

WACK WACK GOLF AND COUNTRY CLUB, INC., PETITIONER, VS. COURT OF APPEALS, PETRONILO ARCANGEL AND ANTONINO D. BERNARDO, RESPONDENTS.

G.R. No. L-11724-25. November 23, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

These petitions were filed by the Wack Wack Golf and Country Club, Inc., to review the decisions of the Court of Appeals in two cases involving the same corporation (CA-G. R. No. 15910-R and CA-G. R. No. 15902-R). As the issues raised in said cases relate to the same principle of law, we shall take them up jointly and resolve the questions assigned therein in a single decision

Petronilo Arcangel, a former employee of the Wack Wack Golf and Country Club, Inc., filed with the Court of First Instance of Manila a money claim for overtime services rendered to said employer, for unenjoyed vacation leave, moral damages and attorney's fees. The employer having filed its answer to the complaint, the case was accordingly set for trial. At the hearing of May 6, 1955, however, neither the defendant (employer) nor its counsel, Balcoff, Poblador and Angel C. Cruz, appeared notwithstanding the fact that they were duly notified of the hearing since March 22, 1955; hence, the plaintiff was allowed to continue presenting his evidence without the presence of defendant.

On May 10, 1955, the lower court rendered judgment for the plaintiff employee, awarding him a total of P7,70278.

On May 14, 1955, the law firm of Juan T. Chuidian, on behalf of the defendant employer, filed a petition to set aside the judgment on the ground of misunderstanding, mistake and excusable neglect, which petition was denied by the lower court in its order of May 31.

The employer appealed from this order—not from the decision on the merits—to the Court of Appeals claiming that the court a quo committed a grave abuse of discretion in denying its petition for relief. The Court of Appeals, finding no justification for the employer's failure to appear at the hearing, upheld the order appealed from.

There is no disagreement as to the facts allegedly constituting the mistake, accident or excusable negligence upon which the employer's petition for relief was based. As put down in petitioner-appellant's brief filed in the Court of Appeals, and adopted by said court, they are:

"The (records of this case show that defendant-appellant (employer) was represented by the law office of Balcoff and Poblador and Angel C. Cruz from the inception of this case up to May 14, 1955, when Law Office Juan T. Chuidian filed its appearance upon being, referred by law office of Balcoff and Poblador on May 12, 1955 the copy of the decision dated May 10, 1955 of the Trial Court.

'Sometime before May 5, 1955 defendant-appellant Wack Wack Golf and Country Club, Inc., had manifested its desire to replace their counsel Messrs. Paredes, Balcoff and Poblador in this case with Law Office Juan T.

Chuidian. On May 5, 1955 Atty. Jesus Sayoc of the undersigned law firm conferred with Atty. Angel Cruz of Messrs. Paredes, Balcoff and Poblador for the purpose of securing the court file in this case and effect the substitution of attorney. Unfortunately, Mr. Balcoff was not in the office at the moment and Atty. Angel Cruz declared he had no authority to turn over to Law Office Juan T. Chuidian the court papers and file in this case; besides, there were unpaid bill due Messrs. Paredes, Balcoff and Poblador. Arriving at the office, Mr. Jesus Sayoc advised Mr. Juan T. Chuidian of the reluctance of Messrs. Paredes, Balcoff and Poblador to turn over the court file of the case to the former. In view of this development, Atty. Chuidian called up Atty. Balcoff by telephone and it was agreed between the two gentlemen that inasmuch as Attys. Paredes, Balcoff and Poblador were still the attorneys of record in the case, Atty. Balcoff would send a representative of his law office to appear at the hearing of the case the following day, May" 6, 1955 in order to ask for postponement of the case. Consequently, nobody in Law Office Juan T. Chuidian appeared in behalf of defendant-appellant on May 6, 1955 before the Trial Court. As a matter of fact, the records of the case were turned over to Law Office Juan T. Chuidian only on May 13, 1955 after Law Office Juan T. Chuidian had received on May 12, 1955 through Messrs. Paredes, Balcoff and Poblador a copy of the decision dated May id, 1955 of the Trial Court. On the other hand, Atty. Angel Cruz or any associate lawyer of Messr. Paredes, Balcoff and Poblador did not appear for defendant-appellant on May 6, 1955."

We are with the Court of Appeals in the observation that as of May 6, 1955, the law firm of Balcoff and Poblador and Angel C. Cruz were still the employer's counsel of record, the law office of Juan T. Chuidian having entered its appearance in the' case only on May 14, 1955. As such counsel of record, said law firm must have known that, its impending relief as counsel for the defendant notwithstanding, it is under obligation to protect the client's interest (which includes appearance at the hearing) until its final release from the professional relationship with such client. For its part, the court could recognize no other representation, on behalf of the client except such counsel of record until a formal substitution of attorney is effected. Thus, any agreement or arrangement such counsel of record and its client may reach regarding the presentation of the client's case in court is purely their private concern. Proceedings in court cannot be made to depend on them. The lack of coordination or understanding between the two law firms in the instant case cannot be considered as a legal excuse or falling within the ambit of excusable negligence to justify the granting of relief from the order declaring the client in default or, as in this case, from a decision entered after presentation of evidence in his absence.

Where the defendants were given every reasonable opportunity to try their case and no legal excuse was presented for a further adjournment, and order denying defendant's motion to set aside their default and vacate the judgment against them entered upon such default, was proper (*Centerville Creamery Co. vs. Waxier*, 30 N.Y.S. 2d. 232, 262 App. Div. 1055.)

G. R. No. L-11724 (CA-G. R. No. 15902-R):

On February 18, 1953, Antonino D. Bernardo, former official of appellant, filed with the Court of First Instance of Manila a claim against the Wack Wack Golf & Country Club, Inc., for overtime pay, unenjoyed vacation and sick leaves from 1946 to 1951 and attorney's fees. As the employer denied the claim, the case was set for trial.

At the hearing of May 12, 1955, after about 8 previous postponements, nobody appeared for the employer although said defendant was represented from the commencement of the proceeding by Atty. Angel C. Cruz and was duly notified of the hearing since March 26, 1955. Consequently, the plaintiff-employee was permitted to continue presenting his evidence before the Deputy Clerk of Court who was delegated for this purpose.

On May 14, 1955, the lower court adjudged the plaintiff entitled, to the claim, and sentenced defendant-employer to pay the total sum of P26,422.78.

On the same day, May 14, 1955, the employer represented by the law office of Juan T. Chuidian, filed a petition

for relief from the order authorizing the Deputy Clerk of Court to receive plaintiff's evidence and for the re-opening of the case. The petition was later supplemented by another similarly praying for the setting aside of the decision rendered therein, on the ground of accident or excusable 'negligence. Upon plaintiff's opposition, these petitions were denied by the court in its order of May 31, 1955. From this order of denial, defendant employer appealed to the Court of Appeals. On October 30, 1956, the Court of Appeals affirmed the disputed order, for the reason that under the circumstances, there was no justification for defendant's counsel to anticipate that the Court would grant a motion for postponement of the hearing of May 12, 1955. The accident or excusable negligence referred to by the new counsel for defendant employer is stated in the petition for relief filed in the lower court, thus:

"1. That defendant heretofore had been represented by Atty. Angel C. Cruz; that for certain reasons the defendant recently contracted the services of Law Office of Juan T. Chuidian to handle this case; in substitution of Atty. Angel Cruz, the appearance of the undersigned law office has been filed with this Honorable Court on May 12, 1955;

"2. That it was only in the afternoon of May 11, 1955 that the records of this case were sent to the undersigned law office, and that Atty. Juan T. Chuidian was then out of town and, consequently, nobody knew what action to take in this case;

"3. That in the morning of May 12, 1955, Atty. Juan T. Chuidian telephoned the undersigned law office and requested that one of the assistant attorneys appear at the sala in connection with the scheduled hearing of the above entitled case, and to move for the postponement thereof on the obvious reason that the undersigned Jaw firm was not prepared right then and there to proceed with the trial of the case inasmuch as the facts of the case were not then sufficiently known to any of the associate attorney

"4. That when Attorney Suntay of the undersigned law office arrived at the sala of this Honorable Court, he was informed that the case had been called earlier in the calendar and in view of the failure of any person to appear in behalf of defendant, the Deputy Clerk of Court was authorized to receive the evidence for the plaintiff;

"5. The subsequent efforts of Attorney Suntay to suspend the reception of plaintiff's evidence and postpone the hearing proved fruitless; ***"

From the foregoing facts, it is evident that Atty. Suntay's appearance (late by some 35 minutes) at the hearing of the case was solely for the purpose of securing another postponement of the trial; that his delay was brought about by the absence of the principal counsel in town, and by want of instructions from the latter as to what action his assistants should take on the matter; that the records of the case were only turned over to the new counsel on May 11, and that there was no time to prepare for the trial. Under these circumstances, the employer's charge that the trial court abused its discretion in denying its petition for relief from the order authorizing the reception of plaintiff's evidence in the absence of defendant and the judgment rendered in the case, is premised on the ground (1) that counsel's, tardiness or delay as well as his unpreparedness to go to trial are accidental or may be considered as excusable, negligence, arid (2) that the trial court should have allowed the motion for postponement.

Both points find adequate answer in the Court of Appeals ruling which we quote with approval

"The hearing on May 12, 1955 had been fixed, with the conformity of both parties, as early as March 18, 1955. Not only that, but the verbal order issued in open court was supplemented by a written order, copy of which was received by defendant's counsel on March 26, 1955. On the date of the trial defendant was still represented by Atty. Angel C. Cruz as counsel of record. Up to then there had been no substitution of attorneys, nor had Attorney Cruz withdrawn his appearance in the case. Indeed the record does not show that he ever did

withdraw his appearance or filed a motion for substitution. The responsibility for representing defendant at the trial on May 12, 1955 was therefore still his. On the other hand if it is true, as alleged by appellant, that the services of Atty. Juan T. Chuidian had been engaged sometime prior to May 11, 1955 then it was the latter's duty to file his appearance opportunely and prepare for the trial on May 12. It is to be presumed that in accepting the case Attorney Chuidian knew that the trial was to be held on that date; and he certainly was not justified in accepting the case unless he was prepared to go to trial as scheduled. He had no right to take for granted the liberality of the court or the generosity of plaintiff by appearing, through an assistant of his, after the case had been actually called on the calendar and while the evidence of the plaintiff was already being received, and then only to ask (verbally) for another postponement.

"All motions for postponement should be presented at such time as is practicable to prevent the adverse party from incurring unnecessary expenses by coming to trial, otherwise postponement shall be denied. And a party moving for postponement should be in court on the day set for trial if the motion is not acted upon favorably before that day. He has no right to rely either on the liberality of the court, or on the generosity of the adverse party.' (Moran on Rules of Court, 1952 edition, pp. 651-653, citing *Linus vs. Rovira*, 61 Phil., 137; *Miranda vs. Mun. of Navotas*, 2 Phil., 667; *Quimson vs. Suarez*, 64 Phil., 907; *Macondray & Co. vs. Paredes*, G. R. No. 38255, Sept. 5, 1933; *Sunico vs. Villapando*, 14 Phil., 352.) "

In addition, the records of these two cases reveal that even prior to May 5, 1955, defendant-appellant had manifested its desire to replace its former counsel Messrs. Paredes, Balcoff & Poblador with the law office of Atty. Juan T. Chuidian. If this were so, it was the bounden duty of both law firms to have made the necessary arrangement for the protection of the interest of their client. Their failure to do so cannot certainly be considered excusable neglect to the extent of making the action of the trial court, as well as the Court of Appeals in denying relief based thereon, an abuse of discretion constituting reversible error.

Although no longer necessary in view of the conclusions already reached and expressed, attention may be drawn to the lack of the required affidavits of merit to support the petitions for relief. While there are sworn statements on the alleged mistake, accident and/or excusable negligence, there is, in G. R. No. L-11724, total absence of, and in G. R. No. L-11725, insufficient affidavit showing the facts constituting the valid defense which the movant may prove in case a new trial is granted. Even in the latter case, the only reference made in the affidavit of the assistant lawyer in the law firm of Atty. Chuidian who, as admitted in the pleadings submitted by them, did not know the facts of the case, was the statement "that the defendant has genuine and bona fide defenses to the claims interposed by plaintiff, more particularly set out in its Amended Answer dated August 4, 1954." This amended answer is not under oath. Consequently, the mere incorporation thereof by reference made by one who had no knowledge of the said defenses does not comply with the requirements of the rules and decisions on the matter. The affidavits of merit must state facts, and not mere conclusions or opinions, otherwise they are not valid.[1]

Anent the question raised by petitioner in both instances regarding the legality of the lower court's order authorizing the Deputy Clerk of Court to receive plaintiff's evidence, we again make our own the Court of Appeals ruling, thus:

"Defendant next contends that the trial Court acted contrary to law and gravely abused its discretion when it delegated the Deputy Clerk of Court to receive plaintiff's evidence. It should be borne in mind that the delegation was made in view of the absence of defendant and his counsel and that the function thus delegated was merely ministerial, namely, the taking down of the testimony of the witnesses and the marking down of whatever documentary evidence would be presented. There could be no occasion for the exercise of judicial discretion such as might have been called for if the other party had been present to object to questions that were propounded or to the admission of exhibits.

It cannot therefore be seriously maintained that any prejudice was caused to defendant by the action taken by

the Court."

Wherefore, finding no error in the decisions of the Court of Appeals sought to be nullified, the petitions filed in these two cases are hereby dismissed, with costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Labrador, Reyes, J. B. L., Endencia, and Gutierrez David, JJ. concur.

[1] Estrella vs. Zamora, 5 Phil., 415; Philippine Engineering Co. vs. Argosino, 49 Phil., 983; Coombs vs. Santos, 24 Phil., 446.

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