

**ANGELES CASON, SUBSTITUTED BY ANTONIO C. GARRETERO,
PLAINTIFF AND APPELLEE, VS. VICENTE SAN PEDRO, AND CARMEN
FAVILA, DEFENDANTS AND APPELLANTS.**

G.R. No. L-18928. December 28, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

"The defendants in this case not satisfied with the order dated September 2, 1960, in which they were declared in default for not answering a written interrogatory and the order dated November 11, 1960 denying the motion for reconsideration and the decision dated June 28, 1961, for being contrary to law, hereby serve notice that they are appealing, as they hereby appeal said orders and said judgment by default directly to the Hon. Supreme Court for the review of the question of law involved."

On June 16, 1959, plaintiff filed with the abovementioned court a complaint against defendants, seeking the permanent closing of certain windows and balconies of the VICAR Building, Dagupan City, owned by defendants, as they offer direct and oblique views upon plaintiff's tenement; removal of the electrical, wirings attached and installed on the southwestern wall of VICAR Building and VICAR Building Annex; and payment to plaintiff attorney's fees and expenses of litigation in the sum of P2,000.00. The VICAR Building and VICAR Building X Annex are owned by and constructed in the lot of defendants, located at the poblacion of Dagupan City, on Tprres Bugallon Avenue, which lot adjoins the plaintiff's.

To this complaint, defendants filed an answer with counterclaim (on July 1, 1959) specifically denying the allegations thereof and alleging as specific defenses that the construction of VICAR Building and VICAR Building Annex were made in accordance with plans and specifications designed by duly licensed engineers and architects It and duly approved by the City Engineer of Dagupan City who issued the necessary building permits for the construction of said buildings; that during the construction of t said buildings which lasted for almost three years, plaintiff did not interpose any objection and acquiesced to the same; that what plaintiff considered as windows, apertures, and balconies are not those openings prohibited by law; that plaintiff's building which is only two stories adjoins VICAR Building and the VICAR, Building Annex does not extend to the rear of plaintiff's lot, so that by the side of the Annex, there is an open space in which no privacy of dwelling could be violated; and that under the circumstances of the case, plaintiff is guilty of laches. As counterclaim, defendants alleged that there is no damage suffered by plaintiff and her complaint is motivated solely by ulterior motives rather than an actual violation of a legal right; plaintiff's complaint is intended to harass and besmirch defendants' reputation in the community and in their business and, by reason thereof, they suffered moral "damages in the sum of P10,000.00 and attorney's fees in the sum of P5,000.00.

On October 19, 1959 and March 17, 1960, plaintiff served written interrogatories to defendants, which the latter received on March 19. Defendants failed to answer said written interrogatories.

On May 11, 1960, therefore, plaintiff filed a motion to declare defendants in default, for their failure to answer the

written interrogatories within the reglementary period of 15 days from receipt thereof, which motion reads thus:

"MOTION FOR JUDGMENT BY DEFAULT"

"Comes Now the plaintiff, thru counsel, unto this Honorable Court and respectfully states:

1. That on July 6, 1959, plaintiff received the answer dated June 29, 1959 filed by the defendants, thru their counsel.
2. That on October 19, 1959, plaintiff, thru counsel, served upon the defendants Vicente San Pedro and Carmen Favila, written interrogatories to be answered separately by each of them in accordance with Rule 20.
3. That the said defendants failed to serve their answers to the said interrogatories within the reglementary period of 15 days from and after their receipt thereof.
4. That when plaintiff-movant was about to file the corresponding motion for judgment by default on account of their failure to serve their answers thereto, it was noted that defendant's counsel could not be served with notice at their address of record, in consequence of which, this representation filed the motion of February 16, 1960 seeking an order of this Honorable Court to require the defendants' counsel to make more specific their office address or to authorize plaintiff to serve notice directly to defendants.
5. That in compliance with the order of the Court dated March 7, 1960, the defendants' counsel furnished the Court and the plaintiff with their new office address.
6. That on March 17, 1960, in order to avoid any possible technical objections, plaintiff thru counsel again served written interrogatories upon the defendants to be answered by them separately, and also furnished copies thereof defendants' counsel and to this Honorable Court.
7. That defendants Vicente San Pedro and Carmen Favila received the said written interrogatories on March 19, 1960 as evidenced by the registry return cards.
8. That defendants again failed to serve their answers to the said written interrogatories in spite of the lapse of more than 40 days from and after the date of service upon them thereof.

"Wherefore, it is respectfully prayed that an order issue (1) declaring the defendants to have wilfully failed to answer written interrogatories; (2) striking out all the answer of said defendants; and (3) entering a judgment by default against the said defendants in accordance with Section 5, Rule 24 of the Rules of Court."

On July 29, 1960, defendants filed an opposition to the motion (or judgment by default, on the ground that they did not receive the interrogatories "due to the fact that they were abroad for business purposes and they only arrived on June 27, 1960. Defendants claimed also that the granting of the motion will transfer the burden or onus probandi from plaintiff to defendants, which is contrary to the Rules of Evidence; that said interrogatories contain immaterial, irrelevant and improper questions; that plaintiff could establish the facts intended to secure from defendants' answer by his own evidence; that the interrogatory puts defendants in a very disadvantageous position of proving plaintiff's case by their testimony, when it should be plaintiff who should prove his own case; and that it is discretionary on the court to determine whether plaintiff is entitled to have his interrogatory answered and to receive evidence about the wilfulness of denying or refusing to answer, before a judgment by default is entered and there is no showing that there was wilfull failure or refusal by them to answer such interrogatories.

On August 12, 1960, plaintiff filed a reply to defendants' opposition, alleging that plaintiff's motion is governed by Section 5, Rule 24, Rules of Court, which authorizes entering of a default judgment against a party who fails to answer written interrogatories submitted under Rule 20; that due to defendants' default, they have lost their standing in court and their opposition is too late, having been filed more than two months after the motion for

default was submitted for resolution; that defendants' claim that the granting, of the motion for default will transfer the onus probandi, to defendants is without merit as plaintiff is still obliged to present evidence in support of the complaint; that defendants' objections that the interrogatories contain immaterial, irrelevant, and improper questions may not be entertained by the court because defendants' invariable answer to the allegations of the complaint is "lack of knowledge or information", despite the fact that VICAR Building and the Annex are in existence, thus affording them opportunity to perceive if the allegations of the complaint are true or not; that defendants' objection that the facts intended to be elicited from their answer to the interrogatories may be established by proof, does not constitute valid objection because one of the principal purposes of interrogatories is to obviate necessity of proof of matters certain.

On September 3, 1960, defendants filed a rejoinder alleging that Rule 20 does not establish any sanction or specify the effect of failure or refusal to answer a written interrogatory.

On September 2, 1960, the court issued an order (of default) of this tenor:

"ORDER

"Acting upon the Motion for Judgment by Default filed by the plaintiff, thru counsel, dated May 5, 1960, to which a written opposition, dated July 29, 1960, was filed by the defendants and then counsel were duly served with plaintiff's written interrogatories, but that they have failed to submit to this Court their written answers thereto "within the period fixed in Section 2 of Rule 20 of the Rules of Court, and finding plaintiff's motion for judgment by default, as well as his reply to the opposition of the defendants to be well taken, as prayed for.

"The Court, under the authority of Section 5 of Rule 24 of the Rules of Court, grants the said motion.

"Let this case be set for September 20, 1960, at 8:30 A.M. for the reception of plaintiff's evidence.

"SO ORDERED."

On September 8, 1960, defendants filed a motion for reconsideration of said order of default and prayed that they be permitted to present evidence surrounding the reception of the written interrogatories and the non-answer thereof, on the ground that the court has discretionary power to require further evidence before judgment by default could be entered.

On September 14, 1960, defendants (in retaliation) also filed a motion to declare plaintiff in default for failure to answer their counterclaim (embodied in their answer of July 1, 1959).

On November 11, 1960, the court issued an order denying defendants' aforementioned motion for reconsideration dated September 8, 1960; motion of September 14, 1960 and memorandum of October 12, 1960, for lack of merit.

From this order, which is equivalent to a denial of relief from an order of default under Rule 38, no appeal has been taken.

More than seven months later, and after the reception of plaintiff's evidence ex parte, the court, on June 28, 1961, rendered the decision above adverted to.

From this decision, defendants appealed directly to us, with the following assignment of errors:

1. The lower court erred in declaring that the defendants-appellants were in default when there was no valid service of the written interrogatories served to them.
2. The lower court erred in holding that it is an abuse of discretion not to grant the motion for judgment by default filed by plaintiff.
3. The lower court erred in denying defendants-appellants a day in court and, therefore, the decision rendered

by said court is null and void.

4. The lower court erred in not resolving defendants-appellants' motion to declare plaintiff-appellee in default and not giving appellants an equal opportunity to prove their counterclaim.

In support of their first assignment of error, defendants-appellants claim that there was no valid service of the written interrogatories, because they were served on appellants personally and not on their counsel. The claim is devoid of merit. The truth of the matter is that appellants and their counsel were each duly served with the written interrogatories and a copy thereof was even filed with the trial court. Note that in the order of September 2, 1960, the trial court categorically found "that the defendants (appellants) and their counsel were duly served with the plaintiff's (appellee's) written interrogatories" (Paragraph 1, Order of September 2, 1960, pp. 40-41, Record on Appeal). In view of this factual finding¹ of the trial court, and having chosen to raise this appeal to this Court for the express purpose of "reviewing the question of law involved" (Notice of Appeal, *supra*), appellants have thereby accepted without reservation the findings of fact of the trial court; and they cannot raise said issue for the first time on appeal.

As to the second and third assignments of error, we also find the same untenable. Section 5 Rule 24, of the Rules of Court, expressly authorizes the court to render a default judgment against a party who "fails to serve answers to written interrogatories submitted under Rule 20 after proper service of such interrogatories", upon motion of the serving party. In this, respect, we fully agree with the following observations of the trial court, in justifying its order of default against appellants;

"The Court sees no cogent reasons to disturb its aforesaid order of September 2, 1960. Said order was issued pursuant to Section 5 of Rule 24 of .the Rules of Court, which authorizes the Court to enter a judgment by default against a party who fails to serve answers to interrogatories submitted under Rule 20, after the requisites therein mentioned have been complied with, which the plaintiff did. In this connection, it is well to quote American authorities on this point, thus:

"The proper remedy for failure to answer interrogatories is a motion for judgment by default, and not a motion to require answers to the interrogatories." (United. States vs. W. E. O'Neil Construction Co., 4 Fed. Rules Service, p. 527; U.S. Dist. Ct. D, Mass, Jan. 6, 1941).

'Under some statutes a party may take a judgment by default on the opposing party's failure to answer interrogatories.' (34 C.J. 161, citing several American cases).

While there is authority to the effect that:

'After an answer to the merits, plaintiff cannot take judgment by default because defendant neglects to answer interrogatories which are taken for confessed, but can avail himself only of the confession as proved on the trial' (Behan vs. Hite, 14 Ia. 67), however this Court cannot properly apply the ruling laid down in said case, in the face of an express provision in our procedural law which authorizes the taking of judgment by default against the party failing to answer, within the prescribed period written interrogatories served on him. To do so, will do violence to this specific provision of law and render it dead and meaningless.

"The defendants also invoke the exercise by this Court of its sound discretion by giving them further opportunity to answer the written interrogatories served on them, as held in the case of Dann vs. Campagnie General Trang-Atalantique Ltd., 2 Fed. Rules Service 399, Rule 37d, 33 Case No. 1. This Court cannot see its way clear to exercising this sound discretion in favor of the herein defendants. On the contrary, it will be abusing its discretion, if the defendants are given further opportunity to answer the written interrogatories, on the ground that the situation obtaining in this case does not justify the granting of the relief prayed for by said defendants. Note that the defendants have negligently failed to give their answer to the interrogatories duly served on them despite the

lapse of more than sufficient time for them to do so. If they want to invoke the exercise by this Court of its sound discretion in their favor, why did they not even bother to file their written answers to the interrogatories soon after they were served with plaintiff's motion for judgment by default dated May 6, 1960? The Court could probably have given them the opportunity they now seek. Neither had the defendants cared to ask for extension of time within which to answer the said interrogatories under Section 2, Rule 20, of the Rules of Court. Nor had they filed any objection to said interrogatories, on the ground that they violate their privilege against self-incrimination. The Court believes that the answers to the interrogatories will not place the defendants in estoppel to claim such privilege. Stated otherwise, the defendants have remained in long hibernation, and awoke only at this late hour when compelled to do so, because they now see that their rights are being injured or prejudiced. The Court cannot countenance this situation. The law protects the vigilant and not those who sleep on their rights.

"The fact that the issues in this case have already been joined is no reason for the non-application of Section 5, Rule 24, of 'the Rules of Court, for the reason that the rule on written. interrogatories, as on deposition, inspection of documents, things, lands, or of any property, physical and mental examination of persons, and admission by an adverse party, may be availed of by any, party even after the issues are joined, because the purpose of these modes of discovery is, as stated by Moran, 'to provide both parties with complete variety of means by which they may compel each other to lay all their cards on the table without concealing any relevant fact prior to the trial.'

"Further, the rules on interrogatories are intended to expedite trial, and to relieve parties of the cost of proving facts which will not be disputed and the truth of which can be ascertained with reasonable certainty (Federal Rules, Civil Procedure, Rule 33, 28 USCA, Jackson vs. Dotsebue Oil Sales, 17 FRD 204). This is the underlying spirit that prompted the Supreme Court in promulgating the rules on interrogatories. The defendants have disregarded this spirit behind the promulgation of said rules by their long, continued failure, or refusal to answer the interrogatories served on them. It is, therefore, a manifest intent to delay the; early termination of the case.

"This failure or refusal of the defendants to give their answers to the interrogatories could also be taken to mean that they do not dispute the facts alleged in paragraphs VII to XII of plaintiff's' complaint, or that said facts could be determined with reasonable certainty. This conclusion finds support in defendants' invariable answers to the allegations to said paragraphs VII and XII of the complaint which bear the uniform pattern of have not knowledge or information sufficient to form a belief as to the truth of x x x."

Lastly, appellants' last assignment of error cannot be sustained. Note that at the time appellants filed their motion to declare appellee in default (on September 14, 1960), they were already declared in default by the trial court's order dated September 2, 1960. Having been declared in default, they have lost their standing in court (Lim Toco vs. Go Fay, 45 O.G. 3350) and the trial court was justified in refusing or failing to act on their aforementioned motion to declare appellee in default.

Wherefore, finding that the trial court committed no error in rendering the judgment appealed for, based on facts found by the trial court, which factual findings are not in issue here, the same is hereby affirmed, with costs against the defendants-appellants. It is so ordered.

Bengzon, C. J., Padilla, Concepcion, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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