

J. ARTIE VERGEL DE DIOS, PETITIONER, VS. COURT OF APPEALS AND EDUARDO LOPINGCO, RESPONDENTS.

G.R. No. 80491. August 12, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Procedural rules are designed to insure the orderly and expeditious administration of justice by providing for a practical system by which the parties to a litigation may be accorded a full and fair opportunity to present their respective positions and refute each other's submissions under the prescribed requirements, conditions and limitations. Adjective law is not the counterfoil of substantive law. In fact, there is a symbiotic relationship between them. By complying faithfully with the Rules of Court, the bench and the bar are better able to discuss, analyze and understand substantive rights and duties and consequently to more effectively protect and enforce them. The other alternative is judicial anarchy.

It is unfortunate, however, that on occasion procedural rules are invoked not to uphold but to frustrate the prescriptions of substantive law. This usually happens where the party does not expect to win on the merits of his cause and so seeks to out-manuever and delay his opponent by resorting to clever if futile technicalities. The many ingenious gambits to this end are not unknown to the Court. It was not born yesterday. When it comes across any such subterfuge, it easily recognizes and rejects it, that the rules of procedure may not be perverted into engines of injustice.

By its Board Resolution No. 939B-82, adopted on December 28, 1982, the Philippine Veterans Bank conveyed a parcel of land under a conditional sale to Averdi Marketing and Development Corporation.[1] Petitioner Artie Vergel de Dios, as general manager of Averdi, then transferred his rights to Eduardo Lopingco, herein private respondent, subject to the terms and conditions specified in their Memorandum of Agreement[2] and the Addendum thereto,[3] both concluded in February 1983.

On June 21, 1984, Lopingco filed with the Regional Trial Court of Manila a complaint against the petitioner and the Philippine Veterans Bank for revocation of the said board resolution and the rescission of his contract with the petitioner. Copies of the complaint, together with the corresponding summons, were served on the defendants.

On July 6, 1984, the Philippine Veterans Bank filed a motion to dismiss the complaint on the grounds of lack of a cause action and improper party.

On July 13, 1984, at 9:15 o'clock in the morning, Lopingco filed an amended complaint and at the same time served a copy thereof on the petitioner by registered mail.

On the same day, but after the filing of the amended complaint, the law firm of Fornier, Defensor, Rubinos and Fornier, through Atty. Alarico T. Mundin, filed its entry of appearance and motion for extension of time to file responsive pleading on behalf of the petitioner. The motion was subsequently granted but only for ten days.

On August 10, 1984, the petitioner filed through counsel an omnibus motion asking that he be furnished a copy of

the amended complaint. This was opposed by the private respondent, who said that the copy sought had already been sent directly to the petitioner by registered mail "because at the time said copy was mailed, there was as yet no appearance of counsel for said defendant."

On September 12, 1984, at the hearing on the motion to dismiss, counsel for the private respondent moved for a declaration of default against the petitioner for failure to file his answer within the reglementary period. The trial court deferred resolution of the motion pending receipt of proof that the petitioner had indeed received the copy of the amended complaint sent to him by registered mail.

On December 6, 1984, upon presentation of a certification from the Makati Central Post Office that the petitioner had received a copy of the amended complaint on July 17, 1984, he was declared in default and evidence for the other parties was subsequently received ex parte.

On April 30, 1985, Judge Arsenio M. Gonong rendered a decision disposing as follows:

WHEREFORE, based on the allegations and prayer on the complaint and the evidences adduced in support thereof, JUDGMENT is hereby rendered, ordering the rescission of the Memorandum-Agreement and the Addendum thereto entered into between plaintiff Eduardo Lopingco and defendant J. Artie Vergel de Dios; ordering the defendant J. Artie Vergel de Dios to refund the plaintiff his downpayment of P725,000.00 with legal interest thereon from February 18, 1983; ordering defendant J. Artie de Dios to indemnify plaintiff in the amount of P140,000.00 yearly from February 18, 1983 until plaintiff shall have received a complete refund of his investment; ordering defendant J. Artie Vergel de Dios to pay the plaintiff P20,000.00 as actual damages; P1,000.00 as litigation expenses; 10% of the total amount due as and for attorney's fees and to pay the costs.

The case is hereby DISMISSED in so far as defendant Philippine Veterans Bank is concerned.

On June 5, 1985, the petitioner filed a motion for new trial alleging error on the part of the trial court for declaring him in default although he had not yet been served with a copy of the amended complaint and his omnibus motion had not yet been resolved. Assuming that such service was not necessary, he contended that he was nonetheless not negligent for failing to file his answer within the extended reglementary period.

This motion was denied in an order dated August 7, 1985.[4] On the validity of the service of the amended complaint, the trial court declared:

x x x To repeat, the service of amended complaint directly on defendant De Dios is in accordance with Sec. 2, R-13, Revised Rules of Court, to the effect that service of notice, pleadings, orders, and the like, should be made on the party, if not represented by counsel (Elli vs. Ditan, 5 SCRA 503; PLDT vs. NLRC, 128 SCRA 402-403) for "Without any record before it of any attorney appearing for said party, it certainly was in accordance with Section 2 of Rule 13 of the Rev. Rules of Court to serve the judgment upon the party affected thereby. It would be an absurdity to hold otherwise." (Luzon Rubber & Manufacturing Co. vs. Estaris, 52 SCRA 392). By analogy, the instant plaintiff could only serve his amended complaint directly on defendant De Dios. Because of all this, it is not correct then for movant De Dios to claim that this Court did not resolve his Omnibus Motion before declaring him in default and that the default order has no legal basis.

The trial court also found that the petitioner was negligent in not filing his answer on time, for reasons to be cited below.

On August 30, 1985, the petitioner filed an appeal with the respondent court, alleging that the trial court erred in declaring him in default without first ruling on his omnibus motion and in denying his motion for new trial. The appellate tribunal affirmed the questioned order.[5] The petitioner then came to this Court, contending that the Court of Appeals committed grave abuse of discretion: (a) in holding that he was properly declared in default; (b) in not setting aside the judgment by default as improper for unjustly depriving him of his constitutional right to be

heard, the right to fair trial and the right to due process of law; (c) in not declaring that the proper remedy or action of respondent Lopingco is reformation and not rescission of the Memorandum of Agreement and the Addendum thereto; and (d) in not declaring that the decision appealed from as tainted with an award of excessive damages, insufficiency of evidence, and violation of the law.

The petitioner submits that inasmuch as the amended complaint completely replaced the original complaint, the latter was stricken from the record and considered non-existent. So was the summons that accompanied it. As the amended complaint was a completely new pleading, a new summons should have been issued requiring the defendants to answer the same, conformably to Rule 14, Sec. 1, of the Rules of Court. For failing to do this and thereafter declaring him in default, the trial court denied him the right to be heard in violation of due process.

This argument is not acceptable.

The rule is that it is only when new causes of action are alleged in an amended complaint filed before the defendant has appeared in court that another summons must be served on the defendant with the amended complaint.[6]

In determining whether a different cause of action is introduced by amendments to the complaint, the court must ascertain if the defendant shall be required to answer for a liability or legal obligation wholly different from that which was stated in the original complaint.[7] An amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in express terms, and the subject of the controversy or the liability sought to be enforced remains the same.[8]

A reading of the amended complaint in the case at bar shows that it merely supplemented an incomplete allegation regarding the subject property. The purpose of the amendment was merely to include the additional information that the subject property "was and is still under litigation and the contract was entered into without the knowledge and approval of the litigants or of competent judicial authority."

It is clear from a comparison of the allegations appearing in the original complaint and in the amended complaint that the cause of action of the private respondent had not been changed. The amended complaint also asked for the rescission of the Memorandum of Agreement and the Addendum and the return of the sum of P725,000.00 which had been given by Lopingco to the petitioner as down payment on the subject property. Plainly, what was sought to be enforced against the petitioner both in the original complaint and in the amended complaint was his obligation to refund the said sum to the private respondent. The amended complaint did not change the cause of action but simply advanced the above-quoted additional information.

We hold therefore that no new summons on the amended complaint was necessary.

Apart from this, the record shows that, contrary to the petitioner's allegation, he received a copy of the amended complaint on July 17, 1984, through his authorized agent, as certified to by the Makati Central Post Office. The certification stated that Registered Letter No. 1933 (the amended complaint) posted on "July 13, 1984 at GSIS Post Office addressed to Artie Vergel de Dios, Studio 20, 3rd Floor, Makati Townhouse, 100 Gil J. Puyat Avenue, Makati, Metro Manila, was delivered to and received by the authorized representative of the addressee, administrator Dado on July 17, 1984." [9] This certification has not been denied by the petitioner.

The trial court was correct in holding that when the private respondent sent by registered mail a copy of the amended complaint directly to the petitioner, he was acting in accordance with Sec. 2 of Rule 13 of the Rules of Court, allowing direct service on a party if not represented by counsel. At the time the amended complaint was

filed, the defendant was not yet represented by counsel, which entered its appearance only after the private respondent had filed his amended complaint.

It is noteworthy that the trial court cautiously suspended resolution of the motion to declare the petitioner in default until the private respondent shall have furnished proof of service of the amended complaint upon the petitioner. It was only on December 6, 1984, after the private respondent had submitted the above-quoted certification, that the trial court declared the petitioner in default.

As the trial court granted the motion for extension before declaring the petitioner in default, he cannot say that it had unduly favored the private respondent. Neither has the petitioner been denied due process, for he was given adequate opportunity, even extended by ten days more beyond the reglementary period, to file his answer to the amended complaint.

It is true that this Court looks with disfavor upon default judgments, preferring to give the parties full opportunity to argue their respective positions at a regular trial. But there are limits to our forbearance. As we held in *Pahilanga vs. Luna*:^[10]

It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay, the court will not ordinarily exercise its discretion in his favor.

In not exercising that discretion in the petitioner's favor, Judge Gonong correctly observed:

x x x As a matter of fact, defendant De Dios was aware of his task to file his answer to the instant complaint within the time constraint provided by the Rules as can be gleaned from his motion through his counsel, Atty. Munding, reading thus: 2. Undersigned counsel was informed by defendant that the LAST DAY FOR FILING HIS ANSWER AND/OR RESPONSIVE PLEADING IS TOMORROW, 13 July 1984, the summons and copy of the complaint having been received by herein defendant on 28 June, 1984' (par. 2, Entry of Appearance and Motion for Extension of Time to File Responsive Pleading, page 38, record; capitalization supplied). And yet, in spite of this consciousness upon receipt of the summons directing him within fifteen days after service to answer complaint, and also to serve a copy of said answer, within the same period, and failure to do so, judgment by default may be taken against him, still he (De Dios) did not upon receipt of the Amended Complaint sent on 13 July, 1984, and received by him four days after, on 17 July, 1984, rush to his counsel and handed to the latter the said amended complaint so that he would not run the risk of being declared in default. As it turned out, it was only when he filed, thru Atty. Defensor, his Motion For New trial on June 5, 1985, that he disclosed the fact that he did not consult his counsel as regards his receipt of the amended complaint (or 11 months and 18 days from July 17, 1984).

This circumstance or inattention on his part simply demonstrates that defendant De Dios did not exercise due diligence and concern on the matter as an ordinary prudent person would do in order to have his answer filed within the reglementary period. Practical wisdom in taking care of one's affairs dictates that he should pay attention to the summons and at once see his lawyer without any delay. He did not. And so he has only himself to blame for the consequences of his act in treating the summons and complaint served upon him for granted. This court can do no less than to withhold exercising its discretion in his favor, it being convinced that said defendant's actuations of delay as pictured above can only be subsumed as one 'not excusable negligence, mistake or accident.'

On the merits, the petition must also fail.

The petitioner argues that the private respondent has no cause of action for rescission and contends that the proper action is for reformation of the Memorandum of Agreement and the Addendum.

In the Memorandum of Agreement, the petitioner assigned to the private respondent the property rights he had acquired under Board Resolution No. 939B-82, subject to the following terms and conditions:

1. The downpayment of 20% for the purchase of the land (P700,000.00) from the Philippine Veterans Bank shall be paid by the PARTY OF THE SECOND PART through the PARTY OF THE FIRST PART, on or before _____, so that the latter could obtain a conditional sale of the property from the bank.
2. The PARTY OF THE SECOND PART shall pay the sum of P1,000,000.00 to the PARTY OF THE FIRST PART in the following manner:
 - a. P500,000.00 upon payment of the 20% downpayment over the land;
 - b. P500,000.00 in five (5) equal installments for a period of five (5) months beginning on the date of this agreement.

FINAL ASSIGNMENT: The sale by the bank of the property to the PARTY OF THE FIRST PART being conditioned upon the payment of the 20% downpayment shall, upon fulfillment thereof, obligate the PARTY OF THE FIRST PART thereupon to automatically execute in favor of the PARTY OF THE SECOND PART a deed of assignment over the said property.

We find that the above-quoted conditions, specifically the stipulation in the last paragraph, are susceptible of only one interpretation. The plain meaning is that upon the down payment of the amount of P700,000.00 to the Philippine Veterans Bank by Lopingco, De Dios, as the first party, shall execute in favor of Lopingco, as the second party, a deed of assignment over the property subject of the agreement.

The petitioner does not deny that he has not executed that deed. He submits, though, that it was the private respondent who violated the express terms of the contracts for failing and refusing to pay the amount of P500,000.00 to the petitioner upon his payment of the 20% downpayment to Philippine Veterans Bank. We are not persuaded. What we read from the agreement is that the private respondent shall pay the P500,000.00 to the petitioner only upon execution by the latter of the deed of assignment in favor of the private respondent as required by the above-quoted last paragraph. Otherwise, the private respondent would be paying P700,000.00 to the Philippine Veterans Bank and P500,000.00 to the petitioner without one single document to prove that the property rights acquired by the petitioner under Board Resolution No. 939B-82 no longer belong to him but have already been transferred to Lopingco.

Under the circumstances of this case, there is no question that the private respondent could avail himself of the remedy of rescission as authorized under Art. 1191 of the Civil Code, thus:

Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

Interpreting this article in the case of Universal Food Corporation vs. Court of Appeals,[11] we stated that "rescission will be ordered only where the breach complained of is so substantial as to defeat the object of the parties in entering into the agreement." In the case at bar, we find that the non-performance by the petitioner of his obligation to execute the deed of assignment, which has not been denied, was a substantial breach that warranted rescission.

We again quote the trial court with approval:

If there be any actionable wrong under the facts obtaining hereunder it would be the act of defendant J. Artie Vergel de Dios. By entering into the contract (Memorandum-Agreement and its Addendum) conveying his rights arising from Veterans Bank Board Resolution No. 9391-82 and having succeeded in having the plaintiff agree thereto on the assurance that defendant de Dios will be able to procure the approval and conformity of the Bank, of which he was not able to do so, and his subsequent receipt of the partial consideration of P700,000.00 and an additional amount of P25,000.00 knowing fully well that he could not transfer or convey his rights is a wrong, enforceable against him.

Under the facts presented, rescission is the proper remedy and as provided for under Art. 1385 of the New Civil Code: Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore." In the case at bar, the plaintiff is very well entitled to the rescission of the Memorandum-Agreement and its Addendum, in fact the plaintiff was never in possession of the object of said contract as title and possession thereto cannot be transferred by the defendant de Dios, and pursuant to the same provision the plaintiff is likewise entitled to an indemnity for damages.

The petitioner submits that by claiming that the agreements did not reflect the true intention of the parties, the private respondent thereby limited his recourse to reformation of the contract. We think not. Given a choice of remedies, the private respondent had a right to reject reformation of the contract as an available option and to choose rescission instead as the more effective relief for the protection of his interests.

In demanding that the trial court serve new summons upon him because of the amendment of the complaint, the petitioner manifested his bad faith all too clearly. The amendment made was not substantial and did not change the original complaint so as to require the service of new summons upon him. Even if it was, it has been established that a copy of the amended complaint had been legally delivered to and received by him and that he in fact referred it to his counsel, albeit, through his own negligence, not soon enough. He cannot now claim that he was unaware of the amended complaint and was thus unable to answer it. That is a rank pretense. The trial court was not obliged to perform a charade. Courts do not lend themselves to empty gestures or useless rituals that can only impede the speedy administration of justice. The petitioner's pious invocation of due process is nothing short of heretical and deserves to be dismissed.

In these circumstances, the petitioner cannot complain that the damages awarded against him are excessive. Indeed they are not, and we sustain them completely.

WHEREFORE, the petition is DENIED. The challenged decision is AFFIRMED, with costs against the petitioner.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Orig. Rec., p. 30.

[2] Ibid., pp. 31-33.

[3] Id., pp. 36-37.

[4] Id., pp. 155-161.

[5] Nocon, J., ponente with Tensuan and Kalalo JJ., concurring.

[6] Pan-Asiatic Travel Corp. vs. CA, 164 SCRA 623; Ong Peng vs. Custodio, 1 SCRA 780.

[7] Vicente J. Francisco, The Revised Rules of Court in the Philippines, Vol. I, pp. 647-650.

[8] Shaffer vs. Palma, 22 SCRA 934; Metropolitan Bank and Trust Co. vs. Presiding Judge, RTC Mla., Br. 39, 189 SCRA 520.

[9] Orig. Rec., p. 73.

[10] 164 SCRA 725.

[11] 33 SCRA 1.

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