

COURT OF APPEALS DECISION

Bagumbayan Productions, Inc., Petitioner, vs. Balatbat Productions, Inc. and Hon. Gregorio S. Narvasa, Judge, Manila Court of First Instance, Respondents, C.A.G. R. No. 25435-R, February 2, 1960, Cabahug, J.

CIVIL PROCEDURE; TRIAL BY COMMISSIONER; SECTION 1 RULE 34 OF RULES OF COURT CONSTRUED. — Under the provision of Section 1, Rule 34 of the Rules of Court "By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court." In the case at bar, although there was no written consent signed by the parties filed with the clerk of court in Civil Case No. 35113 but the parties therein having manifested to respondent judge in open court their agreement to the continuation of the proceedings before the clerk of court and the same agreement having been incorporated in the order of August 10, 1959, the provision of Section 1, Rule 34 of the Rules of Court has been substantially complied with.

*Vicente J. Francisco, for respondents.
Luis Manalang, for petitioner.*

DECISION

In an original petition filed with this court petitioner prays that a) the order of the court referring cross-examination of petitioner's witnesses and the introduction of evidence by respondent before the commissioner and all other proceedings by nature included therein as well as the few cross-question already propounded by the respondent's counsel before the commissioner, clerk Macario M. Oflada, be declared null and void; b) ordering the respondent honorable judge to set the hearing before the court and prohibiting him to refer to a commissioner; the cross-examination and introduction of evidence of respondent; c) that the respondent, except the respondent honorable judge, be ordered to pay actual damage in the amount of P2,000 for attorney's fees and other incidental expenses of the litigation and moral damages in the amount of P10,000, plus costs."

The record discloses that herein petitioner was the plaintiff in Civil Case No. 35113 of the Court of First Instance of Manila, while herein respondent Balatbat Productions, Inc. was the defendant therein. When the trial of that case was called on June 29, 1959, neither the defendant nor its counsel appeared; whereupon Judge Gregorio S. Narvasa, presiding over branch V of the same court issued an order allowing the plaintiff to present its evidence before Clerk of Court Macario M. Oflada. Upon the defendant's motion and despite the plaintiff strong opposition, the court, on July 6, 1959, gave the "defendant's counsel an opportunity to cross-examine the witnesses presented by the plaintiff during the ex-parte reception of the latter's evidence, and adduce evidence for said defendant." For this purpose the hearing of the case was set for July 27, 1959. A petition for the reconsideration of this order was denied on the 16th of the same month.

Alleging that he would be in Iloilo City to attend to some pending cases before the Iloilo branch of the Court of Industrial Relations, on July 14, 1959 counsel for plaintiff moved for the cancellation of the hearing set for July 22, 1959 and that it be reset for the following month, which motion was opposed by the defendant. Neither the herein petitioner nor the respondents attached to their petition and answer the order resolving this motion for postponement of plaintiff, but it is presumed that the same was granted and the hearing was postponed on August 10, 1959; for on this date, herein respondent judge issued the following order:

"By agreement of the parties, the continuation of the proceedings in this case may be had before the Clerk of Court who is hereby authorized to receive the evidence the parties may present."

It appears that immediately after the issuance of this order, the parties in the above numbered civil case appeared before Clerk of Court Macario M. Oflada who, at 9:05 a.m. of the same day, opened the hearing with plaintiff's witness Jose Maria Hernandez testifying on cross-examination. However, this cross-examination had to be suspended because according to the plaintiff's counsel, he "would like to avail myself of the proviso of the order of the Honorable Court that in case we did not get along all right, because of so many legal questions that are being raised, we can have the case returned to the Honorable Judge." And in a motion bearing the same date of August 10, 1959 but filed on the 18th, the plaintiff asked that the hearing of the case be conducted on September 2, 1959 before the respondent judge and not before the commissioner. Upon the denial of this last motion on August 18, 1959, the plaintiff filed an urgent motion for reconsideration praying that this last order of denial be reconsidered and another be entered ordering the continuance of the hearing before the court and not before the commissioner. Acting on this motion for reconsideration and the opposition thereto, respondent judge issued on September 18, 1959 the order hereinbelow quoted:

"After careful consideration of plaintiff's urgent motion for reconsideration of Order of August 18, 1958, denying said plaintiff's motion to continue hearing of this case before the Judge himself instead of this case before the Clerk of Court, as per Order of August 10, 1959, and of defendant's opposition thereto, the court hereby denies the said motion for reconsideration, and maintains its Order of August 10, 1959." (an nex B)

Hence the filing of the instant petition. The petitioner contends that there being no written consent of both parties as required by section 1, rule 34 of the Rules of Court, the respondent judge committed a grave abuse of discretion in ordering that the cross examination of its witnesses and the reception of the respondent corporation's evidence in Civil Case No. 35113 be made before a commissioner, and in neglecting or refusing to do his duty as enjoined by law. On the other hand, respondents maintain that the agreement entered into by and between the parties in open court, which agreement was incorporated in the controverted order of August 10, 1959, is a substantial compliance with the provision of the section aforesaid, which provides:

"By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court."

Indeed, there was no written consent signed by the parties filed with the clerk of court in Civil Case No. 35113; but the parties therein having manifested to respondent judge in open court their agreement to the continuation of the proceedings before the clerk of court, and the same agreement having been incorporated in the order of August 10, 1959, we are of the opinion and so held that the provision of section 1, rule 34, Rules of Court, cited by the petitioner, has been substantially complied with. Consequently, in issuing the order complained of the respondent judge acted perfectly in accordance with the mandates of the law and he did not commit any semblance of an abuse, much less grave abuse, of discretion; nor did he refuse or neglect

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with him. It turned out later that the affidavit contained allegations that B, a married man, had agreed to live separately from his wife, confirming that each of them could choose another lifetime partner without interference from the other.

Can the act of Atty. A, in ratifying the affidavit subject him to disbarment, ? Briefly reason out your answer.

- V. (a) F is the leading lawyer in his province. C, a resident of the same province, having a doubtful claim against P, another resident, consult with F, showing him papers and giving him facts relative to the claim. F thereafter tells C he believes that C does not have a case against P and politely refuses to handle the case. Subsequently, C hires the services of another lawyer and files suit against P. P now approaches and ask F to represent him.
- (1) What consideration may be invoked in support of F's acceptance of the request that he represent P in the case?
- (2) What consideration in contra may be invoked?
- (3) State whether the Supreme Court has decided any case with similar facts; and if so, give the ruling enunciated by the Court.
- (b) Suppose that next month after the bar examinations are over but before the results are published, you are engaged to represent the accused in a criminal case of damage to property through reckless imprudence pending before the Municipal Court of Manila. Can you legally represent the accused? Briefly explain your answer.
- VI. (a) After a pre-trial was had in a civil case, Judge B casually states the following to the attorney for the plaintiff: "Atty. X, I do not believe in the veracity of or relevancy of your evidence. I advise you to compromise your case."

- (1) Has the judge committed any breach of judicial ethics? Explain you answer.
- (2) What remedy, if any does the plaintiff have? Explain.
- (a) A bus, driven by X collided with and damaged the car of Y. In the criminal case filed for physical injuries and damage to the property through reckless imprudence, Judge G acquitted the accused X. Subsequently, Y filed a civil action for damages against X. The civil case was assigned to the sala of Judge G.
- (1) Can Judge G be disqualified from hearing the civil case? Briefly give your reasons.
- (2) If X should seek to disqualify Judge G, how should he go about it?
- VII. (a) SW, a woman married to FH, sold two parcels of land located in Quezon City for P20,000.00 to Mr. & Mrs. AB. Prepare the notarial acknowledgment for a simple unilateral deed of absolute sale to cover the transaction, supplying all necessary data.
- (b) Prepare a simple negotiable promissory note with an acceleration clause.
- VIII. (a) Using your own facts, prepare a paragraph for inclusion in the articles of incorporation of a company providing for its authorized capitalization.
- (b) Supplying your own facts, prepare a simple bill of exchange.
- IX. (a) T is the owner of an apartment house. He leased apartment No. 2 to H for a year, terminating on July 31, 1959. Although no extension to the lease was granted, H refused to vacate. On August 16th, as Attorney for T, you filed a complaint for ejectment against H. Reproduce your entire complaint.
- X. (a) Omitting caption and title, and supplying all necessary facts, prepare the body of an information 'charging the accused with bigamy. Manila. August 30, 1959

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lect to perform any duty specifically enjoined by law.

The petitioner alleges that it orally acquiesced to the cross examination of its witness before a commissioner subject "to the proviso that in the event many legal questions or issues arise during the cross-examination before the commissioner, the same shall be returned to the court as the commissioner is powerless to rule on them." However, the order of August 10, 1959 completely belies this allegation — which is probably the reason why it is not among the annexes submitted with the petition, despite the fact that it is precisely the same order being questioned.

Upon the other hand, it cannot be successfully denied that the principal issue of Civil Case No. 35113 requires a tedious examination of a lengthy and complicated account. Aside from the P160,000.00 for moral and exemplary damages and attorney's fees, the plaintiff therein, herein petitioner, asked for the payment of P35,000.00 representing its capital contribution to the filming of "Buhay at Pag-ibig ni Dr. Jose Rizal"; P31,000.00 representing damages due to padded production costs; P10,000.00 representing earned and concealed profits; and P50,000.00 for unrealized but expected profits. While the defendant therein, herein respondent corporation, alleged that the total cost of the production of the film was not only P70,000.00 as previously estimated, but P101,424.86; that every item of expense is supported by invoices and vouchers; that the more than six months' showing of the film in different theaters would require the report of the ticket sellers; and that the statement of account covering all income and expenses would demand the intervention and testimony of public accountants. It is therefore indisputable that the respondent judge on his

own motion and even without the consent of the parties, could have legally referred the aforementioned civil case to the commissioner directing the latter to hear and report upon the entire issue, pursuant to section 2 of the rule aforesaid.

WHEREFORE, the instant petition is denied and dismissed, with costs against the petitioner.

IT IS SO ORDERED.

Dizon and Peña, JJ., concurred.

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NO MONEY?

A famous lawyer was called in to see a man in the county jail accused of murder.

When he returned to his office, his secretary said, "Well, did you take the case, Mr. Blank?"

"No, I didn't take it."

"Why, didn't you think the man was justified in his acts?"

"My dear young lady," said the lawyer, "he certainly was not financially justified in committing murder." — *Naples (N.Y.) Record.*

NONE WHATSOEVER

Judge: This is a malpractice case, and the defendant is a doctor. Does that create any bias or prejudice in you in any respect because the defendant is of that profession?

Juror: No, Your Honor.

Judge: What is your occupation?

Juror: Undertaker. — *Minnesota Bulletin.*