TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 04539, September 04, 2014]

THE PROVINCE OF SOUTHERN LEYTE, PLAINTIFF-APPELLEE, VS. PACIFIC UNION INSURANCE CO., INC., DEFENDANT-APPELLANT.

DECISION

HERNANDO, J.:

Before Us is an appeal[1] filed by defendant-appellant Pacific Union Insurance Co., Inc (PUICI) from the Orders dated July 11, 2011[2] and June 26, 2012[3] rendered by the Regional Trial Court (RTC), Branch 24 of Maasin City, Southern Leyte in Civil Case No. R-3620, an action for Collection of Sum of Money with Writ of Preliminary Attachment. The assailed July 11, 2011 Order granted plaintiff-appellee's motion for judgment on the pleadings and thereby ordered defendant-appellant to pay the former the amount of Php29,685,483.26 plus 6% (interest) per annum from the date of the filing of the complaint until fully paid. The other assailed June 26, 2012 Order, on the other hand, denied defendant-appellant's motion for reconsideration relative to the earlier July 11, 2011 Order.

The Antecedents:

The present appeal stemmed from a Complaint[4] filed by plaintiff, Province of Southern Leyte, represented by its Provincial Governor, Damian G. Mercado, on April 1, 2011 for Collection of Sum of Money with Writ of Preliminary Attachment before the Regional Trial Court (RTC) of Maasin City, Southern Leyte against defendant Pacific Union Insurance Company, Inc. (PUICI). Defendant PUICI is a corporation duly organized and existing under the laws of the Philippines and is engaged in the insurance, surety and bonding business.

In its Complaint, plaintiff alleged that on November 24, 2006, it entered into a Contract with Arnold T. Espinosa, who is doing business under the name and style of ARN Builders, involving the construction of Subang Daku Flood Control Project in Sogod, Southern Leyte. Under the said Contract, Arnold T. Espinosa/ARN Builders (contractor), in consideration of plaintiff's payment in the amount of Php98,951,610.88, undertook to execute and complete the project within a period of two hundred ten (210) calendar days, or up to July 4, 2007 and to maintain the same in conformity with the terms and conditions of said Contract. It was further agreed that should the contractor fail to so complete the project satisfactorily within the specified contract time, he shall be liable to pay plaintiff liquidated damages. Thus, to guarantee faithful performance of said Contract, plaintiff required the contractor to post a performance bond which shall be forfeited in plaintiff's favor in the event of default on the part of the Contractor in any of its obligations under the said Contract.

Consequently, on November 28, 2006, defendant as surety issued its Performance Bond No. 12075 in the amount of Php29,685,483.26 on behalf of its principal, Arnold T. Espinoza/ARN Builders and in favor of plaintiff as obligee. Under and by virtue of said performance bond, defendant and Arnold T. Espinoza/ARN Builders jointly and severally bound themselves to pay plaintiff the amount of Php29,685,483.26 to answer for the damages which plaintiff may sustain should the principal fail to faithfully comply with the project in accordance with the terms and conditions of the said Contract. Thereafter, plaintiff released to the contractor the amount of Php42,341,394.30 as partial payment for the project.

However, at the expiration of the 210-day construction period, the contractor only accomplished 45.86% of the Subang Daku Flood Control Project, in clear breach of its obligations and undertaking under the Contract, to the great damage and prejudice of plaintiff. Hence, plaintiff rescinded the Contract and immediately called upon defendant's Performance Bond to answer for the damages it suffered.

According to plaintiff, defendant tried to evade its clear obligations to plaintiff by contending that its liability under the Performance Bond, which is Php29,685,483, is way below the actual work accomplished by the contractor in the total amount of Php45,379,208.75 for which plaintiff even owes the contractor the balance of Php3,037,814.45 because plaintiff only disbursed to the contractor the amount of Php42,341,394.30. Plaintiff, however, clarified with defendant that under the Implementing Rules and Regulations of R.A. No. 9184[5], in case the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the contractor, the procuring entity concerned may rescind the contract, forfeit the contractor's performance security and take over the project or award the same to a qualified contractor through a negotiated contract. Accordingly, since Arnold T. Expinoza/ARN Builders failed to finish the project at the specified completion date of July 4, 2007, it had breached its obligations under the Contract warranting its rescission and the forfeiture of the Performance Bond.

Plaintiff, thus, sent several notices of demand to defendant seeking for the payment of the amount of Php29,685,483.26 of the Performance Bond but defendant failed and refused and continuously fails and refuses to pay the same. Plaintiff asserted that after receiving the huge amount of premium from the contractor, defendant suddenly reneged its undertaking and refused to honor its obligations under the Performance Bond. Thus, defendant was in complete bad faith and guilty of fraud.

Subsequently, defendant PUICI filed its Answer[6] on June 27, 2011 denying all the material allegations in plaintiff's Complaint for lack of sufficient knowledge as to the truth thereof. In its Special and Affirmative Defenses, defendant raised the following:

> 8. It repleads, reiterates and incorporates by way of reference all the foregoing allegations to form part hereof and insofar as they may be relevant thereto;
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> 9. The instant case should be dismissed because the complaint asserting the claim states no cause of action against herein answering defendant;

10. Under the foregoing circumstances plaintiff lacks any legal capacity to pursue any claim involving the subject Performance Bond and consequently has no cause of action against herein defendant.

11. Defendant PACIFIC UNION INSURANCE COMPANY hereby repleads, reiterates and incorporates, by way of reference, the foregoing allegations as part hereof and insofar as they may be relevant herein;

x x x x x x x x x

On July 7, 2011, plaintiff filed a Motion for Judgment on the Pleadings[7]. It submitted said motion for the consideration and approval of the trial court on July 15, 2011 at 8:30 in the morning.

Thereafter, the trial court found merit in plaintiff's Motion for Judgment on the Pleadings and thus, granted the same in an Order dated July 11, 2011, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is rendered granting the motion for judgment on the pleadings, ordering the defendants to pay plaintiff the amount of P29,685,483.26 plus 6% (percent) per annum from the date of the filing of the complaint until fully paid.

Corollarily, another Order dated July 11, 2011 was also issued by the trial court cancelling the July 21, 2011 scheduled hearing in view of the Order granting plaintiff's Motion for Judgment on the Pleadings.

Hence, this appeal by defendant-appellant anchored on the following assignment of errors:

Assignment of Errors[8]:

I. THE TRIAL COURT COMMITTED SERIOUS MISCARRIAGE OF JUSTICE AND PALPABLE VIOLATION OF DUE PROCESS WHEN IT GRANTED PLAINTIFF'S *MOTION FOR JUDGMENT ON THE PLEADINGS* AND RENDERED JUDGMENT IN ITS FAVOR WITHOUT NOTICE AND HEARING THEREBY PRECLUDING THE DEFENDANT FROM FILING ANY OPPOSITION OR OBJECTION TO THE MOTION;

II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S *MOTION FOR JUDGMENT ON THE PELADINGS(sic)* DESPITE SEVERAL ISSUES TENDERED BY THE DEFENDANT'S ANSWER;

III. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S *MOTION FOR RECONSIDERATION* AND BRUSHING ASIDE DEFENDANT'S PRAYER FOR

THE JOINDER OF ARN BUILDERS AS AN INDISPENSABLE PARTY IN THE CASE.

Court's Ruling:

The appeal is bereft of merit.

We shall delve into the issues raised by appellant successively.

Appellant first assails the court *a quo*'s Order granting appellee's Motion for Judgment on the Pleadings without the required notice and hearing as it supposedly violated its fundamental rights to due process and fair play.

Appellee counters that the trial court did not err in resolving the questioned motion *ex-parte* citing *Dino v. Valencia*[9]. At any rate, appellee further argues that granting *arguendo* that it erred, the supposed error of the court *a quo* in resolving the motion *ex-parte* had been cured and rendered moot by appellant's filing of the Amended Motion for Reconsideration where appellant had registered its opposition to the questioned motion.

On this matter, the points of the appellee are well-taken.

Elementary is the rule that every motion must contain the mandatory requirements of notice and hearing and that there must be proof of service thereof.[10] The Court has consistently held that a motion that fails to comply with the above requirements is considered a worthless piece of paper which should not be acted upon.[11] The rule, however, is not absolute.[12] There are motions that can be acted upon by the court *ex parte* if these would not cause prejudice to the other party.[13] They are not strictly covered by the rigid requirement of the rules on notice and hearing of motions.[14]

A Motion for Judgment on Pleadings may be made *ex-parte.*[15] As correctly cited by appellee, the Supreme Court, in *Dino v. Valencia*[16], declared that:

> Section 1, Rule 19 of the Rules of Court which states that where an answer "admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading", does not state whether the motion for judgment on the pleading may be considered *ex-parte* or only after notice of hearing served on the adverse party. ***A motion for a judgment on the pleadings, where the answer admits all the material averments of the complaint, as in the present case, is one that may be considered ex-parte because, upon the particular facts thus presented and laid before the court, the plaintiff is entitled to the judgment.***

In the older case of *Cruz v. Ernesto Oppen Inc., et. al.*[17], this issue had likewise been discussed. There, the High Court explained the matter in this wise:

> x x x This motion may not have been skillfully labeled. In effect, however, it is a motion for judgment on the pleadings. x x x.
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> Applicable then is Section 1, Rule 19 of the Revised Rules of Court (formerly Section 10, Rule 35 of the old Rules), which states that where an answer "admits the material allegations of the adverse party's pleading, the court may, *on motion of that party*, direct judgment on such pleading." On this point, then Justice Arsenio P. Dizon of the Court of Appeals, now of this Court, analyzing the provisions of Section 10, Rule 35 of the old Rules of Court, observed that **"the rule does not state whether the motion for judgment on the pleadings may be considered *ex-parte* or only upon notice served on the adverse party," and concluded that a motion for judgment on the pleadings in which all the material averments of the complaint are admitted, "is one that may be considered *ex-parte* because, upon the particular fact thus presented and laid before the court, the plaintiff is entitled to the precise order applied for.**" Such is the situation here. No need there was to set for oral argument respondents' motion of June 8. (Emphasis supplied)

On the basis of these cases, We hold and so rule that a motion for judgment on the pleadings may be considered *ex-parte,* hence, can be acted upon by the court *a quo* even without the required notice and hearing.

In that same case of *Cruz,* the Supreme Court went further and stated that:

> 6. Concededly, the order of July 3, 1964 dismissing the petition was issued without hearing the parties on oral arguments. ***But the proceedings did not end there. For, petitioner moved to reconsider that order. In that motion for reconsideration, she has had the opportunity to present, and in fact did present, her written arguments once again on the legal issues.*** She set her aforesaid motion to reconsider for hearing on August 15, 1964. She has had opportunity to be heard. She cannot complain. Unfortunately for her, it was denied on that same day.
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> ***In this factual environment, it cannot be said that petitioner was denied her day in court. Lack of original notice to set the motion to resolve for hearing was cured by the fact that she was heard on her motion for reconsideration.***
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> ***She was not, therefore, prejudiced by the fact that respondents' motion to decide the case was not set for hearing.***
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> 7. **At all events, if the Court of First Instance erred in resolving**