

PRIMA MALIPOL, IN HER OWN BEHALF AND AS GUARDIAN AD LITEM OF HER MINOR CHILDREN, LYDIA MALIJAN, JOSEFINA MALIJAN, TEODORA MALIJAN, AND SEBASTIAN MALIJAN, PLAINTIFFS-APPELLEES, V...

G.R. No. L-27730. January 21, 1974

Ponente: ZALDIVAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d4e40c2dd445/>

ZALDIVAR, J.:

Appeal on questions of law from the decision dated July 1, 1966, a judgment by default, and from the order dated October 10, 1966, of the Court of First Instance of Batangas in its Civil Case No. 1732 which denied defendants-appellants' motion to lift the order of default and for a new trial and which considered the judgment by default as standing with full force and effect.

In the evening of February 6, 1965, at about 8:35 o'clock, Pantaleon Malijan, who was walking with his companion Leonardo Amante on the shoulder of the road in Barrio San Felix, Sto. Tomas, Batangas, was hit by a gasoline tanker and was thrown to the ground. While he was sprawling on the ground Malijan was run over by the tanker's right wheel that got detached from its axle. Malijan's companion, with the aid of the barrio captain, brought Malijan to the San Pablo City Hospital where he died that same night, the cause of death being "possible traumatic cerebral hemorrhage due to vehicular accident."

The gasoline tanker with Plate No. T-52573, series of 1964, driven at the time of the accident by herein appellant Ernesto Labsan, was being used in connection with the gasoline business of the owner, the herein appellant Lily Lim Tan.

Representations and demands for payment of damages having been ignored by appellants, appellees filed on May 18, 1966 a complaint in the Court of First Instance of Batangas praying that appellants be condemned to pay, jointly and severally, the damages as specified in said complaint. The appellees are the mother and the minor brothers and sisters of the deceased Pantaleon Malijan.

Appellants were duly served with summons on May 19, 1966, but they failed to file their answer within the reglementary period. Upon appellees' motion of June 8, 1966, the trial court, in an order dated June 10, 1966, declared the appellants in default, and appellees were permitted to present their evidence in the absence of the appellants. The trial court rendered a decision, dated July 1, 1966, the dispositive portion of which reads as follows:

"WHEREFORE, finding the averments in the complaint as supported by the evidence to be reasonable and justified, judgment is hereby rendered in favor of the plaintiffs and against the defendants. The defendant driver, Ernesto Labsan, is ordered (1) to pay the sum of P2,100.00 to the plaintiffs for expenses for hospitalization, medical treatment, vigil and burial of Pantaleon Malejan; (2) to pay to the plaintiffs the sum of P6,000.00 for the death of said victim; (3) to pay to the plaintiffs the sum of P20,000.00 for the loss of earnings of said deceased for a period of five years; (4) to pay to the plaintiffs the sum of P5,000.00 for moral damages ;

(5) to pay to the plaintiffs the sum of P2,000.00 for attorney's fees and P500.00 for incidental and litigation expenses; and (6) to pay the costs of the suit. Should Ernesto Labsan not be able to pay the foregoing damages, they shall be paid for by defendant Lily Lim Tan, who by law, being the owner and operator of the gasoline tanker that featured in the accident, is subsidiarily liable."

Copy of the decision was received by the appellees on August 23, 1966.

A motion for execution was filed on August 26, 1966 by appellees but the trial court held its resolution in abeyance until September 22, 1966 when the judgment would become final.

On September 21, 1966 appellants filed a verified motion to lift the order of default and for a new trial, alleging that they were deprived of their day in court when the order of default was issued and a decision rendered thereafter; that they had good and valid defenses, namely: (a) that the accident which gave rise to the case was due to force majeure; (b) that appellant Ernesto Labsan was without fault in the accident that gave rise to the case; and (c) that appellant Lily Lim Tan had exercised the due diligence required of a good father of a family to prevent damage. Finding said motion to be without merit, the trial court denied the same on October 10, 1966. Hence, this appeal wherein appellants made assignment of errors, as follows:

(a)

The trial court erred in finding that appellants took the complaint for granted by reason of the fact that appellants referred to their lawyer the complaint for answer only after the lapse of eleven (11) days from receipt thereof;

(b)

The trial court erred in not holding that the mistake committed by the late Atty. Daniel Chavez in giving the wrong date of receipt by appellants of the summons and the complaint to Atty. Romulo R. de Castro on June 10, 1966 due to the abnormal mental condition of the late Atty. Daniel Chavez on June 10, 1966 which thereafter resulted in the commission of suicide by the latter on June 17, 1966, constitutes the mistake and accident in law which warrant the relief from default and the granting of the new trial;

(c)

The trial court erred in not holding that the fact that appellants, through Atty. Romulo R. de Castro, filed on June 10, 1966 a motion for extension of time to file answer, and thereafter actually did file their answer to the complaint on June 20, 1966 wherein they alleged good, valid and meritorious defenses against the claim of plaintiffs in the complaint, should warrant favorable consideration of appellants' motion to lift order of default and for new trial; and

(d)

The trial court erred in not granting appellants' motion to lift order of default and for new trial.

1. In support of their first assignment of error, counsel for appellants contends that the finding of the trial court, that the appellants took the complaint for granted when they referred the complaint to their lawyer only on the eleventh day after receipt thereof, was unwarranted, because appellants had 15 days from receipt of the summons and complaint to answer and their lawyer, the late Atty. Daniel Chavez, after the complaint was referred to him on the eleventh day, had still four days to file the answer, which he could very well do inasmuch as he was well acquainted with the facts because he was the lawyer of appellant Ernesto Labsan in Criminal Case No. 2200 of the Court of First Instance of Batangas for homicide thru reckless imprudence — which case arose from the very accident subject of appellees' complaint; that appellant Lily Lim Tan, furthermore, had instructed her employee, Eleuterio Dizon, to handcarry the summons and to deliver it to nobody except to Atty. Chavez; that Atty. Chavez,

in a long distance telephone conversation with appellant Lily Lim Tan, assured the latter that he would attend to the complaint.

We do not find merit in the contention of counsel for appellants. It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In the motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise these guidelines for an orderly and expeditious procedure would be rendered meaningless.[1] Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor.[2]

In the instant case, We agree with the trial court that appellants have not shown that they exercised such diligence as an ordinary prudent person would exercise, to have the answer filed within the reglementary period. Appellant Lily Lim Tan admitted in her affidavit[3] that she received the summons and copy of the complaint on May 19, 1966, and that having read the complaint she found out that she was being sued, together with her driver, for damages in connection with the accident of February 6, 1965 at Sto. Tomas, Batangas. The damages asked in the complaint amounts to P36,600.00. The summons required them to answer the complaint within 15 days from receipt thereof, and warned them that should they fail to answer within said period the plaintiffs would take judgment against them for the relief demanded in the complaint. The damages demanded was not a negligible sum, and appellant Lily Lim Tan, who is a business woman, should have considered the matter a serious one. Ordinary prudence would dictate that she should concern herself about the matter, that she should refer said complaint with the least possible delay to her lawyer. But, for reasons she did not explain, she referred the complaint to her lawyer only after the lapse of ten (10) days from receipt thereof, i.e., on May 30, 1966. She should have considered that four days might not be sufficient time for her lawyer to prepare and file the answer.

Appellants, however, contend that their lawyer, Atty. Chavez, could very well prepare the answer within the remaining four days of the reglementary period, for he was conversant with the facts of the case. Be that as it may, the fact was that Atty. Chavez failed to file the answer. Because Atty. Chavez assured her, in their long distance telephone conversation that he would take care of the complaint, appellant Lily Lim Tan took for granted that the answer would be filed on time. Said appellant should have checked before the expiration of the period for filing the answer whether the complaint was really taken care of, or not. But this, appellant Lily Lim Tan failed to do, and this is another instance showing her lack of concern over the complaint. There was, therefore, no showing of due diligence on the part of appellants which would excuse their failure to file their answer on time. There is no showing either that the other appellant, Ernesto Labsan, had taken any step to have an answer filed in his behalf — evidently he was relying on his employer.

2. In support of the second assignment of error, appellants contend that the facts show that on June 10, 1966, Atty. Chavez, who was then acting strangely, endorsed the summons and complaint to Atty. Romulo R. de Castro; that upon inquiry by Atty. de Castro from Atty. Chavez the latter informed him that the summons was served on appellants on May 30, 1966; that appellant Lily Lim Tan, who was assured by Atty. Chavez in their long distance telephone conversation that the complaint would be attended to, could not, by the exercise of ordinary diligence, have foreseen, and avoided, the circumstance that at the time she referred the summons to Atty. Chavez, the latter was already in an abnormal condition which later resulted in his committing suicide on June 17, 1966; that it was Atty. Chavez's abnormal condition and his having given to Atty. de Castro the wrong date of the receipt of the summons by the appellees that caused the delay in the filing of the answer; that said circumstances constituted

mistake and accident which entitled appellants to relief from default and a grant of new trial.

Appellants' contention that the delay in filing the answer was due to mistake and accident is untenable.

The mistake, according to appellants, consisted in Atty. Chavez' having told Atty. de Castro on June 10, 1966 that appellants received the summons and complaint on May 30, 1966. Even if Atty. Chavez had told Atty. de Castro the correct date, that is, that appellants received the summons on May 19, 1966, the answer could not have been filed on time by Atty. de Castro, because the reglementary period for filing the answer expired on June 3, 1966, and it was already June 10, 1966, when the complaint was endorsed by Atty. Chavez to Atty. de Castro.

The accident, according to appellants' counsel, consisted in Atty. Chavez's being in an abnormal condition at the time the complaint was given to him on May 30, 1966. This claim of appellants is not supported by the record.

The record does not show that Atty. Chavez was suffering from an abnormal mind on May 30, 1966. His actuations on May 30 were those that could be expected of a normal person. Atty. Chavez asked the employee of appellant Lily Lim Tan about the date when his employer received the summons and complaint, and because the employee could not give him the desired information Atty. Chavez placed a long distance telephone call to appellant Lily Lim Tan to ask about said date. This action of Atty. Chavez showed that he was very much aware that the reglementary period within which the answer should be filed was to be computed from the date of the receipt of the summons and the complaint. It also showed that Atty. Chavez knew the easiest and the most practical means to get the information that he needed - that was by a long distance telephone call to his client, Lily Lim Tan. These actuations of Atty. Chavez showed that he knew the importance of the matter at hand, and he was exercising the ordinary and reasonable care over the interests of his client. These specific actions of Atty. Chavez indicated that as of May 30, 1966 he had a sound mind.

It is claimed by appellants that on June 10, 1966 Atty. Chavez endorsed the complaint to Atty. de Castro, and told the latter that the summons and complaint were received by the appellants on May 30, 1966. It is further claimed by appellants that this information given by Atty. Chavez - that the summons and complaint were received by the appellants on May 30, 1966 - was the mistake that caused the delay of the filing of the answer. But it should be noted that on June 10, 1966 when Atty. Chavez endorsed the complaint to Atty. de Castro and informed the latter that the summons and complaint were received by the appellants on May 30, 1966, the period within which the answer should be filed had already expired - the expiry date being June 3, 1966. There is no showing that between May 30, when Atty. Chavez received the summons and complaint from the employee of Lily Lim Tan, and June 3, 1973 Atty. Chavez was incapacitated to file the answer. And so it is clear that before the case was endorsed to Atty. de Castro, the appellants were already in default. The failure to file the answer on time may well be attributed to the mistake or negligence of Atty. Chavez. The appellees are bound by the mistakes, and may suffer by the negligence, of their lawyer. In fact, on June 8, 1966, or two days before Atty. Chavez endorsed the case to Atty. de Castro, the appellees had filed a motion in court to declare the defendants (now the appellants) in default. The moves taken by Atty. de Castro - in filing a motion for extension of time to file an answer on June 10, 1966, and finally filing an answer on June 20, 1966 - were already late.

The fact that Atty. Chavez committed suicide on June 17, 1966 does not necessarily prove that he was abnormal, incompetent or insane on May 30, 1966. Although there is a judicial declaration that a sane man would not commit suicide, cognizance is nevertheless taken of the fact that circumstances at some given time may impel a person to commit suicide.[4] The probative value of suicide in determining the sanity of a person is dependent on the factual situation in each case. Such matters as the reasons for the act of self-destruction, the circumstances indicating the person's state of mind at the time, and other pertinent facts must be considered. The appellants had not indicated to the trial court any circumstance from which the trial court could form an opinion of the mental

condition of Atty. Chavez before he committed suicide. The trial court, therefore, did not err when it did not favorably consider the claim of the appellant that their failure to file their answer to the complaint was due to accident or mistake, as contemplated in Section 3 of Rule 18 of the Rules of Court.

3. In support of the third assignment of error, appellants argue that acting on the wrong information given by Atty. Chavez, Atty. Romulo de Castro filed on June 10, 1966 a motion for an extension of 20 days within which to file an answer and that he did file the answer with good, valid and meritorious defenses on June 20, 1966; that on June 27, 1966 when appellees were allowed to present their evidence ex-parte, the motion for extension of time and the answer already formed part of the records of the case; that inasmuch as the late filing of the answer was due to accident and mistake, and appellants had good, valid, and meritorious defenses, the motion to lift the order of default and for new trial should have been favorably considered by the court.[5]

Let it be noted that the lower court rendered its decision on July 1, 1966, and the appellees received notice of said decision on August 23, 1966. The decision would have become final on September 22, 1966. On September 21, 1966 the appellants filed their motion to lift the order of default and for new trial. The motion of the appellants therefore, was in the nature of a motion for a new trial based on fraud, accident, mistake or excusable negligence under paragraph (a) of Section 1 of Rule 37 of the Rules of Court. Under Section 2 of said Rule 37 the moving party must show that he has a meritorious defense. The facts constituting the movant's good and substantial defense, which he may prove if the petition were granted, must be shown in the affidavit which should accompany the motion for a new trial[6]. In the instant case, the motion to lift the order of default and for new trial as well as the affidavit of merits accompanying the motion did not contain clear statements of the facts constituting a good and valid defense which the appellants might prove if they were given a chance to introduce evidence. The allegations in the motion that defendants have good and valid defenses, namely: that the accident which gave rise to the case was force majeure; that defendant Ernesto Labsan is absolutely without fault in the accident that gave rise to the case; and that defendant Lily Lim Tan has exercised due diligence required of a good father of a family to prevent damage[7], are mere conclusions which did not provide the court with any basis for determining the nature and merit of the probable defense. An affidavit of merit should state facts, and not mere opinion or conclusions of law.[8]

Hence the trial court correctly denied the motion to set aside order of default and for new trial.

We must, however, point out a flaw in the decision of the lower court. It is stated in the decision appealed from that the driver, Ernesto Labsan, was primarily liable for the payment of damages adjudged therein, and the appellant Lily Lim Tan, being the owner and operator of the gasoline tanker that figured in the accident, is subsidiarily liable, that is, liable only in case Ernesto Labsan was not able to pay. This is not correct. The action in the instant case was brought not to demand civil liability arising from a crime. The complaint makes no mention of a crime having been committed, much less of the driver Ernesto Labsan having been convicted of a crime. But there is an allegation in the complaint that Ernesto Labsan was the authorized driver of the truck that figured in the accident, which truck was operated by appellant Lily Lim Tan in connection with her gasoline business. The prayer in the complaint, furthermore, sought to hold appellants jointly and solidarily liable for damages. The instant action, therefore, was based, as the complaint shows, on quasi delict. Under Article 2180 of the Civil Code, which treats of quasi delicts, the liability of the owners and managers of an establishment or enterprise for damages caused by their employees is primary and direct, not subsidiary.[9] The employer, however, can demand from his employee reimbursement of the amount which he paid under his liability.[10] The employer, appellant Lily Lim Tan, must be held primarily and directly, not subsidiarily, liable for damages awarded in the decision of the lower court. This is, of course, without prejudice to the right of appellant Lily Lim Tan to demand from her co-appellant Ernesto Labsan reimbursement of the damages that she would have to pay to appellees.

WHEREFORE, the decision of the Court of First Instance of Batangas, dated July 1, 1966, as modified in accordance with the observations We made in the preceding paragraph, and the order, dated October 10, 1966, denying appellants' motion for the lifting of the order of default and for new trial, in Civil Case No. 1732, are affirmed. Costs against defendants-appellants.

IT IS SO ORDERED.

Fernando, Barredo, Antonio, and Aquino, JJ., concur.

Fernandez, J., concurs in a separate opinion.

[1] Quirante, et al. vs. Verano, et al., L-30207, February 27, 1971, 37 SCRA 801, 804.

[2] Asian Surety & Insurance Company, Inc. vs. Ong Ting, et al., L--22079, May 27, 1966, 17 SCRA 292, 296.

[3] Record on Appeal, pages 32-34.

[4] 41 Am. Jur. 2d. p. 680.

[5] The alleged motion for extension of time to file answer and the alleged answer that was filed on June 20, 1966 do not appear in the printed Record on Appeal which forms part of the record of this case before this Court.

[6] Rosario vs. Alonzo, L-17330, June 29, 1963, 8 SCRA, 397, 398, 399.

[7] Record on Appeal, page 25.

[8] Price Stabilization Corporation vs. fudge of the Court of First Instance of Manila, et al., 97 Phil. 153, 156.

[9] Barredo vs. Garcia, 73 Phil. 607, 620-621.

[10] Article 2181, Civil Code.

CONCURRING AND DISSENTING OPINION

FERNANDEZ, J.:

I agree with the dispositive part of the decision and the correctness of its premise that the liability of appellant Lily Lim Tan is primary and direct, and that her motion to set aside the order of default and the decision rendered thereafter as a result of an ex parte hearing is in the nature of a motion for new trial which must be denied for insufficiency of the affidavit of merit accompanying said motion.

Lawyers preparing an affidavit of merit should be reminded that it must contain facts which if believed by the court would support a valid defense, because a motion for new trial should not be granted if it would be a mere exercise in futility in so far as the attainment of justice is concerned.

However, I am not ready to join the majority in its pronouncements in connection with the negligence involved in this case. The provisions of the Rules of Court should be interpreted liberally to afford every litigant his day in court. Under this principle, I consider the negligence of appellant Lily Lim Tan and her first lawyer Atty. Daniel Chavez to be excusable. Said appellant had a right to rely upon Atty. Chavez when she indorsed her case to him that he would be able to prepare and file the answer for her during the remaining four days of the fifteen-day period which commenced on May 19, 1966, or otherwise file a motion to extend the time to file the same. After all, it is a simple case for damages due to reckless imprudence of appellant's driver, resulting in the death of the

victim.

Considering that Atty. Chavez committed suicide on June 17, 1966, his troubled mind which probably led to his tragic end should be a sufficient explanation of his negligence in misinforming Atty. Romulo R. de Castro, the lawyer to whom he indorsed the case of Lily Lim Tan on June 10, 1966 that Lily Lim Tan received the summons on May 30, 1966, and not on May 19, 1966.

I am not ready to attribute to Atty. Romulo R. de Castro any negligence. He had a right to rely on the information given him by Atty. Chavez that summons was received for the filing of the answer only on May 30, 1966. Atty. de Castro, to gain enough time, filed on the same day the case was indorsed to him by Atty. Chavez a motion for extension of time within which to file the answer which was actually filed on June 20, 1966.

All these, notwithstanding, this is a time as good as any to impress upon litigants and lawyers alike the necessity of stamping or writing on any pleading, process, order or decision in any court case the time and date of its receipt and the affixing thereon of the initials of the person receiving the same. For, human memory once in a while for some and very often for others, fails in the correct remembrance of dates and events. If this had been done by Lily Lim Tan and Atty. Chavez in this case with respect to the summons, the late filing of the answer which resulted in default and a decision rendered after an ex-parte hearing, could have been avoided.

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.