GUILLERMA S. SABLAS, JOINED BY HER HUSBAND, PASCUAL LUMANAS, PETITIONERS, VS. ESTERLITA S. SABLAS AND RODULFO S. SABLAS, RESPONDENTS.

G.R. NO. 144568. July 03, 2007

Ponente: CORONA, J.

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CORONA, J.:

This case traces its roots to a complaint for judicial partition, inventory and accounting filed by respondents Esterlita S. Sablas and Rodulfo S. Sablas against petitioner spouses Pascual Lumanas and Guillerma S. Sablas in the Regional Trial Court of Baybay, Leyte, Branch 14[1] on October 1, 1999.[2]

Petitioner spouses were served with summons and a copy of the complaint on October 6, 1999. On October 21, 1999, they filed a motion for extension of time requesting an additional period of 15 days, or until November 5, 1999, to file their answer. However, they were able to file it only on November 8, 1999. While the trial court observed that the answer was filed out of time, it admitted the pleading because no motion to declare petitioner spouses in default was filed.[3]

The following day, November 9, 1999, respondents filed a motion to declare petitioner spouses in default.[4] It was denied by the trial court in an order dated December 6, 1999.[5] Respondents moved for reconsideration but it was also denied.[6] Thereafter, they challenged the December 6, 1999 order in the Court of Appeals in a petition for certiorari[7] alleging that the admission of the answer by the trial court was contrary to the rules of procedure and constituted grave abuse of discretion amounting to lack of jurisdiction.

In a decision dated July 17, 2000,[8] the appellate court ruled that the trial court committed grave abuse of discretion because, pursuant to Section 3, Rule 9 of the Rules of Court, the trial court had no recourse but to declare petitioner spouses in default when they failed to file their answer on or before November 5, 1999. Thus, the Court of Appeals granted the petition, vacated the December 6, 1999 order and remanded the case to the trial court for reception of plaintiffs' evidence.

Aggrieved, petitioner spouses (defendants in the trial court) now assail the July 17, 2000 decision of the Court of Appeals in this petition for review on certiorari.[9]

Petitioner spouses contend that the Court of Appeals decision was not in accord with the rules of procedure as it misconstrued Section 3, Rule 9 of the Rules of Court and was in contravention of jurisprudence.

We agree.

Where There Is No Motion, ThereCan Be No Declaration of Default
The elements of a valid declaration of default are:

- the court has validly acquired jurisdiction over the person of the defending party either by service of summons or voluntary appearance;[10]

- the defending party failed to file the answer within the time allowed therefor and

- a motion to declare the defending party in default has been filed by the claiming party with notice to the defending party.

An order of default can be made only upon motion of the claiming party.[11] It can be properly issued against the defending party who failed to file the answer within the prescribed period only if the claiming party files a motion to that effect with notice to the defending party.

In this connection, Section 3, Rule 9 of the Rules of Court provides:

> SEC. 3. Default: Declaration of. - If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. x x x. (emphasis supplied)

Three requirements must be complied with before the court can declare the defending party in default: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare him in default and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rules of Court.[12]

The rule on default requires the filing of a motion and notice of such motion to the defending party. It is not enough that the defendant fails to answer the complaint within the reglementary period.[13] The trial court cannot motu proprio declare a defendant in default[14] as the rules leave it up to the claiming party to protect his or its interests. The trial court should not under any circumstances act as counsel of the claiming party.

WHERE THERE IS NO DECLARATION OF
DEFAULT, ANSWER MAY BE ADMITTED
EVEN IF FILED OUT OF TIME

It is within the sound discretion of the trial court to permit the defendant to file his answer and to be heard on the merits even after the reglementary period for filing the answer expires.[15] The Rules of Court provides for discretion on the part of the trial court not only to extend the time for filing an answer but also to allow an answer to be filed after the reglementary period.[16]

Thus, the appellate court erred when it ruled that the trial court had no recourse but to declare petitioner spouses in default when they failed to file their answer on or before November 5, 1999.

The rule is that the defendant's answer should be admitted where it is filed before a declaration of default and no prejudice is caused to the plaintiff.[17] Where the answer is filed beyond the reglementary period but before the defendant is declared in default and there is no showing that defendant intends to delay the case, the answer should be admitted.[18]

Therefore, the trial court correctly admitted the answer of petitioner spouses even if it was filed out of time because, at the time of its filing, they were not yet declared in default nor was a motion to declare them in default ever filed. Neither was there a showing that petitioner spouses intended to delay the case.

WHERE ANSWER HAS BEEN FILED,
THERE CAN BE NO DECLARATION
OF DEFAULT ANYMORE

Since the trial court already admitted the answer, it was correct in denying the subsequent motion of respondents to declare petitioner spouses in default.

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In Cathay Pacific Airways, Ltd. v. Hon. Romillo, Jr.,[19] the Court ruled that it was error to declare the defending party in default after the answer was filed. The Court was in fact even more emphatic in Indiana Aerospace University v. Commission on Higher Education:[20] it was grave abuse of discretion to declare a defending party in default despite the latter's filing of an answer.

The policy of the law is to have every litigant's case tried on the merits as much as possible. Hence, judgments by default are frowned upon.[21] A case is best decided when all contending parties are able to ventilate their respective claims, present their arguments and adduce evidence in support thereof. The parties are thus given the chance to be heard fully and the demands of due process are subserved. Moreover, it is only amidst such an atmosphere that accurate factual findings and correct legal conclusions can be reached by the courts.

Accordingly, the petition is hereby GRANTED. The July 17, 2000 decision of the Court of Appeals in CA-G.R. SP No. 57397 is REVERSED and SET ASIDE and the December 6, 1999 order of the Regional Trial Court of Baybay, Leyte, Branch 14 is REINSTATED. The case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Presided by Judge Cristina T. Pontejos.

[2] The case was docketed as Civil Case No. B-1999-10-24.

[3] Order dated November 9, 1999. Rollo, p. 52.

[4] The answer was served on respondents' counsel by registered mail and respondents alleged that they were unaware that petitioner spouses already answered the complaint.

[5] Rollo, p. 24.

[6] Resolution dated January 11, 2000. Id., pp. 25-26.

[7] Under Rule 65 of the Rules of Court. The case was docketed as CA-G.R. SP No. 57397.

[8] Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Quirino D. Abad-Santos, Jr. (retired) and Romeo A. Brawner (retired) of the Third Division of the Court of Appeals. Rollo, pp. 63-67.

[9] Under Rule 45 of the Rules of Court.

[10] Laus v. Court of Appeals, G.R. No. 101256, 08 March 1993, 219 SCRA 688.

[11] Mediserv, Inc. v. China Banking Corporation, G.R. No. 140755, 17 April 2001, 356 SCRA 616.

[12] De los Santos v. Carpio, G.R. No. 153696, 11 September 2006, 501 SCRA 390 .

[13] Id.

[14] Viacrusis v. Estenzo, 115 Phil. 556 (1962); Trajano v. Cruz, G.R. No. L-47070, 29 December 1977, 80 SCRA 712.

[15] De Dios v. Court of Appeals, G.R. No. 80491, 12 August 1992, 212 SCRA 519.

[16] Regalado, Florenz, REMEDIAL LAW COMPENDIUM, vol. I, 6th Revised edition; Section 11, Rule 11, Rules of Court provides:

Sec. 11. Extension of time to plead. - Upon motion and on such terms as may be just, the court may extend the time to plead provided in these Rules.

The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these Rules.

[17] Trajano v. Cruz, supra.

[18] Cathay Pacific Airways, Ltd. v. Hon. Romillo, Jr., 225 Phil. 397 (1986).

[19] Id.

[20] G.R. No. 139371, 04 April 2001, 356 SCRA 367.

[21] Cathay Pacific Airways, Ltd. v. Romillo, Jr., supra.

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