

ARCHIPELAGO BUILDERS (SHOULD BE PAULINO G. PE, DOING BUSINESS UNDER THE NAME AND STYLE "ARCHIPELAGO BUILDERS"), PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND UNIVERSAL...

G.R. No. 75282. February 19, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

This is a review of the decision of the former Intermediate Appellate Court which affirmed in toto the summary judgment rendered in favor of private respondent by the Regional Trial Court of Quezon City in its Civil Case No. Q-37642.[1]

The facts as found by respondent court are as follows:

"In its complaint filed on March 15, 1983, amended on September 9, 1983, the Universal Steel Smelting Co., Inc., prayed that Paulino G. Pe doing business under the name of 'Archipelago Builders' be ordered to pay the plaintiff P167,663.33 with interest plus attorney's fees for unpaid accounts on purchases of construction materials.

"In his answer to the amended complaint, defendant admitted having made purchases of steel bars between February 26, 1982 to June 8, 1982 but alleged that the steel bars delivered were not the specifications agreed upon and were found to be deficient in weight and stress.

"Defendant admitted an obligation to the plaintiff but not in the amount of P167,663.33 as alleged by plaintiff. Defendant also alleged in its affirmative defense that on February 15, 1982 Paulino G. Pe executed a written contract with the owner on the construction of the proposed J.M.S. International Building at Vito Cruz Extension, Makati, Metro Manila, resulting in a tie-up with plaintiff whereby the latter will supply the required steel bars as per specifications at the jobsite for the account of Paulino G. Pe, the contractor.

"He furthered averred that the steel bars supplied by plaintiff were not as per specifications agreed upon and as tested several times were found to be deficient in weight and stress, thus causing the temporary stoppage of the work at the jobsite for about six (6) weeks, such that remedial measures were adopted and agreed to by plaintiff's representatives, Mr. Benjamin So and Atty. Alfredo David and the answering defendant so that he incurred additional expenses in the amount of P135,236.10 which should be reimbursed by plaintiff to Paulino G. Pe and which precipitated the stoppage of payment of PCIB Check No. 093702 issued by said defendant to plaintiff in the amount of P133,520.87.

"On account of the delay of about six weeks in the construction work at the jobsite the owner of the building being constructed enforced against the answering defendant the penalty clause provided for in the building contract for which the amount of liquidated damages was assessed at P184,800.00 against said defendant which should be assumed by the plaintiff. On these two items alone, defendant suffered actual damages in the amount of P320,036.10. Even under the claim of plaintiff in the amount of P167,663.33 there is still a difference of P152,372.77 in favor of the defendant.

"After the pre-trial was terminated, plaintiff filed a motion for summary judgment attaching an affidavit of merit to prove the obligation of the defendant. The defendant opposed said motion. (p. 219, record)"[2]

On August 17, 1984, the lower court granted the motion and accordingly rendered a summary judgment in favor of the plaintiff, ordering herein petitioner, as defendant therein, to pay private respondent, as plaintiff therein, the sum of P167,663.33 with interest at 14% from June 8, 1983 until fully paid, and attorney's fees of P30,000.00 and costs, and dismissing petitioner's counterclaim.[3]

On appeal, respondent court affirmed the decision of the court below, hence the present petition the central issue of which is whether a summary judgment is legal and proper under the circumstances in this case.

Rule 34 of the Rules of Court authorizes the rendition of a summary judgment when on motion of the plaintiff, after the answer to the complaint had been filed, it would appear at the hearing for such a judgment, from the pleadings, depositions and admissions on file, together with the affidavits that, except as to the amount of damages, there is no genuine issue as to any material fact and that the winning party is entitled to a judgment as a matter of law.

In the case at bar, summary judgment is not warranted. An examination of the pleadings shows that petitioner duly raised substantial and triable issues of fact, to wit: that the total amount of steel bars he purchased from private respondent is worth P380,000.00 only, and not P414,182.46, as claimed by private respondent, since the other deliveries valued at P34,142.46 were given free per their oral agreement, to make up for the deficiencies in weight and stress of the defective steel bars supplied by private respondent, aside from the other steel bars petitioner had to purchase to complete said deficiencies.

Petitioner correctly and specifically points out that there are genuine triable issues which should be ventilated to determine which allegations of fact are correct:

"For instance, plaintiff-appellee (private respondent hereinafter), in support of its motion for summary judgment (Annex 'D'), submitted the affidavit of Alfredo David, its collection manager, stating that private respondent sold to Paulino G. Pe (petitioner hereafter) various quantities of steel bars in the amount of P414,182.46 between February 26, 1982 to June 8, 1982 covered by its invoices marked as Annexes 'A', 'A-1' to 'A-21' (Underscoring supplied).

"Upon the other hand, in his Pre-Trial Brief (Annex 'K') dated April 30, 1984, petitioner admitted having made purchases of steel bars from private respondent from February 26, 1982 to April 5, 1982 as per Annexes 'A' to 'A-17'" of their amended complaint in the total amount of P380,040.00 but denied that the deliveries covered by their Annexes 'A-18' to 'A-21' in the total amount of P34,142.46 were his purchases, as they covered deliveries of steel bars supplied by private respondent at the jobsite for FREE to make up for the deficiencies in weight and stress of the defective steel bars supplied by them, and those that could not be supplied by them, petitioner was free to procure the same from other sources as agreed upon. (Underscoring supplied.)

"On this point, the admission claimed by private respondent to have been made by petitioner and which was adopted by the Intermediate Appellate Court in its decision (page 3, paragraph 2, Annex 'A') was in the aggregate amount of P414,182.46. This was not true as this was specifically denied under oath by petitioner in his Answer to the Amended Complaint (par. 4 of the Answer on page 14 of the Appellant's Brief, Annex 'H'). In the same answer (par. 19) petitioner manifested that his total claims against private respondent was in the total amount of P330,036.10, consisting of additional expenses of P135,236.10 incurred by virtue of an agreement between the litigating parties as remedial measures against defective steel bars supplied by private respondent and liquidated damages of P184,800.00 due to the delay in the construction works caused by the defective steel bars. Thus deducting from P320,036.10 there would still be a balance of P152,372.77 in favor of petitioner.

"On the findings of the Intermediate Appellate Court that petitioner in his Counter-Affidavit (Annex 'E-1') did not deny the receipt of the steel bars unpaid for, suffice it to say that in paragraphs 4 and 5 thereof, petitioner virtually denied his indebtedness with the private respondent when alleged that the steel bars supplied by private respondent were defective and that subsequent events which transpired thereafter and which were pleaded accordingly, negated the claim of private respondent that petitioner was still indebted to it.

"He denied this claim specifically and under oath in paragraph 3 of the Verification and Denial Under Oath of his Answer on page, 21 of Appellant's Brief (Annex 'H'). These denials were reiterated in petitioner's Opposition to Motion for Summary Judgment dated July 23, 1984 (Annex 'E') and in the attached Counter-Affidavit (Annex 'E-1'), and in Petitioner's Rejoinder to Plaintiff's Reply to Opposition to Motion for Summary Judgment dated August 3, 1984 (Annex 'G').[4]

The foregoing submissions present a factual dispute which must be resolved and settled only by means of a trial on the merits, and not by a perfunctory resolution which in effect deprives a litigant of his day in court. It is desirable that evidence pro and contra be presented by both parties to determine whose claim is true, a process which need not take long to conclude. If petitioner can prove, as he represents he can by testimonial and documentary evidence, that the steel bars delivered by private respondent failed to comply with the standard set by law and that in order to cure said defect private respondent agreed to supply additional steel bars for free and, in case of unavailability of supply, it authorized petitioner to procure the same from other suppliers at its expense, then this will extinguish or reduce the amount claimed by private respondent.

Firmly settled is the rule that where there is an issue of fact joined by the parties or where the facts pleaded by the parties are disputed or contested, neither one of them can pray for summary judgment.[5] Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of trial, wherein the parties may submit their respective witnesses and evidence in support of their respective factual contentions.[6]

Summary judgment should not be granted where it fairly appears that there is a triable issue to be adjudicated, as in this case. In conducting the hearing on the motion for a summary judgment, the purpose is not to try the issue but merely to determine whether there is a meritorious issue to be tried. The court should not pass on questions of credibility or weight of evidence. The summary judgment procedure should not be perverted to the trial of disputed questions of fact upon affidavits.[7]

In case there is doubt as to the propriety of a summary judgment, the doubt shall be resolved against the moving party. The court should take that view of evidence most favorable to the party against whom it is directed and give that party the benefit of all favorable inferences.[8] The trial courts have but limited authority to render summary judgments and may do so only in cases where there is clearly no genuine issue as to any material fact. The rule does not invest the court with jurisdiction summarily to try the factual issue on affidavits, but authorizes summary judgment only if it clearly appears that there is no genuine issue as to any material fact.[9]

WHEREFORE, the appealed decision of respondent court is hereby REVERSED and SET ASIDE and the records of this case are remanded to the court of origin for trial on the merits.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[*] This title of the petition adopts the correction indicated by the Intermediate Appellate Court in AC-G.R. CV. No. 05250.

- [1] Penned by Justice Jorge R. Coquia, with Justices Mariano A. Zosa and Floreliana Castro-Bartolome concurring.
- [2] Rollo, 30-31.
- [3] Original Record, 243.
- [4] Rollo, 15-17.
- [5] *Magallanes vs. Kayanan, et al.*, 69 SCRA 29 (1976).
- [6] *Auman, et al. vs. Estenzo, et al.*, 69 SCRA 524 (1976); *Loreno, et al. vs. Estenzo, et al.*, 73 SCRA 630; *Viajar, et al. vs. Estenzo, et al.*, 89 SCRA 684.
- [7] *Estrada vs. Consolacion, et al.*, 71 SCRA 523 (1976); *Natalia Realty Corporation vs. Vallez, et al.*, 173 SCRA 534 (1989).
- [8] *Gatchalian vs. Pavilin, et al.*, 6 SCRA 508 (1962); *Viajar, et al. vs. Estenzo, et al.*, *supra*.
- [9] *Agcanas vs. Nagum*, 32 SCRA 298 (1970); *Gatchalian vs. Pavilin*, *ante*.

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