

CONSTANTINO VIVERO, PLAINTIFF AND APPELLEE, VS. FELIPE R. SANTOS, ET AL., DEFENDANTS. EUGENIO BALO, DEFENDANT AND APPELLANT.*G.R. No. L-8105. February 28, 1956*

Ponente: BAUTISTA ANGELO, J.

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This is an action instituted in the Court of First Instance of Leyte to recover the sum of P12,000, with legal interest thereon, plus damages and attorney's fees. Defendants, in their answer, set up as special defense that they had made partial payments to the plaintiff amounting to P1 1,793.50 with the result that the only unpaid balance due the latter is P205.50. They set up a counter-claim of P1,000 as moral damages and another amount P1,000 as attorney's fees.

The case was originally set for hearing on August 12, 1953 but, upon motion of defendants' counsel, "for the reason that he would be occupied on the same date in another case pending in another court, it was transferred to September 23, 1953. On September 15, 1953, defendants' counsel filed another motion praying that the hearing be postponed to any date after the election for the reason that, being a candidate for congressman in the fifth district of Leyte, he will be occupied in his political campaign beginning September 15, 1953 until election day. This motion was denied on September 19, 1953, but in September 23, 1953, the date of hearing, neither the defendants, nor their counsel, appeared, whereupon plaintiff was allowed to present his evidence and on October 30, 1953, the court rendered decision ordering the defendants to pay to plaintiff, jointly and solidarily, the amount of P9,882.20. The court also decreed that, should the defendants, principal or surety, fail to pay the judgment, the properties of the surety Eugenio Balo may be proceeded against in accordance with law to satisfy it with the exception of two parcels of land.

On December 1, 1953, defendants, through their counsel, filed an urgent motion praying that the case be reopened to give them an opportunity to present their evidence alleging therein that the failure of their previous counsel to appear was due to excusable negligence in that, being a candidate for congressman, he was busy in his campaign and was not able to attend to the hearing. This motion was denied, and the decision having become final, plaintiff prayed for the issuance of a writ of execution. The writ was ordered issued and the sheriff proceeded to levy upon the properties of surety Eugenio Balo. On April 7, 1954, Balo, through counsel, filed a petition for relief intimating that his failure to appear at the hearing was not due to his fault as he was never notified of said hearing either by the court or by his former lawyer and that because he had a meritorious defense, he asked that he be given a chance to be heard. He attached to the motion an affidavit of merit. And this petition having been denied, Balo appealed directly to this Court alleging that said order is contrary to law.

The order which appellant seeks to set aside in this appeal stems from a petition he filed on April 7, 1954, which was amended on May 3, 1954, praying for relief from the effects of the judgment rendered on the merits pursuant to section 2 Rule 88. The gist of the petition consists in that said judgment was rendered without petitioner having

had any opportunity present his evidence; that his failure to be present at the hearing was because he was not notified thereof neither by the court nor by his counsel; and that he never received a copy of the decision either from the court or from his lawyer and for that reason "he was not able to take the necessary action to protect his interest. He also averred that he had a good and meritorious defense which have the effect of counteracting the claim of the plaintiff.

Petitions of this nature, as a rule, are addressed to the sound discretion of the court,¹ and unless abuse of discretion is shown, the order of the court should be left undisturbed (*La O vs. Dee, et al.*, G. R. No. L-3890, January 23, 1953). Here there is no showing that the trial court has abused its discretion in denying appellant's petition for relief but acted thereon having in view only the equities of the case in so far as they affect the failure of appellant and his co-defendants to appear at the hearing. Thus, it appears that the case was originally set for hearing on August 12, 1953, and on motion of defendants' counsel, it was transferred to September 23, 1953. And when said counsel again moved for postponement because he was a candidate for congressman and would be busy campaigning for his candidacy, the court denied the motion but neither the defendants, nor their counsel, appeared at the hearing. And the record further shows that when defendants' counsel filed the second motion alleging as reason that he was a candidate, the court already warned him to make the necessary arrangement in order that another lawyer may take over the case. Counsel not only ignored this warning but even failed to inform his clients of his decision. This conduct is indeed reprehensible, but it does not furnish sufficient ground for granting relief considering that the trial court postponed the hearing once and had warned counsel that he should make the necessary arrangement to have another lawyer to represent him in his absence. We are of the opinion that the court acted properly in denying the motion for relief.

It is true that the failure of appellant to appear at the hearing, as well as his co-defendants, is not due to his fault but to lack of the necessary diligence on the part of his counsel which resulted in his prejudice, but such a misconduct is binding upon the client. A client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently (*U. S. vs. Umali*, 15 Phil., 33). A client is bound by the mistakes of his lawyer (*Montes vs. Court of First Instance of Tayabas* 48 Phil., 640; *Isaac vs. Mendoza*, 89 Phil., 279). "If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned." [*De Florez vs. Raynolds*, Fed. Cas. No. 3742, 16 Blatch, (U. S.) 397.]

Appellant also complains that his failure to appear at the hearing was not due to his fault but to the fact that he was not notified of the hearing either by the court or by his counsel, nor of the decision rendered in the case, as otherwise, he claims, he could have taken appropriate action in due time. But this complaint finds no legal justification because, under our rules, if a party appears by an attorney who makes of record his appearance, service of the pleadings is required to be made upon the attorney and not upon the party (section 2, Rule 27). And this Court has held that, in such a case, "a notice given to the client and not to his attorney is not a notice in law" (*Chainani vs. Judge Tancinco*, 90 Phil., 862). There is no dispute that appellant has a counsel of record who was duly notified of the hearing.

With regard to the merits of the case, we find that the special defense of appellant has already been taken into account so that, even if opportunity had been given him to present his evidence, the same would not have materially altered the nature of the decision. On this point, the trial court said:

"While it is true that the evidence show that this surety had reference only to the promissory note of P12,000 as stated in Exhibit 'B', evidence was presented that the guaranty or surety was intended for any P12,000 worth of loan that the defendants might owe from the plaintiff. The payments made during the period covered from May 5,

1951 to January 7, 1952, as contained in the three Statements of Accounts, Exhibits 'H', 'I' and 'J', made no reference as to whether or not there were payments for the loan of P12,000 or for any or all of the promissory notes mentioned in this decision. The Court understands that all of these payments were paid against all the promissory notes and inasmuch as the surety entered into between the plaintiff and the defendants, although the promissory note, Exhibit 'B', specifically mentioned that it was only for this particular loan, the court believes that as claimed by the plaintiff in his testimony this obligation on the part of the co-defendant Eugenio Balo was to respond to any indebtedness of the principals not exceeding P12,000.

The order appealed from is affirmed with costs against appellant.

Parás, C. J., Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, Reyes, J. B, L., and Endencia, JJ., concur.

[1] Coombs vs. Santos, 24 Phil., 446; Dolpan vs. Sigabu, 25 Phil., 148; Mapua vs. Mendoza, 45 Phil., 424; Fdismino vs. Gloria, 47 Phil., 967; Philippine Guaranty Co. vs. Belando, 52 Phil., 410.

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