

**FIRST INTEGRATED BONDING & INSURANCE CO., INC.,
PETITIONER, VS. JUDGE MARIO M. DIZON, COURT OF FIRST
INSTANCE OF CEBU, CEBU CITY BRANCH IV, JAIME L. GO AND
PROVINCIAL SHERIFF OF...**

G.R. No. 61289. October 27, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the service of summons and order of default upon lawyer Renato Villanueva who was allegedly not the authorized representative of First Integrated Bonding & Insurance Co., Inc., a firm domiciled in Manila and with an agency at Room 504 Gorones Building, Cebu City.

The firm was one of the nine insurance firms from which Jaime L. Go secured fire insurance aggregating P3,650,000. The firm's coverage was for P100,000 as shown in the policy issued in its behalf by Villanueva. As Go's loss allegedly amounted to 63% of the insured properties, the firm's share was supposedly P63,000, an amount which Go sought to recover in a complaint filed on May 21, 1981 against the nine companies all joined as defendants in Civil Case No. R-20539 of the Court of First Instance of Cebu.

In that case, the summons and the order of default instead of being served in the Manila home office, the only address in the policy, were served upon Villanueva with offices at 416 Gorones Building who, according to the insurance firm, was not authorized to receive the same. However, the partial decision of Judge Mario M. Dizon dated May 11, 1982 (ordering the said firm to pay P63,000 plus 14% interest per annum, P6,000 as actual and moral damages and P5,000 as attorney's fees and expenses of litigation) was served upon the firm's branch secretary on June 2, 1982 in its office at Room 504 Gorones Building and not upon Villanueva (Annex J of petition).

Twelve days later, or on June 14, 1982, the firm filed a motion for reconsideration and new trial which was supported by an affidavit of merits of Jacinto S. Reyes, the firm's authorized representative. In that affidavit, the firm enumerated its defenses to the claim and alleged that Villanueva was not its authorized representative and that some officials of the Associated Claims Adjusters, Inc. were Go's lawyers.

Judge Dizon denied the motion. He issued a writ of execution. The sheriff levied upon the office equipment of the firm and garnished its deposit of P17,826.14 in the bank. The insurance firm filed a motion for reconsideration of the order denying its motion for new trial. The trial court denied the motion in its order of July 30, 1982. The instant petition for certiorari was filed in this Court on August 5, 1982.

The insurance firm posted a bond of P74,000 to answer for the judgment. A writ of preliminary mandatory injunction was issued by this Court to re-instate the firm's standing in court and for the return of its properties which had been levied upon.

We hold that the respondent judge acted with grave abuse of discretion amounting to lack of jurisdiction in not

setting aside the judgment by default. Villanueva, the supposed general manager of the insurance firm's Cebu branch, who is a lawyer himself, had apparently betrayed its interest by not answering the complaint and allowing an order of default to be entered against it. This could have been obviated if the summons had been served upon the firm itself in Manila.

Manifestly, the firm was denied due process. The judgment by default was rendered against it by reason of Villanueva's negligence, if not collateral fraud, which resulted in a deprivation of its substantial right to a hearing.

It may be stressed that had the summons been served at the firm's Manila office and not, as alleged by Go, upon lawyer Villanueva in Cebu City, then there would have been no impression of collusive conduct between the insured and the insurer's agent.

WHEREFORE, the lower court's orders of June 29 and July 30, 1982 are reverse and its judgment, writ of execution, levy and garnishment are set aside. The First Integrated Bonding & Insurance Co., Inc. should answer the complaint within ten (10) days from notice of the finality of this judgment. The lower court is directed to conduct further proceedings in the case.

The firm is ordered to file within the same ten-day period a surety bond for P74,000 to replace its injunction bond in this Court dated August 26, 1982. That bond will answer for the adverse judgment against the insurance firm.

The sum of P17,826.14 (dealt with in the firm's motion for clarification of September 30, 1983) should be returned by Go immediately to the firm's bank account. Its restitution is covered by the preliminary mandatory injunction issued in this case. Costs against respondent Go.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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