

VALENTIN EDUQUE, PETITIONER, VS. THE HON. COURT OF APPEALS AND SY YEN, RESPONDENTS.

G.R. No. 19389. March 31, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal by certiorari, taken by petitioner Valentin Eduque, from a decision of the Court of Appeals modifying a decision of the Court of First Instance of Manila.

It is not disputed that, sometime in 1953, respondent Sy Yen leased from Eduque a building, consisting of three (3) doors, located at Herran St., district of Paco, Manila, and bearing, Nos. 1127, 1129 and 1131 (formerly Nos. 1437, 1439 and 1441) of said street. On December 22, 1959, Sy Yen commenced this action, in said court of first instance, for the recovery of the sums of P3,500, P5,300, P2,800 and P14,700, allegedly representing the cost of repairs made and improvements introduced by him in said building in May, 1954, November, 1955, October, 1957 and October, 1959, respectively, pursuant to an agreement, he claimed to have had with Eduque, to the effect that the cost of said repairs and improvements would not be chargeable to the latter, that in consideration thereof, Sy Yen could occupy the building as long as he wanted to, provided that he paid the agreed rentals, and that, should Eduque sell the property to a third party, he (Eduque) would notify Sy Yen in advance of such sale, as well as stipulate in the contract of sale that the aforementioned agreement with Sy Yen would be respected by the buyer. Sy Yen averred in the complaint that, without such previous notice, Eduque sold the property, in October or November, 1959, to Manuel Uy & Sons, which demanded that Sy Yen vacate the premises not later than December 31, 1959, and that, for this reason, Sy Yen suffered damages amounting to P10,000 and prayed that Eduque be, also, sentenced to pay the sum of P5,000, as attorney's fees.

Served with summons on December 28, 1959, Eduque moved on January 12, 1960, for an extension of fifteen (15) days within which to answer the complaint. On January 13, 1960, the lower court granted him a 10-day extension only which, on motion dated January 22, 1960, but filed on January 23, 1960, was further extended for another ten (10) days, to expire on February 1, 1960. On motion filed by Sy Yen on February 3, 1960, the court in an order dated February 6, 1960, declared Eduque in default, owing to his failure to plead within the period of the last extension granted him. Said order of February 6, 1960, likewise, set the case for the reception of Sy Yen's evidence on February 24, 1960. Eduque filed, on February 12, 1960, his answer, and, on February 15, 1960, a motion to set aside the order of default. Sy Yen objected to the latter on February 19, 1960 and prayed by said answer be "disallowed". The motion to set aside the order of default was denied on February 24, 1960. Eduque sought on March 5, 1960, a reconsideration of the order to this effect, which was denied on March 17, 1960. Soon thereafter, or on March 25, 1960, Sy Yen introduced his evidence, and on April 7, 1960, the lower court rendered a decision sentencing Eduque to pay P26,300 to Sy Yen, as the cost of the repairs and improvements allegedly made and introduced by him, aside from the sum of P1,000 as attorney's fees, and the costs. On appeal taken by Eduque, the Court of Appeals affirmed this decision, except as to the indemnity of P26,300, which was "reduced to P25,000 only due to depreciation, wear and tear of the repairs and improvements" made by Sy Yen.

The main issue in this appeal by certiorari is whether or not the court of origin and the Court of Appeals had erred in holding that Eduque had not justified the setting aside of the order of default dated February 6, 1960. In this connection, Atty, Bienvenido L. Rillo, as counsel for Eduque, alleged in his motion, dated February 15, 1960;

"2. That the failure of the undersigned counsel to file the answer within the period was due to reasons beyond his control and not through his willful neglect, to wit:

a) That on January 25, 1960, the wife of the undersigned counsel was taken to the North General Hospital to deliver; that the wife of the undersigned counsel delivered by means of a Caesarian operation; that since the delivery of his wife the undersigned counsel was not able to go to his office because he had to be beside his wife inasmuch as the purchases of medicines necessary for the treatment of his wife was made by the undersigned counsel when the "Dharmae of the North General Hospital was without the medicine prescribed by the attending physician;

b) That about five days after her delivery she developed high blood pressure so much so that he had to continuously stay in the hospital;

c) That on or about February 2, 1960, undersigned counsel took his wife from the hospital: however, two days thereafter, he had to take her back to the hospital inasmuch as she developed a high fever and she was only discharged from the North General Hospital on February 12, 1960;

"3. That due to the circumstances mentioned above the undersigned counsel was not able to attend to all matters pending in his office and the preparation and filing of the answer of the above-entitled case was one of them."

His Honor, the trial Judge, denied said motion upon the ground that Eduque's counsel "could have asked his assistants to file the necessary motion for another extension, or could have asked his client to employ another lawyer if he felt that he would be unable to attend to the Case." The Court of Appeals concurred in this view, citing *Gaerlan vs. Bernal* (L-4039, January 28, 1952)) in support thereof, and added that the aforementioned motion is "not accompanied with affidavits of merits" and that the allegation therein to the effect that Eduque has a meritorious defense "is a conclusion of law".

It should be noted, however, that said motion was duly sworn to by Atty. Rillo, and that the aforementioned allegation is to the effect that Eduque "has a meritorious defense x x x as shown in the answer filed on February 12, 1960". In that answer, Eduque alleged that he had entered into a contract of lease with Sy Yen, merely as attorney-in-fact of Elisa Eduque-Tabora, who is the owner of the leased property; that the same was in a good habitable condition, fit for the purpose for which Sy Yen intended it, when said contract was entered into and Sy Yen took possession of the premises; that the repairs and improvements alleged in the complaint were made without Eduque's knowledge and consent; that Sy Yen is not entitled to reimbursement for said repairs and improvements, for their contract of lease provides, inter alia, that :

"5. No improvement or alteration shall be undertaken by the Tenant without the previous written consent of the Landlord. When permitted, such improvement or alteration as well as repairs shall be for the sole account of the Tenant. Provided that improvement shall remain the exclusive property of the Landlord at the Termination of the lease. However, should the Landlord elect to have such improvement removed, the Tenant binds himself to take them out at his (Tenant's) expense." (Underscoring supplied.)

and that Eduque could not have agreed to allow Sy Yen to occupy the leased premises as long as he paid the agreed rentals, not only because their contract expressly stipulated that it "shall commence on December 1, 1953 and shall continue on a month-to-month term", but, also, because Sy Yen "knows that as an attorney-in-fact, his (Eduque's) authority to lease the premises is limited". Considering that these allegations in Eduque's answer are fully borne out by copy of his contract of lease with Sy Yen, which was attached to said pleading, we find that

Eduque had satisfactorily established in his motion to set aside the order of default, by reference therein to the answer filed by him prior thereto, that he has a good and substantial defense which he may prove if the petition were granted.

As regards the question whether the negligence of Eduque in failing to file his answer within the reglementary period is excusable or not, the case of Gaerlan vs. Bernal (*supra*) cited by the Court of Appeals is not in point, for the lawyer involved in that case had "partners or companions in the law firm", which Atty. Rillo did not appear to have. Under the circumstances set forth in Eduque's motion to set aside the order of default, we believe that Atty. Rillo's aforementioned negligence is excusable, and that the lower court should have, accordingly, granted the motion.

WHEREFORE, the decision of the Court of Appeals and that of the Court of First Instance of Manila are hereby set aside, and the case remanded to the court of origin for further proceedings, with the costs of this instance against respondent Sy Yen.

IT IS SO ORDERED.

Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.
Benzon, C.J., took no part.

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