THE PHILIPPINE AMERICAN LIFE & GENERAL INSURANCE COMPANY, PETITIONER, VS. JOSEPH ENARIO, RESPONDENT.

G.R. No. 182075. September 15, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The consequences of the failure of defendant to attend the pre-trial is the central issue in this case.

Assailed in this petition is the Decision[1] dated 28 September 2007, as well as the Resolution[2] dated 6 March 2008 of the Court of Appeals in CA-G.R. CV No. 82353, vacating and setting aside the orders dated 3 June 2003[3] (June Order) and 24 November 2003[4], and the decision dated 24 February 2004[5] of the Regional Trial Court of Manila[6] declaring respondent Joseph Enario in default and ordering him to pay Philamlife P1,122,781.66.

Respondent was appointed as agent of Philamlife on 12 November 1991.[7] Aside from being an active agent of Philamlife, respondent was appointed unit manager where he also regularly received his override commissions. He was afforded the privilege of receiving cash advances from Philamlife, which the latter charges or debits against future commissions due respondent, and the arrangement continued until his resignation in February 2000.[8]

At the time of respondent's resignation, Philamlife allegedly discovered that respondent had an outstanding debit balance of P1,237,336.20, which he was obligated to settle and liquidate pursuant to the Revised Agency Contract he signed at the time of his employment, the pertinent portion of which provides:

> 35. The Agent shall immediately at any time upon demand or without necessity of demand upon termination of this Contract, return to the Company and all documents, agency materials, paraphernalia, and such other properties which he may have received therefrom to effectively discharge and perform his duties and obligations.[9]

Philamlife sent three (3) successive demand letters to respondent for the settlement of his outstanding debit account.[10] On 31 October 2000, respondent requested that he be given time to review and settle his accountabilities as he was still trying to reconcile his records. [11]

When the parties failed to reach an agreement regarding the settlement of the outstanding debit balance, Philamlife filed a complaint for collection of a sum of money against respondent before the Regional Trial Court (RTC) of Manila on 22 June 2001.

In his Answer, respondent denied the allegations that he had an outstanding debit balance of P1,237,336.20 considering that he and Philamlife had yet to reconcile the records of remittances with his compensation, as well as overriding commissions. Respondent prayed for the dismissal of the complaint and counterclaimed for damages.[12]

On 30 October 2002, the RTC set the pre-trial conference on 3 and 17 December 2002. The parties were directed

to file their respective pre-trial briefs before the date of the pre-trial conference.[13] Respondent moved for the postponement of the pre-trial to 14 January 2003 due to conflict of schedule,[14] which motion the RTC received on 2 December 2002.[15]

On 14 January 2003, the opposing counsels agreed to amicably settle the case, prompting the RTC to reset the pre-trial to 8 May, 3 June and 1 July 2003.[16]

On 7 May 2003, respondent sent a telegram requesting for another postponement of the pre-trial scheduled on the following day due to medical reasons.

On 3 June 2003, respondent failed to appear. Consequently, Philamlife manifested that respondent be declared in default for failure to appear at the pre-trial. The RTC granted the manifestation and allowed Philamlife to present its evidence on 1 July 2003.[17] The June Order reads:

> Appearance by Atty. Marivel A. Bautista Deodores, for the plaintiff. No appearance by Atty. Casiano C. Vailoces, for the defendant.
>
> Atty. Bautista-Deodores manifested that defendant be declared in default for failure to appear four (4) times and that she be given 15 days from today to file a memorandum.
>
> All manifestations, GRANTED. Plaintiff is allowed to present their evidence on July 1, 2003 at 8:30 in the morning as previously scheduled.
>
> SO ORDERED.[18]

It was only on the following day, 4 June, that the RTC received respondent's motion for postponement of the 3 June 2003 hearing, which was mailed on 30 May 2003.[19]

The 1 July 2003 hearing was reset to 28 August 2003 and Philamlife was ordered to present its evidence ex parte.[20]

Respondent filed a motion for reconsideration of the June Order.

Despite notice, respondent still failed to appear on the 28 August 2003 pre-trial. Philamlife was then allowed to present its evidence ex parte, which it did on that same hearing. Meanwhile, Philamlife was also ordered to comment on the motion for reconsideration of the order of default filed by respondent.[21] Respondent denied receiving a notice of hearing for 28 August 2003.[22]

In its Formal Offer of Evidence, Philamlife submitted statements of account to prove that respondent has an outstanding debit account balance amounting to P1,237,390.26; and a summary of sale underwriter vouchers (SUV) as evidence of cash advances, among others.[23]

On 24 November 2003, the trial court issued an Order denying the motion for reconsideration of the order of default and admitted Philamlife's Formal Offer of Evidence.[24]

On 24 February 2004, the trial court rendered judgment ordering respondent to pay the following amount to Philamlife:

- One Million One Hundred Twenty-two Thousand Seven Hundred Eighty- One and 66/100 (P1,122,781.66);

- P10,000 as attorney's fees;

- Costs of Suit.[25]

Respondent elevated the case to the Court of Appeals via petition for certiorari under Rule 65 of the Rules of

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Court. On 28 September 2007, the Court of Appeals reversed the trial court's decision and ruled, thus:

> WHEREFORE, the orders dated June 3, 2003 and November 24, 2003 and the decision dated February 24, 2004 of the Regional Trial Court of Manila (Branch 8) are VACATED and SET ASIDE and the case REMANDED to that court for pre-trial and other proceedings.
>
> SO ORDERED.[26]

The appellate court found that "respondent's failure to appear for pre-trial on 3 June 2003 does not constitute obstinate refusal to comply with the lower court's order."[27] Further, the appellate court held that the trial court erred in issuing an Order of Default since Section 5, Rule 18 of the Rules of Court explicitly provides that failure to appear for pre-trial on the part of the defendant shall be cause to allow the plaintiff to present evidence ex parte and the court to render judgment on the basis thereof. [28]

Philamlife filed a motion for reconsideration, which was denied by the Court of Appeals in its Resolution dated 6 March 2008.

Hence, this petition for certiorari was filed by Philamlife which attributes error on the part of the Court of Appeals in vacating and setting aside the RTC's default order as a consequence of respondent's failure to appear during pre-trial. Philamlife concedes that the Court of Appeals correctly relied on Justice Florenz Regalado's annotation in his book, REMEDIAL LAW COMPENDIUM, that instead of defendant being declared in default by reason of his non-appearance, Section 5 Rule 18 of the Rules of Court spells out that the procedure will be to allow the ex parte presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. Likewise from Justice Regalado, Philamlife argues that the reference to the word "default" which had been deleted in the present rules solely for semantical propriety and terminological accuracy, is not an error as the standing procedure was followed by the trial court in allowing the ex parte presentation of Philamlife's evidence. Philamlife insists that since pre-trial is mandatory in any action, when a party fails to appear therein, he may be non-suited or declared in default.[29]

On the other hand, respondent maintains that the RTC committed an egregious error when it issued an order of default against him for failure to appear for pre-trial on 3 June 2003.

The fundamental issue is whether or not the RTC erred in declaring respondent in default and allowing Philamlife to present its evidence ex parte.

The resolution of this issue hinges on the interpretation and application of Section 5, Rule 18 of the Rules of Court, which states:

> Section 5. Effect of failure to appear. -- The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

The "next preceding" section mandates that:

> Section 4. Appearance of parties. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Note that nowhere in the first aforementioned provision was the word "default" mentioned. Prior to the 1997 Revised Rules of Civil Procedure, the phrase "as in default" was initially included in Rule 20 of the old rules, and

which read as follows:

> Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

It was however amended in the 1997 Revised Rules of Civil Procedure. Justice Regalado, in his book REMEDIAL LAW COMPENDIUM, explained the rationale for the deletion of the phrase "as in default" in the amended provision, to wit:

> - This is a substantial reproduction of Section 2 of the former Rule 20 with the change that, instead of defendant being declared "as in default" by reason of his non-appearance, this section now spells out that the procedure will be to allow the ex parte presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. While actually the procedure remains the same, the purpose is one of semantical propriety or terminological accuracy as there were criticisms on the use of the word "default" in the former provision since that term is identified with the failure to file a required answer, not appearance in court.[30]

Still, in the same book, Justice Regalado clarified that while the order of default no longer obtains, its effects were retained, thus:

> Failure to file a responsive pleading within the reglementary period, and not failure to appear at the hearing, is the sole ground for an order of default, except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed, that is, the plaintiff shall be allowed to present evidence ex parte and a judgment based thereon may be rendered against defendant.[31]

As the rule now stands, if the defendant fails to appear for pre-trial, a default order is no longer issued. Instead, the trial court may allow the plaintiff to proceed with his evidence ex parte and the court can decide the case based on the evidence presented by plaintiff.

The position of Philamlife is in accord with the Rule. Indeed, the amendment did not change the essence of the original provision. The legal ramification of defendant's failure to appear for pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.

Therefore, the June Order cannot be completely vacated because semantics aside, the order substantially complied with Section 5 in relation to Section 4, Rule 18 of the Rules of Court.

The importance of pre-trial in civil actions cannot be overemphasized. In Balatico v. Rodriguez[32], the Court, citing Tiu v. Middleton[33], delved on the significance of pre-trial, thus:

> Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:
>
> (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
>
> (b) The simplification of the issues;
>
> (c) The necessity or desirability of amendments to the pleadings;
>
> (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
>
> (e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action.[34]

Therefore, "pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation."[35] This considered, it is required in Section 4 of Rule 20 of the Rules of Court that:

> Section 4. Appearance of parties. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. [Emphasis supplied]

Definitely, non-appearance of a party may only be excused for a valid cause. We see none in this case even if the positions of the parties are given a second consideration.

Philamlife claims that respondent was absent the four (4) times that the case was called for pre-trial on 3 and 17 December 2002, 8 May 2003 and 3 June 2003. Philamlife underlines the belated filing of respondent of his motions for postponement. The motion for the postponement of the 3 and 17 December 2002 pre-trial was received by the trial court on 3 December 2002 while that for 8 May and 3 June 2003 pre-trial was received on 4 June 2003 or the day after the pre-trial, where and when respondent was declared in default. Philamlife considers the manner by which respondent moved for postponements, as well as his claim that he was not notified of the 28 August 2003 when records show that he was in fact notified, as clear demonstration of negligence, irresponsibility and contumacy.

Respondent counters that he moved for the postponement of the 3 and 17 December 2002 pre-trial due to a conflict of schedule while the 14 January 2003 pre-trial was reset on account of the parties' agreement to settle the case amicably. The 8 May 2003 pre-trial was also postponed due to medical reasons. While he did not appear on the pre-trial of 3 June 2003, he filed on 30 May 2003 a motion for postponement, although received by the trial court only on 4 June 2003. Respondent added that on 3 June and 1 July 2003 pre-trial days, petitioner was not even ready to present its evidence. It was only on 28 August 2003 that Philamlife presented its evidence ex parte, despite the unresolved motion for reconsideration of the 3 June 2003 order.

The Court of Appeals dismissed Philamlife's contention and declared that "respondent's failure to appear for pre-trial on 3 June 2003 does not constitute obstinate refusal to comply with the lower court's order and that only on that date was respondent absent when the case was actually called for pre-trial."[36]

Respondent undeniably sought for postponement of the pre-trial at least three (3) times. First, he cited conflict in schedule as reason to seek postponement of the 3 and 17 December 2002 pre-trial. Second, the 8 May 2003 pre-trial was reset upon motion of respondent through a telegram due to medical reasons. Third, respondent also filed a motion to postpone the pre-trial for 3 June 2003 and he explained that "defendant and plaintiff's Cebu Office are still negotiating the ways for the projected settlement on possible monthly basis with property as guarantee to be embodied in their Compromise Agreement, and since plaintiff's Cebu Officer could not always be available they have not yet wind-up to bring matters to plaintiff's Manila Office through their counsel."[37]

The first two (2) motions for postponement were granted by the trial court. Only the 3 June 2003 pre-trial

proceeded in the absence of respondent during which the trial court issued the default order. The trial court's denial of the motion for reconsideration of the June Order amounted to a denial of his motion for postponement of the 3 June 2003 pre-trial date.

A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party. [38]

In deciding whether to grant or deny a motion for postponement of pre-trial, the court must take into account the following factors: (a) the reason for the postponement, and (b) the merits of the case of movant.[39]

The trial court correctly saw the reason proffered by respondent as insufficient to excuse his non-appearance. Indeed, when the 14 January 2003 pre-trial was postponed to 8 May 2003, the parties were in fact given the opportunity to settle the case amicably, as there was ample time for both parties to reconcile their records and agree on compromise figures. We cannot see how, inspite of the length of time given to him, respondent can still use as reason a possible settlement, about which Philamlife even denies having any knowledge.

Notably, the trial court could not have acted timely in his favor because the trial court received the motion one day after the pre-trial schedule. About this, we note further the practice of respondent in filing his motions for postponement close to the scheduled pre-trial date. In his motion to reset the 8 May 2003 pre-trial, his motion was mailed on 7 May 2003. Likewise, his motion for postponement for the 3 June 2003 pre-trial was mailed on 30 May 2003. In those occasions, the trial court either received his motions on the day of pre-trial or a day after the pre-trial date. The trial court, which at the day of the 3 June 2003 pre-trial has not received any word from the respondent would logically, as it did, proceed with the hearing.

Respondent tries in vain to reason out that by allowing Philamlife to present its evidence ex parte, his right to due process was denied.

"The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process."[40]

Respondent had been given more than enough time to present his evidence. The pre-trial date was reset four (4) times for a total period of 6 months before the trial court allowed Philamlife to present its evidence ex parte when respondent failed to appear on the scheduled date.

With respect to the trial court's order for respondent to pay P1,122,781.66 representing the amount of his outstanding debit balance, we affirm its findings which were based on records presented by Philamlife. As a consequence of respondent's non-appearance, he was deemed to have waived his right to present his own evidence, if there was any.

We overturn the ruling of the Court of Appeals on the foregoing basis.

WHEREFORE, the Decision dated 28 September 2007, as well as the Resolution dated 6 March 2008 of the Court of Appeals in CA-G.R. CV No. 82353 are REVERSED and SET ASIDE. The Orders dated 3 June 2003 and 24 November 2003 and the Decision dated 24 February 2004 of the Regional Trial Court of Manila ordering respondent Joseph Enario to pay Philamlife P1,122,781.66 are REINSTATED.

SO ORDERED.

Corona, C. J., (Chairperson), Carpio-Morales,[*] Velasco, Jr., and Del Castillo, JJ., concur.

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[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring. Rollo, pp. 23-29.

[2] Id. at 30.

[3] Records, p. 113.

[4] Id. at 204-206.

[5] Id. at 241-243.

[6] Presided by Judge Felixberto T. Olalia, Jr.

[7] Records, p. 5.

[8] Id. at 16.

[9] Id. at 85.

[10] Id. at 90-92.

[11] Id. at 93.

[12] Id. at 45-47.

[13] Id. at 58.

[14] Id. at 60.

[15] Id. at 59.

[16] Id. at 106.

[17] Id. at 113.

[18] Id. at 113.

[19] Id. at 114-115.

[20] Id. at 121.

[21] Id. at 133.

[22] Id. at 199.

[23] Id. at 138-142.

[24] Id. at 206.

[25] Id. at 243.

[26] Rollo, p. 29.

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[27] Id. at 27.

[28] Id. at 26.

[29] Id. at 14.

[30] Regalado, Remedial Law Compendium, Vol. I, Ninth Revised Edition, p. 309.

[31] Id. at 188.

[32] G.R. No. 170540, 28 October 2009, 604 SCRA 634.

[33] 369 Phil. 829 (1999).

[34] Tiu v. Middleton, supra, at 835.

[35] United Coconut Planters Bank v. Magpayo, G.R. No. 149908, 27 May 2004, 429 SCRA 669, 675, citing Development Bank of the Philippines v. Court of Appeals, G.R. No. 49410, 26 January 1989, 169 SCRA 409, 411.

[36] Rollo, p. 27.

[37] Records, p. 114.

[38] Memita v. Masongsong, G.R. No. 150912, 28 May 2007, 523 SCRA 244, 254, citing China Banking Corp. v. Court of Appeals, et al., 162 Phil. 505 (1976) and Gohu v. Spouses Gohu, 397 Phil. 126 (2000).

[39] Philippine Transmarine Carriers, Inc. v. Court of Appeals, G.R. No. 122346, 18 February 2000, 326 SCRA 18, 27, citing Aguilar v. Court of Appeals, 227 SCRA 472 (1993).

[40] Air Philippines Corporation v. International Business Aviation Services Philippines, Inc., G.R. No. 151963, 9 September 2004, 438 SCRA 51, 66-67, citing Ramoran v. Jardine CMG Life Insurance Co., Inc., 383 Phil. 83, 99, February 22, 2000, per De Leon Jr., J. (citing Oil and Natural Gas Commission v. CA, 354 Phil. 830, 848, July 23, 1998, per Martinez, J.). See Salonga v. CA, supra, p. 528, per Panganiban, J.; Villa Rhecar Bus v. De la Cruz, 157 SCRA 13, 16, January 7, 1988, per Gancayco, J.; Producers Bank of the Philippines v. CA, supra, p. 826, per Carpio, J.; Salonga v. CA, supra, p. 528, per Panganiban, J. See Mutuc v. CA, 190 SCRA 43, 49, September 26, 1990, per Paras, J. (citing Juanita Yap Say v. IAC, 159 SCRA 325, 327, March 28, 1988, per Sarmiento, J.; Richards v. Asoy, 152 SCRA 45, 49, July 9, 1987; and Tajonera v. Lamaroza, 110 SCRA 438, 448, December 19, 1981.

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