

## FIFTH DIVISION

[ CA-G.R. CV No. 102754, March 17, 2015 ]

**RIC SITOSTA, PLAINTIFF-APPELLEE, VS. ALFREDO TAN LUSTERIO, DEFENDANT-APPELLANT.**

### D E C I S I O N

**LOPEZ, J.:**

This resolves the appeal filed by Alfredo Tan Lusterio, assailing the February 7, 2014 Decision and April 3, 2014 Order of Branch 41, Regional Trial Court of Manila (trial court), that found him liable to Ric Sitosta for P1,682,852.00 plus interests, attorney's fees and costs of suit.

The facts are culled from the records.

On December 7, 2011, Sitosta filed an Amended Complaint for Sum of Money and Damages against Lusterio, alleging that Lusterio obtained a loan of P1,682,852.00 evidenced by sixteen RCBC Checks.<sup>[1]</sup> When the checks were deposited, they were dishonored by the drawee bank for reason of "Account Closed". Sitosta sent a demand letter but Lusterio refused to pay.<sup>[2]</sup>

In his Answer with Affirmative Defenses and Counterclaim, Lusterio alleged that he was only given P1,200,000.00. The money was not a loan but a financial assistance. He was forced to issue the RCBC Checks and informed Sitosta before the account was closed. Lusterio told Sitosta that he would replace the checks and to refrain from depositing them, but Sitosta violated the agreement. He cannot remember receiving a demand letter. Also, he already made the following payments: (1) RCBC Check No. 1352022 for P50,000.00 dated April 8, 2008; (2) RCBC Check No. 1352021 for P50,000.00 dated April 9, 2008; (3) RCBC Check No. 1352020 for P100,000.00 dated March 5, 2008; (4) RCBC Check No. 936852 for P25,000.00 dated October 1, 2007; and (5) RCBC Check No. 936853 for P25,000.00 dated October 15, 2007.

Pre-trial was set on May 3, 2013 but was canceled due to the failure of defendant Lusterio's counsel to appear and to file his entry of appearance.<sup>[3]</sup> The second pre-trial conference was likewise canceled for failure of defendant's counsel to appear.<sup>[4]</sup> Pre-trial was reset for the third time on August 22, 2013 but both the defendant and his counsel were absent, prompting the trial court to allow plaintiff Sitosta to present his evidence ex-parte.<sup>[5]</sup>

Subsequently, Lusterio filed an "Ex-Parte Motion/Manifestation" stating that he was unable to attend the pre-trial because he saw on television that government offices were closed due to the flood in Metro Manila. He then moved to be allowed to cross-examine plaintiff's witness and to present his evidence.<sup>[6]</sup> The trial court denied

Lusterio's motion for being filed in violation of Sections 4 and 5, Rule 15 of the Rules of Court.<sup>[7]</sup>

On September 30, 2013, Sitosta presented his evidence, before the Branch Clerk of Court as Commissioner, consisting of his Judicial Affidavit<sup>[8]</sup>, the Demand Letter<sup>[9]</sup>, and the sixteen RCBC Checks with annotations "Account Closed"<sup>[10]</sup>. Lusterio asked to cross-examine Sitosta but he was reminded that it was an ex-parte presentation of evidence.<sup>[11]</sup> Subsequently, Sitosta's evidence were admitted and the case was submitted for decision.<sup>[12]</sup> Incidentally, Lusterio filed motions for reconsideration of the Order allowing Sitosta to present evidence ex-parte and submitting the case for Decision.<sup>[13]</sup> The motions were denied.<sup>[14]</sup>

On February 7, 2014, the trial court rendered the Decision finding Lusterio liable, as follows:

Here, the defendant never denied issuing the subject checks for value. Thus, the checks, the entries of which are in his own handwriting, simply proves the existence of the loan transaction between the plaintiff and the defendant. And, the plaintiff's possession of the subject checks is enough proof that defendant's indebtedness has not been discharged by any payment. It is well to remember that a check may constitute as evidence of indebtedness. xxx

xxx

This Court also finds it proper to award attorney's fees in favor of the plaintiff in consonance with Article 2208(2) of the Civil Code. However, the amount of P30,000.00 is more appropriate in line with the policy that the award of attorney's fees must always be reasonable.

WHEREFORE, judgment is hereby rendered in favor of plaintiff Ric Sitosta and against defendant Alfredo Tan Lusterio as follows:

(1) Ordering defendant to pay his monetary obligation in the sum of One Million Six Hundred Eighty Two Thousand Eight Hundred Fifty Two Pesos (P1,682,852.00) plus six percent (6%) per annum interest reckoned from the date of filing of this case until the finality of the judgment. If the adjudged amount remain unpaid thereafter, an interest rate shall be imposed at six percent (6%) per annum computed from the time the judgment becomes final and executory until the same is fully satisfied;

(2) Ordering defendant to pay attorney's fees and litigation expenses fixed on the reasonable sum of P30,000.00; and

(3) Ordering defendant to pay the costs of the suit.

SO ORDERED.<sup>[15]</sup>

Lusterio moved for reconsideration but it was denied.<sup>[16]</sup> Hence, this appeal claiming that his right to due process was violated when the trial court continually refused to let him present his evidence. The Branch Clerk of Court abused her

authority when she refused to let him cross-examine plaintiff's witness. Furthermore, the February 7, 2014 Decision resulted in unjust enrichment on Sitosta's part since the loan was only for P1,200,000.00 in addition to the payments already made.<sup>[17]</sup>

The appeal lacks merit.

First, on the issue of due process, Section 5, Rule 18 of the Rules of Court provides:

Sec. 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next proceeding action shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.** [Emphasis Ours.]

It is clear from the Rules that if the defendant is absent during the pre-trial, the court may allow the plaintiff to present his evidence before the Branch Clerk of Court ex parte.<sup>[18]</sup> In this case, We recall that pre-trial was postponed twice due to the absence of defendant Lusterio's counsel. During the third setting, both Lusterio and his counsel failed to appear. The trial court thus correctly issued the Order allowing plaintiff Sitosta to present evidence ex parte.

Although Lusterio tried to lift the Order through his "Ex-Parte Motion/Manifestation", it did not contain a notice of hearing. Sections 4 and 5, Rule 15 of the Rules of Court reads:

Sec. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

The rule is explicit, all written motions shall be set for hearing except those which are non-litigable that may be acted upon by the court without prejudicing the rights of the adverse party.<sup>[19]</sup> A motion that does not meet the requirements of Sections 4 and 5 of Rule 15 of the rules of court is a mere scrap of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon.<sup>[20]</sup> Lusterio's motion does not fall within the exception, since it would affect the right of plaintiff to present his evidence ex parte. Hence, the trial court properly denied the motion.

We take emphasis that the Order allowing Sitosta to present evidence ex parte became final. Consequently, Lusterio cannot claim that the Branch Clerk of Court