

LOURDES CATALA, PLAINTIFF AND APPELLEE, VS. NEMESIO MONTEVERDE, SANTIAGO MATUTE, AS GUARDIAN OF CANDELARIA MONTEVERDE, THE SPOUSES MILAGROS MONTEVERDE AND LEON A. GARCIA, AND TH...

G. R. No. 42832. September 30, 1936

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On July 16, 1930, the Court of First Instance of Manila rendered judgment in civil case No. 35611, "Jose Martinez de San Agustin, plaintiff, vs. Tomas Monteverde, defendant", ordering the latter to pay to the plaintiff the sum of P39,000 with legal interest from January 21, 1929, with the costs. Tomas Monteverde died but his coheirs Nemesio Monteverde and Leon A. Garcia, in an instrument dated August 11, 1930, made a compromise with Jose Martinez de San Agustin whereby, by the payment of the sum of P6,870 to the latter and the cession to Francisco J. Gonzalez of a parcel of land having an area of 2,000 square meters, valued at P20,000, situated in Davao, Province of Davao, said Martinez de San Agustin deemed the judgment obtained by him in the above-stated case fully paid, the three of them, on said date August 11, 1930, having filed a motion praying the court to consider the judgment as satisfied and the case as finally terminated.

Jose Martinez de San Agustin sold all his rights so acquired to Francisco J. Gonzalez, for which reason there were inserted in the compromise agreement the following paragraphs: "4. Provided, That as Mr. Jose Martinez sold and transferred all his rights to Mr. Francisco J. Gonzalez, the corresponding certificate of title shall be issued within the period of sixty (60) days from the date of the execution of this instrument in favor of said Mr. Francisco J. Gonzalez married to Rufina Narciso residing at 375 Penafrancia Street, of the District of Paco, City of Manila, Mr. Jose Martinez having sold them on the date of the first compromise had with Mr. Tomas Monteverde on October 4, 1929; to which effect Messrs. Leon A. Garcia and Nemesio Monteverde, in their own behalf and as children and agents of Mr. Tomas Monteverde, recognize Mr. Francisco J. Gonzalez as the only owner entitled to the title and possession of the land in question. * * * 6. The parties agree that, should the corresponding certificate of title to the lot on San Pedro Street, municipality of Davao, Province of Davao, Philippine Islands, not be obtained in favor of Mr. Francisco J. Gonzalez within the period of sixty (60) days, the grantors Messrs. Leon A. Garcia and Nemesio Monteverde shall pay jointly and severally with Mr. Tomas Monteverde the sum of twenty thousand pesos (P20,000) as price of the lot not transferred to Mr. Francisco J. Gonzalez, which sum is stipulated as the actual and current market value thereof."

In another deed of August 26, 1931, Damaso Suazo, as testamentary executor of the deceased Tomas Monteverde and the latter's heirs named: Candelaria Monteverde, represented by her legal guardian Santiago Matute, Nemesio Monteverde, Vicenta Monteverde with her husband Vicente A. Tiongko, and Milagros Monteverde with her husband Leon A. Garcia, ratified all the stipulations of the compromise agreement and assumed the obligations therein contracted by Nemesio Monteverde and Leon A. Garcia. Francisco J. Gonzalez transferred all his rights acquired in both public instruments to the now plaintiff Lourdes Catala.

The defendants, the testamentary executor of Tomas Monteverde and the above-named heirs of the latter, failed to comply with their obligation to deliver the transfer certificate of title of the portion of land transferred, first to Francisco J. Gonzalez and later to the plaintiff, and for this reason the latter brought the action to compel them to pay her the sum of P20,000 with legal interest thereon, plus the costs.

The plaintiff brought the action in the City of Manila and the defendants had to be summoned in Davao, Davao. The plaintiff, by means of a bond of P2,000 filed by her, obtained the preliminary attachment of all the property of the defendants. On December 21, 1933, the defendants, through Attorney Leon A. Garcia, telegraphed Attorney Jose P. Laurel requesting him to do his best to dissolve the preliminary attachment and, upon his failure to do so, to convince the court to cancel it by means of a bond for the value of the property in question, adding that the plaintiff's action would not prosper according to the evidence in their possession. On December 23 of said year, Attorney Laurel filed a motion entitled "Special Appearance and Motion to dissolve writ of attachment" praying for the dissolution of the preliminary attachment or the Hating thereof by means of a bond which the defendants were ready to file. On December 29 of said year, the court ordered the lifting of the attachment on condition that the defendants file a bond in the sum of P20,000. On January 3, 1934, after the lapse of more than ten (10) days after the defendants' appearance through counsel, the plaintiff, represented by her Attorney Jose Martinez de San Agustin, filed a motion urging that the defendants be declared in default for not having filed a demurrer or answer within the period of ten (10) days from the date of their appearance of record. In an order of the 5th of said month, the court declared in default all the defendants. On the following day, January 6, the attorney for the defendants filed a motion praying for the cancellation of the order of default on the ground that the period of forty (40) days to appear and that of ten (10) days to file a demurrer or an answer had not yet elapsed and because the appearance entered by the defendants for the dissolution of the attachment was a special one and to no other purpose. On said date, January 6, the court, in the absence of the defendants and without previously deciding the motion to set aside the order of default, heard the case and rendered judgment against the defendants, ordering them to pay to the plaintiff the sum of P20,000 with legal interest thereon from December 8, 1933, until fully paid, and the costs. The attorney for the defendants was notified of the judgment on January 10, and on the following day, January 11, he filed an urgent motion, duly sworn to, praying that the order of default and the judgment by default be set aside. On January 13, the attorney for the plaintiff filed a written opposition to the defendants' motions and at the hearing of the latter the attorney for the defendants presented documentary evidence consisting in the telegram received by him and the registered envelope showing that the contents thereof was received by the addressees on January 3, 1934. On January 25, 1934, the attorney for the defendants filed the answer of the defendants and the demurrer of Santiago Matute, as guardian of the minor Candelaria Monteverde, and prayed that both pleadings be admitted, being filed within the period of forty (40) days from the date on which they were summoned in Davao. The attorney for the plaintiff asked for the rejection of said pleadings. The attorney for the defendants likewise asked for the rejection of the last pleading of the attorney for the plaintiff.

On April 21, 1934, the court issued an order denying the motions presented by the defendants seeking to set aside the order of default and the judgment by default, and ordered that the answer and demurrer filed by them be stricken out of the record. It likewise denied the petition of the attorney for the plaintiff for the issuance of a writ of execution of the judgment. The attorney for the defendants, as proof of the latter's allegation that they had a good and meritorious defense, presented a letter from the attorney for the plaintiff and contended that the defendants were thereby relieved from their obligation to pay the sum of P20,000 in case the delay in the delivery of the title was due to acts of the Director of Lands or of the General Land Registration Office. Said letter reads as follows :

"August 11,1930

"Messrs. Leon A. Garcia and Nemesio Monteverde. My Dear Sirs: Clarifying paragraphs 4 and 6 of our compromise agreement, I must inform you that in case the delay in the segregation of the lot is due to causes dependent upon the Director of Lands or the General Land Registration Office, it shall not affect the responsibility established in paragraphs 4 and 6.

"Respectfully yours,

(Sgd.) "J. MARTINEZ "

JOSE MARTINEZ DE SAN AGUSTIN

"203 Cdbtido, Manila, P. /."

As its principal reason for denying the motions to set aside the order of default and the judgment by default, the court, in its order of April 21, 1934, stated that the terms of the letter constituted no defense for the defendants because in reality they reinforced the stipulation in paragraph 6 of the compromise agreement. On May 8, 1934, the attorneys for the defendants filed a motion for reconsideration praying that the order of April 21, of said year be set aside. Upon the denial of this motion for reconsideration by another judge on the 12th of said month and year, the defendants excepted thereto and duly filed their bill of exceptions which was approved.

The appellants attribute four (4) alleged errors to the order of April 21, 1934, and to the subsequent one of May 12 of said year denying the motion for reconsideration, but this court is of the opinion that the appeal raises only one fundamental question which is whether or not the court abused its discretion in denying the motions presented by the defendants, seeking to set aside the order of default and the judgment by default. Said motions were filed in accordance with section 113 of the Code of Civil Procedure which provides that a party may be relieved from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect. We agree with the lower court that the appearance entered by the defendants was not a special appearance, in the strict sense, and that their obligation to file a demurrer or answer to the complaint within ten (10) days arose thereafter, in accordance with Rule 9 of the Rules of Courts of First Instance. In the cases of *Guevara vs. Tuason & Co.* (1 Phil., 27), and *Zulueta vs. Zulueta* (1 Phil., 254), this court has held that the erroneous interpretation or application of a law is not an excusable error giving right to the remedy afforded by section 113. However, this court holds that under the circumstances the defendants' negligence was excusable because their attorneys received the papers necessary to formulate their demurrer or answer, with their legal defense, only after the ten-day period had already elapsed (*Ong Guan Can vs. Century Insurance Co.*, 45 Phil., 667). The court, in passing upon the motions, should have taken into account the fact that the attorneys for the defendants acted promptly and with extraordinary diligence in seeking to set aside the order of default and the judgment by default and, above all, that the defendants had a good defense (*Coombs vs. Santos*, 24 Phil., 446; *Daipan vs. Sigabu*, 25 Phil., 184; *Mapua vs. Mendoza*, 45 Phil., 424; and *Bank of the Philippine Islands vs. De Coster*, 47 Phil., 594). With respect to this latter extreme this court does not wish to determine the scope, in its opinion, of the letter of August 11, 1930, signed by Jose Martinez de San Agustin, so as not to prejudge the case on its merits. However, it is convinced and so holds that said evidence constitutes a good defense in favor of the defendants. If the evidence were admitted at the trial, the result would probably be different and the defendants would not perhaps be obliged to pay the penalty stipulated. Furthermore, the court should have taken into consideration the fact that among the defendants there is a minor or incapacitated, named Candelaria Monteverde, who is represented in the case by her guardian ad litem. This court is of the opinion that the ends of justice would be better served if the defendants were permitted to defend themselves by presenting in their answer all the legal defenses they may have available.

In view of the foregoing, the orders of April 21, and May 12, 1934, are set aside, and the court shall enter another

admitting the demurrer and answer filed by the defendants, without special pronouncement as to the costs of this instance. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Conception, JJ., concur.

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