendering judgment in accordance with law.

Costs shall be assessed against the appellees. So ordered.

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

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