ONG GUAN CAN, PLAINTIFF AND APPELLEE, VS. THE CENTURY INSURANCE COMPANY, LTD., DEFENDANT AND APPELLANT.

G.R. No. 21196. February 06, 1924

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-21196/

JOHNSON, J.:

The only question presented by the appeal is whether or not the judgment by default rendered by the lower court should be set aside and annulled. We think it should be, for the following reasons:

The action was commenced in the Court of First Instance of the City of Iloilo on the 15th day of May, 1923. Its purpose was to recover an amount due on the policy of insurance issued by the defendant to the plaintiff. On the same day a copy of the complaint was served upon the defendant, through its duly authorized representative in the City of Iloilo, Messrs. Andrews & Co. The defendant filed its appearance with the clerk of the court on the 7th day of June, 1923. The notice of appearance, it is alleged and not denied, was mailed at the City of Manila on the 2d day of June, 1923. On the 5th day of June, 1923, the attorneys for the plaintiff presented a motion praying that a judgment by default be rendered against the defendant. Said motion was granted on the same day, and a judgment by default was duly entered. On the 8th day of June, 1923, the defendant, through its attorneys, filed a motion praying that the judge set aside said judgment by default and permit the defendant to answer. Said motion recited that the said notice of appearance was mailed at the City of Manila on the 2d day of June, 1923, and that the steamship Vizcaya, carrying mails, including the letter containing the notice of appearance on the 2d day of June, did not arrive at Iloilo in the usual course until after the time had expired for filing its appearance, or on the 7th day of June, 1923, due to the fact that said ship encountered a storm at sea. The lower court denied said motion on the 11th day of June, 1923, to which order the defendant duly excepted, and later presented another motion to the same effect, alleging and asserting that it had a valid and meritorious defense to the cause of action presented by the plaintiff. Later the second motion was also denied, to which the defendant also excepted. Some further proceedings were had in the lower court concerning the judgment by default, which have no importance in the consideration of the question presented.

From the judgment by default of the lower court the defendant appealed and now alleges that it committed an error in not granting the motions to set aside said judment and permit the defendant to answer. It is admitted that the plaintiff and defendant resided in the same province. Under paragraph 2 of section 392 of Act No. 190 it became the duty of the defendant to appear within twenty days from the service of the summons. The summons was served on the 15th day of May. The twenty days within which the defendant was required to appear expired on the 5th day of June. No appearance was filed by the defendant until perhaps the 7th day of June. It is admitted that the defendant mailed its appearance in the City of Manila on the 2d day of June, 1923. It is also a fact that mail, in the ordinary course, will arrive at Iloilo from Manila in two days. The defendant mailed its appearance at a time when in the ordinary course of events it would have reached the hand of the clerk of the court on or before the expiration of the time within which it was obliged to make its appearance. The reason that the appearance did not reach its destination was due to a fact over which the defendant had no control. The failure to make the

appearance within the time prescribed by law was due to no fault of the defendant. The defendant evidently made an honest effort to comply with the law. To render a judgment against it under these circumstances would be to render a judgment against it without giving it an opportunity to be heard.

It has been frequently decided that, if pleadings or other papers essential to a case are entrusted to the mails in due season and under proper precaution and are lost or miscarried, it will be ground for vacating a judgment by default. (Boyd vs. Williams and Overbaugh, 70 N. J. Law, 185; Corning vs. Tripp, 1 Howard's Practice [N. Y.], 14; Williams vs. Richmond, etc. Railroad Co., 110 N. C, 466; Chicago, etc. Railway Co. vs. Eastham, 30 L. R. A. [N. S.], 740; 23 Cyc, 943; 15 Ruling Case Law, 708.)

A delay of mail, such as occurred in the present case, in our opinion amounts to accident or surprise for which judgments by default may be set aside, especially when the defendant shows by affidavit or otherwise that he has a valid and meritorious defense. The time fixed for filing papers in a cause is generally directory and the court always has it in its power, in the exercise of a proper discretion, to extend the time fixed by law whenever the ends of justice would seem to demand such an extension. (Wood vs. Fobes and Farnham, 5 Cal., 62.)

Considering the causes which prevented the defendant from making its appearance within the time prescribed by subparagraph 2 of article 392 of Act No. 190 and considering its showing that, if permitted to answer, it has a meritorious defense, we are of the opinion, and so decide, that the judgment by default rendered by the lower court should be and is hereby set aside, and it is hereby ordered and decreed that the defendant's appearance be admitted and that it be given ten days in which to answer from notice of this decision. And without any finding as to costs, it is so ordered.

Araullo, C J., Street, Malcolm, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.