

**RUFINO CO, PETITIONER, VS. HON. EFICIO B. ACOSTA, IN HIS
OFFICIAL CAPACITY AS PRESIDING JUDGE; RTC, BRANCH CLV,
PASIG, METRO MANILA, AND THE REFRIGERATION INDUSTRIES,
INC., AND ...**

G.R. No. 64591. January 17, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari to annul and set aside (1) the respondent court's decision dated March 9, 1983 ordering petitioner Rufino Co to pay respondents Refrigeration Industries, Inc. and Delta Motors Corporation the sum of P2,907,535.00 plus the legal rate of interest thereon from the date of demand, P200,000.00 as and by way of attorney's fees, and costs; (2) the order of default dated November 22, 1982; (3) the ex-parte presentation of the respondents' evidence made on December 3, 1983; and (4) the sheriff's sale pursuant to the March 9, 1983 decision and to issue an order extending the effects of the order of dismissal of Civil Case No. 42815 dated November 26, 1980 to herein petitioner.

On November 20, 1979, Pepsi Cola Bottling Company of the Philippines, Inc. (hereinafter called PEPSI), through Mr. C.M. Aboitiz issued three (3) purchase orders addressed to CTC Appliance Center for 12,000 units of refrigerators valued at P35,322,900.00. Petitioner Rufino Co is the proprietor of the Center.

On November 21, 1979, in a formal deed of assignment, petitioner Co assigned his rights and interests to the three purchase orders and to the money value of the deliveries made or to be made thereunder to respondent Refrigerations Industries, Inc. (hereinafter called RII).

On March 13, 1980, PEPSI wrote a letter to the private respondents informing them that on March 9, 1981, it took notice of the assignments of the purchase orders by the petitioner and stated that it was not recognizing the same.

In the course of time, 10,000 units of refrigerators were delivered and paid. No problem arose from these 10,000 units.

On March 18, 1981, PEPSI wrote a letter to the petitioner requesting the delivery of 1,000 units of refrigerators not later than March 31, 1981 and stating that PEPSI will be talking directly to respondent RII through Mr. Dominador Gana on the matter of storage fees.

From March 23, 1981 to May 21, 1981 PEPSI received 1,000 units of refrigerators directly from respondent RII. The total invoice price of these units was P2,907,535.00.

On June 2, 1981, private respondent RII sent a letter of demand to PEPSI.

On June 4, 1981, PEPSI wrote private respondent RII acknowledging receipt of the demand letter but stating that it does not recognize and does not feel bound by the petitioner's assignment of the purchase orders.

On June 24, 1981, private respondent RII sent another letter of demand to PEPSI demanding payment of the P2,907,535.00 within five days.

On June 26, 1981, PEPSI informed respondent RII that there is no legal basis for the demand and no reason for PEPSI to pay the 1,000 units. It added further that respondent RII's recourse is against the petitioner.

On July 8, 1981, failing to collect from PEPSI, private respondent RII sent a letter of demand to the petitioner demanding payment of P2,907,535.00, but the latter refused and failed to pay.

On September 10, 1981, private respondent RII and Delta Motors Corporation filed Civil Case No. 42815 for a sum of money with attachment before Branch X of the Court of First Instance of Rizal, against Pepsi Cola Bottling Company of the Philippines, Inc., and petitioner Rufino Co.

On November 26, 1981, the private respondents filed a formal ex-parte motion to dismiss the complaint against PEPSI. Attached to the motion is an instrument entitled "Joint Release, Waiver and/or Quitclaim" which covenants that Delta Motors, RII, and PEPSI mutually agreed to release and forever discharge each other from any and all liabilities or causes of action arising out of the transaction involving the 1,000 units of refrigerators in order to maintain harmonious business relations among the parties. On the same day, the respondent court issued an order which reads:

On motion of the plaintiff, the complaint against the defendant Pepsi-Cola Bottling Company of the Philippines, Inc. is hereby DISMISSED.

On November 19, 1982, the private respondents filed an ex-parte motion to declare the petitioner Rufino Co in default for having failed to file his answer.

On November 22, 1982, the respondent court issued the following order:

AS PRAYED FOR by plaintiff thru counsel, defendant Rufino Co is hereby declared in default and plaintiff is allowed to present its evidence ex-parte on December 3, 1982 at 2:30 p.m.

On March 9, 1983, the respondent court rendered its decision, the dispositive portion of which states:

WHEREFORE, premises considered judgment is hereby rendered in favor of the plaintiffs and against the defendant Rufino Co, ordering the latter to pay the former the sum of P2,907,535.00 plus the legal rate of interest therein from date of demand; the sum of P200,000.00 as and by way of attorney's fees; plus the costs of suit.

On April 12, 1983, petitioner Co filed a "Petition for Relief from Judgment" alleging:

- That excusable negligence transpired which prevented petitioner from availing the usual and ordinary remedies under the law.
- That petitioner has a valid and meritorious defense and had he not been prevented from presenting his evidence the decision could have been different.

Pending resolution of the petitioner's petition for relief from judgment, the respondent court issued a writ of execution dated April 12, 1983, and as a consequence, virtually all of the petitioner's real properties were levied upon on execution and advertised for sale at public auction on July 15, 20, and 22, 1983.

On April 27, 1983 the petitioner filed a motion for a restraining order to restrain the writ of execution.

On June 6, 1983, the petitioner filed an urgent motion for resolution of his petition for the issuance of a restraining order.

On June 9, 1983, the petitioner again filed an urgent supplementary motion for a restraining order pending the resolution of his petition for relief or a motion to dismiss the case.

On July 6, 1983, the petitioner filed still another urgent motion for resolution of his petition for the issuance of a restraining order pointing out that the respondent court had not resolved his motion even as the date of sale in the sheriff's notice for the sale on execution of his properties was only a few days away.

On July 13, 1983, the respondent court issued the following order:

For lack of merit, the "Petition for Relief from Judgment" and the "Petition for the Issuance of a Restraining Order filed by defendant Rufino Co are hereby DENIED.

On August 31, 1983, we issued a temporary restraining order enjoining the respondent Regional Trial Court of Pasig, Branch CLV from taking further action in Civil Case No. 42815, more particularly from taking any further proceedings relative to the writ of execution in said civil case, until further orders.

The petitioner raises the following legal issues for our resolution:

I

CONSIDERING THAT UNDER THE ALLEGATIONS OF THE COMPLAINT, BOTH THE DEFENDANTS PEPSI COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., (HEREAFTER TO BE REFERRED TO AS PEPSI FOR SHORT) and RUFINO CO ARE INDISPENSABLE PARTIES, SUED UNDER A COMMON CAUSE OF ACTION, MAY THE PLAINTIFF MOVE TO DISMISS THE CASE AGAINST THE PEPSI WITHOUT NOTICE TO DEFENDANT RUFINO CO?

II

AFTER THE HONORABLE COURT DISMISSED THE CASE AGAINST PEPSI UPON THE EX-PARTE MOTION OF THE PLAINTIFFS, DID THE RESPONDENT HONORABLE COURT RETAIN AUTHORITY TO ACT IN THE CASE AND ISSUE ORDERS, SUCH AS THE ORDER DECLARING THE DEFENDANT RUFINO CO IN DEFAULT AND HEARING PLAINTIFF'S EVIDENCE EX-PARTE, CONSIDERING THAT PEPSI IS AN INDISPENSABLE PARTY?

III

WHETHER OR NOT THE DECISION RENDERED IN THIS CASE IS VALID CONSIDERING THAT UPON THE DISMISSAL OF THE CASE AGAINST PEPSI, THE RESPONDENT HONORABLE COURT LOST AUTHORITY TO ACT FURTHER: WHETHER OR NOT, IN CONSEQUENCE, THE SHERIFF'S NOTICE TO SELL, AND THE SUBSEQUENT SALES OF PETITIONER'S PROPERTIES PRODUCED ANY LEGAL EFFECTS.

IV

WHETHER OR NOT THE BENEFITS OF THE DISMISSAL OF THE CASE AGAINST PEPSI, WHICH DISMISSAL HAS LONG BECOME FINAL AND UNAPPEALABLE, SHOULD BE EXTENDED TO THE PETITIONER RUFINO CO.

The petitioner contends that he and the Pepsi-Cola Bottling Company of the Philippines, Inc. are indispensable parties sued under a common cause of action and that if the complaint is dismissed insofar as PEPSI is concerned, the court should have ordered also the dismissal of the case insofar as it affects the petitioner. According to him, it does not matter that the dismissal is upon the evidence presented by the plaintiff or upon the latter's mere desistance, for in both instances, a lack of sufficient legal basis must be the cause.

On the other hand, the private respondents state that the petitioner is confusing the decision of the court a quo because instead of questioning the order denying the petition for relief from judgment, the petitioner assails the decision of the court dated March 9, 1983 which has already become final and executory with the writ of

execution issued already being implemented by the Deputy Sheriff of Rizal.

The private respondents argue that our ruling in *Lim Tanhu v. Hon. Ramolete* (66 SCRA 425) is not applicable because there are important facts which differentiate the *Lim Tanhu* case from the instant petition. The respondents state that (1) in the case of *Lim Tanhu*, the same cause of action was averred by several defendants, some of whom were declared in default and some of whom filed their answers. In the case at bar, they contend that respondents RII's cause of action against the petitioner is entirely different from its cause of action against PEPSI, the former being the assignor of the purchase orders and the latter being the maker of the purchase orders; (2) in the case of *Lim Tanhu*, some of the defendants were declared in default, hence, the defenses set up by those who answered the complaint were available to the other defendants who were declared in default. In the case at bar, both defendants Rufino Co and PEPSI did not answer the complaint. It is argued that there are no defenses which can be interposed by Rufino Co; (3) in the case of *Lim Tanhu*, a motion to lift the order of default was filed by the defaulting defendant, while in the case at bar, no motion to lift order of default was filed by defendant Rufino Co; and (4) in the case of *Lim Tanhu*, all the defendants were indispensable parties while in the case at bar, plaintiffs may file an action against any of the defendants for the simple reason that a valid judgment can be rendered against either of the two defendants.

We agree with the petitioner.

The private respondents' complaint for a sum of money with attachment against PEPSI and Rufino Co clearly shows that PEPSI and the petitioner are indispensable parties to the case. In fact the private respondents sued both PEPSI and the herein petitioner under a common cause of action. Paragraph 21 of the complaint states that:

21. That both defendants are guilty of conspiracy, connivance, unfair play, and foul tactics because on the one hand, PEPSI received and accepted the 1,000 refrigerators from plaintiffs without the intention to pay the latter but only with the intent to set off the debts of Rufino Co. On the other hand, Rufino Co refused to pay plaintiffs the price of the 1,000 refrigerators despite due demand, and he was happy that his debts or obligations to PEPSI were set off or were discounted by means not coming from his pockets. In other words, both defendants acting in concert and with a view to victimize the hapless and unsuspecting plaintiffs made simultaneous acts calculated to gain and to profit from the loss and misfortune of plaintiffs.

Likewise, the affidavit attached in support of the complaint is framed in such a way that there can be no doubt as to the intention of the private respondents in suing PEPSI and the petitioner herein as indispensable parties. Paragraphs two (2) and three (3) of said affidavit state:

- That, however, in spite of Pepsi's rejection and refusal to honor and to recognize the assignment, Pepsi, as aforesaid, received and accepted the delivery to it by Refrigeration of 1,000 units of "Frigidaire" and "Sharp" electric refrigerators of various sizes and measurements. But Pepsi refused to pay the invoice price of P2,907,535.00, because Pepsi's intention was not to pay Refrigeration and Delta but only to set off the accountabilities and obligations of Rufino Co to Pepsi. Upon formal demand by Refrigeration and Delta upon Pepsi and Rufino Co to pay for the 1,000 refrigerators; both Pepsi and Rufino Co refused to pay, without just or legal grounds:

- That based on the Deed of Assignment issued by Rufino Co in favor of Refrigeration and Delta, and from the surrounding acts and circumstances performed by Pepsi, especially its acts in rejecting the assignment by Rufino Co, its receiving and accepting the delivery of 1,000 units of refrigerators from Refrigeration, and its keen desire to just set-off the debts of Rufino Co and not to pay a single cent to Refrigeration and Delta, it is clear that Pepsi was guilty of a fraud, bad faith, and deceit in contracting the debt or incurring the obligation, thereby prejudicing and damaging Refrigeration and Delta in the huge amount aforementioned.

Our ruling in *Lim Tanhu v. Hon. Ramolete* (66 SCRA 452) is applicable to the instant petition. The fact that in the

case of Lim Tanhu several defendants were declared in default and the defenses set up by those who answered the complaint were available to those who were in default, while in the case at bar both PEPSI and the petitioner did not answer the complaint, is of no moment because our ruling in the Lim Tanhu case was based on the fact that all the defendants therein were indispensable parties and the plaintiff moved for the dropping of two defendants from the complaint. The situation is similar to this case where both PEPSI and Rufino Co were sued as indispensable parties under a common cause of action, and on motion of the private respondents PEPSI was dropped as a party defendant. We held in the Lim Tanhu case that:

Stated differently, in all instances where a common cause of action is alleged against several defendants, some of whom answer and the others do not, the latter or those in default acquire a vested right not only to own the defense interposed in the answer of their co-defendant or co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. The substantive unity of the plaintiff's cause against all the defendant is carried through to its objective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself. Indeed, since the singleness of the cause of action also inevitably implies that all the defendants are indispensable parties, the court's power to act is integral and cannot be split such that it cannot relieve any of them and at the same time render judgment against the rest. Considering the tenor of the section in question, it is to be assumed that when any defendant allows himself to be in default knowing that his co-defendant has already answered, he does so trusting in the assurance implicit in the rule that his default is in essence a mere formality that deprives him of no more than the right to take part in the trial and that the court would deem anything done by or for the answering defendant as done by or for him. The presumption is that otherwise he would not have seen to it that he would not be in default. Of course, he has to suffer the consequences of whatever the answering defendant may do or fail to do, regardless of possible adverse consequences, but if the complaint has to be dismissed in so far as the answering defendant is concerned it becomes his inalienable right that the same be dismissed also as to him. It does not matter that the dismissal is upon the evidence presented by the plaintiff himself or upon the latter's mere desistance, for in both contingencies, the lack of sufficient legal basis must be the cause. The integrity of the common cause of action against all the defendants and the indispensability of all of them in the proceedings do not permit any possibility of waiver of the plaintiff's right only as to one or some of them, without including all of them, and so, as a rule, withdrawal must be deemed to be a confession of weakness as to all. This is not only elementary justice; it also precludes the concomitant hazard that plaintiff might resort to the kind of strategem practiced by private respondent herein that resulted in totally depriving petitioners of every opportunity to defend themselves against her claim, which, after all, as will be seen later in this opinion, the record does not show to be invulnerable, both in their factual and legal aspects, taking into consideration the tenor of the pleadings and the probative value of the competent evidence which were before the trial court when it rendered its assailed decision. Where all the defendants are indispensable parties, for which reason the absence of any of them in the case would result in the court's losing its competency to act validly, any compromise that the plaintiff might wish to make with any of them must, as a matter of correct procedure, have to await until after the rendition of the judgment, at which state the plaintiff may then treat the matter of its execution and the satisfaction of his claim as variably as he might please. Accordingly, in the case now before Us together with the dismissal of the complaint against the non-defaulted defendants, the court should have ordered also the dismissal thereof as to petitioners.

Applying the above-quoted ruling, we find that the respondent court erred in (1) declaring petitioner Co in default; (2) in hearing the plaintiff's evidence ex-parte on December 3, 1982; (3) in rendering the decision dated March 9, 1983; (4) in issuing the writ of execution and in having the petitioner's properties levied upon in execution; (5) in having them advertised for sale, and consequently, (6) in ordering them sold to answer for the private respondents' claim. After the lower court dropped PEPSI as a party defendant in Civil Case No. 42815, the respondent court lost authority to act further in the case insofar as the petitioner is concerned.

Furthermore, the private respondents' admission in their complaint that the assignments made to them by the

petitioner are genuine, valid, and in accord with Article 1475 of the Civil Code taken together with the joint waiver, release, or quitclaim in favor of PEPSI which received and profited from the 1,000 refrigerators virtually absolve the petitioner from any and all legal liability insofar as the purchase orders are concerned.

WHEREFORE, the petition is granted. The proceedings in the respondent court in Civil Case No. 42815 subsequent to the November 26, 1981 order dismissing the complaint as against Pepsi-Cola Bottling Company of the Philippines, Inc., are hereby annulled and set aside, particularly the ex-parte presentation of private respondents' evidence against the petitioner on December 3, 1982 and the decision dated March 9, 1983. The respondent court is ordered to extend the effects of the dismissal of the complaint to petitioner Rufino Co. The respondent court is permanently enjoined from taking any further action in said civil case except as herein indicated.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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