

LEONIDA VERCELES, REP. BY ATTORNEY-IN-FACT, EDITHA V. ZAPATA, PETITIONER-APPELLEE, VS. NATIONAL HOUSING AUTHORITY, REGISTRY OF DEEDS FOR THE CITY OF MANILA AND FE GAMBOA-DAVID, ...

Ponente: LANTION, J.A.C., J.

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LANTION, J.A.C., J.:

Before Us is an appeal from the Decision[1] dated 23 August 2013 of the Regional Trial Court (RTC) of Manila, Branch 4 (court a quo) in P-08-062, the dispositive portion of which reads:

“WHEREFORE, the Register of Deeds of Manila is hereby ordered upon payment of the prescribed fees, to cancel Transfer Certificate of Title No. 162512 and the Notice of Adverse Claim inscribed thereon under Entry No. 9788/T-162512, provided that no document or transaction registered or pending registration in her office shall be adversely affected thereby.

Let a copy of this Decision be furnished the petitioner and her counsel for their information and guidance.

SO ORDERED.”

THE FACTS

Stripped of non-essentials, the antecedent facts of the case are as follows:

On 10 October 2008, petitioner-appellee Leonida Verceles, represented by her attorney-in-fact Editha Zapanta (Appellee), filed an Amended Petition[2] for Cancellation of Transfer Certificate of Title (TCT) No. 162512 and Adverse Claim under Entry No. 9788T-162512 against respondents National Housing Authority (NHA) and Fe Gamboa David (David) before the court a quo. She alleged that she is the registered owner of a parcel of land covered by TCT No. 160590 which she previously bought from NHA. She averred that she discovered that another title (TCT No. 162512) covering the same parcel of land was registered under her name. She alleged that the issuance of TCT No. 162512 was probably due to an “inadvertent error” on the part of the NHA. Thus, she sought the cancellation of TCT No. 162512 to avoid duplicity of titles.

Thereafter, the NHA filed its Comment and/or Opposition to Appellee's Amended Petition,[3] alleging that it has no knowledge of the existence of TCT No. 160590. It averred that TCT No. 162512 was released on account of NHA's full payment of the mortgage amount in August 1991. On the other hand, David failed to submit a comment on the Amended Petition. In an Order dated 01 April 2009, the court a quo declared David to have waived her right to file the same.[4]

Afterwards, the court a quo, in its Order[5] dated 05 November 2009, opted to have a full blown adversarial hearing on the issues presented and ordered the parties to present their respective testimonial and documentary evidence ex parte before the LRA Clerk of Court.

During the hearing for the initial presentation of Appellee's evidence on 27 January 2010, the court a quo noted

the appearance of the NHA and Appellee's respective counsels. The court a quo deemed it proper to observe the ordinary rules of procedure in the conduct of the trial instead of the aforementioned ex parte presentation of evidence before the LRA Clerk of Court. Thereafter, the court a quo set the case for pre-trial,[6] and Appellee and the NHA submitted their respective Pre-Trial Briefs.[7]

On the scheduled date of pre-trial, the respective counsels of Appellee and the NHA appeared. The court a quo ordered the postponement of the court proceedings and directed the parties to undergo mediation.[8]

Meanwhile, Appellee filed a Motion to Declare Respondent Fe Gamboa David in Default[9] dated 26 March 2010 alleging that David failed to file any answer or comment despite receipt of the Amended Petition and the attendance of his son, Angelito David (Angelito), during the 27 January 2010 hearing. Hence, Appellee prayed that David be declared in default.

On 15 July 2010, the court a quo issued an Amended Order[10] stating that David "as per information has recently expired". The court a quo directed the Heirs of David to notify the court a quo of the names of her heirs who will substitute her.

On 05 November 2010, a certain Atty. Petronilo David (Atty. Petronilo) entered his appearance as counsel for the Heirs of David (Appellant Heirs). The court a quo then set the pre-trial anew on 17 February 2011.[11]

On 23 November 2010, Appellant Heirs filed a Motion for Extension of Time To File Answer for Respondent Fe Gamboa David[12] praying for an additional period of fifteen (15) days or until 30 November 2010 within which to file an Answer.

Thereafter, Appellee filed a Manifestation and Motion to Declare Heirs of Defendant Fe Gamboa David in Default[13] praying that Appellant Heirs be declared in default for their "inability and failure to file their Answer and/or any responsive pleadings".

During the pre-trial on 17 February 2011, the NHA and Appellee Heirs failed to appear. The court a quo noted the Appellant Heirs' continued absence and failure to submit the names of the person who will substitute the deceased David. Consequently, the court a quo declared them in default. The court a quo then permitted Appellee to present her evidence ex parte before the LRA Clerk of Court for failure of the NHA to appear on said pre-trial and Appellant Heirs to submit a Pre-Trial Brief.[14] Thereafter, Appellee proceeded to present her evidence ex parte.[15]

On 24 February 2011, Appellant Heirs submitted their Motion for Substitution[16] specifying the following names of heirs who will substitute David in the proceedings: Angelito G. David, Domincano G. David, Aristotle G. David, and Lourdes David-Roño. On even date, Appellant Heirs also filed a Motion to Admit the Attached Respondent Heirs of the Late Respondent Fe Gamboa-David's Comment and/or Opposition to Petitioner's Amended Petition[17] averring that they failed to promptly file a comment and/or opposition to the Amended Petition because of their counsel's preoccupation with another client's case.

On 05 May 2011, Appellant Heirs filed an Omnibus Motion[18] assailing the validity and legality of the court a quo's Order dated 17 February 2011 declaring them in default. They alleged, among others, that the Motion to Declare Heirs of Defendant Fe Gamboa David in Default was manifestly defective for failure to specify the date for hearing the same. They also alleged that the failure to submit the name/s of the heirs or legal representative was not a valid ground to declare Appellant Heirs in default. In an Order[19] dated 21 June 2012, the court a quo, however, resolved to deny Appellant Heirs' Omnibus Motion for lack of merit.

Thereafter, the Designated Court Commissioner[20] provided a Commissioner's Report[21] informing the court a

quo that Appellee has already presented ex parte her evidence and submitted her formal offer of exhibits.

Eventually, the court a quo rendered the herein assailed Decision ordering the cancellation of TCT No. 162512 and Entry No. 9788/T-162512.[22]

Hence, this appeal.

ASSIGNMENT OF ERROR

Appellant Heirs raise this lone error:

ENTERING A DEFAULT JUDGMENT AGAINST RESPONDENT NATIONAL HOUSING AUTHORITY (“NHA”) AND APPELLANTS HEIRS NOTWITHSTANDING THAT THE FACTS AND/OR CIRCUMSTANCES AND THE APPLICABLE LAWS OBTAINING DO NOT WARRANT SUCH JUDGMENT.[23]

OUR RULING

The instant appeal fails.

Appellant Heirs argue that the court a quo erred in rendering a default judgment as it was based solely on the Appellee's evidence presented ex parte. They allege that the Manifestation and Motion to Declare Heirs of Defendant Fe Gamboa David in Default is “manifestly defective” as Appellees failed to indicate therein the date of hearing. The Manifestation and Motion is a mere scrap of paper for failure of Appellee to furnish them a copy of the same.[24]

Appellant Heirs' arguments fail to persuade.

Rule 9, Section 3 of the Rules of Court provides for the instance when a party to an action may be declared in default, to wit:

SEC. 3. Default; declaration of. — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) Effect of order of default. — A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) Relief from order of default. — A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (Emphasis supplied)

Pursuant to Rule 9, Section 3, a court may proceed to render judgment as the pleading may warrant should a defendant fail to timely file his or her answer or decline from immediately rendering judgment and instead require the plaintiff to present evidence.[25] There are three requirements which must first be complied with by the claiming party before the court may declare the defending party in default:

(1)

the claiming party must file a motion asking the court to declare the defending party in default;

(2)

the defending party must be notified of the motion to declare him in default; and

(3)

the claiming party must prove that the defending party has failed to answer within the period provided by the Rules.[26]

All these requisites were complied with by Appellee.

First, it is undisputed that Appellee filed the Manifestation and Motion to Declare Heirs of Defendant Fe Gamboa David in Default for their “failure to file their Answer and/or any responsive pleadings”.

Second, contrary to their allegations, Appellant Heirs were properly notified of the Manifestation and Motion as borne by the records. At the last page of the Manifestation and Motion, it appears that Appellee requested for a hearing on 29 December 2010 at 1:30 in the afternoon.[27] It was the court a quo, in its Order dated 14 January 2011, which however set the hearing for the same on 24 February 2011 at 1:30 in the afternoon. Records also show that said Manifestation and Motion was sent to Appellant Heirs via registered mail on 23 December 2010.[28] Moreover, it appears that Appellant Heirs, Appellee and the NHA were notified of the Order dated 14 January 2011 setting the hearing on 24 February 2011.[29]

Third, it is apparent that Appellant Heirs failed to file an answer or any responsive pleading within the reglementary period and appear on the scheduled hearing dates set by the court a quo. It should be noted that before the Appellee filed the Manifestation and Motion, a certain Atty. Petrinilo already entered his appearance as counsel for Appellant Heirs and he was informed by the court a quo of the hearing set on 17 February 2011 .[30] Equally worth noting is that on 23 November 2010, Appellant Heirs, thru Atty. Petrinilo, filed a Motion for Extension of Time To File Answer for Respondent Fe Gamboa David[31] praying for an additional period of fifteen (15) days or until 30 November 2010 within which to file their answer. Nevertheless, the records are barren of proof that Appellant Heirs filed any responsive pleading to Appellee's Amended Petition notwithstanding their prayer for an extension of fifteen (15) days. While there is nothing in the records that show that the court a quo acted upon said Motion for Extension, it should be emphasized that the counsel has no right to presume that his pleading is to be granted as a matter of right as the same is addressed to the sound discretion of the court. Thus, the movant should never take it for granted that it is going to be granted.[32] It is thus incumbent on any movant for extension to exercise due diligence to find out for himself as soon as possible the court's action on his motion, by timely inquiry from the court.[33]

It also bears stressing that in the court a quo's Order dated 01 April 2009, David, during her lifetime, was already declared to have waived her right to file an answer.[34]

Parenthetically, a defendant declared in default may avail of some proper remedies as follows: (a) a motion to set aside the order of default under Rule 9, Sec. 3 (b), of the Rules of Court; (b) a motion for new trial under Rule 37, Sec. 1 (a) if the default was discovered after judgment but while appeal is still available; (c) a petition for relief under Rule 38 if judgment has become final and executory; and (d) an appeal from the judgment under Rule 41 even if no petition to set aside the order of default has been resorted to.[35]

In the case of *Austria vs. Lichauco*,[36] the Supreme Court ruled that the fact that the defendant a quo availed of the proper remedies does not by itself result in a judgment in her favor or the reversal of the assailed order and decision of the trial court.

Here, Appellant Heirs filed a motion to set aside the order of default[37] but was it was denied by the court a quo, in its Order[38] dated 21 June 2012, for lack of merit. They then appealed to this Court under Rule 41 of the Rules of Court assailing the adverse decision of the court a quo and seeking that the instant case be remanded to the court a quo for further proceedings therein. Manifestly, they were able to utilize appropriate remedies available to them. It should be remembered that they were not able to present their evidence because of their obstinate failure to file a responsive pleading notwithstanding that they had already prayed for an additional period to do so. Having availed of the remedies available to them, Appellant Heirs cannot now allege that the court a quo's Decision is erroneous for being based solely on the evidence presented by Appellee and in effect, feign denial of their day in court as they have been given every opportunity to fully ventilate their side.

In addition to the foregoing, Appellant Heirs also contend that their failure to submit the name/s of legal representatives or substitutes of the deceased David is not a valid ground to declare them in default under Rule 3, Section 16 of the Rules of Court. They add that the declaration of default cannot operate against them as they were not named and there was no valid substitution in place of the deceased party.[39]

The contentions are without merit.

While We agree with Appellant Heirs that under Rule 3, Section 16[40] of the Rules, failure to submit the names of the legal representatives is not a ground to declare them in default, We opine that said failure was not the sole ground that the court a quo took into consideration in declaring them in default. As above-discussed, it was not only David who failed to file an answer to the Amended Petition but Appellant Heirs as well, and despite of the extension prayed for. Notably, records bear that after the 05 November 2010 hearing, during which their counsel entered his appearance for them, they failed to appear on several hearings set by the court a quo particularly during the 17 February 2011 hearing.

We should likewise be mindful that Appellant Heirs were declared in default because of their failure to file a Pre-trial Brief and appear during the pre-trial.[41]

Furthermore, We do not subscribe to Appellant Heirs' argument that there was no valid substitution of parties in place of the late David so as to make the court a quo's Order declaring them in default binding upon them. Jurisprudence teaches Us that the need for substitution of heirs is based on the right to due process accruing to every party in any proceeding and thus, formal substitution is not always necessary. The Supreme Court, in the recent case of *Spouses Berot vs. Siapno*,[42] ruled that a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs appeared and participated in the proceedings of the case, explaining as follows:

“Although the jurisprudential rule is that failure to make the substitution is a jurisdictional defect, it should be noted that the purpose of this procedural rule is to comply with due process requirements. The original party having died, he could not continue, to defend himself in court despite the fact that the action survived him. For the case to continue, the real party in interest must be substituted for the deceased. The real party in interest is the one who would be affected by the judgment. It could be the administrator or executor or the heirs. In the instant case, the heirs are the proper substitutes. Substitution gives them the opportunity to continue the defense for the deceased. Substitution is important because such opportunity to defend is a requirement to comply with due process. Such substitution consists of making the proper changes in the caption of the case which may be called the formal aspect of it. Such substitution also includes the process of letting the substitutes know that they shall be bound by any judgment in the case and that they should therefore actively participate in the defense of the deceased. This part may be called the substantive aspect. This is the heart of the procedural rule because this substantive aspect is the one that truly embodies and gives effect to the purpose of the rule. It is this court's view that compliance with the substantive aspect of the rule despite failure to comply with the formal aspect may be considered substantial compliance.” (Emphasis and Underscoring Supplied)

In *Vda. De Salazar v. Court of Appeals*,^[43] cited in the aforementioned case of *Spouses Berot vs. Siapno*, the Supreme Court held that formal substitution of heirs and appointment of a legal representative as jurisdictional requirements are not necessary when the heirs of the deceased defendant themselves voluntarily appeared and actively participated in the case.

In the case at bar, an assiduous examination of the records points that Appellant Heirs voluntarily appeared before the court a quo. Per Minutes of the court a quo's hearing on 12 August 2010, David's son and Atty. Petronilo appeared before the court a quo. Furthermore, it should be reiterated that as early as 05 November 2010, more or less four (4) months from the time the court a quo received an information that David passed away, Atty. Petronilo formally entered his appearance as counsel for the Heirs of David. On 23 November 2010, Appellant Heirs, thru said counsel, also filed a Motion for Extension of Time To File Answer for Respondent Fe Gamboa David praying for an additional period of fifteen (15) days or until 30 November 2010 within which to file their answer to the Amended Petition. To top it all, they have been actively opposing the Manifestation and Motion of Appellee. Evidently, Appellant Heirs voluntarily submitted to the jurisdiction of the court a quo.

In light of the foregoing, We find no reason to reverse and set aside the assailed Decision dated 23 August 2013, much less remand the case for further proceedings to the court a quo.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated 23 August 2013 of the Regional Trial Court of Manila, Branch 4 in P-08-062 is AFFIRMED.

SO ORDERED.

De Leon, M.M., Chairperson and Antonio-Valenzuela, N.G., JJ., concur.

[1] Decision penned by Judge Jose Lorenzo R. Dela Rosa; Records, pp.

[2] Records, pp. 29-36.

[3] *Id.*, pp. 70-73.

[4] *Id.*, p. 83.

[5] *id.*, pp. 87-88.

[6] *Id.*, pp. 93-94.

[7] *Id.*, pp.98-100 & 113-117.

[8] *Id.*, pp. 120-121.

[9] *Id.*, pp. 140-142.

[10] *Id.*, p.149.

[11] *Id.*, p. 157.

[12] *Id.*, pp. 160-161.

[13] *Id.*, pp. 164-166.

[14] *Id.*, pp.182-183.

[15] *Id.*, pp. 196-207.

[16] *Id.*, pp. 208-209.

[17] *Id.*, pp. 217-221.

[18] *Id.*, pp. 257-266.

[19] *Id.*, pp. 331-333.

[20] Atty. Joseph S. Dimaiyacan

[21] Records, pp. 300-301.

[22] *Id.*, pp. 377-380.

[23] Rollo, p. 15.

[24] Rollo, pp. 21-28.

[25] *Manuel vs. Ong*, G.R. No. 205249, October 15, 2014.

[26] *Delos Santos vs. Carpio*, G.R. No. 153696, September 11, 2006.

[27] Records, p. 169.

[28] *Id.*, p. 174.

[29] *Id.*, p. 180.

[30] *Id.*, p. 157.

[31] *Id.*, pp. 160-161.

[32] *Manila Banking Corp vs. Rabina*, G.R. No. 145941, December 16, 2008.

[33] *Fil-Garcia, Inc. vs. Hernandez*, A.C. No. 7129, July 16, 2008.

[34] *Id.*, p. 83.

[35] *Austria vs. Lichauco*, G.R. No. 170080, April 3, 2007.

[36] G.R. No. 170080, April 3, 2007.

[37] Records, pp. 257-267.

[38] *Id.*, pp. 331-333.

[39] Rollo, pp. 21-28.

[40] SEC. 16. Death of party; duty of counsel.—Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[41] Records, p. 332.

[42] G.R. No. 188944. July 9, 2014.

[43] G.R. No. 121510. November 23, 1995.

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