

ELMER F. GOMEZ, Petitioner, vs. MA. LITA A. MONTALBAN, Respondent.

G.R. No. 174414. March 14, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review on Certiorari seeks to reverse (1) the Order[1] dated 20 June 2006 of the Regional Trial Court (RTC) of Davao City, Branch 13, which granted herein respondent Ma. Lita A. Montalban's Petition for Relief from Judgment and dismissed Civil Case No. 29,717-03 for lack of jurisdiction; and (2) the Order[2] dated 2 August 2006 denying herein petitioner Elmer F. Gomez's Motion for Reconsideration thereof .

On 30 May 2003, petitioner filed a Complaint[3] with the RTC for a sum of money, damages and payment of attorney's fees against respondent, docketed as Civil Case No. 29,717-03. The Complaint alleged, among other things, that: on or about 26 August 1998, respondent obtained a loan from petitioner in the sum of P40,000.00 with a voluntary proposal on her part to pay 15% interest per month; upon receipt of the proceeds of the loan, respondent issued in favor of petitioner, as security, Capitol Bank Check No. 0215632, postdated 26 October 1998, in the sum of P46,000.00, covering the P40,000.00 principal loan amount and P6,000.00 interest charges for one month; when the check became due, respondent failed to pay the loan despite several demands; thus, petitioner filed the Complaint praying for the payment of P238,000.00, representing the principal loan and interest charges, plus 25% of the amount to be awarded as attorney's fees, as well as the cost of suit.

Summons was served, but despite her receipt thereof, respondent failed to file her Answer. Consequently, she was declared[4] in default and upon motion, petitioner was allowed to present evidence ex parte.

After considering the evidence presented by petitioner, the RTC rendered a Decision[5] on 4 May 2004 in his favor, the fallo of which reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the Court hereby decides this case in favor of [herein petitioner] and against [herein respondent], ordering [respondent] to pay [petitioner] the following amounts:

- P40,000.00 representing the principal amount of the loan;
- P57,600.00 representing interest at the rate of 24% per annum reckoned from August 26, 1998 until the present; and
- P15,000.00 representing attorney's fees.

On 28 May 2004, respondent filed a Petition for Relief from Judgment[6] alleging that there was no effective service of summons upon her since there was no personal service of the same. The summons was received by one Mrs. Alicia dela Torre, who was not authorized to receive summons or other legal pleadings or documents on respondent's behalf. Respondent attributes her failure to file an Answer to fraud, accident, mistake or excusable negligence. She claimed that she had good and valid defenses against petitioner and that the RTC had no jurisdiction as the principal amount being claimed by petitioner was only P40,000.00, an amount falling within the jurisdiction of the Municipal Trial Court (MTC).

After petitioner filed his Answer[7] to the Petition for Relief from Judgment and respondent her Reply,[8] the said Petition was set for hearing.

After several dates were set and called for hearing, respondent, thru counsel, failed to appear despite being duly notified; hence, her Petition for Relief was dismissed[9] for her apparent lack of interest to pursue the petition.

Respondent filed a Motion for Reconsideration[10] of the dismissal of her Petition for Relief, stating that her counsel's failure to appear was not intentional, but due to human shortcomings or frailties, constituting honest mistake or excusable negligence.

On 18 November 2005, the RTC granted[11] respondent's motion for reconsideration, to wit:

In regard to the motion for reconsideration file by [herein respondent] of the order of the court dismissing her petition for relief from judgment, the court, in the interest of justice, shall give [respondent] one more chance to present the merits of her position in a hearing. The dismissal of the petition is therefore reconsidered and set aside.

On 20 June 2006, the RTC granted respondent's Petition for Relief from Judgment and set aside its Decision dated 4 May 2004 on the ground of lack of jurisdiction. The fallo of the assailed RTC Order reads:

WHEREFORE, the petition for relief is hereby GRANTED. The decision of this court dated May 4, 2004 is RECONSIDERED and set aside for lack of jurisdiction on the part of the court, without prejudice to the case being refiled in the proper Municipal Trial Courts.[12]

Petitioner filed a motion for reconsideration of the afore-quoted Order, but the same was denied by the RTC in another Order[13] dated 2 August 2006.

Hence, the present Petition filed directly before this Court.

In his Memorandum,[14] petitioner raises the following issues for the Court's consideration:

- Whether or not the Regional Trial Court has jurisdiction over this case for sum of money, damages and attorney's fees where the principal amount of the obligation is P40,000.00 but the amount of the demand per allegation of the complaint is P238,000.00;
- Whether or not respondent's relief from judgment is proper during the period for filing a motion for reconsideration and appeal.

Before the Court dwells on the principal issues, a few procedural matters must first be resolved.

Section 2(c), Rule 41 of the Rules of Court categorically provides that in all cases where only questions of law are raised, the appeal from a decision or order of the RTC shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.[15]

The distinction between questions of law and questions of fact has long been settled. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[16]

Simple as it may seem, determining the true nature and extent of the distinction is sometimes complicated. In a case involving a "question of law," the resolution of the issue must rest solely on what the law provides on the

given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[17]

The first issue raised in the present petition is one of jurisdiction of the court over the subject matter - meaning, the nature of the cause of action and of the relief sought. Jurisdiction is the right to act or the power and authority to hear and determine a cause. It is a question of law.[18] The second issue refers to the aptness of the grant of a Petition for Relief from Judgment. These questions are undoubtedly one of law, as they concern the correct interpretation or application of relevant laws and rules, without the need for review of the evidences presented before the court a quo.

Thus, with only questions of law raised in this Petition, direct resort to this Court is proper.[19]

The Court shall now discuss whether the RTC has jurisdiction over Civil Case No. 29,717-03.

Petitioner's Complaint before the RTC reads:

- On or about August 26, 1998, [herein respondent] obtained from the [herein petitioner] a loan for the principal sum of FORTY THOUSAND PESOS (P40,000.00) with a voluntary proposal on her part to pay as much as 15% interest per month. Machine copy of Cash Voucher dated August 26, 1998 is herewith attached as Annex "A".
- Upon receipt of the proceeds of the said loan, [respondent] issued in favor of the Plaintiff Capitol Bank Check with check nos. 0215632 postdated on October 26, 1998 for the sum of Forty Six Thousand Pesos (P46,000.00) as security on the loan with P6,000.00 as the first month of interest charges. When the check became due, [respondent] defaulted to pay her loan despite several allowances of time and repeated verbal demands from the [petitioner]. The said check was later on dishonored for the reason: "Account Closed". Machine copy of Capitol Bank Check wit nos. 0215632 is herewith attached as Annex "B".
- On July 4, 2002, [petitioner] engaged the services of the undersigned counsel to collect the account of the [respondent]; thus, on the same day, a demand letter was sent to and received by her on July 9, 2002. And despite receipt thereof, she failed and continues to evade the payment of her obligations to the damage and prejudice of the [petitioner]. Thus, as of July 4, 2002, [respondent]'s loan obligation stood at TWO HUNDRED THIRTY EIGHT THOUSAND PESOS (P 239,000.00), inclusive of interest charges for 32 months. Machine copy of Demand Letter and its registry receipt and return card is herewith attached as Annexes "C"; "C-1" and "C-2", respectively.
- In view of [respondent]'s refusal to pay her loan, [petitioner] is constrained to engage the services of counsel to initiate the instant action for a fee of 25% for whatever amounts is collected as flat attorney's fee. [Petitioner] will likewise incur damages in the form of docket fees.

PRAYER

WHEREFORE, it is respectfully prayed of the Honorable Court that Decision be rendered ordering the [respondent] to pay [petitioner] as follows:

- The amount of P238,000.00 with interest charges at the sound discretion of the Honorable Court starting on July 4, 2002 until paid in full;
- The sum equivalent to 25 % of the amount awarded as attorney's fee;
- Cost of suit;
- Other relief that the Honorable Court may find just and equitable under the premises are likewise prayed for.[20] [Emphasis ours.]

The Court gleans from the foregoing that petitioner's cause of action is the respondent's violation of their loan agreement.[21] In that loan agreement, respondent expressly agreed to pay the principal amount of the loan, plus 15% monthly interest. Consequently, petitioner is claiming and praying for in his Complaint the total amount of P238,000.00, already inclusive of the interest on the loan which had accrued from 1998. Since the interest on the loan is a primary and inseparable component of the cause of action, not merely incidental thereto, and already determinable at the time of filing of the Complaint, it must be included in the determination of which court has the jurisdiction over petitioner's case. Using as basis the P238,000.00 amount being claimed by petitioner from respondent for payment of the principal loan and interest, this Court finds that it is well within the jurisdictional amount fixed by law for RTCs. [22]

There can be no doubt that the RTC in this case has jurisdiction to entertain, try, and decide the petitioner's Complaint.

To this Court, it is irrelevant that during the course of the trial, it was proven that respondent is only liable to petitioner for the amount of P40,000.00 representing the principal amount of the loan; P57,000.00 as interest thereon at the rate of 24% per annum reckoned from 26 August 1998 until the present; and P15,000.00 as attorney's fees. Contrary to respondent's contention, jurisdiction can neither be made to depend on the amount ultimately substantiated in the course of the trial or proceedings nor be affected by proof showing that the claimant is entitled to recover a sum in excess of the jurisdictional amount fixed by law. Jurisdiction is determined by the cause of action as alleged in the complaint and not by the amount ultimately substantiated and awarded.[23]

Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action.[24] The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[25] The averments in the complaint and the character of the relief sought are the ones to be consulted.[26] Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[27]

On the propriety of the granting by the RTC of respondent's Petition for Relief from Judgment, the Court finds and so declares that the RTC did indeed commit an error in doing so.

First of all, a petition for relief under Rule 38 of the Rules of Court is only available against a final and executory judgment.[28] Since respondent allegedly[29] received a copy of the Decision dated 4 May 2004 on 14 May 2004, and she filed the Petition for Relief from Judgment on 28 May 2004, judgment had not attained finality. The 15-day period to file a motion for reconsideration or appeal had not yet lapsed. Hence, resort by respondent to a petition for relief from judgment under Rule 38 of the Rules of Court was premature and inappropriate.

Second, based on respondent's allegations in her Petition for Relief before the RTC, she had no cause of action for relief from judgment.

Section 1 of Rule 38 provides:

SECTION 1. Petition for relief from judgment, order, or other proceedings. - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Under Section 1, Rule 38 of the Rules of Court, the court may grant relief from judgment only "[w]hen a judgment or final order is entered, or any other proceeding is taken against a party in any court through fraud, accident, mistake, or excusable negligence x x x."

In her Petition for Relief from Judgment before the RTC, respondent contended that judgment was entered against her through "mistake or fraud," because she was not duly served with summons as it was received by a Mrs. Alicia dela Torre who was not authorized to receive summons or other legal processes on her behalf.

As used in Section 1, Rule 38 of the Rules of Court, "mistake" refers to mistake of fact, not of law, which relates to the case.[30] The word "mistake," which grants relief from judgment, does not apply and was never intended to apply to a judicial error which the court might have committed in the trial. Such errors may be corrected by means of an appeal.[31] This does not exist in the case at bar, because respondent has in no wise been prevented from interposing an appeal.

"Fraud," on the other hand, must be extrinsic or collateral, that is, the kind which prevented the aggrieved party from having a trial or presenting his case to the court,[32] or was used to procure the judgment without fair submission of the controversy.[33] This is not present in the case at hand as respondent was not prevented from securing a fair trial and was given the opportunity to present her case.

Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against.[34] Under Section 1, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client.[35] To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel. What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.[36]

Third, the certificate of service of the process server of the court a quo is prima facie evidence of the facts as set out therein.[37] According to the Sheriff's Return of Service,[38] summons was issued and served on respondent thru one Mrs. Alicia dela Torre, thus:

"THIS IS TO CERTIFY that on June 25, 2003 at around 1:45 p.m. the undersigned sheriff caused the service of summons issued in the above-entitled case together with attached complaints and annexes for and in behalf of defendant [respondent] thru a certain Mrs. Alicia Dela Torre inside their compound at the given address who acknowledged receipt by signature and notation of said dela Torre appearing thereof.

Wherefore, this summons is respectfully returned to the Honorable Regional Trial Court, Branch 13, Davao City, duly SERVED for its records and information."

Finally, even assuming arguendo that the RTC had no jurisdiction over respondent on account of the non-service upon her of the summons and complaint, the remedy of the respondent was to file a motion for the reconsideration of the 4 May 2004 Decision by default or a motion for new trial within 15 days from receipt of notice thereof. This is also without prejudice to respondent's right to file a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the order of default of the court a quo and the proceedings thereafter held including the decision, the writ of execution, and the writ of garnishment issued by the RTC, on the ground that it acted without jurisdiction.[39] Unfortunately, however, respondent opted to file a Petition for Relief from the Judgment of the RTC, which, as the Court earlier determined, was the wrong remedy.

In *Tuason v. Court of Appeals*,[40] the Court explained the nature of a petition for relief from judgment:

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be

either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.[(Emphasis and underscoring supplied; citations omitted)

In the case at bar, there being no fraud, accident, mistake, or excusable negligence that would have prevented petitioner from filing either a motion for reconsideration or a petition for review on certiorari of the 4 May 2004 Decision of the RTC, her resort to a Petition for Relief from Judgment was unwarranted.

This Court also notes that when respondent was declared in default for her failure to file an Answer to the Complaint, she did not immediately avail herself of any of the remedies provided by law. *Lina v. Court of Appeals* [41] enumerates the remedies available to a party declared in default:

a)

The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable negligence, and that he has a meritorious defense (Sec. 3, Rule 18 [now Sec. 3(b), Rule 9]);

b)

If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37;

c)

If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 [now Section 1] of Rule 38; and

d)

He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him (Sec. 2, Rule 41). (Emphasis added)

In addition, and as this Court earlier mentioned, a petition for certiorari to declare the nullity of a judgment by default is also available if the trial court improperly declared a party in default, or even if the trial court properly declared a party in default, if grave abuse of discretion attended such declaration.[42]

If respondent is really vigilant in protecting her rights, she should have exhausted all the legal remedies above-mentioned to nullify and set aside the order of default against her, and should no longer have waited for the judgment to be rendered. Respondent does not deny that she did receive the summons, although she alleges that it was not properly served upon her, yet she chose to sit on her rights and did not act immediately. For respondent's failure to act with prudence and diligence in protecting her rights, she cannot now elicit this Court's sympathy.

Respondent's petition for relief from judgment is clearly without merit and should not have been granted by the RTC.

WHEREFORE, the instant petition is hereby GRANTED. Consequently, the Decision dated 4 May 2006 of the Regional Trial Court of Davao, Branch 13, in Civil Case No. 29,717-03 is hereby REINSTATED and the Order dated 20 June 2006 granting the petition for relief from judgment is hereby SET ASIDE.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 7-9.

[2] Id. at 10-11.

[3] Id. at 37-39.

[4] Id. at 47.

[5] Id. at 49-51.

[6] Id. at 52-54.

[7] Id. at 58-65.

[8] Id. at 72-74.

[9] Id. at 77.

[10] Id. at 78.

[11] Id. at 81.

[12] Id. at 9.

[13] Id. at 10-11.

[14] Id. at 129.

[15] Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank and Trust Co., G.R. No. 161882, 8 July 2005, 463 SCRA 222, 232.

[16] Chiang Kai Shek College v. Court of Appeals, G.R. No. 152988, 24 August 2004, 437 SCRA 171, 183.

[17] Microsoft Corporation v. Maxicorp, Inc., G.R. No. 140946, 13 September 2004, 438 SCRA 224, 231.

[18] Municipality of Kananga v. Judge Madrona, 450 Phil. 392, 396 (2003).

[19] Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank and Trust Co., *supra* note 15 at 234.

[20] Rollo, pp. 37-38.

[21] Cause of action is the act or omission by which a party violates a right of another (Section 2, Rule 2 of the Rules of Court).

[22] Section 1(8) of Republic Act No. 7691 otherwise known as "An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980," provides:

SECTION 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended as follows:

x x x x

8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees,

litigation expenses, and costs or the value of the property in controversy exceeds One hundred thousand pesos (P100,000.00) or such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Two Hundred Thousand Pesos (P200,000.00).

[23] *Dionisio v. Puerto*, 158 Phil. 671, 677 (1974).

[24] *Dimo Realty & Development, Inc. v. Dimaculangan*, 469 Phil. 373, 381-382 (2004).

[25] *Barangay Piapi v. Talip*, G.R. No. 138248, 7 September 2005, 469 SCRA 409, 413; *Deltaventures Resources, Inc. v. Hon. Cabato*, 384 Phil. 252, 260 (2000).

[26] *Serdoncillo v. Benolirao*, G.R. No. 118328, 8 October 1998, 297 SCRA 448, 459; *Umpoc v. Mercado*, G.R. No. 158166, 21 January 2005, 449 SCRA 220, 232; *Lacierda v. Platon*, G.R. No. 157141, 31 August 2005, 468 SCRA 650, 660-662.

[27] *Barrazona v. Regional Trial Court, Branch 61, Baguio City* G.R. No. 154282, 7 April 2006, 486 SCRA 555, 560.

[28] *Aboitiz International Forwardes, Inc. v. Court of Appeals*, G.R. No. 142272, 2 May 2006, 488 SCRA 492, 506.

[29] *Rollo*, pp. 52-57.

[30] *Agan v. Heirs of Sps. Nueva*, 463 Phil. 834, 840-841 (2003).

[31] *Guevara v. Tuason and Co.*, 1 Phil. 27, 28 (1901).

[32] *Garcia v. Court of Appeals*, G.R. No. 96141, 2 October 1991, 202 SCRA 228, 233-234.

[33] *Magno v. Court of Appeals*, 194 Phil. 271, 278 (1981).

[34] *Regalado v. Regalado*, G.R. No. 134154, 28 February 2006, 483 SCRA 473, 484.

[35] *Insular Life Savings and Trust Company v. Runes, Jr.*, G.R. No. 152530, 12 August 2004, 436 SCRA 317, 324-325.

[36] *Que v. Court of Appeals*, G.R. No. 150739, 18 August 2005, 467 SCRA 358, 368.

[37] *Aboitiz International Forwarders, Inc. v. Court of Appeals*, *supra* note 28 at 506-507.

[38] *Rollo*, p. 44.

[40] G.R. No. 116607, 10 April 1996, 256 SCRA 158, 167; *Mercury Drug Corporation v. Court of Appeals*, 390 Phil. 902, 912-913 (2000).

[41] G.R. No. L-63397, 9 April 1985, 135 SCRA 637, 642.

[42] *Cerezo v. Tuazon*, 469 Phil. 1020, 1036-1037 (2004).

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