

43 Phil. 755

[ G. R. No. 18504. September 15, 1922 ]

**FELIX GREGORIO, PLAINTIFF AND APPELLANT, VS. THE BACHRACH MOTOR CO., INC., DEFENDANT AND APPELLEE.**

**D E C I S I O N**

STATEMENT

The plaintiff is a merchant and a resident of Cabanatuan, Nueva Ecija. The defendant is a corporation organized under the law of the Philippine Islands with its principal office in the city of Manila, and is a dealer in motor cars.

In the years 1919 and 1920, the plaintiff bought from the defendant two trucks, one automobile, and one trailer at the agreed price of P26,855.34, and certain auto supplies and materials. Growing out of their mutual dealings and relations, the plaintiff commenced this action in which he prays for an accounting from the defendant, and that it be required to produce in court all of its books, records, and files, and that plaintiff be discharged and released of all liability to the defendant, and that he have and recover from the defendant P15,738.27, the costs of the suit and interest, and prays for an injunction against the defendant from enforcing any claim which it may have against the plaintiff.

For answer, the defendant makes a specific denial of all of the material allegations of the complaint, and, as a special defense, alleges that the White truck described in paragraph two of plaintiff's second cause of action was voluntarily delivered by the plaintiff to the defendant under instructions to sell it for the best obtainable price. That it was unable to sell the truck, and that on July 1, the truck was returned to the plaintiff who voluntarily received and accepted it.

As a cross-complaint and counterclaim, the defendant further alleges the execution of certain chattel mortgages by the plaintiff to the defendant, a breach of the conditions and a

sale of the property under the terms of the mortgage, and also the sale of certain goods, wares, and merchandise, making a total amount of all sales and purchases of P39,042.46 upon which at different times and from different sources, the defendant has paid P19,646.26 leaving a balance due and owing the defendant from the plaintiff of P16,187.01, for which it prays judgment against the plaintiff, with costs.

The trial court rendered judgment for the defendant as prayed for in its counterclaim, from which the plaintiff appeals, claiming that the court erred in the admission of certain exhibits of the defendant, in applying the law to the facts, and in not granting a continuance.

Johns, J.:

The complaint was filed on October 22, 1920, the original answer on November 22, 1920, and the amended answer on February 14, 1921. Upon such issues the case was set down for trial March 10, 1921. At that time, claiming that his client was sick and unable to be present, the attorney for the plaintiff asked that the trial be postponed to which the defendant consented, and the case was again set for trial on August 24, 1921. The attorney for the plaintiff then appeared and asked for another continuance, claiming that he had duly notified his client of the time when the case was set for trial, and that he had not received any word from him, and, for such reason, was unable to proceed with the trial. The defense objected to any further delay, contending that they had not received any notice from the attorney for the plaintiff of his purpose to ask for further delay, and that the defendant was there with its witnesses ready for trial. The court denied plaintiff's motion for further continuance, and directed that the trial proceed. The plaintiff did not offer any evidence. The defendant offered evidence to sustain all of the allegations made in its cross-complaint and counterclaim based upon which the court rendered judgment for the defendant, as prayed for.

The testimony on the part of the defendant is clear and convincing, and is conclusive upon all of the alleged facts. Here, the plaintiff brought the defendant into court, and a continuance of six months was granted at the request of the plaintiff. At the end of that time the plaintiff again came into court without any showing whatever, and asked for another continuance. After the plaintiff commenced this action invoking the power of the court, it was his duty to prepare his case and be ready for trial, and he had no right or license to ask for a continuance without at least making some kind of a reasonable showing, which was not done in this case.

Upon its counterclaim, the defendant introduced statements, various invoices and vales rendered to the plaintiff showing a full and complete history of all of its dealings with the plaintiff, from which it appeared and the trial court found that the plaintiff was indebted to the defendant in the sum of P16,187.01.

There is no merit in the appeal. The judgment is affirmed, with costs. So ordered.

*Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.*

*Johnson, J., did not take part.*