

SPOUSES HUMBERTO DELOS SANTOS AND CARMENCITA DELOS SANTOS, PETITIONERS, VS. HON. EMMANUEL C. CARPIO, PRESIDING JUDGE OF RTC, BRANCH 16, DAVAO CITY AND METROPOLITAN BANK AND TRUS...

G.R. NO. 153696. September 11, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court filed by spouses Humberto delos Santos and Carmencita delos Santos (petitioners) assailing the Decision[1] dated April 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64961.[2]

The antecedent facts of the case as summarized by the CA are as follows:

On January 3, 2001, Metropolitan Bank and Trust Company (or "Metrobank") filed a complaint[3] for sum of money against spouses Humberto and Carmencita delos Santos (or "petitioners") before the Regional Trial Court of Davao City (Branch 16).

On January 22, 2001, petitioners were served with the summons, together with a copy of the complaint. As petitioners failed to file an answer within the reglementary period, Metrobank, on February 8, 2001,[4] filed a motion to declare them in default. The motion was set for hearing on February 16, 2001.

Acting on the motion, the lower court, presided over by Hon. Emmanuel C. Carpio (or "respondent judge"), issued an order dated February 12, 2001 declaring petitioners in default and setting the ex-parte presentation of Metrobank's evidence on March 7, 2001.

On February 15, 2001, petitioners filed an opposition to Metrobank's motion to declare them in default, claiming that upon receipt of the summons, they immediately sought the services of Atty. Philip Pantojan (or "Atty. Pantojan") of the Into Pantojan Gonzales and Marasigan Law Offices but it was only on February 12, 2001 that they were able to meet with Atty. Pantojan. Petitioners alleged that not being "learned in law", they were unaware "of the consequences of delay in the filing of their answer."

On the same date, February 15, 2001, petitioners filed a motion to admit answer, as well as the answer. In an order dated February 16, 2001, respondent judge disregarded petitioners' opposition to Metrobank's motion for default and stood pat on his previous default order.

On February 19, 2001, Metrobank filed an opposition to petitioners' motion to admit answer, arguing that said motion was rendered moot and academic by the February 12, 2001 order. Metrobank also chided petitioners for violating the three-day notice rule under Sec. 4, Rule 15 of the 1997 Rules of Civil Procedure. In an order dated February 20, 2001, the motion to admit answer was denied.

On February 27, 2001, petitioners filed a motion to lift the order of default; Metrobank opposed the motion. In their motion, petitioners reiterated that, being laymen, they were unaware of the fifteen-day period within which to file the answer and that their failure to do so was due to the unavailability of Atty. Pantojan who was

then "always out of town." They attached to their motion an "Affidavit of Merits" which restated the contents of the motion. Petitioners further claimed that "if given our day in Court, we have a meritorious defense to set up against the allegations of the plaintiff's complaint."

On March 2, 2001, respondent judge issued an order holding in abeyance the ex-parte reception of evidence pending resolution of petitioners' motion to lift the order of default.

On March 5, 2001, respondent judge issued an order denying petitioners' motion to lift the order of default and setting the reception of Metrobank's evidence on March 7, 2001, as previously scheduled. On that date (March 7, 2001), Metrobank presented its evidence and the case was submitted for decision. Petitioners moved for reconsideration of the March 5, 2001 order but their motion was denied on March 21, 2001.[5]

Aggrieved, petitioners filed a Petition for Certiorari with the CA ascribing grave abuse of discretion committed by the trial court amounting to lack of jurisdiction in issuing the Orders dated February 12 and 16, 2001, declaring them in default and denying their Opposition to Metropolitan Bank and Trust Company's (Metrobank) Motion to Declare them in Default, respectively; and the Orders dated March 5 and 21, 2001 denying their Motion to Lift the Order of Default and their Motion for Reconsideration, respectively.

In a Decision dated April 30, 2002, the CA denied the petition for lack of merit and accordingly dismissed the same. The CA did not find the excuse proffered by petitioners, i.e., the ignorance of procedural rules and their lawyer's unavailability, as constitutive of excusable negligence. It also ruled that for an order of default to be set aside, petitioners must have a meritorious defense or that something could be gained by having the order of default set aside; that petitioners' affidavit of merit did not show a meritorious defense since it merely stated that "they have a meritorious defense to set up against the allegation of petitioners' complaint" but there was no discussion of such defense and the facts which they intend to prove in support thereof.

The CA further found unmeritorious the contention of petitioners that they were declared in default without giving them ample time to file an opposition to Metrobank's Motion to Declare them in Default; that under Section 3, Rule 9 of the Rules of Court, it is provided that the court shall, upon motion of the claiming party with notice to the defending party in default, and proof of such failure, declare the defending party in default; and that since it is clear from the records that the reglementary period for filing an answer had expired with no responsive pleading filed by petitioners, the trial court had properly declared them in default. The CA further declared that even assuming that the trial court committed a procedural lapse in declaring petitioners in default before the scheduled hearing of Metrobank's motion, such error is not so serious as to constitute grave abuse of discretion.

Hence, the instant petition filed by petitioners raising the following issues, to wit:

- Whether or not the procedural lapse committed by Honorable Public Respondent in issuing an Order declaring petitioners' [sic] in default on 12 February 2001 or four (4) days before the scheduled hearing of Metrobank's Motion to declare petitioners' [sic] in default on 16 February 2001 is so serious as to constitute grave abuse of discretion.
- Whether or not LITIS PENDENTIA raised by petitioners' [sic] as an affirmative defense is a meritorious defense.
- Whether or not it is beyond the authority of the Honorable Trial Court to rule on the issue of LITIS PENDENTIA simply and chiefly because the defendants failed to seasonably raise it.
- What constitutes Affidavit of Merit? [6]

Petitioners claim that the trial court committed grave abuse of discretion in declaring them in default in its Order dated February 12, 2001, which was four days before the hearing set on Metrobank's Motion to Declare them in

Default; that their failure to file their Answer within the reglementary period was due to the fact that the services of their counsel of choice could not be secured within the period; that they had filed their Motion to Admit Answer and their Answer as well as their Opposition to respondent's motion to declare them in default on February 15, 2001, a day prior to the scheduled date of hearing.

Petitioners aver that under Section 1, Rule 9 of the Rules of Court, defenses like the "court has no jurisdiction, *litis pendentia*, *res judicata* and prescription" can be taken cognizance of by the court despite the fact that they are not in a motion to dismiss or Answer; that the trial court should have looked into their affirmative defense of *litis pendentia* raised in their Answer since it is a meritorious defense as it is a ground for a dismissal of a complaint. They further contend that although the affirmative defense of *litis pendentia* had reached the trial court's attention, it still refused to pass judgment on said legal concern; that the defense of *litis pendentia* raised in their Answer is sufficient to show that the affidavit of merit showed a meritorious defense; that the procedural lapse committed by the trial court would cause the unlawful deprivation of their property rights through undue haste.

In its Comment, Metrobank contends that petitioners failed to file a motion for reconsideration before filing the instant petition which would vest authority for this Court to assume jurisdiction; that the rule on declaration of default did not expressly mandate the trial court to conduct a hearing of the motion as it merely requires that the notice of the motion was made to the defending party; that the trial court declared petitioners in default since they failed to file their Answer within the reglementary period; that assuming *arguendo* that the trial court committed procedural lapse in declaring petitioners in default before the scheduled hearing, there is still no grave abuse of discretion committed by the trial court since even if the hearing was held, it would not make any difference as petitioners failed to file their Answer within the reglementary period.

Metrobank further argues that petitioners' negligence is not excusable because if they have consulted the associates of Atty. Pantojan, they would definitely be advised to ask for an extension of time to file their answer; that petitioners failed to present a meritorious defense since aside from merely stating in general terms their claim of *litis pendentia* as a defense, the same is misplaced because Civil Case No. 28,362-2001 pending in RTC of Davao City, Branch 16, and Civil Case No. 27,875-2000 filed by petitioners in RTC of Davao City, Branch 10, have separate and distinct causes of action; that the trial court is correct in not ruling on the issue of *litis pendentia* as petitioners' Answer was not admitted as part of the records of the case.

Petitioners filed their Reply contending that appeal by certiorari under Rule 45 does not require prior filing of a motion for reconsideration; that the procedural lapse committed by the trial court in declaring petitioners in default before the scheduled hearing should not be tolerated since petitioners' land and building are at stake; and that they should not be faulted for not consulting the associates of Atty. Pantojan as they reposed their trust and confidence in him.

Petitioners and Metrobank filed their respective memoranda. Metrobank's Memorandum no longer questioned petitioners' non-filing of a motion for reconsideration of the CA decision.

Prefatorily, we agree with petitioners that in appeal by certiorari, the prior filing of a motion for reconsideration is not required.[7]

The principal issue before us is whether or not the CA erred in upholding the Orders of the trial court declaring petitioners in default and denying their Motion to Lift Order of Default.

We rule in the affirmative.

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. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

Clearly, there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default, to wit: (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; (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule.

In filing motions, Section 4, Rule 15 of the Rules of Court, specifically provides:

Sec. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. (Emphasis supplied)

x x x x

Prior to the present rule on default introduced by the 1997 Rules of Civil Procedure, as amended, Section 1 of the former Rule 18 on default is silent on whether or not there is need for a notice of a motion to declare defendant in default.[8] The Court then ruled that there is no need.[9] However, the present rule expressly requires that the motion of the claiming party should be with notice to the defending party.[10] The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments.[11] The notice of a motion is required when the party has the right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard.[12]

Therefore, as the present 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 failed to answer the complaint within the reglementary period to be a sufficient ground for declaration in default. The motion must also be heard.

In this case, it is not disputed that petitioners were served summons on January 22, 2001.[13] Under Section 1, Rule 11 of the Rules of Court, the defendant shall file his answer to the complaint within 15 days after service of summons, unless a different period is fixed by the court. Petitioners' answer was due on February 6, 2001, but no answer was filed by petitioners. Thus, Metrobank filed a Motion[14] to declare petitioners in default on February 9, 2001, setting the hearing thereof on February 16, 2001. However, four days before the scheduled hearing, the trial court issued the Order dated February 12, 2001, declaring petitioners in default.

We could not see any justifiable reason why the trial court chose not to hear the petitioners on the date and time fixed in Metrobank's motion, and instead, hastily granted the motion before it could be heard on the ground that it had found the motion to be impressed with merit. Indeed, in totally disregarding the purpose for which the filing of a motion and notice to defending party are required by the Rules, the trial court had acted in a despotic manner that is correctly assailed through a petition for certiorari which petitioners have seasonably filed with the CA.

Again, respondent Judge acted capriciously when he totally ignored petitioners' Opposition to Metrobank's Motion to Declare them in Default and denied their Motion to Admit Answer, both filed on February 15, 2001, a day before the scheduled hearing, which showed their desire to be heard before the motion to declare them in default is resolved by the trial court.

A mere perusal of the Answer attached to the Motion to Admit Answer would readily reveal that petitioners raised a special and affirmative defense the other action pending between the same parties for the same cause. Petitioners alleged that they entered into several loan agreements with Metrobank involving an aggregate amount of

P12,500,000.00 which was the basis of petitioners' causes of action in a civil case they earlier filed against Metrobank with the RTC of Davao City, Branch 10, docketed as Civil Case No. 27,875-2000, for damages, fixing of interest rates, application of excess interest payments; that the principal obligation of P12,500,000.00 includes all other loans which petitioners have with Metrobank; that the P500,000.00 obligation covered by the promissory note subject of the instant Civil Case No. 28,362-2001 is part of the P12,500,000.00 loan of petitioners, subject of Civil Case No. 27,875-2000 that was earlier filed; and that a written copy of the P500,000.00 loan was not attached to the complaint.

Thus, the trial court is deemed to have been apprised of the affirmative defense of *litis pendentia*. Instead of unceremoniously discarding petitioners' Opposition and Motion to Admit Answer^[15] which were filed before the scheduled date of hearing of the motion to declare petitioners in default, it behooved upon the trial court to delve into the merits of the Opposition and the Answer.

The trial court then should have been guided by Section 11, Rule 11 of the Rules of Court, to wit:

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.

and Section 1, Rule 9 of the 1997 Rules of Procedure which provides:

Sec. 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Under Rule 11, it is within the discretion of the trial court to permit the filing of defendant's answer even beyond the reglementary period, provided there is justification for the belated action, and there was no showing that the defendant intended to delay the case. Petitioners may be considered to have committed excusable negligence when they waited for the counsel of their choice who was out of town which caused the delay in filing their Answer; and the Motion to Admit Answer was filed before the scheduled date of hearing on the Motion to Declare Petitioners in Default, showing that petitioners had no intention to delay the case.

Under Rule 9, the trial court may *motu proprio* dismiss the claim when it appears from the pleadings or evidence on the record that there is another cause of action pending between the same parties for the same cause. With the alleged affirmative defense of *litis pendentia*, the trial court had justifiable compelling reason to recall its premature Order declaring petitioners in default.

In a case,^[16] we found the trial court to have gravely abused its discretion when it declared defendants in default; that the answer should be admitted because it had been filed before it was declared in default and no prejudice was caused to plaintiff; and that the hornbook rule is that default judgments are generally disfavored.^[17]

In this case, since the Order dated February 12, 2001 declaring petitioners in default is null and void, the filing of the Answer may be considered as having been filed before petitioners were declared in default and therefore no prejudice was caused to Metrobank and there was no undue delay on the part of petitioners.

Basic elementary sense of fairness, liberality and substantial justice so dictate that the premature Order be considered as null and void. It is the avowed policy of the law to accord both parties every opportunity to pursue and defend their cases in the open and relegate technicality to the background in the interest of substantial

justice.[18]

Since the Order dated February 12, 2001 was null and void, the trial court likewise committed grave abuse of discretion in issuing the Orders dated March 5, 2001 and March 21, 2001 denying petitioners' Motion to Lift Order of Default and Motion for Reconsideration, respectively.

We reiterate the ruling in *Akut v. Court of Appeals*,[19] where we found that the trial court committed grave abuse of discretion in declaring therein petitioners in default and in denying their motion to set aside the order of default, thus:

The controlling principle ignored by respondent court is that it is within sound judicial discretion to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired. This discretion should lean towards giving party-litigants every opportunity to properly present their conflicting claims on the merits of the controversy without resorting to technicalities. Courts should be liberal in setting aside orders of default, for default judgments are frowned upon, and unless it clearly appears that reopening of the case is intended for delay, it is best that the trial courts give both parties every chance to fight their case fairly and in the open, without resort to technicality. x x x

x x x Moreover, petitioners' answer shows that they have a prima facie meritorious defense. They should, therefore, be given their day in court to avoid the danger of committing a grave injustice if they were denied an opportunity to introduce evidence in their behalf.

Our ruling in *Mercader v. Bonto*[20] and the copious precedents therein cited that "considering that the late filing of defendants' answer was due to excusable negligence and that they appear to have a meritorious defense; that defendants filed an answer before they were declared in default; and that the late filing of the answer did not in any way prejudice or deprive the plaintiff of any substantial right, nor was there intention to unduly delay the case, WE hold that the respondent judge committed an abuse of discretion in declaring the defendants in default and in refusing to set aside the order of default" is fully applicable to the case at bar.

Time and again the Court has enjoined trial judges to act with circumspection and not to precipitately declare parties in default, needlessly compelling the aggrieved party to undergo the additional expense, anxiety and delay of seeking the intervention of the appellate courts and depriving them of the much needed time and attention that could instead have well been devoted to the study and disposition of more complex and complicated cases and issues.[21] (Emphasis supplied)

In sum, we find that the RTC Order declaring petitioners in default and its subsequent Order denying petitioners' Motion to Lift Order of Default are null and void; and the CA erroneously upheld the assailed Orders of the trial court.

WHEREFORE, the petition for review is GRANTED. The Decision of the Court of Appeals dated April 30, 2002 in CA-G.R. SP No. 64961 is REVERSED and SET ASIDE. The Order of Default of the Regional Trial Court is SET ASIDE and the Answer filed by petitioners is deemed ADMITTED. The trial court is DIRECTED to continue with deliberate speed with the proceedings in the case below.

Costs against private respondent.

SO ORDERED.

Panganiban, c. J. (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur

[1] Penned by Justice Edgardo P. Cruz, concurred in by Justices Mariano C. del Castillo and Regalado E.

Maambong; CA rollo, pp. 115-121.

[2] Entitled "Sps. Humberto delos Santos and Carmencita delos Santos v. Hon. Emmanuel C. Carpio, Presiding Judge of the Regional Trial Court, 11th Judicial Region, Branch 16, Davao City, and Metropolitan Bank and Trust Company."

[3] Docketed as Civil Case No. 28,362-2001.

[4] Should be February 9, 2001, records, p. 15.

[5] CA rollo, pp. 115-117.

[6] Rollo, pp. 16-17.

[7] Atty. Paa v. Court of Appeals, 347 Phil. 122, 136 (1997).

[8] Oscar M. Herrera, Comments on the 1997 Rules of Civil Procedure as amended, Volume VII, p. 101, 1997 edition.

[9] Id. citing The Philippine British Company, Inc. v. De los Angeles, 159 Phil. 660, 673 (1975); Dulos v. Court of Appeals, G.R. No. 87917, August 7, 1990, 188 SCRA 413, 420.

[10] Rules of Court, Rule 9, Section 3.

[11] Herrera, Remedial Law, Volume I, p. 733, 2000 edition.

[12] Yap v. Court of Appeals, 200 Phil. 509, 514 (1982).

[13] Records, pp. 13-14.

[14] Id. at 15.

[15] Set for hearing on the same day that the hearing on the motion to declare petitioners in default was set.

[16] Indiana Aerospace University v. Commission on Higher Education, G.R. No. 139371, April 4, 2001, 356 SCRA 367, 381.

[17] Id.

[18] Republic of the Philippines v. Sandiganbayan, G.R. Nos. 109430-43, December 28, 1994, 239 SCRA 529, 536.

[19] 201 Phil. 680 (1982).

[20] G.R. No. L-48564, August 20, 1979, 92 SCRA 665, 677.

[21] Supra note 19, at 687-688.

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