

EXCEL AGRO-INDUSTRIAL CORPORATION, PETITIONER, VS. JUAN T. GOCHANGCO AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 77032. September 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

Review on certiorari of the decision[*] of the Court of Appeals in CA-G.R. No. 03663, dated 27 November 1986, affirming the order of Branch XL, Regional Trial Court of Silay City, Negros Occidental, dated 20 February 1984, which dismissed Civil Case No. 1038 and the order, dated 16 March 1984, which denied the motion for reconsideration of the dismissal order.[**]

On 3 October 1983, petitioner as plaintiff filed a complaint against herein private respondent, docketed as Civil Case No. 1038, Regional Trial Court of Silay City, Negros Occidental, Branch XL, seeking to compel the private respondent to accept Republic Bank Check No. 21334067 in the amount of P100,000.00 as payment for a loan secured by a Deed of Assignment over nine (9) parcels of land, to declare such Deed of Assignment of no further force and effect, and to restrain private respondent from disposing of said real properties.

On 12 October 1983, private respondent filed his answer raising therein, among others, the affirmative defense that the complaint states no cause of action, as the creditor assignee, private respondent herein, was not legally bound to accept the check, which is not legal tender. It was also alleged in the answer that there is no defect or illegality in the Deed of Assignment that could render the instrument of no further force and effect.[1]

On 15 November 1983, private respondent also filed a motion to dismiss on grounds similar to those raised in his answer, namely, lack of cause of action in the complaint and validity of the Deed of Assignment.[2]

On 20 February 1984, the trial court issued the questioned order dismissing the complaint. It also denied the motion for reconsideration of said dismissal order in an order dated 16 March 1984. On appeal, the Court of Appeals affirmed the orders of the trial court. It likened respondent's motion to dismiss to a motion for preliminary hearing on affirmative defenses. It also held that there was no need to hold a hearing to receive evidence, as private respondent's allegation of lack of cause of action in the complaint was a hypothetical admission of all the material averments of the complaint. Thus, the sufficiency of the complaint was merely predicated on whether or not the court could render a valid judgment based on the allegations in said complaint.[3] Since the tender of payment in check, alleged in the complaint, does not constitute a valid or legal tender of payment, petitioner's complaint does not state a cause of action and should be dismissed, ruled the Court of Appeals.

Petitioner now contends before this Court that the Court of Appeals erred in affirming the order of the trial court dismissing its complaint on the basis of private respondent's motion to dismiss, because (1) said motion was not filed within the period for filing answer, but instead filed after the answer, and (2) as the ground in the motion to dismiss is the same as the affirmative defense in the answer, that is, lack of cause of action, the trial court should have ordered a preliminary hearing to give the parties an opportunity to adduce evidence.

We find petitioner's first objection without merit but sustain its second objection founded on the necessity of a hearing on the private respondent's motion to dismiss.

As defendant's answer in the trial court raised the affirmative defense of lack of cause of action, we see no error in the trial court's allowance of a motion to dismiss based on the same ground after the answer had been filed. While this procedure may appear to be a bit unusual, it is to be considered as part of the trial court's discretionary power in order to facilitate speedy dispensation of justice, and we see no abuse in its exercise in the present case. It will be noted that the affirmative defense that the defendant earlier raised in his answer is the same ground averred in his motion to dismiss, so that the latter may be treated as a mere reiteration of said ground, or as a motion for preliminary hearing on the affirmative defense contained in the answer.

However, petitioner should have been heard before dismissal of its complaint especially because there is a stipulation in the Deed of Assignment which it executed in favor of private respondent, that the nine (9) parcels of land subject of the Deed were to be forfeited in favor of private respondent who could sell them to any interested party[4] if the loan of P100,000.00 remained unpaid on 1 October 1983, the very day petitioner allegedly tendered payment by check. Such a precipitate deprivation of ownership should have been considered by the trial court, at the very least, in requiring a hearing on the motion to dismiss, and before actually dismissing the complaint, notwithstanding private respondent's attack on the validity of the tendered check and its character as legal tender.

Besides, the complaint also alleged that private respondent "refused and still refuses to accept the check with [sic] legal justification to the prejudice of herein plaintiff." [5] This allegation, we are told by petitioner in this appeal, is supported by proof (which it evidently is prepared to present) "that the obligation of the plaintiff-petitioner in the sum of P100,000.00 which fell due on October 1, 1983, fell on a Friday and since defendant-respondent cannot be contacted earlier, plaintiff-petitioner called defendant-respondent if he will accept a check (Cashier's) for the sum of One Hundred Thousand (P100,000.00) as petitioner did not want to carry so much cash with him from Bacolod to Silay City, due to the rush of hold-ups during that time and to which defendant-respondent gave his assent. Defendant-respondent (however) intentionally refused to accept the payment of the check of P100,000.00 from the petitioner in order to make the petitioner default in his payment as the collateral of the loan is worth more than P1,000,000.00 and by not accepting the payment, respondent stands to profit by not less than P1,000,000.00." [6]

Section 3, Rule 16 of the Revised Rules of Court states:

Hearing and order. - After hearing, the court may deny or grant the motion (to dismiss) or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable. (Emphasis supplied).

It is evident from the above provision that a hearing is necessary before resolution of a motion to dismiss. As held in *Asejo v. Leonoso*, [7] penned by Mr. Justice Tuason;

"Sections 3 and 4 of Rule 8 outline the procedure in cases where one or more of the grounds of dismissal are asserted. Two courses are open: (a) to deny or grant the motion or allow amendment of pleading; (b) to 'defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable.' Any of the grounds to dismiss which has not been brought before the court by motion may be pleaded as an affirmative defense. In either case there must be a hearing. And of necessity the hearing, although called preliminary, should be conducted as ordinary hearings: the parties should be allowed to present evidence and the evidence should be taken down. Otherwise in the event of appeal from an order of dismissal, as in this case, the appellate court would have no means to judge the legality of the proceedings and the sufficiency of the proofs on which the order is predicated. If after the hearing the court is of the opinion that the ground alleged in the motion to dismiss or in the answer is not indubitable, it shall defer the determination of the questions until the trial." [8] (Emphasis supplied)

Private respondent also makes much of the alleged unfunded character of petitioner's check (not a cashier's check) and its failure to assert the validity of said check in the pleadings filed before the trial court, allegations that petitioner now disputes. While this fact (the alleged unfunded character of the said check) has a material, if not crucial, bearing on the ultimate efficacy of petitioner's complaint, it still does not justify the denial to petitioner of a hearing before dismissal of its complaint, pursuant to adverse party's motion to dismiss based on alleged failure of the complaint to state a cause of action. Again, quoting from the Asejo case:

"The plaintiff should at least have been accorded a hearing. This is the least she is entitled to. And this is true regardless of any strong opinion the court may have as to the truthfulness of the document. No such hearing was held. Without hearing the plaintiff would be barred from pursuing her action and is to be deprived of what she claims to be her property without being given an opportunity to affirm or deny the validity of Exhibit B." [9]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. 03663 dated 27 November 1986 affirming the orders of the Regional Trial Court, Branch XL, Silay City, Negros Occidental, dated 20 February 1984 and 16 March 1984, respectively, dismissing Civil Case No. 1038 is hereby SET ASIDE. Civil Case No. 1038 is reinstated and the trial court is ordered to hold a hearing on the motion to dismiss complaint, filed by private respondent. No costs.

SO ORDERED.

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

[*] Penned by Justice Fidel P. Purisima, concurred in by Justices Oscar R. Victoriano and Pedro A. Ramirez.

[**] Both trial court orders were issued by Judge Reynaldo M. Alon.

[1] Decision, Rollo at 12. Original Record at 12-13.

[2] Id., Rollo at 15, 44.

[3] Decision, Rollo at 15.

[4] Annex "B", Original Record at 5.

[5] Original Record at 1.

[6] Memorandum for the Petitioner, at 6, Rollo at 48.

[7] CA-No. 9246, May 26, 1947, 78 Phil. 467.

[8] Id. at 470.

[9] CA-No. 9246, May 26, 1947, 78 Phil. at 471.

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