

T.J. WOLFF & CO., INC., PLAINTIFF-APPELLEE, VS. DEMETRIO MORALDE, DOING BUSINESS UNDER THE NAME AND STYLE, CEBU PEOPLE'S GENERAL SUPPLY, DEFENDANT-APPELLANT.

G.R. No. L-21914. February 28, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the order of the Court of First Instance of Manila setting aside a previous order granting the defendant's petition for relief from judgment.

It is not disputed that on October 17, 1962, the plaintiff, T.J. Wolff & Co., Inc., a domestic corporation with principal offices in the City of Manila, filed an action with the Court of First Instance of Manila against the defendant Demetrio Moralde of Cebu City, doing business under the name and style, Cebu People's General Supply, for the recovery of the amounts of P42,452.66, representing the value of the transistorized radio sets it sold to the defendant on credit, and the interest thereon, which he failed to pay notwithstanding demands; P5,000.00, as liquidated damages; and 20% of the award for and as attorney's fees.

Instead of filing a responsive pleading, the defendant filed a motion to dismiss the complaint, setting it for hearing on December 1, 1962, at 8:00 a.m. On December 1, 1962, the trial court issued an order, denying the motion to dismiss. A copy of the order was sent to Atty. Gregorio Homedia, counsel for the defendants, at his address of record, by registered mail. The registry return card showed that the letter was claimed and received from the Cebu post office on December 12, 1962, by one Rodriguez in behalf of Atty. Gregorio Homedia.[1]

On February 1, 1963, the court, upon motion of the plaintiff, declared the defendant in default and appointed a commissioner to receive the plaintiff's evidence, after which, it rendered judgment ordering the defendant to pay the plaintiff the amount of P36,070.00, plus accrued interest in the amount of P3,294.41 as of December 31, 1962; to pay further interest at the rate of 12% per annum from January 1, 1963, until the principal obligation shall have been paid, plus 20% of the principal obligation as attorney's fees; and the costs of suit. On February 26, 1963, the court ordered the execution of the judgment.

On March 29, 1963, the defendant filed a Motion to Set Aside Order of Default, Decision and Writ of Execution and/or Petition for Relief from Judgment or Order, claiming that he is not in default because he has not yet received any order denying his motion to dismiss; that it is through fraud, accident, mistake, or excusable negligence that a decision, a writ of execution, and an order of default, if there is any, has been rendered by the court; and that he has a substantial and good defense because the defendant is not the owner and proprietor of the Cebu People's General Supply to whom the radios of the plaintiff were allegedly sold, but is owned by Manuel C. Moralde. Attached to the motion were the affidavits of Atty. Gregorio Homedia, former counsel for the defendant, and the defendant Demetrio Moralde; as well as the Answer which defendant seeks to be admitted.[2] Finding the petition to be sufficient in form and substance, vacation Judge Tito V. Tizon ordered the plaintiff to file its answer thereto and set the case for hearing on April 20, 1963.[3] The plaintiff opposed the petition for relief contending

that the petition for relief did not contain the necessary affidavit of merits; the fraud, accident, mistake or excusable negligence relied upon; and the facts constituting the defendant's good and substantial defense, and, therefore, a pro forma motion.[4] After hearing the parties, Judge Tizon granted the petition for relief from judgment and set aside the order declaring the defendant in default and all proceedings taken thereafter, and set the case for hearing, it appearing that an answer had already been submitted.[5] The plaintiff filed a motion for the reconsideration of the order and after a hearing, presiding Judge Francisco Arca, who had returned to his post, set aside the order issued by Judge Tizon.[6] Subsequently, an alias writ of execution was issued, upon motion of the plaintiff, and the Sheriff of Cebu levied upon the properties of the defendant. Hence, this appeal.

The defendant claims that the lower court erred: (1) in setting aside the order of Judge Tizon granting his petition for relief from judgment; and (2) in rendering judgment against him based upon incompetent and inadmissible evidence.

The appeal is without merit. The order appealed from is in harmony with the principles of law governing the dispute. We see no reason why Judge Francisco Arca, being the judge assigned to the case, should not, upon proper motion, reconsider and set aside the order of Judge Tito V. Tizon, who was a vacation judge merely acting for the former.

It is also the recognized rule that before a defendant can have a judgment of default set aside he must first cleanse himself of negligence, and in addition, demonstrate that he has a meritorious defense. The petition should be accompanied by evidence which he intends to present if the motion will be granted, which should be such as to warrant a reasonable belief that the result of the case would be probably otherwise if a new trial is granted.

In the instant case, the defendant failed to prove that his failure to file his answer was due to fraud, accident, mistake or excusable negligence. His contention that he had not received a copy of the order denying his motion to dismiss when the trial court rendered the default judgment is disproved by the fact that a copy of said order was sent by registered mail to defendant's counsel, Atty. Gregorio Homedia, at his address of record and received for and in his behalf by one Rodriguez. Atty. Homedia never disclaimed that this Rodriguez was not acting in his behalf.

Besides, Atty. Homedia set the hearing of his motion to dismiss on December 1, 1963, and the order denying the said motion to dismiss was issued on that same day, December 1, 1963. It is to be expected that counsel for the defendant appeared on the day of the hearing and learned of the order of denial on the said day.

In his affidavit accompanying the petition to set aside judgment, Atty. Homedia stated, however, that during the time he was appearing as legal counsel for the Cebu People's General Supply, he had so many matters to attend to, such that he could not attend to this case, and besides, the records of this case were lost due to the negligence of some employees and the impending strike in the company.

The lower court can scarcely be justified in granting the petition to set aside judgment merely upon a statement of an attorney that he had plenty of work and could not attend to this case.

The petition to set aside judgment was not also accompanied by proof of his meritorious defense. The defendant merely claimed that he is not the owner of the Cebu People's General Supply, but one Manuel C. Moralde, which claim is negated by his letter to the plaintiff, dated October 14, 1962,[7] and the deed of Assignment,[8] he executed in behalf of the Cebu People's General Supply.

The other point raised by the appellant - that the decision is not supported by competent evidence - refers to a question of fact. Considering that the amount demanded by the plaintiff, as appearing in his complaint, did not exceed P200,000.00 in order to vest jurisdiction in this Court to pass upon factual issues,[9] the defendant, in

bringing this case directly to this Court, is deemed to have waived his right to dispute the findings of fact of the court of origin which are final and binding upon this Court.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed. Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Santos, JJ., concur.

[1] Original Record, p. 10.

[2] Record on Appeal, p. 17.

[3] Id., p. 32.

[4] Id., p. 38.

[5] Id., p. 53.

[6] Id., p. 96.

[7] Appendix "A" of the Appellee's Brief.

[8] Appendix "B" of the Appellee's Brief.

[9] See Sec. 4, Rep. Act No. 5440, approved September 9, 1968, in relation to Rep. Act No. 2613, approved August 1, 1959.

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