

ANDRES P. BARING, PLAINTIFF-APPELLEE, VS. CESAR M. CABAUG, DEFENDANT-APPELLANT.*G.R. No. L-23229. July 20, 1967*

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9a933e170809/>**BENGZON, J.P., J.:**

With Andres P. Baring as lessor, and Cesar M. Cabaug as lessee, both entered on June 26, 1960 into a contract of lease over a parcel of land in Pajo, Opon /now Lapulapu City/, Cebu, Lot No. 202 of the Opon Cadastre, for a period of five (5) years starting from July 1, 1960. The rental agreed upon was P75 per month, payable as follows: P375 upon signing of the agreement, as advanced rentals for five (5) months or from July 1, 1960 to November 30, 1960; thereafter, P225 advance rentals for the next succeeding three months, payable on the first five days of every three months.

Pursuant thereto, Cabaug paid P375 on the date of execution of the lease. On December 3, 1960, he paid P75 as part payment of the advance rentals for the three-month period from December 1960 to February 1961. On February 1, 1961, Baring's counsel sent Cabaug a demand letter. On May 22, 1961, a second demand letter was written. Altho Cabaug admittedly received said letters, no further payment of rentals was made.

On February 8, 1962, Baring sued Cabaug in the Court of First Instance of Cebu for specific performance of the lease contract, i.e., payment of rentals due, plus damages and attorney's fees.

On April 24, 1962, Cabaug answered with a counter-claim for rescission of the contract, with damages, alleging that he signed the lease on the strength of Baring's misrepresentation that the parcel of land is the same one formerly owned by Philippine Refining Co., Inc., and that, furthermore, the subject lot has not been delivered to him until now.

After Baring replied to the counterclaim on April 30, 1962, trial started, on November 13, 1962. It was set to be continued on November 20 and 21, 1962. Plaintiff continued testifying on cross-examination on November 20, 1962. The parties then agreed to continue the next trial on January 25, 1963. Attorney for the defendant, however, on January 25, 1963, submitted a written motion for postponement, with the opposing counsel's conformity. So the case was reset for March 26, 1963, notice of which was personally received by defendant's counsel.

On March 26, 1963, neither defendant nor his counsel appeared in court. Plaintiff offered his evidence and the case was submitted for decision. Subsequently, on June 28, 1963, the Court of First Instance rendered its decision, ordering defendant to pay plaintiff P2,250.00 as rentals for 1961, 1962 and January to June of 1963, plus P300.00 attorney's fees and the costs.

On August 14, 1963 defendant's counsel filed a motion for new trial stating that his non-appearance was due to the negligence of his office clerk who forgot to note in his trial calendar the date stated in the notice and who thereafter misplaced or lost said notice; further, defendant allegedly has a good and valid defense. Submitted

therewith were an affidavit of the clerk and an affidavit of merits, signed by defendant's lawyer, as-serting that the parcel of land covered by the lease was never delivered to defendant and that what defendant has occupied lies outside of said lot, "as will be shown by competent evidence later on."

Said motion was denied on September 13, 1963. So, also, a motion to reconsider the denial, was itself de-nied. From the denial orders, defendant has appealed di-rectly to Us, alleging that said denial does not serve the ends of justice, is attended with abuse of discretion and overlooks defendant's good and valid defense.

The rule is that motions for new trial rest on the sound discretion of the trial court (*Porciuncula v. Adamos*, L-11519-20, April 30, 1958, 55 O.G. 32). Among the grounds therefor is excusable negligence (Sec. 1, Rule 37, Rules of Court), and defendant's motion invoked such ground. It is clear from the record however that defen-dant's counsel was inexcusably negligent in failing to take note of the date for the trial in question. As sta-ted, he personally received the notice from the court; it was on his motion that said trial was postponed; having received the notice of the court, he should have forth-with entered the date for the next trial in his calendar, but for no excusable reason he neglected to do so. The fact that he delegated to his clerk the task of noting it down in his trial calendar and that the latter forgot to do so, and even lost the notice itself, does not consti-tute excusable negligence. For 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 negli-gence of the clerk is thus imputable to the aforesaid coun-sel.

As to the defense stated in the affidavit of merits, the same does not deserve a re-opening of the case. If Indeed the parcel of land was never delivered to the les-see, it is strange why he made a total payment of P450.00 for rentals and why he never complained for non-delivery of the lot until he filed his answer to the complaint on April 24, 1962 or about a year and 9 months after the con-tract went into effect. Defendant's silence during this period, notwithstanding plaintiff's two demand letters re-ceived by him, belies his pretenses to non-delivery of the land.

WHEREFORE, the appealed order denying the motion for new trial is affirmed, with costs against appellant.

SO ORDERED.

Reyes, JBL, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J, and Dizon, J., on official leave.

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.