

EUFEMIA RIVERA, ADMINISTRATRIX-APPELLEE, VS. MARIA CONCEPCION PAEZ VDA. DE CRUZ, CLAIMANT-APPELLANT.*G.R. No. L-21545. November 27, 1968*

Ponente: MAKALINTAL, J.

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This case was initiated twenty years ago, on November 8, 1948, when Pedro B. Cruz presented a claim for P10,000.00, evidenced by two promissory notes, in Special Proceedings No. 5990-R of the Court of First Instance of Manila for the settle-ment of the estate of the deceased Romualdo Rivera. The then administrator of the estate filed his answer on November 29, 1948, alleging that "said claim was already the object of an action before the Court of First Instance of Rizal, entitled 'Pedro B. Cruz, v. Romualdo Rivera,' which was presumably dismissed upon petition of the plaintiff, herein claimant," and praying that the claim be dismissed. Except for several postponements of hearing in 1952, it seems that no action was taken on the claim until September 5, 1960 when the present administratrix filed a motion to set the same anew for hearing.

On December 5, 1960 the administratrix moved to dismiss the claim on the ground that it was barred by prior judgment and by negligence or laches, but the probate court sustained the opposition of the claimant. The administratrix moved to reconsider the order of denial, but was again turned down. In view thereof, she filed an amended answer with special-defenses, set-offs and counter-claims. The probate court admitted the amended answer but dismissed the counterclaims.

In an order dated June 20, 1961, the hearing of the claim before the commissioner designated for that purpose was postponed to July 25, 1961 on motion of the claimant without objection on the part of the administratrix. However, on July 11, 1961 the claimant moved again for the postponement of the hearing to either July 31 or August 1, 1961. In an order dated July 17, 1961 the motion was granted and the hearing was rescheduled for August 1, 1961, at 9:00 o'clock in the morning, but on said date neither claimant nor her counsel appeared when the claim was called for hearing be-fore the commissioner. Consequently, the probate court in an order-issued on the same day dismissed the claim on motion of the administratrix.

On August 18, 1961 the claimant filed a verified petition for relief from the order of dismissal on the ground that her failure or that of her counsel to attend the hearing on August 1, 1961 was "due to accident, mistake and/or excusable negligence as shown by the affidavit of Raul La Madrid", which was attached to the petition, and "induced by undersigned's (counsel's) anxiety upon knowing around the end of July that his wife must have to undergo Caesarean section on 3 August 1961, making undersigned (counsel) completely forget to make a detailed check of his trial dates before going to Vigan, Ilocos Sur to attend the hearing, x x on 31 July 1961 x x." In his affidavit La Madrid, a stenographer in counsel's law office, alleged that upon receipt on July 21, 1961 of the order of postponement dated July 17, 1961, and before going on an urgent errand, he placed the order in the folder for incoming papers and it was mixed with other incoming papers of the office; that he was not able to refer immediately the order to the lawyer in charge of the case, Atty. Raymundo A. Armovit, because the latter was then attending a court hearing; that a few days thereafter, he found the order in another folder and believing that it

had already been brought to the attention of Atty. Armovit, he filed it in its proper folder without calling the attention of said counsel to it; and that it was not until late in the afternoon of August 1, 1961 that Atty. Armovit noticed for the first time that the hearing on the claim was set for August 1, 1961. Also attached to the petition was an affidavit of Pedro Albea, alleging in effect that the claimant had a good and substantial cause of action against the estate.

In an order dated October 11, 1961, the probate court denied the petition for relief. Thereupon the claimant went to the appellate court on appeal from the orders of August 1 and October 11, 1961, respectively, alleging that the lower court erred in denying her petition for relief from the order of dismissal notwithstanding (1) the satisfactory and reasonable explanation for such non-appearance, based on the ground of accident mistake and/or excusable negligence; and (2) the affidavit of merits amply corroborated by the administratrix's admission of the genuineness of the promissory notes on which claim was based. The appeal was subsequently certified to this Court for final determination because no question of fact is involved.

The first assignment of error is totally devoid of merit. The explanation offered by appellant for her failure and that of her counsel to attend the hearing on August 1, 1961, as stated in the affidavit of counsel's stenographer, is neither credible nor constitutive of "accident, mistake and/or excusable negligence." It is the duty of counsel to adopt and strictly maintain a system that efficiently takes into account all court notices sent to him and for want of diligent supervision the inexcusable negligence of his clerk is imputable to him. [1] In at least two cases, [2] this Court has held that such kind of excuse as has been presented here is "the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court."

Neither does the alleged forgetfulness of counsel to make a detailed check of his trial dates due to anxiety constitute "accident, mistake or excusable negligence." In one case[3] we held that mere forgetfulness of a party to an action is not sufficient ground for vacating or setting aside a judgment by default. Even assuming that counsel's stenographer failed to bring to his attention the order of July 17, 1961 and that he was suffering from anxiety about the end of July, ordinary prudence demanded that he should have checked at least before the scheduled hearing on July 25, 1961 what action had been taken on his motion seeking postponement of said hearing to either July 31 or August 1, 1961. But evidently he did not make a follow-up of the said motion, such that if the court had denied it, he would not have been present anyway at the hearing scheduled for July 25 and the claim would have been dismissed even then. Moreover, if he were really suffering from anxiety as he alleged, it is strange that he was able to go as far as Vigan, Ilocos Sur, to attend a hearing there on July 31, 1961, leaving his wife who was supposed to undergo a Caesarian operation on August 3, 1961. For the inexcusable negligence of counsel, his client has to bear the adverse consequences." [4]

WHEREFORE, the orders dated August 1 and October 11, 1961 are hereby affirmed with costs against the appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro and Capistrano, JJ., concur.
Fernando, J., took no part.

[1] Colcol vs. Philippine Bank of Commerce, et al., G. R. No. L-23117, Nov. 17, 1967.

[2] Philippine Air Lines vs. Arca, G. R. No. L-22729, February 7, 1967; Ocampo vs. Calauag, No. L-21113, April 27, 1967.

[3] Diriga vs. Biranya, G. R. No. L-22033, July 30, 1966.

[4] Montes vs. Court of First Instance of Tayabas, 48 Phil. 640; Isaac vs. Mendoza, G. R. No. L-2820, June 21,

1951; *Vivero vs. Santos*, G. R. No. L-8105, February 28, 1966; 52 O.G. p. 1424; *Flores vs. The Philippine Alien Property Administrator*, G. R. No. L-21741, April 28, 1960; *Ocampo vs. Calauag*, *supra*.

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