

G.R. No. L-6673

[G.R. No. L-6673. September 08, 1954]

**LUIS AREJOLA, PLAINTIFF-APPELLANT, VS. ANDRES CAYETANO, ET AL.,
DEFENDANTS-APPELLEES.**

D E C I S I O N

PARAS, C.J.:

On September 17, 1952, the plaintiff, Luis Arejola, file a in the Court of First Instance of Camarines Sur a complaint against the defendants, Andres Cayetano and Olimpia Cayetano, for the recovery of damages in the sum of P9,000.00. On September 26, 1952, the defendants filed an answer with a counterclaim for the sum of P23,000.00. On October 14, 1952, the defendants filed a motion praying that the plaintiff be declared in default with the ground regards to the defendants', counterclaim, on that, he had failed to file an answer to the counterclaim within ten days from October 2, 1952, when he received the first notice from the post office of the registered letter containing the defendants' answer. On October 23, 1952, the plaintiff filed an answer to the defendants counterclaim. On October 31, 1952, the Court of First Instance of Camarines Sur issued an order declaring the plaintiff in default, as prayed for by the defendants. On November 11, 1952, the plaintiff filed a petition for relief praying that the order of default be lifted and the plaintiff's answer to the defendants' counterclaim filed on October 23,1952 admitted. This petition for relief was denied by the court in its order dated January 13,1953. The plaintiff has appealed.

In his affidavit In support of the petition for relief, the appellant In substance alleged that in the month of October, 1952, he and his wife temporarily resided in Tariric, Minalabac, Camarines Sur, to look

after the harvest of palay in his farm, leaving in their house in the City of Naga only one servant and their small children; that the plaintiff's absence accounted for his failure actually to receive the registered mail containing the defendants' answer, the notices not having been delivered to him by those who received them; that the plaintiff has a good and meritorious defense against the counterclaim, in that the facts alleged in one plaintiff's complaint would necessarily throw out said counterclaim.

Under the circumstances of this case, we are inclined to hold that the appellant is entitled to relief. First, the complaint is signed by him, unassisted by counsel, and it is fair to suppose that said appellant, without the knowledge and experience of a lawyer, could not have anticipated the filing of the counterclaim or know how to guard against being declared, in default. Secondly, the fact that the three notices from one post office were received in appellant's house in Naga City does not lead to the conclusion that the appellant was aware thereof. Indeed, he affirmed under oath that he had not personally received them; and it was only on October 21, when he and his wife returned to Naga City because of the approaching typhoon "Trix", that appellant's attention was called to the third registry notice received by Delicia Arejola on October 11, 1958, whereupon he collected the registered letter containing the defendants' answer with a counterclaim. Thirdly, the appellant forthwith engaged the services of an attorney who, on October 23, 1952, filed an answer to the counterclaim, it being significant that this was before the issuance of the order of October 31, declaring the appellant in default. Lastly, the appellant obviously appears to have a meritorious defense against the counterclaim, because if the facts constituting his cause of action be proven, they would necessarily negative the basis of the defendants' counterclaim.

Wherefore the appealed order is reversed and the order of the lower court declaring the plaintiff-appellant in default is set aside. Without costs.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista

Angelo, Labrador, Concepcion And Reyes, J.B.L., JJ., concur

Date created: July 26, 2017