

**RAUL H. TANPINCO, PLAINTIFF AND APPELLEE, VS. ANTONIO T. LOZADA AND CENTURY INSURANCE CO., INC., DEFENDANTS.
ANTONIO LOZADA, DEFENDANT AND APPELLANT.**

G.R. No. L-17335. January 31, 1962

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fe786d1b52d3/>

LABRADOR, J.:

The above-entitled case was instituted in the Court of First Instance of Negros Occidental to recover from defendants the sum of P5,000 for the failure of defendant Antonio Lozada to carry out the obligation contracted by him with the plaintiff of clearing and ridding of all occupants, whether tenants or squatters, within the period of 6 months from April 18, 1956, a parcel of land known as Lot No. 213 of the cadastral survey of Bacolod, Negros Occidental. The basis of the suit is an agreement entered into between plaintiff and defendant Antonio Lozada whereby for the consideration of P5,000 Lozada undertook the clearing of the above parcel of land of squatters and occupants within the period of 6 months. The defendant Century Insurance Company, Incorporated, executed a bond in favor of plaintiff to guarantee the performance by Lozada of the faithful compliance with the terms of the agreement. It so happened, however, according to the answer of the defendants, that although defendant Lozada was able to secure a judgment of ejectment in the municipal court of Bacolod City against the occupants or squatters and a writ for its execution, and a further order for the demolition of the houses of the defendants occupants, the demolition was not carried out because of the illness of defendant Lozada; and notwithstanding letters from him to plaintiff asking the latter to extend the period for complying with the obligation of his agreement, he received no reply to his letter up to the filing of the plaintiff's complaint. Lozada further claims that the agreement was against public morals, law and equity. For its part the insurance company admitted the allegations of the complaint but prayed in a crossclaim that judgment be rendered against Lozada for the sum of P5,000 which the Century Insurance had paid under the performance bond.

It does not appear from the record on appeal what proceedings took place subsequent to the filing of the answers of the defendants, although it is presumed that judgment must have been entered against them. For on June 27, 1958, defendant Lozada filed an urgent motion ex-parte alleging that on June 13, 1958 he addressed a letter to the clerk of court "asking for the status of the said case and for a copy of the decision if any" but that he has not received any reply thereto; that he has not authorized anybody in Bacolod City to receive any pleading, etc. in connection with the above case, and he therefore prayed that copy of the decision be sent him if any has been rendered (Record on Appeal, p. 24). On July 12, 1958, the court denied Lozada's motion on the ground that according to the records of the case, Atty. A. L. Balines had not only appeared in his behalf during the hearing of the case, but that he (Atty. Balines) had also filed an urgent motion, dated February 19, 1958, asking "that defendant Lozada, by his undersigned counsel, be granted an extension of one week to file his memorandum," which motion the court granted in its order of February 28, 1958, and that the "record likewise discloses that the same Attorney Balines received a copy of the decision on March 4, 1958."

On July 30, 1958, Lozada filed a "Petition for Relief Under Section 2 of Rule 38 of the Rules of Court," in which

after quoting a letter addressed by him to the clerk of court advising said clerk that Atty. Balines has not informed him about the decision rendered in the case in spite of letters and because of the fact that the decision is already final "in accordance with the finding of this court to the great astonishment and surprise of the defendant," he was praying the court that because of the existence of a clear "excusable negligence" on his part, the court order the clerk to furnish him with a copy of the decision and to set aside the said decision and declare the alias writ of execution null and void, to send all notices and orders of the case to his Manila address and grant any other remedy which may be deemed just and equitable. This motion is sworn to, was set for hearing on Saturday, October 23, 1958 and has attached thereto an affidavit enumerating the facts already mentioned above: (1) his letter of June 13, 1958 to the clerk of the Court of First Instance informing him that he has not received a copy of the decision; (2) that on June 27, 1958; he filed an ex-parte motion alleging that he had not received any decision and prayed the court to send him copy of the decision, if any; (3) that on July 7, 1956, he wrote the clerk of court that in spite of the fact that he had been previously furnished copy of the orders and decision, he was not so advised by his attorney; (4) that he learned about the decision for the first time when he received the court order denying his urgent ex-parte motion of June 27, 1958; and (5) that there is a clear case of excusable negligence considering that he has a good defense as shown in his answer with counterclaim as well as in his deposition.

Defendant opposed the petition for relief on the ground that under section 2 of Rule 27 of the Rules of Court, when a party appears by an attorney, service upon the party shall be made upon his attorney, unless service upon the party himself is ordered by the court; that Atty. Balines is a relative of defendant-movant Lozada; that Atty. Balines is presumed to be innocent of any wrong, misconduct or misbehavior. Following the presentation of the above opposition, the court denied the motion in an order dated September 2, 1953 and after the denial of a motion for reconsideration, Lozada appealed from said order of denial to this Court.

The enumeration of the above facts and circumstances clearly show that the appeal is absolutely without merit. Under section 2 of Rule 27-of the Rules of Court the attorney of a party is the one to be furnished with copy of any order or decision of the court unless the court orders otherwise. The order of the court denying the petition for relief is fully justified. Lozada alleges that there was excusable negligence on his part; we hold that this is not so. As to the alleged existence of a meritorious defense his motion for relief does not show the existence thereof because the contract itself, which is attached to the complaint, expressly provides:

"That, whereas, the PARTY OF THE SECOND PART is fully aware of the nature and character of the rights and interests which the occupants of said parcel of land hold therein, as he has made and conducted a thorough investigation thereof, just as he is fully aware of the risky nature of the work or undertaking contracted to be performed by him in accordance with this agreement, and the said sum of FIVE THOUSAND PESOS (P5,000.00) has been fixed by him, being by him deemed fully and amply sufficient to compensate him for all his services, trouble and risk and to cover all his expenses in the performance of the work or undertaking contracted by him in accordance with this agreement;

* * * * *

"1. That the work or undertaking to be performed by the party of THE SECOND PART for the PARTY OF THE FIRST PART shall consist in having the said parcel of land completely cleared and rid of all occupants, whether tenants and/or squatters, within a period of six (6) months from the date of the execution of this instrument, which work or undertaking the PARTY OF THE SECOND PART shall perform, completely at his own risk and expense, without any right to be compensated for his services or to be reimbursed for his expenses in case of failure by him to complete the performance of such work or undertaking within the time agreed upon, it being understood, for the purposes of this agreement, that any part performance of such work or undertaking shall be deemed to be a complete lack of performance thereof and shall not impose upon the PARTY OF THE FIRST PART any obligation or liability whatsoever to pay anything therefor;"

The defendant, a lawyer, made the express obligation above set forth presumably cognizant of its effects. But even if the partial compliance of his obligation might have justified reduction in the amount of his liability, his neglect prevents him from securing relief against the judgment.

Wherefore, the order denying the motion for relief should be, as it is hereby, affirmed, with costs against appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera,, Parades, Dizon, and De Leon, JJ., concur.

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.