

## VIKING INDUSTRIAL CORPORATION, PETITIONER, VS. THE COURT OF APPEALS AND JOSE L. LUISON, JR., RESPONDENTS.

*G.R. No. 143794. July 13, 2004*

Ponente: SANDOVAL-GUTIERREZ, J.

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### SANDOVAL-GUTIERREZ, J.:

Litigation is not a “trial and error” proceeding. A party who moves for a new trial on the ground of “honest mistake” must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate.

In this petition for review on certiorari, petitioner Viking Industrial Corporation assails the Court of Appeals (a) Decision[1] dated February 29, 2000 in CA-G.R. SP No. 55253 finding grave abuse of discretion on the part of Judge Vivencio S. Bacilig, Regional Trial Court (RTC), Branch 77, Quezon City, in granting petitioner’s motion for new trial; and (b) Resolution[2] dated June 28, 2000 denying its motion for reconsideration.

The facts are as follows:

In 1993, petitioner extended to respondent Jose L. Luison, Jr. a loan amounting to P2,000,000.00 secured by a promissory note and a real estate mortgage. Two years thereafter, petitioner demanded from respondent the payment of P19,102,916.39, purportedly representing the principal amount of the loan, plus interest and penalties. Respondent disputed the accuracy of the amount. Thus, petitioner threatened to foreclose the real estate mortgage, prompting respondent to file a petition for prohibition and declaratory relief [3] with the RTC, Branch 77, Quezon City, docketed as Civil Case No. Q-96-27553. Petitioner refused to answer the petition because it was erroneously impleaded as “Viking Trading Corporation,” instead of “Viking Industrial Corporation.” Consequently, the court, upon motion of respondent, declared petitioner in default and allowed respondent to present his evidence ex parte.

On July 8, 1996, the RTC, then presided by Judge Ignacio L. Salvador, rendered a judgment by default in favor of respondent, the decretal portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered as follows:

- holds that the principal amount of the loan is only P1,453,500.00;
- orders the reduction of the interest stipulated in the promissory note and deed of real estate mortgage from 60% per annum to 30% per annum only to commence on the first week of October 1993;
- orders the injunction permanent until and/or unless respondent (now petitioner) makes the necessary adjustment or correction of its computation of petitioner’s (now respondent’s) total indebtedness as determined by this Court in page six (6) of this Decision;
- orders respondent (now petitioner) to pay petitioner by way of attorney’s fees the amount of P150,000.00;

SO ORDERED.”

Petitioner received a copy of the above judgment on August 9, 1996. However it did not interpose an appeal.

Upon respondent's motion, the RTC issued an Order dated October 15, 1996, directing the issuance of a writ of execution. Thereupon, the judgment was fully executed and satisfied. The Sheriff's Return issued by Deputy Sheriff Angel L. Doroni states that:

"Pursuant to the Order of the honorable Court dated October 15, 1996 ordering the undersigned to implement the dispositive portion of the Decision dated July 8, 1996 rendered on the above-entitled case, undersigned accordingly implement the same by tendering to respondent Far East Bank Cheque provided SEVEN HUNDRED NINETY THOUSAND SIX HUNDRED FIVE PESOS AND FIFTY NINE CENTAVOS (P790,605.59) ONLY which was received by respondent thru Mr. Brilly Bernardez who claimed that said amount was only a partial payment and who instructed Mrs. Rosalie Pascual to issue a receipt thereof. However, pursuant to said dispositive portion of the Decision and on the basis of petitioner's Manifestation dated November 15, 1996 in favor of respondent, the said dispositive portion of the Decision has been fully paid and satisfied upon receipt by respondent of said Far East Bank Cheque covering the said amount.

Quezon City, Philippines, November 15, 1996."

Petitioner refused to acknowledge the full satisfaction of the judgment by default. Thus, respondent filed two motions, to wit: (1) "Ex-Parte Motion to Require Viking Industrial Corporation (petitioner) to Cause the Cancellation of the Annotation of Mortgage and to Return (to respondent) the Transfer Certificate of Title No. 100313" dated November 29, 1996; and (2) "Urgent Ex-Parte Motion to Enjoin the Ex-officio Sheriff of Quezon City or his Authorized Deputies from Selling at Public Auction the Subject Property" dated January 3, 1997.

The RTC, this time, presided by Judge Normandie B. Pizarro, denied respondent's twin motions in its Order dated February 5, 1997. Ironically, the same Order set aside the judgment by default on the ground that the RTC did not acquire jurisdiction over petitioner because of improper service of summons. Summons was served upon "Viking Trading Corporation," not upon petitioner "Viking Industrial Corporation."

Upon respondent's motion for reconsideration, the RTC overturned its order and reinstated the judgment by default.[4] The court also granted respondent's twin motions earlier mentioned. Petitioner filed a motion for reconsideration but was denied.[5]

Petitioner then filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 45643.[6] On June 11, 1998, the Court of Appeals issued its Decision dismissing the petition and held that Judge Pizarro did not commit grave abuse of discretion in reinstating the judgment by default, ratiocinating as follows:

"We rule for respondents.

"Concededly, as the trial court had aptly observed, summons and other court processes, before the amendment in the designation of the corporation's name from Viking Trading Corporation to that of Viking Industrial Corporation, were received by agents of Viking Trading Corporation which turned out to be the same employees working for Viking Industrial Corporation. We quote: 'It is glaringly clear in this case that summons was served at No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City and received by a certain ROSALIE PASCUAL, who appears to be an agent or at least connected with VIKING INDUSTRIAL CORPORATION. This conclusion is bolstered by another fact that this ROSALIE PASCUAL was the same person who was instructed by Mr. Brilly Bernardez to prepare a receipt for the amount tendered by the Deputy Sheriff of this court for the satisfaction of the dispositive portion of the Decision dated July 8, 1996. Admittedly, Mr. Brilly Bernardez is the President of VIKING INDUSTRIAL CORPORATION (See Order dated December 20, 1996). The Court likewise notes that the signature of said ROSALIE PASCUAL, as appearing in the receipt she issued to the Deputy Sheriff of this Court, appears to be the same signature appearing in some notices and orders issued and sent by this Court to VIKING TRADING CORPORATION at

No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City.

That is not all. The initial notice of hearing for the application of temporary restraining order was served upon respondent VIKING TRADING CORPORATION thru a certain LUZ GRAGASIN at NO. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City (Ref.: Officer's Return dated May 24, 1996). However, the subsequent notice of hearing of the ex-parte motion for execution and Order dated October 8, 1996, was served upon VIKING INDUSTRIAL CORPORATION at No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City again thru LUZ GRAGASIN (Ref.: Return dated October 8, 1996).' (Order dated 13 June 1997, Annex 'F', Rollo at p. 58)

"From all that appear on record and by petitioner's own admissions, all summons, notices and orders issued by the trial court were duly served on Viking Trading Corporation and/or Viking Industrial Corporation with its place of business at No. 315, Roosevelt Avenue, San Francisco del Monte, Quezon City.

"Furthermore, circumstances indicate a waiver on the part of petitioner Viking of any alleged defect in the jurisdiction over its person arising from defective or even want of process for its failure to raise the question of jurisdiction in the trial court at the first opportunity.

"It should be noted that Viking never raised the issue of improper service of summons until the trial court issued a writ of execution pursuant to its Decision dated July 8, 1996. The issue of jurisdiction was belatedly raised only when private respondent Luison moved to cause the cancellation of the annotation of mortgage and for Viking to return the Transfer Certificate of Title No. 100313 to Luison.

"Moreover, even when court notices were in the name of then Viking Trading Corporation, one Mr. Brilly Bernardez, President of Viking Industrial Corporation, voluntarily appeared before the court a quo to represent petitioner Viking Trading Corporation (Hearing of 6 June 1996). As the trial court declared:

'x x x VIKING INDUSTRIAL CORPORATION thru its President, Mr. Brilly Bernardez, personally appeared during the hearing of June 6, 1996, and expressly and unqualifiedly admitted being the respondent in the present case. That Mr. Brilly Bernardez was not authorized to appear and represent VIKING INDUSTRIAL CORPORATION is clearly untenable for his appearance before the court was under the color of authority and he is now estopped from questioning the same. Hence, from this consideration alone, the voluntary appearance of the President of respondent VIKING INDUSTRIAL CORPORATION may be considered as equivalent to service (Sec. 23, Rule 14 of the Rules of Court). Thus, the Court may validly declare the respondent in default for failure to file its answer within the reglementary period.' (Ibid. at p. 57)

"Ergo, by seeking affirmative reliefs through the filing of responsive pleadings (i.e., Annexes 'T', 'W', 'X', Rollo) before the trial court, not to mention its various participation in the proceedings in said court by its President, Brilly Bernardez, and its counsel, Atty. Luciano S. Borja, other than to object to lack of jurisdiction, petitioner Viking had in effect voluntarily submitted itself to the jurisdiction of the court.

x x x

"WHEREFORE, the petition is DISMISSED for lack of merit.

### **"SO ORDERED."**

Undaunted, petitioner filed with this Court a petition for review on certiorari but the same was dismissed in it's Resolution dated November 16, 1998. Eventually, it issued the corresponding Entry of Judgment.[7]

Despite having exhausted all judicial remedies - from the RTC to this Court - still, petitioner was unwilling to yield. It resorted to a second round. On January 21, 1999, it filed with the RTC a motion for new trial, citing the

following as grounds:

- “1. That respondent acted in the honest mistake that, before it should file its responsive pleading thereto, the petition which had been served on it for “Viking Trading Corporation” must first be corrected to reflect its true corporate name, an issue it had pursued to its end at the appellate courts, and that by reason of which its rights had been impaired;
2. That the evidence adduced in this court is insufficient to justify said judgment; and
3. That said judgment is against the law.”

Surprisingly, the RTC was convinced. On April 7, 1999, then Presiding Judge Vivencio S. Baclig granted petitioner’s motion, holding that petitioner’s failure to file an answer to respondent’s petition was due to its “honest mistake” that it had no legal obligation to answer the petition erroneously impleading it as Viking Trading Corporation instead of Viking Industrial Corporation. He set aside the judgment by default and ordered a new trial, thus:

“In its motion for new trial, respondent stressed that its refusal to file its answer is far from being frivolous as, in fact, it once was shared by no less than this Court; and that, although it failed to win the approval of the appellate courts, its belief on such legal position and its pertinent reliance thereon, although erroneous, constitute an honest mistake.

“The Court is persuaded. The natural reaction of any one sued under an erroneous name is to question and/or ignore that suit. In this case, respondent did precisely what it thought was right when it decided to ignore the summons. The vehemence and perseverance of the respondent in pursuing that course of action, spending time and money bringing the issue up to the highest court of the land, to the mind of the Court, is a clear indication of its honest belief in its cause even if those efforts ultimately failed. The Court, therefore, finds that respondent’s failure to file its answer or responsive pleading was on account of an honest mistake which is a valid ground for a new trial (Section 1 (a), Rule 37, Rules of Court, as amended).”

Respondent moved for reconsideration, stressing that the judgment by default is already final and duly executed and, therefore, cannot be set aside. He cited Judge Salvador’s Order dated October 15, 1996 granting his motion for execution as well as the Sheriff’s Return indicating the full satisfaction of the judgment.

In the Order dated September 13, 1999, Judge Baclig denied respondent’s motion for reconsideration.

Hence, respondent filed a petition for certiorari and prohibition with the Court of Appeals, docketed as CA-G.R. SP No. 55253. On February 29, 2000, the Court of Appeals rendered its Decision granting the petition and holding that Judge Baclig acted with grave abuse of discretion in granting petitioner’s motion for new trial considering that it was filed late. Respondent filed a motion for reconsideration but was denied in an Order dated June 28, 2000.

Hence, the instant petition for review on certiorari.

Petitioner’s main argument is that it received a copy of the judgment by default only on January 9, 1999, thus, its motion for new trial filed with the RTC on January 21, 1999 was within the 15-day reglementary period.

Respondent counters that there is conclusive proof on record that petitioner was served a copy of the judgment by default on August 9, 1996. Furthermore, the question on when petitioner actually received a copy of the judgment by default is a question of fact which is not a proper subject of a petition for review on certiorari.

We rule for respondent.

The core issue in this case is whether petitioner filed its motion for new trial seasonably. Thus, it is imperative to determine whether it received a copy of the judgment by default only on January 9, 1999.

Succinct and unmistakable is the consistent pronouncement that this Court is not a trier of facts. And well entrenched is the doctrine that pure questions of fact may not be the proper subject of appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as this mode of appeal is generally confined to questions of law.[8] Corollarily, a question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts.[9]

Whether petitioner was served a copy of the judgment by default only on January 9, 1999 is clearly a question of fact. It practically involves the ascertainment of the veracity of the parties' factual allegations. Unfortunately, we are not inclined to do that.

As a rule, the findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal by this Court as long as they are supported by the records, as in this case.

We quote the Court of Appeals' incisive findings on the matter, thus:

"Private respondent's contention that they received only the decision on January 9, 1999 is a lie, flimsy and frivolous. Way back on October 15, 1997, private respondent went to the Court of Appeals by way of Petition for Certiorari assailing the decision of the lower court. Common sense dictates, that one could not have gone to the Court of Appeals without private respondent's receiving a copy of the decision of the lower court.

"Also, the judgment of the lower court was executed by the Deputy Sheriff on November 15, 1996. For one thing, the counsel of the private respondent issued a receipt to the Sheriff acknowledging the payment made by the petitioner. Said counsel is aware that when execution took place, attached to the writ is the decision of the court. This simply means that Viking Industrial Corporation respected and adhered to the judgment of the Court rendered against it. Had it not, private respondent could have refused succumbing to the full satisfaction of the judgment when the Writ of Execution was implemented.

"Thus, in our mind, we are not convinced that private respondent did not receive a copy of the decision. We are more inclined to believe the Presiding Judge who issued the Order dated October 11, 1996.

"The Presiding Judge could not have specifically mentioned the date August 9, 1996, had he not verified the record as basis in stating the foregoing in the Order. Besides, it clearly appears on record that the mail was sent thru registered mail on July 1996. Clearly then, the Motion for New Trial was filed out of time."

We find no cogent reason why we should review the above findings of the Appellate Court which are sustained by the records.

At any rate, even if the motion for new trial was filed on time, still, the same should not have been granted by the RTC. Petitioner claimed that it committed an "honest mistake" in not filing an answer to respondent's petition for prohibition and declaratory relief because of its belief that the RTC did not acquire jurisdiction over it.

We are not persuaded.

Petitioner's "honest mistake" hardly qualifies as a ground for a new trial. Section 1 of Rule 37 of the 1997 Rules of Civil Procedure, as amended, provides:

"SECTION 1, Grounds of and period for filing a motion for new trial or reconsideration. -- Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and

grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or”

Definitely, petitioner’s reliance on “honest mistake” is misplaced. The mistake referred to above is one which ordinary prudence could not have guarded against. Here, the mistake petitioner committed is a mistake of law. Its lawyer believed that he should not file an answer because his client is erroneously impleaded. Had petitioner’s counsel reviewed more closely the 1997 Rules of Civil Procedure, as amended, particularly Section 4, Rule 10 and Section 1, Rule 16, he would not have committed a mistake which, unfortunately, binds his client. Those Rules are quoted below:

“SEC. 4. Formal amendments. – A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

“SEC. 1. Grounds. – Within the time for but before filing of the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds.

(a) That the court has no jurisdiction over the person of the defending party.”

Clearly, petitioner’s counsel, instead of ignoring respondent’s petition, should have filed a motion to dismiss on the ground that the court has not acquired jurisdiction over its person as the summons (with a copy of the petition) served upon it is defective. Definitely, his invocation of “honest mistake” is misplaced. He could have prevented such mistake if only he is conversant with the Rules.

At any rate, the issue of whether the trial court committed grave abuse of discretion in rendering judgment by default has been settled by this Court.

What we see in petitioner’s conduct is its obsession to exalt technicality over actuality. It is willing to close its eyes to reality if only to win its case through a technicality. Hence, in the end, it must suffer for its obstinacy.

In fine, we hold that petitioner’s motion for new trial is just a last-ditch attempt to revive a lost case. To grant it will set a precedent allowing a new trial upon a party’s mere acknowledgement that in failing to file an answer, he committed an “honest mistake.” In effect, there will be no end to litigation. Interest republicae ut sit finis litium.

WHEREFORE, the petition is hereby DENIED. The challenged Decision and Order of the Court of Appeals in CA-G.R. SP No. 55253 are AFFIRMED.

Costs against petitioner.

### **SO ORDERED.**

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

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[1] Rollo at 23-39. Justice Eloy R. Bello, Jr. wrote the ponencia with Justices Delilah Vidallon-Magtolis and Mercedes Gozo-Dadole concurring.

[2] Rollo at 40.

[3] Entitled “IN THE MATTER OF A PETITION FOR PROHIBITION AND FOR DECLARATORY RELIEF

REGARDING THE CORRECT COMPUTATION OF INDEBTEDNESS AND/OR VALIDITY OF INTEREST AND PENALTY CHARGES STIPULATED IN A PROMISORY NOTE AND REAL ESTATE MORTGAGE, JOSE L. LUISON, JR., petitioner, - versus - VIKING TRADING CORPORATION, respondent.

[4] Order dated June 13, 1997.

[5] Order dated September 12, 1997.

[6] Entitled, “Viking Industrial Corporation, petitioner, - versus - Hon. Normandie B. Pizarro, as Judge RTC of Quezon City, Branch 77, and Jose L. Luison, Jr., respondents.”

### **[7] “ENTRY OF JUDGMENT**

This is to certify that on November 16, 1998 a Resolution rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:

‘G.R. No. 135189 (Viking Industrial Corporation vs. Jose Luison, Jr., et al.) - Considering the allegations, issues, and arguments adduced in the petition for review on certiorari of the decision of the Court of Appeals dated June 11, 1998, the Court resolved to DENY the petition for failure of the petitioner to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction.’

and that the same has, on December 28, 1998 become final and executory and is hereby recorded in the Book of Entries of Judgments.

Manila, Philippines.”

[8] Valmonte vs. Court of Appeals, G.R. No. 41621, February 18, 1999, 303 SCRA 278.

[9] Spouses Batingal vs. Court of Appeals, G.R. No. 128636, February 1, 2001, 351 SCRA 60.

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