

## **JESUSA DEL ROSARIO, PETITIONER, VS. COURT OF APPEALS, LEONORA T. ROXAS, AND PEDRO M. ROXAS, RESPONDENTS.**

*G.R. No. L-33209. May 31, 1982*

Ponente: MAKASIAR, J.

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### **MAKASIAR, J.:**

These two cases arose from practically identical or similar factual backgrounds; hence, in a resolution dated July 24, 1974, this Court ordered that the same be consolidated.

However, for purposes of clarity, it is deemed necessary to cite separately the material facts and the issues raised in each case, thus --

G.R. No. L-33209

Petitioner seeks a review of the resolution of the Court of Appeals (Special Division of Five) dated December 22, 1970, reversing its decision of June 5, 1970 (Special Second Division), and its resolution of February 8, 1971 denying petitioner's motion for reconsideration.

The dispositive portion of the challenged resolution reads:

"WHEREFORE, the decision of June 5, 1970 herein is hereby reconsidered and set aside and, in lieu thereof, another is hereby rendered setting aside the default order below of October 4, 1965 and declaring null and void all proceedings thereafter taken in Civil Case No. Q-8740 of the Court of First Instance of Quezon City, including the decision therein of November 22, 1965 and the Order of August 31, 1966 deny-ing appellants' Petition to Set Aside.

"Let the record hereof be remanded to the Court a quo with instructions to admit appellants' Answer with Counterclaim dated February 22, 1966 and, thereafter, to proceed to hear the Case anew and render judgment therein as the evidence and the law may warrant.

"No costs.

"IT IS SO ORDERED" (p. 56, rec.).

The backdrop of this case is as follows:

On May 3, 1965, herein petitioner Jesusa del Rosario instituted in the Court of First Instance of Quezon City an action for a sum of money against the spouses Leonora Roxas and Pedro Roxas, private respondents herein. The case was docketed as Civil Case No. Q-8740.

The complaint states that on three different occasions, that is, on October 22, 1963, June 19, 1964 and July 14, 1964, private respondent Leonora Roxas applied to, and received from the petitioner herein, by way of loan, the total amount of P40,000.00 on the express understanding that said indebtedness would be paid by private respondent Leonora Roxas on demand in accordance with the terms of the three pro-missory notes executed on the dates mentioned above (pp. 1-12, rec. on appeal; p. 73, rec.).

The complaint also states that despite repeated demands for payment by herein petitioner, private respondents (spouses Leonora Roxas and Pedro Roxas) failed to pay their debts and, as a consequence of which, herein petitioner was constrained to engage the services of counsel for a fee of 25% of the total amount due under the three promissory notes. The complaint like-wise contains allegations for the issuance of a writ of preliminary attachment.

On May 22, 1965, private respondent Leonora Roxas received the summons with copies of the complaint attached.

On June 7, 1965, private respondents, then defendants in the court below, thru counsel, Atty. Leopoldo V. Repotente, filed an ex parte motion asking for an extension of ten (10) days from June 7, 1965 within which to answer the complaint (pp. 21-22, ROA; p. 73, rec.). However, in spite of the said motion for extension of time, private respondents failed to file their answer.

On September 15, 1965, herein petitioner Jesusa del Rosario filed a motion to declare the defendants in default for their failure to answer the complaint.

On October 4, 1965, the trial court issued an order declaring private respondents in default (pp. 25-26, ROA; p. 73, rec.) and allowed the petitioner herein to present her evidence before the clerk of court.

On November 22, 1965, the court rendered a decision the dispositive part of which reads:

"WHEREFORE, the Court renders judgment in favor of plaintiff and against the defendants, to wit:

"1 . Ordering the defendants to pay, jointly and severally, to plaintiff the sum of P5,000.00 with legal rate of interest there-on from June 1, 1964, until fully paid;

"2 . Ordering the same defend-ants to pay, jointly and severally, to plaintiff another sum of P5,000.00 with legal rate of interest thereon from July 1, 1964, until fully paid;

"3 . Ordering the defendants to pay, jointly and severally, to plaintiff the sum of P30,000.00 with legal rate of interest from August 1, 1964, until fully paid; and

"4 . Ordering the defendants to pay, jointly and severally, to plaintiff the further sum equivalent to 10% of the aforesaid amounts due on the abovementioned promissory notes, which the Court finds to be reasonable for attorney's fees, and the further sum of P671.25 for expenses in litigation in this case, with costs against the defendants.

xx xx xx

"SO ORDERED" (pp. 31-32, ROA; p. 73, rec.).

On February 23, 1966, private respondents herein filed a petition to set aside the order of default and the decision dated November 22, 1965, to admit answer with counterclaim and for new trial. In their petition, private respondents contend that said order and decision of the court were rendered against them through fraud "the same having been obtained in gross violation of the agreement between the defendants and Elena del Rosa-rio, plaintiff's sister and the real party-in-interest in the case, that this case be held in abeyance in the meantime that the parties are working out a just and peaceful settlement of their differences" (p. 33, ROA; p. 73, rec.). Private respondents further contend that they have meritorious defenses to the causes of action alleged in the complaint.

In an order dated August 31, 1966, the Court of First Instance of Quezon City denied the aforesaid petition of private respondents for lack of merit.

Not satisfied with the decision of the court, private respondents herein appealed said decision to the Court of

Appeals.

On June 5, 1970, the Court of Appeals, thru a Special Second Division composed of Justices Jose M. Mendoza (ponente), Juan P. Enriquez and Jesus Y. Perez, rendered a unanimous decision affirming the decision of the Court of First Instance of Quezon City (pp. 24-38, rec.).

On September 4, 1970, private respondents filed a motion for reconsideration of the decision of the Court of Appeals.

Meanwhile, Justice Jose M. Mendoza, ponente of the case, retired from government service and the case was assigned to Justice Juan P. Enriquez (p. 12, rec.).

Acting on the motion for reconsideration filed by private respondents, the Court of Appeals, thru a Special Division of Five, with Justice Juan P. Enriquez as ponente, issued on December 22, 1970 the earlier quoted challenged resolution reversing the June 5, 1970 decision which affirmed the decision of the Quezon City CFI.

Herein petitioner filed a motion for reconsideration of the December 22, 1970 resolution which was denied in a resolution dated February 8, 1971.

Hence, this petition.

G.R. No. L-38737

The subject matter of this petition is the decision of the Court of Appeals (Tenth Division) which affirmed the decision of the Court of First Instance finding and declaring herein petitioners (spouses Leonora Roxas and Pedro Roxas) in default and ordering them to pay, jointly and severally, the herein respondent Elena del Rosario the sum of P50,000.00 with legal interest and 10% of the amount as attorney's fees.

The facts are rehashed as follows:

On May 3, 1965, herein private respondent Elena del Rosario filed an action for a sum of money in the Court of First Instance of Rizal at Quezon City against the spouses Leonora Roxas and Pedro Roxas, petitioners herein. The case was docketed as Civil Case No. Q-8739.

It is alleged in the complaint that on May 28, 1963, the spouses Leonora Roxas and Pedro Roxas obtained a loan from private respondent Elena del Rosario in the sum of P50,000.00 as evidenced by a promissory note (p. 22, ROA, p. 66, rec.) executed by both spouses.

The complaint likewise states that despite repeated demands for payment made by private respondent Elena del Rosario upon the spouses (petitioners herein), the latter have failed and refused to pay their indebtedness; that by reason of such failure and refusal on the part of the Roxas spouses to settle their obligation, private respondent here-in Elena del Rosario was constrained to engage the services of counsel for a fee of 25% of the amount due under the promissory note. The complaint also asks for the issuance of a writ of preliminary attachment.

On May 6, 1965, the trial court ordered the issuance of a writ of preliminary attachment against the properties of Leonora Roxas and Pedro Roxas.

On May 22, 1965, herein petitioners received the summons.

On June 7, 1965, petitioners, then defendants in the lower court, thru their counsel, Atty. Leopoldo V. Repotente, filed an ex parte motion asking for an extension of ten (10) days from June 7, 1965 within which to answer the complaint. However, no answer was filed by petitioner spouses within the period mentioned in their motion.

On September 15, 1965, the plaintiff filed a motion to declare the defendants (herein petitioners) in default. The

trial court granted the motion and allowed the plaintiff to present her evidence before the clerk of court.

On November 22, 1965, the trial court rendered a decision the dispositive part of which reads:

"IN VIEW OF THE FOREGOING, the Court renders judgment in favor of plaintiff and against the defendants Leonora T. Roxas and Pedro M. Roxas, ordering the said defendants to pay, jointly and severally, to plaintiff the sum of P50,000.00 plus legal rate of interest thereon from August 1, 1963, until fully paid, and the further sum equivalent to 10% of the amount due, which the court finds to be reasonable as attorney's fees; and further order-ing the defendants to pay jointly and severally to plaintiff the sum of P838.77 as expenses in litigation in this case, with costs against the defendants.

"SO ORDERED" (ROA, p. 23; p. 66, rec.).

The defendants (petitioners herein) filed a petition dated February 8, 1966 to set aside the order of October 4, 1965 declaring them in default, and the decision dated November 22, 1965 and for a new trial on the grounds that said order and decision were rendered against them through fraud "the same having been obtained by the plaintiff in gross and palpable violation of her agreement with the defendants that the case be held in abeyance in the meantime that the parties are working out a just and peaceful settlement of their differences" and that defendants have meritorious defenses to the causes of action alleged in the complaint.

Attached to the petition was an answer with a counterclaim dated February 8, 1966.

The Quezon City CFI heard jointly the separate petitions to set aside order of default filed in Civil Case No. Q-8739 (Elena del Rosario case) and Civil Case No. Q-8740 (Jesusa del Rosario case).

On August 31, 1966, an order was issued for both cases denying for lack of merit the aforementioned petitions to set aside (pp. 101-106, ROA; p. 66, rec.).

Herein petitioners appealed to the Court of Appeals from said order of August 31, 1966, decision dated November 22, 1965 and order of default dated October 4, 1965.

On March 15, 1974, the Court of Appeals rendered a decision (pp. 27-36, rec.) affirming the decision of the trial court in Civil Case No. Q-8739.

The spouses Leonora Roxas and Pedro Roxas filed a motion for reconsideration which was denied by the Court of Appeals in a resolution dated May 23, 1974 (p. 37, rec.).

Hence, this petition.

## I

As culled from the material allegations raised in these two related cases, the common issues submitted for Our resolution are the following: (a) whether or not the twin orders of default dated October 4, 1965 and the twin decisions dated November 22, 1965 of the Quezon City CFI -- all against the spouses Leonora Roxas and Pedro Roxas and in favor of the sisters Elena del Rosario and Jesusa del Rosario -- were taken against them through fraud; and (b) whether or not said spouses have meritorious defenses to the causes of action alleged in the complaints filed separately by sisters Elena del Rosario and Jesusa del Rosario.

On the issue of fraud, the spouses Leonora Roxas and Pedro Roxas presented affidavits claiming that after the filing of the two cases (Civil Case No. Q-8739 and Q-8740) in the Quezon City CFI, they allegedly entered into an agreement with Elena del Rosario, sister of Jesusa del Rosario, whereby said Leonora Roxas bound herself to collect the sums of money -- P50,000.00 and P40,000.00, respectively demanded in the aforesaid cases -- from a certain William Lim (Lim Go Tong), the alleged real debtor; and as a consideration thereof, Elena del Rosario

allegedly undertook to cause the holding in abeyance of the two complaints filed against Leonora Roxas and Pedro Roxas. Atty. Leopoldo V. Repotente, counsel for the spouses Leonora Roxas and Pedro Roxas, corroborated the foregoing assertion of Leonora Roxas in an affidavit (pp. 45-50, ROA; p. 73, rec. L-33209; pp. 17-21, ROA; p. 67, rec. L-38737).

In his affidavit, Atty. Repotente claims that he accompanied Leonora Roxas to the residence of Elena del Rosario in order to take part in the discussion regarding the proposed amicable settlement of the two civil cases filed separately by the Del Rosario sisters, Atty. Repotente further claims that during said discussions, Elena del Rosario allegedly assured him and Mrs. Leonora Roxas that she (Elena del Rosario) will cause the filing of a manifestation in court holding the complaint in abeyance and, at the same time, asked Atty. Repotente not to answer said complaint in the meantime that an amicable settlement of the cases is being discussed to avoid "further bitterness between the parties who are comadres." It is allegedly because of the fore-going understanding that, according to Atty. Repotente, he did not file an answer to the complaint.

There is no merit in the contention of Leonora Roxas and her counsel, Atty. Repotente, that they were victims of fraudulent machinations allegedly perpetrated on them by Elena del Rosario. It strikes Us as odd that Leonora Roxas who was supposedly accompanied by her lawyer, would be hoodwinked by Elena del Rosario into not filing an answer to the complaint. It is hard to believe that Atty. Repotente would be so naive to be misled by an ordinary woman like Elena del Rosario who was not familiar with court procedures.

As counsel of Leonora Roxas in the court below, Atty. Repotente is expected to utilize his knowledge of the law and procedure to the utmost with the end in view of protecting his clients' interest. Furthermore, he ought to know that mere agreement of the parties to hold in abeyance the filing of an answer, without formally informing the court of the same, has no legal effect whatsoever on the tolling of the period within which to answer.

As aptly stated by Justice Mendoza in the decision of the Court of Appeals (Special Second Division) dated June 5, 1970:

"xx x Atty. Repotente being a lawyer knows fully well or is presumed to know the rule that a responsive pleading to a complaint should be filed within a reglementary period, otherwise his clients would be defaulted. If Atty. Repo-tente was recreant in his duty as a lawyer to his clients in this respect, then such negligence binds the appellants" (p. 28, rec., L-33209).

Additionally, this Court takes notice of the fact that the spouses Leonora Roxas and Pedro Roxas did not bother to answer the two complaints filed against them by the Del Rosario sisters even after their motion for extension of time to answer dated June 7, 1965 was granted by the trial court. It was not until nine (9) months later from the time the two complaints were filed on May 3, 1965 and four (4) months after they were already declared in default in an order dated October 4, 1965, when they filed separate petitions dated February 8, 1966 (Elena del Rosario case) and February 22, 1966 (Jesusa del Rosario case) seeking to set aside the twin order of default and the twin decision dated November 22, 1965, to admit answer with counterclaim and for new trial.

To Our mind, such apparent complacency on the part of the spouses Leonora Roxas and Pedro Roxas only belies their claim that fraud was per-petrated on them by Elena del Rosario in obtaining from the trial court a judgment by default.

For if it were true indeed that Elena del Rosario resorted to fraudulent maneuvers to obtain judgment by default against the spouses Leonora Roxas and Pedro Roxas, then why did it take so much time for the said spouses to file their petitions to set aside order of default and the decision of November 22, 1965 together with their answers to the complaints filed by the Del Rosario sisters? A litigant who became a victim of fraudulent machinations perpetrated by another would not waste so much time to ventilate or denounce such fraudulent acts before a court

of justice.

## II

The spouses Leonora Roxas and Pedro Roxas advanced the second argument that they have a meritorious defense to justify the setting aside of the order of default by the court a quo. Said spouses contend that they have no obligation to pay the Del Rosario sisters for the amounts stated in the complaints because said amounts were actually loaned to William Lim alias Lim Go Tong. Said spouses further contend that the amounts stated in the complaints were merely entrusted to them by the Del Rosario sisters for delivery by way of loan to William Lim, the alleged real debtor.

Again, We find no merit in the second argument advanced by the Roxas spouses.

The promissory notes upon which the two complaints are based indubitably show that said spouses were the recipients of the amounts stated therein by way of loan. In no uncertain terms, the promissory notes read:

" October 22nd, 1963

"P5 ,000.00

"FOR VALUE RECEIVED, I, LEONORA T. ROXAS, promise to pay Dra. JESUSA DEL ROSARIO, or ORDER, the sum of FIVE THOUSAND PESOS, PHILIPPINE CURRENCY (P5 ,000.00) at her house at 58 Broadway, Q.C. UPON DEMAND.

Done at 58 Broadway, Quezon City, on this day, October 22nd, 1963.

/S/ LEONORA T. ROXAS

/T/ LEONORA T. ROXAS

WITH MY MARITAL CONSENT:

/S/ PEDRO ROXAS

/T/ PEDRO ROXAS

" June 19th, 1964

"P5 ,000.00

"FOR VALUE RECEIVED, I, LEONORA T. ROXAS, PROMISE TO PAY DRA. JESUSA DEL ROSARIO, or ORDER, the sum of FIVE THOUSAND (P5,000.00) PESOS, PHILIPPINE CURRENCY, at her house at 58 Broadway, New Manila, Quezon City, UPON DEMAND. Done this 19th day of June, 1964.

/S/ LEONORA T. ROXAS

/T/ LEONORA T. ROXAS

WITH MY MARITAL CONSENT:

/S/ PEDRO ROXAS

/T/ PEDRO ROXAS

" July 14th, 1964

"P30 ,000.00

"FOR VALUE RECEIVED, I, LEONORA T. ROXAS, Promise to pay DRA. JE-SUSA DEL ROSARIO, or ORDER, the sum of THIRTY THOUSAND PESOS, (P30 ,000.00), PHILIPPINE CURRENCY, at her house at 58 Broadway, New Manila, Quezon City UPON DEMAND. Done this 14th day of July, 1964, in Quezon City.

/S/ LEONORA T. ROXAS

/T/ LEONORA T. ROXAS

WITH MY MARITAL CONSENT:

/S/ PEDRO ROXAS

/T/ PEDRO ROXAS"

(pp. 2-6, ROA, p. 73, rec., L-33209).

" May 28, 1963

"Upon demand I promise to pay Miss Elena del Rosario or order the sum of Fifty Thousand (P50 ,000.00) Pesos Philippine Currency.

/S/ LEONORA T. ROXAS

/T/ PEDRO M. ROXAS"

(p. 2, ROA; p. 66, rec. L-38737).

Nowhere in the aforequoted promissory notes does it state that William Lim, alias Lim Go Tong, was the real debtor, as claimed by the Roxas spouses. The name William Lim is not even mentioned therein. There is no doubt therefore that the spouses Leonora Roxas and Pedro Roxas are the debtors.

WHEREFORE, IN G.R. NO. L-33209, THE RESOLUTION OF THE COURT OF APPEALS (SPECIAL DIVISION OF FIVE) DATED DECEMBER 22, 1970 IS HEREBY REVERSED AND SET ASIDE; THE DECISION DATED JUNE 5, 1970 OF THE COURT OF APPEALS (SPECIAL SECOND DIVISION) WHICH AFFIRMED THE DECISION OF THE TRIAL COURT IS HEREBY REINSTATED, WITH COSTS AGAINST RESPONDENT SPOUSES.

IN G.R. NO. L-38737, THE DECISION OF THE COURT OF APPEALS DATED MARCH 15, 1974 IS HEREBY AFFIRMED, WITH COSTS AGAINST PETITIONER SPOUSES.

**SO ORDERED.**

Plana, Vasquez, and Relova, JJ.,concur.

Teehankee, (Chairman) and Melencio-Herrera, JJ.,in the result.

Gutierrez, Jr., J., no part.

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