

Summary Judgment Procedure In The Philippines

By ROSA SANTOS

INTRODUCTION

THE Rules of Court have introduced many innovations in Philippine procedural law. These changes manifest significant efforts to effect procedural reforms in this country; and are aimed at greater simplification and speed in the determination of judicial controversies. Among the important innovations in the Rules is the motion for summary judgment.

The purpose of this article is to explain summary judgment procedure in civil actions by showing its object and effects, its nature, the manner by which it has been applied to practical use and advantage, in the light of settled law on similar proceedings in other jurisdictions; and, finally, to show the extent to which such procedure has actually been availed of in our courts.

Brief History and Development of Summary Judgment Procedure

The summary judgment rule is not an original conception of the framers of the Rules of Court in the Philippines. It was adopted in South Carolina as early as 1768. England first employed the procedure in 1855. Both in England and in the United States this procedure was at first limited to certain types of actions, like actions for recovery of debts or liquidated demands in money. However, when the advantages derived from the procedure became more and more evident and its applicability to other types of

cases was tested, other states that adopted such procedure in the United States (among them being New York, New Jersey, Connecticut, Pennsylvania, Indiana, Virginia, West Virginia, Delaware, Missouri) gradually expanded its scope to include as many kinds of actions as practicable. (*Edmunds, Federal Rules of Civil Procedure, Vol. 2, p. 1340*). The promulgation in September 16, 1938, of the Federal Rules of Civil Procedure which provides for uniform rules for the District Courts of the United States made summary judgment available to all types of actions and claims, and to both the plaintiff and the defendant. (*Rule 56 (a) and (b) Federal Rules of Civil Procedure.*) Rule 36 of the Rules of Court in the Philippines, which comprises the law on summary judgment in this jurisdiction, was copied from Rule 56 of the said Federal Rules of Civil Procedure, with the sole omission from the former of a provision in the latter providing for denial of the motion or the admission of depositions in case affidavits are not available.

Purposes of the Procedure

The purpose of summary judgment is to relieve a party who has an undeniable cause of action or defense from fake claims or defenses, or such as are prosecuted by the adverse party merely for the purpose of delay. (*Address of Mr. Martin Conboy, Am. Bar. Ass. Journal, 22:881, Dec. '36; Richard vs. Credit Sussie, 242*

N. Y. S. 341, 152 N. E. 120.) The motion for summary judgment seeks to determine "whether or not a defense worthy of trial exists, or whether the action has sufficient merit to entitle plaintiff to go to trial." (*Loehr vs. Steng*, 219 Wis. 361, 262 N. W. 373).

In the Philippines, one of the difficult problems of judicial administration has always been the congested condition of the court dockets. The motion for summary judgment aids in expediting legal process. Justice Manuel V. Moran, a member of the Committee created to frame the New Rules, says:

" 'Summary judgment' is one of the methods devised by the new procedure for a prompt disposition of civil actions wherein there exists no genuine controversy. It is certainly unjust to allow a defendant, who has no real defense to resort to the ordinary procedure simply to avail himself of all the delays attendant thereto, to prejudice of his creditors. By means of discovery through depositions or admissions, or by means of affidavits of merits the real position of the defendant may promptly be shown to the court and immediate judgment may thus be secured—By the same means the defending party may promptly prove the groundliness of the claim, and thus secure an immediate judgment in his favor." (*Comments of the Rules of Court by Manuel V. Moran, vol. 1 p. 326*).

Rule in the Philippines

The rules on summary judgment procedure in the Philippines is found in Rule 36 of the Rules of Court. Under our law the motion is available in all types of civil actions and to all the parties thereto. The plaintiff seeking to recover upon a claim, counterclaim, or crossclaim or to obtain a declaratory relief, as well as the defendant against whom such

claim, counterclaim, or crossclaim or declaratory relief is sought may move for summary judgment in his favor. (Rule 36, Secs. 1, 2, *Rules of Court of the Philippines*.) Even the government itself may be made subject to this procedure. (*12 Months of New Federal Rules, by Alex Hottzoff, Am. Bar. Ass., Journal, 26:45-51 Ja. '40*).

In order to bring himself within the summary judgment rule, the claimant, after the issues are joined, must file an affidavit setting forth the facts proving his claim and adding that there is no defense. Upon that showing he brings the opposing party before the court on 10 days notice. Prior to the date set for the hearing the opposing party may contest the motion by counter-affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions on file, together with the affidavits show that there is no genuine issue as to any material fact that the moving party is entitled to a judgment as a matter of law. (Rule 36, sec. 3). When the fact in dispute is only the amount of the damage, the motion for summary judgment will not be defeated. But the court may proceed to assess the amount of damages. (*Ibid.*; *Livingston vs. Blumenthal*, 248 App. Div. 289 N. Y. S. 5).

A partial summary judgment may also be decreed. Thus if the court finds from the affidavits presented that there is no genuine issue of fact as to a part only of the case it may render a summary judgment as to such part, and the cause as to the other party shall determine what material facts are not substantially controverted and the extent to which the amount of damages or other relief

is in controversy. This shall be done in a manner similar to the pre-trial. The result of the determination shall be specified in an order which shall control the subsequent course of the action. (*Ibid.*; *Moran, Comments on Rules of Court, Vol. I, p. 335*).

The Affidavit

The most important feature of the motion for summary judgment is the affidavit. It furnishes the necessary guaranty of trustworthiness regarding the claim sued upon. It is on the nature of the affidavit and the facts and statements that may or may not be alleged therein that much controversy has arisen, the settlement of which has resulted in innumerable court decisions regarding various phases of the subject.

Section 5 of Rule 36 requires that the affidavit must: (1) be made on personal knowledge; (2) set forth such facts as are admissible according to the rules of evidence; (3) show affirmatively that the affiant is competent to testify to the matters stated therein. The affidavit must be executed by the moving party in person or by one with knowledge of the facts. Hence an affidavit made by the plaintiff's attorney and not by a person having knowledge of the facts was held insufficient. (*A. Sidney Davison Coal Co. Inc. vs. Doth Co., et al. 193 N. Y. S. 883*).

Such facts as are inadmissible according to rules of evidence may not be alleged in the affidavit. Facts may not be set forth to vary the terms of the written contract sued upon: Neither may such facts which are immaterial and irrelevant to the nature of the claim be alleged. The allegations in the affidavit should not encroach upon the testimonial privileges of the

adverse party, nor, in general, infringe any other rule prescribed in Rule 123 of the Rules of Court.

The affiant must be competent to testify to the matters stated therein. The affidavit must affirmatively show that affiant is not a minor, nor otherwise incompetent.

The affidavit must contain "evidential" facts not "ultimate" facts or mere conclusions of law. It has been held that an allegation in the affidavit "that by reason of the failure of the defendant to show title to the aforesaid premises free from material defect, the said loan was not consummated" is at best a statement of an ultimate fact and it is not necessary for the defendant to submit an opposing affidavit to such an allegation. (*Kellog vs. Berkshire Bldg. Corp. 221 N. Y. S. 628*).

The number of affidavits which each party must present has not as yet been conclusively determined. In a certain case, the plaintiff upon receipt of defendant's affidavit submitted an additional affidavit, going into greater detail as to the specific items of the claims of the purported account. The court held doubtful the propriety of such a practice, "as successive affidavits piecing out and stringing out the assumed right of summary judgment resolves itself into a trial by affidavits" a condition which should not be countenanced (*Twig vs. Twig, 191 N. Y. S. 781*). Our rules do not prohibit such a procedure nor does it limit the number of affidavits to be filed by the parties. Some of the few summary judgments rendered by our courts have been based on only one affidavit. (*Abejuela vs. Reyes, Court of First Instance of Manila, Case No. 57928; Manila Motor Co. vs. Paz Yatco Alzona, Court of First Instance of*

Manila, Case No. 57959). The determining factor would seem to be such a number as would show conclusively the lack of a triable issue, and the objection is directed rather to the method of piecing out the affidavits of the movant according as the counter-affidavits of the adverse party are offered.

Application of the Rule.—

The rule relating to summary judgment is discretionary. It must be exercised with care and not be extended beyond its limits. Before a party may be entitled to it he should bring himself squarely within its spirit and letter. (*Hoof et al. vs. John Hunter Corp.* 193 N. Y. S. 91).

"The test of the determination of the motion is important. It is not which party by his affidavits has convinced the court he is right, but is, instead whether the court is satisfied that there is a triable issue of fact on the action." (*Method of objecting to pleadings and of obtaining summary judgment* by E. A. Tintel Mo. Law Rev. 4:114 Ap. '39). Justice Cardozo, while sitting in the New York Supreme Court, held:

"There must be supporting affidavits proving the cause of action and that clearly and completely by affiants who speak with knowledge. There must be a failure on the part of the defendant to satisfy the court by affidavit or other proof that there is any basis for his denial or any truth in his defense. The case must take the usual course if less than this appears. To justify a departure from that course and the award of summary relief, the court must be convinced that the issue is not genuine but feigned and that there is in truth nothing to be tried." (*Curry vs. Mackenzie*, 146 N. E. 375).

As long as there is one good issue, which must await trial, the purpose of the rule to save delay falls and the motion for summary judgment must be denied. (*King Motor Sales Corp vs. Allen*, 204 N. Y. S. 555).

The burden of proof is upon the party who filed the motion for summary relief. The affidavit filed by him is strictly construed against him (*Wyatt vs. Maden* 32 Fed. [2nd] 839). On the other hand, the counter-affidavit of the adverse party is liberally construed in the latter's favor. (*Lawanan vs. Johnston*, 42; App. D. C. 202; cited by *Hilton McAbe, Summary Judgment*, L. J. Ap. '40). This is particularly true where a square question of credibility of witness arises or where a complicated state of facts is presented. (*Summary Judgment Procedure* Frank T. Boesel, Wis. L. Rev. 6: 5 D '30). Thus, it is incumbent upon the movant to state sufficient facts in his affidavit to establish a cause of action in his favor and against his opponent. (*Summary Judgment, Hilton McAbe, L. J. Ap. '40*). If he does not do so the motion will be denied even if the counter affidavit of the opponent is also insufficient. (*In re: Littleton's Estate*, 223 N. Y. S. 870; *La Price vs. Wayne*, 208 N. W. 449).

The motion will also be denied when the matter is so complex as to the facts and so delicate as to the law involved. (*Goldstein vs. Koff*, 203 N. Y. S. 119). But the mere fact that different questions of law may be involved will not defeat a motion for summary judgment. (*Kennilwood Owners Assn. Inc. vs. Wall*, 26 N. Y. S. 136).

In case the defendant, without attacking the plaintiff's claim sets up a counterclaim, the plaintiff's motion for summary judgment on his claim may be granted or denied. If the plaintiff's claim for which he seeks a summary judgment exceeds the defendant's counterclaim, the plaintiff's motion may be granted only for the dif-

ference between the amount demanded by him and that demanded by the defendant. (*Dairyman's League Corp. Assn. Inc. vs. Egh et al.*, 239 N. Y. S. 152). If the defendant's counterclaim exceeds the plaintiff's claim, the court may deny the motion, or it may be granted provided the plaintiff files a bond to secure defendant against loss in case of the establishment of the counterclaim. (*Seagram Distillers Corp. vs. Manor*, 1 Fed. Rules Service, 608; 25 F Supp. 233 [cited in *Moran*, Vol. I, p. 336]). But in all cases the counterclaim itself must be set for trial. This is because the right to counterclaim is a substantial right entitled to the full protection of the court. (*Aetna Life Insurance Co. of Hartford vs. Nat'l Dry Docks and Repair*, 245 N. Y. S. 365).

When a motion for summary judgment is presented, the court may grant or deny the motion in its entirety, or it may grant a partial judgment. (*Rule 36, secs. 3 & 4, Rules of Court of the Philippines*). But in no case may the court grant judgment conditionally. Thus a judgment which gave summary relief to the plaintiff so long as the defendant does not file a bond conditioned to pay any judgment ultimately recovered, was held void and of no effect. (*Gibson vs. Standard Auto Co. of N. Y.*; 203 N. Y. S. 53).

The party seeking summary judgment is not precluded from filing a subsequent application in case his first motion is denied. (*Davison Coal Co. vs. Interstate Coal Co.*, 193 N. Y. S. 883), and in one case, when the appellate court held a summary judgment improperly granted, the plaintiff was given leave to apply for partial judgment. (*Donnelly vs. Bander*, 216 N. Y. S. 437).

In the early case of *Dwan vs. Massarene*, 192 N. Y. S. 577, the order granting or denying the motion was not considered appealable on the ground that no substantial right of the parties was violated. Subsequent cases, however, have established the right to appeal from such an order. The practice generally adopted is that on decision of the motion a formal order is entered denying or granting the motion. If the motion is denied an appeal is taken from the order; if granted, a judgment is entered and the appeal is usually taken from both the order and the judgment. (*Interstate of Aperlo vs. N. Y. Tribune*, 202 N. Y. S. 232; *U. S. Products vs. Standard Textile*, 231 N. Y. S. 115).

Criticisms Against the Procedure.

The summary judgment procedure, in spite of its obvious merits, has not escaped criticism, especially in the earlier years of its adoption in the United States.

The first serious criticism was directed against its constitutionality. It was alleged that it denied the right of trial by jury as well as due process of law. Whatever apprehension there had been on this point, however, were later removed by the courts of law in New York and California and finally by the Supreme Court of the United States which fully upheld its constitutionality. According to the decisions, the defendant is not denied trial by jury since no issues are tried. The remedy is not granted unless it has been undeniably determined that there is no substantial issue on the controversy. (*Hanna vs. Mitchell*, 235 N. Y. S. 534; 139 N. E. 724). Neither is there a denial of due process, because the motion is granted or denied only after the adverse party has been duly notified and he is

given an opportunity to be heard. (*Cowan Oil and Refining Co. vs. Miley Petroleum Corp.* 295 Pac. 504).

One of the criticisms advanced against the procedure is that it could itself be made an instrument of delay (*Summary Judgment, Clark and Samenow, Yale Law Journal, F '29, 38: 423*) or may be used as a means of embarking on a fishing expedition into the adverse party's evidence. (*Motion for Summary Judgment, Marquette Law Review, D '36, 21: 52*). The possibility of lawyers resorting to such abuses is now obviated by the provisions of Rule 36, section 6. This section of the Rules makes the party employing affidavits in bad faith and solely for the purpose of delay liable to pay the other party the amount of the expenses which the filing of the affidavits caused him to incur, including attorneys fees. Furthermore, the offending party or attorney may be adjudged guilty of contempt.

Another criticism against the use of the motion for summary judgment is its tendency to decrease the fees of attorneys. (*Methods of Obtaining Summary Judgment, by Ernest A. Fintel, Missouri Law Review, Ap. '39, 4: 114*). This tendency, it is alleged, is a result of the unusual speed with which litigations are terminated. The criticism seems to be based on a very practical consideration since lawyers, like all human beings, must live. But this is hardly a good argument when law is viewed as a profession rather than a mere business. The ethics of the legal profession demand of the practitioners unselfish service, one that redounds not only to his own and his client's benefit but also to the efficient administration of justice.

Nevertheless, the proven benefits of the summary judgment procedure in the various jurisdictions which have made very extensive use of it outweighs whatever demerits it may have. It has been shown to encourage litigation, and the interposition of sham defenses or those made only for the purpose of delay; it effectuates settlements and gives to the plaintiff a speedy judgment; it encourages creditors to resort to courts knowing they will get quick and satisfactory results; it simplifies court procedure and lessens court congestion.

Eight Months of Summary Judgment Procedure.—

In spite of the benefits which summary judgment procedure offers, it has not been very much availed of by practitioners in Manila. In a personal survey made by the writer through the dockets of all the courts of First Instance of Manila the following facts were discovered: During the period covering July 1, 1940, to January 31, 1941 a total of eleven applications for summary judgments were made. All the applications were filed by the plaintiffs. All claims were for the recovery of a sum of money. Seven applications were granted; two were denied; two had not been decided at the date of the survey. One appeal was filed by the defendant from an order granting plaintiff's motion for summary judgment.

In New York, where this procedure has been considered an outstanding procedural reform, these data appear: In 1822, the first full year of the operation of the limited summary judgment procedure as first adopted there were 194 applications. The next year there were 448, of which 447 were brought by plaintiffs and one

brought by a defendant on the counterclaim. (*Summary Judgment Procedure in New York is outstanding Procedural Reform*, Edward R. Finch, *L. J. Oct. 31, 1939*).

When we compare the jurisdiction of the State of New York with that of the Manila Courts the difference in proportion of the applications in the latter does not seem very great. Indeed it might even be said that relatively, the lawyers in Manila are not behind in availing themselves of the new procedure. However, we must not lose sight of the fact that summary judgment procedure during the first year of its adoption in New York was much limited to certain types of actions and could be availed of by the plaintiff only. The procedure was, therefore, less available to practitioners in New York than it is to lawyers in Manila now.

The survey also show that 750 of all cases brought before the said courts during the same period were for money claims, 50 were for foreclosure of mortgages, and 80 were for manual delivery of personal property.

These are among the types of cases where the use of summary judgment would be of most benefit in expediting legal process. Justice Moran said on this point: "It is the experience of the bench and the bar that there are many cases which are not seriously defended and that if a defense if any, is interposed at all, it is only to gain a little longer time for payment. At present in the Philippines, those cases are generally for money lent or for the price of goods sold. (Moran: *Comments on Rules of Court, Vol. I. p. 326*).

What then are the reasons for the apparent timidity of our lawyers in making use of this form of relief?

One of the reasons offered is that in our jurisdiction there exist similar remedies which existed under the old code of Civil Procedure, which by reason of their being better known to the practitioners have been availed of more often. Such reliefs are the motion to dismiss and the judgment on the pleadings. Another method used by the defendants where they do not care to raise an issue is generally to give way for a default judgment on them and in favor of the plaintiff. These reasons seem substantiated by the records of our courts which show a large number of cases decided on default or dismissals.

However, it is submitted that neither the judgment on the pleadings nor the motion to dismiss may in all cases be substituted for the motion for summary judgment. There are fundamental differences between them.

A judgment on the pleadings is a judgment on the facts as pleaded by the parties before the court. A summary judgment is evidenced on the facts as proven summarily by affidavits. (Moran: *Comments on the Rules of Court, Vol. I, pp. 328*).

Motion for summary judgment may be distinguished from a motion to dismiss because while a motion to dismiss is largely in the nature of plea in confession and avoidance, a motion for summary judgment traverses the opponent's claim or defence. Thus failure to state a cause of action, if appearing on the face of the complaint is a ground for motion to dismiss, but if it is not so apparent and the insufficiency is to be shown by affidavits, deposi-

tions, admissions, or other documents, the motion should be for summary judgment. Moreover, a motion to dismiss is filed before the pleadings, a motion for summary judgment after issue is joined. Finally, a motion to dismiss may be filed only on the grounds stated on Rule 8 of the Rules of Court, while motion for summary judgment may be filed on any ground whatever showing the non-existence of the adverse party's claim or defense. (Moran: *Comments on the Rules of Court*, Vol. I, p. 329).

It is thus seen that the existence of these other remedies can not diminish the practical utility of the summary judgment procedure. The summary judgment rule is considerably wider in extent and scope, available to both parties in all cases, and most

serves to prevent unnecessary delay in judicial actions.

More basic reasons than the above are, namely: (1) that the members of the bar do not know of this existing remedy which has been introduced for the first time in our courts, or (2) even if they do know of it, its extent and the scope of its application have not as yet been fully comprehended.

It is with these two last reasons in mind that the author has ventured to set forth in this article an explanation of the summary judgment procedure in the light of our rules and the settled law on the matter in other jurisdictions. It is hoped that the article will serve to add information on the procedure, or, at least, will stimulate the reader to probing deeper into the subject itself.