

FELIPE LUNA, PETITIONER, VS. GAVINO S. ABAYA, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (CALOOCAN BRANCH), AND HORTENSIO A. DOMINGO, RESPONDENTS.

G.R. No. L-3443. May 26, 1950

Ponente: BENGZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5cf682e0a9b0/>

BENGZON, J.:

A. Statement: This is a petition to annul three orders of the court of first instance of Rizal in connection with its civil case number 75, entitled Eustaquio C. Olvina vs. Felipe Luna. The first order dated September 29, 1947, declared both plaintiff and defendant in default as against the complaint in intervention of Hortensio A. Domingo; the second, dated August 31, 1948, rendered judgment against both, adjudging Hortensio A. Domingo the owner of the premises in question; and the third required the execution of such judgment.

At the request of petitioner we issued a writ of preliminary injunction after he had filed a suitable bond.

B. The facts: (1) On November 20, 1946, Eustaquio C. Olvina brought suit against Felipe Luna, alleging that he was owner of a house and lot in Caloocan, Rizal; that on January 26, 1945, he borrowed money from Felipe Luna and mortgaged said realty; that through deceit he signed a deed of pacto de retro instead of mortgage; and that through ejectment proceedings Luna obtained possession. He asked for declaration of dominion and other allied remedies.

(2) On January 12, 1947, the defendant Luna answered, and asserting their contract was a conditional sale, pleaded *res judicata*.

(3) On June 21, 1947, Hortensio A. Domingo filed a complaint in intervention averring that on October 15, 1942, he purchased the property from Olvina, who reserved the right to repurchase it within one year; that Olvina failed to buy it back; and that Luna knew this sale when he purchased the realty in 1945. Domingo therefore prayed for declaration of ownership and other consequent relief against both parties.

(4) On August 4, 1947, the court admitted the complaint in intervention.

(5) On September 3, 1947, the intervenor submitted a motion asking that plaintiff and defendant be declared in default for failure "to file their answer to intervenor's complaint of intervention" within ten days "under section 5, Rule 13, of the Rules of Court".

(6) As requested, on September 29, 1947, the court issued an order holding the plaintiff and the defendant in default.

(7) The intervenor was subsequently permitted to present his evidence, and on August 31, 1948, a decision was rendered upholding Domingo's ownership of the house and, among other things, ordering Felipe Luna to vacate it and pay rents from November, 1946.

(8) On October 23, 1948, Felipe Luna moved that the judgment be set aside, and the case reinstated, alleging that

he had just been notified of the decision and that he had a good defense because he was an innocent purchaser for value without notice, whose document was duly inscribed in the Registry, etc. The petition was supported by an affidavit of merit.

(9) On March 15, 1949, the motion Was denied.

(10) On April 19, 1949, the defendant through another attorney reiterated the petition for reinstatement and, upon equitable considerations, asked that the default order be lifted.

(11) On July 14, 1949, the motion w|as denied.

(12) On September 13, 1949, Felipe Luna through a third attorney moved that the default order |and the judgment against him be set aside, for the reason that said default order was not authorized by law.

(13) On October 28, 1949, the court denied the motion and directed the issuance of execution.

(14) On November 8, 1949, this petition for certiorari was filed. It is mainly grounded upon the illegality of the order of default.

C. Discussion: In applying for the default order and in issuing it, Hortensio A. Domingo and the lower court expressly invoked section 5 of Rule 13, which reads as follows:

"Sec. 5. Time.—Unless a different period is fixed by the court, the complaint or answer in intervention shall be filed within ten (10) days from notice of the order permitting such intervention."

There was plain error. The ten-day period is fixed for the intervenor, who may either present a complaint or an answer after his petition for intervention has been granted. In the Olvina-Luna litigation the intervenor already submitted his complaint. The 10-day period was not meant for the plaintiff nor the defendant.

Realizing their mistake, respondents presently quote section 4 of Rule 13, which prescribes:

"Sec. 4. Complaint or answer in intervention if permitted.—If permitted, the intervention shall be made by complaint filed and served in regular form, and may be answered as if it were an original complaint; but where intervenor unites with the defendant in resisting the claims of the plaintiff, the intervention may be made in the form of an answer to the complaint."

And they argue that plaintiff and defendant were duty bound to answer the complaint in intervention within fifteen days from service, and that such period had expired on September 29, 1947, when the default order was entered. The reply to this is that the section says, "may be answered" and the word "may" is usually permissive, not mandatory. Furthermore, supposing that it is mandatory, by the very count of respondents, the 15-day period had not yet expired on September 3, 1947 when the motion for default was made. Obviously this is the reckoning date—not the day of the order.

Respondents maintain that the service of the notice of hearing "cured whatever irregularity the order of default may have created". The service was not actual. If at all, it was merely constructive. And even if actually received, the notice would have afforded no remedy, for the reason that even if defendant had appeared at the hearing pursuant to such notice, he could adduce no evidence, nor could he be heard because of the default order [1]. The service of such notice was unnecessary and useless, and therefore it could have no curative effect. It is just the same as if the court had not sent the notice and had proceeded to admit the intervenor's evidence in the absence and without the knowledge of the adverse parties.

As the judgment of August 31, 1948, was promulgated almost a year after the order of default, the idea crossed our minds that herein petitioner should be held negligent for not having requested the lifting thereof within that

long period of time; but the thought had to be promptly rejected because the date is not shown when he was advised of such default order, if he was notified at all. The possible suggestion that he should have been alerted by the receipt of copy of the application for default, may be answered with the statement that he understood he was not in default and had every right to relax, expecting the court to rule accordingly.

From the foregoing considerations, we conclude that the defendant Felipe Luna was deprived of his day in court through a patently erroneous interpretation of the rules.

"A default judgment may be set aside where it was entered by the clerk without any authority therefor, as where default was improperly entered for failure of plaintiff to answer a cross complaint which under the circumstances was unnecessary. Also a judgment entered contrary to the course of the court by inadvertence, improvidence, mistake, or the like may be set aside. A judgment maybe set aside whether there was a total lack of authority to enter any judgment or only lack of authority to enter a particular judgment, when the entry of such a judgment was premature, as where it was entered before expiration of the time for the filing of an answer, before expiration of a continuance granted by the trial judge, pending an application for a change of venue, prior to the day on which the cause was docketed for trial, or prior to the date reserved for decision on a demurrer. A default judgment erroneously rendered where defendant "was not in default may be vacated." (49 C. J. S., pp. 617-618). (*Italics ours*).

D. Judgment: Wherefore, the order of default and the proceedings subsequent or pursuant thereto should be, and are hereby, annulled and set aside.

Ozaeta, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Velez vs. Ramos, 40 Phil., 787. See also 49 Corpus Juris Secundum, p. 361.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.