

**CRISELDA LEONARDO AND CELING MARTINEZ, PETITIONERS, VS.
S.T. BEST, INC., RESPONDENT.***G.R. No. 142066. February 06, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-142066/>**TINGA, J.:**

On March 15, 1996, respondent S.T. Best, Inc. brought an action for damages with prayer for issuance of a writ of injunction against herein petitioners Criselda Leonardo and Celing Martinez and one Consuelo Germar. The Complaint, filed before the Regional Trial Court, Branch 57 of Makati City, sought payment of damages for the injury to respondent's property resulting from petitioner's illegal quarrying activities. Apparently, petitioners and respondent were owners of adjacent parcels of land, with respondent's lots forming part of a residential subdivision. Respondent claimed that petitioners had been conducting quarrying activities since 1994 without a permit and in violation of the property boundary limits. The excavation was done in an oblique direction thereby undermining the foundation of respondent's lots.

Respondent sought to restrain petitioners from further quarrying activities and prayed for the issuance of a temporary restraining order (TRO). The trial court issued the TRO after a hearing, which petitioners and their counsel then, Atty. Elison G. Natividad, failed to attend despite due notice.[1] The trial court then set the hearing on the issuance of a writ of preliminary injunction on April 11, 1996.

On April 1, 1996, petitioners filed a motion to dismiss the complaint on grounds of improper venue, lack of jurisdiction over the person of defendant Consuelo Germar, and failure to state a cause of action. The motion was denied.[2]

Petitioners, through Atty. Natividad, filed an Answer with Compulsory Counterclaim on May 17, 1996.[3] They contended that the quarrying activities were wholly undertaken by one Rolando Somera under a contract for a minimal fee or royalty. Rolando Somera took charge of the quarrying activities and petitioners had no control over the operations, they claimed. Petitioners also argued that they did not encroach on the property boundary line since the area where the quarrying activities were conducted was actually within the confines of their property, and that it was really respondent who first committed the encroachment.

At the hearing of the application for preliminary injunction, neither petitioners nor their counsel were present. Hence, the trial court allowed respondent to present its evidence ex parte on June 19, 1996. Respondent's witness, Engineer Helset Gutoman, testified that the illegal quarrying had nearly encroached on the property line of three parcels of land owned by respondent and the oblique direction of the excavation had weakened the foundation of respondent's property. He was of the opinion that a retaining wall had to be constructed to protect respondent's land. The estimated cost for the construction of the retaining wall added up to P1,040,070.00.[4]

Pre-trial conference was scheduled on July 16, 1996 with all parties duly notified.[5] On June 10, 1996, counsel for petitioners filed a Pre-trial Brief, furnishing respondent's counsel with a copy thereof. On the scheduled date, however, only counsel for respondent was present. The pre-trial was reset to September 10, 1996 since it appeared that the absence of petitioners and their counsel was due to an ongoing negotiation for settlement between the

parties before the Mayor of Sta. Maria, Bulacan.[6]

Petitioners and their counsel still failed to appear for the pre-trial conference on September 10, 1996. Upon motion of counsel for respondent, petitioners were declared as in default, and respondent was given fifteen (15) days to present its evidence ex parte.[7]

Petitioners moved for reconsideration[8] of the default order, averring that they were made to believe that they had already reached a settlement before the Mayor of Sta. Maria, Bulacan, i.e., one party will spend for the materials for the reconstruction of the damaged portions of the lots while the other party will furnish the labor. Thus, petitioners informed their counsel that they had settled the case and from then on discontinued communicating with him, believing in good faith that the case had already been settled.

The trial court granted the motion for reconsideration and scheduled the pre-trial on December 3, 1996.[9] Pre-trial was reset to January 21, 1997,[10] then later to March 5, 1997[11] in view of the retirement of the Presiding Judge. Pre-trial was again moved to May 27, 1997 since no Presiding Judge had yet been appointed.[12]

On May 27, 1997, only counsel for respondent was present since it appeared from the records that petitioners did not receive a copy of the Constancia dated March 4, 1997, informing them of the re-scheduled pre-trial conference. Hence, pre-trial was again moved to July 7, 1997,[13] but on said date only counsel for respondent appeared. Once again neither petitioners nor their counsel were in attendance. Upon motion of respondent, petitioners were declared as in default for the second time and respondent was directed to present evidence ex parte on July 21, 1997. Respondent adopted the evidence it offered at the June 10, 1996 hearing for the issuance of a preliminary injunction and rested its case.[14]

Thereafter, the trial court rendered its Decision,[15] dated January 28, 1998, in favor of respondent. Petitioners were ordered to observe the required distance from the property boundary line and pay respondent actual damages of P1,000,000.00, exemplary damages of P100,000.00 and attorney's fees of P50,000.00, plus costs.

Respondent moved for the execution of the decision in due course. The trial court required petitioners to comment on the motion[16] but they failed to do so. On August 15, 1998, the trial court granted the motion.[17] The Writ of Execution was issued and served upon all the petitioners.[18] A Notice of Levy was served upon the Register of Deeds of Meycauayan, Bulacan, and the Transfer Certificates of Title of the properties owned by petitioners were levied upon, the properties sold on execution and bought by respondent as the highest bidder.[19]

On October 7, 1999, petitioners filed a Petition to Annul Decision with Prayer to Lift Writ of Execution with Application for Preliminary Injunction/Temporary Restraining Order before the Court of Appeals. Petitioners alleged that they did not receive notice of the pre-trial conference and were not informed by their former counsel, Atty. Natividad, of his receipt of such notice and that their presence was required in said proceeding. They likewise claimed that they never received notice of the judgment by default. Neither did Atty. Natividad inform them of the judgment. They pointed out that they learned of the decision only sometime in October 1998 through respondent's former counsel, Atty. Noel Darren C. Damian, who in his visit to petitioner Celina Martinez' house, informed them of the default judgment and assured them that despite the decision, respondent would still settle the case amicably with them. Relying on the assurances of respondent's former counsel, petitioners waited for whatever action that respondent's former counsel would take. To their surprise, they received on September 22, 1999 a copy of the Notice of Auction Sale.

The Court of Appeals dismissed the petition[20] as it found that petitioners failed to prove extrinsic fraud. Petitioners did not specify or establish any fraudulent act committed by the respondent which prevented them from fully exhibiting their side of the case. The remedy of annulment of judgment may be availed of only when

the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.[21] Petitioners failed to avail of these remedies without sufficient justification, thus they could not now resort to an action for annulment of judgment. The Court of Appeals also observed that petitioners did not act with prudence and diligence with regard to their case since they left the lawsuit entirely in the hands of their former counsel and did not even inquire from him about its status. Thus, the appellate court ruled, petitioners were bound by the conduct, negligence and mistake of their former counsel. Petitioners moved for reconsideration but the motion was denied.[22]

Petitioners now assail the Court of Appeal's dismissal of the petition to annul judgment.

Petitioners question the appellate court's conclusion that they lacked prudence and diligence in relying on the representation of their former counsel, Atty. Elisa G. Natividad. He is the petitioners' second cousin. Petitioners believe that their familial relationship with their lawyer is more than enough reason for them to entrust their case to him. Their blood ties assured them that Atty. Natividad would take care of the case for them especially since they finished only third grade elementary schooling and have very limited knowledge of legal procedure.

While it may be that petitioners, being uneducated, believed that their former counsel was properly handling their case, they appear to have been negligent as well. Even though they received various notices and orders of the trial court, they did not exhibit even a modicum of curiosity as to the progress of the suit by inquiring from their former counsel what the notices they received signified. This lack of concern or complacency is likewise demonstrated by their inaction when they were allegedly informed by respondent's counsel of the judgment by default against them. Petitioners did not even seek to confirm this piece of news with their counsel. Petitioners' total reliance on the supposed assurance of amicable settlement by respondent's counsel despite the judgment by default against them is unusual for and atypical of defendants in civil cases. Petitioners manifestly failed to display the expected degree of concern or attention to their case. They did practically nothing to protect their interest in the litigation.

As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business." [23]

Next, petitioners contend that respondent's former counsel, Atty. Damian, committed extrinsic fraud when he informed them sometime in October 1998 of the unfavorable decision against them and assured them that despite the judgment by default, respondent will still settle the case amicably with them. Relying on Atty. Damian's assurance, petitioners failed to appeal the judgment by default until the same became final and executory. Atty. Damian's actions allegedly caused petitioners to be denied due process.

The issue in every petition for annulment of judgment is whether extrinsic fraud attended the rendition of the assailed decision. Extrinsic fraud refers to any fraudulent act of the prevailing party in litigation committed outside of the trial of the case, whereby the defeated party is prevented from fully exhibiting his side of the case by fraud or deception practiced on him by his opponent, such as by keeping him away from court, by giving a false promise of a compromise, or where the defendant never had any knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority connives at his defeat.[24] These instances show that there was never really a real contest in the trial or hearing of the case so that the former judgment should be annulled and the case set for a new and fair hearing.[25]

By no stretch of the imagination can the alleged acts of counsel for respondent constitute extrinsic fraud. Extrinsic fraud requires that the losing party be prevented by the prevailing party from fully exhibiting his defense before the court. Here, when the purported fraudulent act was committed on October 1998, the judgment by default had

long become final and executory on January 28, 1998. The records show that petitioners were served a copy of the decision through their former counsel Atty. Natividad who received it on April 27, 1998.[26] Petitioners had fifteen (15) days within which to appeal the decision or to file a motion for new trial or reconsideration but they failed to do so.

In other words, the alleged fraudulent act came after the parties were allowed to present their evidence, or were given the opportunity to do so, after the petitioners were declared as in default for failure to appear at the pre-trial conference, and after the questioned decision already became final and executory and no longer appealable. Other than this allegation, petitioners do not cite any other specific act of respondent's counsel before or during trial that would constitute extrinsic fraud. Petitioners' claim that Atty. Damian's alleged acts caused them to dispense with an appeal of the judgment by default, therefore, is patently without merit.

Finally, petitioners argue that they were denied their right to be heard when they were not given notice to attend the pre-trial conference, and that the trial court relied solely on the evidence presented by respondent without giving petitioners the opportunity to cross-examine respondent's witness.

The records belie petitioners' claim that they never received notices informing them of the pre-trial. Registry return cards bearing the signatures of petitioners' representative and lawyer Atty. Natividad prove their receipt of the notices diligently sent by the trial court. When the trial court declared petitioners as in default for the second time for their continued failure to attend pre-trial, it did so in accordance with Rule 18 of the 1997 Rules of Civil Procedure and with due regard to the constitutional guarantee of due process. Petitioners were given the opportunity to be heard and to submit evidence in their defense. The trial court gave petitioners every chance to air their side and even reconsidered its first order declaring petitioners as in default. Nonetheless, petitioners and their counsel failed to take advantage of such opportunity. As, they were declared as in default, they were not entitled to present evidence in their behalf or to cross-examine respondent's witness. Under Section 5, Rule 18 of the 1997 Rules of Civil Procedure, failure on the part of the defendants and their counsel to appear at the pre-trial shall be cause to allow the plaintiff to present his evidence ex parte, and the court to render judgment on the basis thereof. Plainly, petitioners cannot complain that they were denied due process.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Order dated March 21, 1996, RTC; Records, p. 71.

[2] Order dated April 22, 1996, RTC; Records, p. 89.

[3] Records, pp. 94-99.

[4] TSN, June 10, 1996, pp. 138-145.

[5] Order dated May 20, 1996, RTC; Records, p. 101.

[6] Records, p. 171.

[7] Order dated September 10, 1996, RTC; Records, p. 174.

[8] Records, pp. 177-179.

[9] Order dated October 17, 1996, RTC; Records, p. 183.

- [10] Constancia dated December 3, 1996, RTC; Records, p. 185.
- [11] Constancia dated January 14, 1997, RTC; Records, p. 186.
- [12] Constancia dated March 4, 1997, RTC; Records, p. 187.
- [13] Order dated May 27, 1997, RTC; Records, p. 193.
- [14] Order dated July 21, 1997, RTC; Records, p. 213.
- [15] Penned by Judge Oscar B. Pimentel; Records, pp. 228-230.
- [16] Order dated July 3, 1998, RTC; Records, p. 217.
- [17] Order dated August 14, 1998, RTC; Records, p. 221.
- [18] Records, pp. 241-242.
- [19] Sheriff's Return dated October 28, 1999, RTC; Records, p. 240.
- [20] Resolution penned by Justice Marina L. Buzon and concurred in by Justices Elvijohn S. Asuncion and Edgard P. Cruz, promulgated on October 15, 1999; Rollo, pp. 22-24.
- [21] Sec. 1, Rule 47, 1997 Rules of Civil Procedure.
- [22] Resolution promulgated on February 16, 2000; Rollo, pp. 31-32.
- [23] *Fernandez v. Tan Tiong Tick*, No. L-15877, April 28, 1961, 1 SCRA 1138, 1143.
- [24] *Heirs of Antonio Pael v. Court of Appeals*, G.R. No. 133547 and 133843, February 10, 2000, 325 SCRA 341, 359, citing *Cosmic Lumber Corporation v. Court of Appeals*, 265 SCRA 168, 179 (1996).
- [25] *Ibid.*
- [26] Records, p. 230.

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