

CARCON DEVELOPMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS AND UNIVET AGRICULTURAL PRODUCTS, INC., RESPONDENTS.

G.R. No. 88218. December 19, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

Presented in the proceedings at bar is the question of whether or not the omission of the Trial Court to actually conduct a hearing on a motion for summary judgment is so grave a defect as to render void the summary judgment subsequently promulgated.

The question originated from an action brought in the Regional Trial Court by Univet Agricultural Products, Inc. against Carcon Development Corporation. By that action, Univet sought to recover the sum of P31,853.25 -- representing the balance of the price of veterinary preparations and products sold and delivered by it to Carcon from December, 1980 to July, 1981 in the aggregate sum of P116,925.00 -- plus interest at 12% per annum and 25% as attorney's fees. To its complaint Univet attached the corresponding invoices (identified as Annexes A to F, inclusive).

In its Answer with Counterclaim, Carcon:

a) ADMITTED -

- 1) the parties' personal circumstances set out in the complaint; and
- 2) the purchase of veterinary preparations and products thru Univet's sales agent, Noli Itun;

b) DENIED LIABILITY, alleging that -

- 1) due to financial failures, Carcon had paid Univet in hogs, thru its agent, Noli Itun;
- 2) the total value of the hogs delivered to Itun was P238,349.20 (the delivery receipts being attached to the answer, signed by Itun, but without reference to Univet);
- 3) it thus results that it is Univet in fact which is indebted to it in the sum of P121,424.20 (P238,349.20 minus P116,925.00);

and

c) SET UP A COUNTERCLAIM for said alleged excess payment amounting to P121,424.20.

On November 14, 1983, Univet filed a MOTION FOR SUMMARY JUDGMENT. Attached to it were the affidavits of (1) Conrado Baylon, its Marketing Director and National Sales Manager, and (2) Winston T. Young, its Credit Supervisor. The affiants asserted of their own knowledge that Univet had never authorized Noli Itun or any one to accept payment in kind from Carcon; Carcon's receipts all show nothing more than deliveries to Noli

Itun in his personal capacity, not to Univet; and Itun in fact had been discharged from his employment precisely because it had been discovered that he was engaging in business with Carcon, among others, for his own account.

The motion for summary judgment contained a notice of hearing, set by the movant on November 25, 1983. On this date of hearing, however, there was no appearance for Carcon. What the Trial Court did with respect to said motion for summary judgment, was to issue an Order, giving "defendant ** ten (10) days from receipt (t)hereof within which to file its opposition, after which the same is deemed submitted for decision."

Pursuant thereto, Carcon submitted its opposition to the motion for summary judgment under date of December 5, 1983. That opposition was not verified. No opposing affidavits were attached to it. It simply made the claim that:

- (1) trial was needful since the special and affirmative defenses in the answer did in truth raise genuine issues;
- (2) it had paid Univet in kind thru Noli Itun, but no receipts had ever been issued by Univet;
- (3) moreover, there was no detailed statement by Univet precisely showing the debt of P31,853.25 being claimed in its complaint.

The Trial Court then rendered the summary judgment prayed for, on December 12, 1983. In it the Court recited the above stated facts, and concluded that after examining the pleadings, affidavits and supporting papers filed by the parties, summary judgment was proper as no genuine issue had been raised as to any material fact. The judgment authorized recovery by Univet of the amount by it claimed, P31,853.25, with interest at 12% p.a. from June 10, 1982 (when the complaint was filed) until fully paid, as well as 15% of the total amount awarded as attorney's fees and litigation expenses.

This judgment was, on appeal,[1] affirmed by the Court of Appeals in its own Decision dated March 1, 1989.[2] The latter decision was afterwards assailed in this Court by Carcon, which in its petition for review on certiorari, prayed for its setting aside, and for the remand of the case "to the Trial Court for trial on the merits." This Court denied the petition, by Resolution dated July 10, 1989, "it appearing that only questions of facts are raised in this case and no reversible error is otherwise shown in the challenged judgment."

Carcon's motion for reconsideration dated August 17, 1989 asks the Court to set aside this Resolution. The motion will be denied for lack of merit. A few words will however be devoted to the question presented in the opening paragraph of this opinion.

It is noteworthy that Univet complied with Section 3 of Rule 34, which requires that a motion for summary judgment should be served at least 10 days before the time specified for the hearing. In its motion, Univet fixed the time of hearing thereof at November 25, 1983 (11 days from date thereof, November 14, 1983).

Since the defendant did not appear on the date set for hearing, November 25, 1983, the Court gave it 10 days from notice within which to file opposing affidavits pursuant to the same Section 3, Rule 34, viz.: "The adverse party prior to the day of hearing may serve opposing affidavits."

The defendant filed an unverified opposition and did not submit affidavits in traverse of those of Univet; and since, after submitting the opposition, it did not ask for a hearing, or any other additional relief, it evidently acquiesced to the judge's directive that upon submission of the opposition, the matter would be deemed "submitted for resolution."

The theory of summary judgment is that although an answer may on its face appear to tender issues -- requiring trial -- yet if it is demonstrated by affidavits, depositions, or admissions that those issues are not genuine, but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff.[3] The court is expected to act chiefly on the basis of the affidavits, depositions, admissions submitted

by the movant, and those of the other party in opposition thereto.[4] The hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus de riguer. The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. This is not to say that a hearing may be regarded as a superfluity. It is not, and the Court has plenary discretion to determine the necessity therefor. Under the circumstances of this case, however, a hearing would have served no purpose, and was clearly unnecessary. The summary judgment here was justified, considering the absence of opposing affidavits to contradict the sworn declarations of Univet's officials, which demonstrate that the issues raised in the answer are sham, not genuine.

WHEREFORE, the motion for reconsideration is DENIED for lack of merit.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Docketed in the Court of Appeals as CA-G.R. CV No. 05858

[2] Per Victor, J, with whom concurred Ejercito and Kalalo, JJ.

[3] SEE Vergara, Sr. v. Suelto, 156 SCRA 753, 762

[4] Id., citing Cadirao v. Estenzo, 132 SCRA 93, in turn citing Viajar v. Estenzo, 89 SCRA 684; Gorospe v. Santos, 69 SCRA 191, 203; de Leon v. Faustino, G.R. No. L-15804, Nov. 29, 1960; PNB v. Philippine Leather Co., Inc., et al., G.R. No. L-10884, Mar. 31, 1959; Bautista, et al. v. Gonzalez, 78 Phil. 390; Jugador v. de Vera, G.R. No. L-6308, Mar. 30, 1954

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