

**RICARDO O. MONTINOLA, JR. AND RAMON MONFORT, PETITIONERS,  
VS. REPUBLIC PLANTERS BANK, INTERMEDIATE APPELLATE  
COURT, AND REGIONAL TRIAL COURT (BRANCH XLVI) OF THE  
SIXTH JUDICIAL ...**

*G.R. No. 66183. May 04, 1988*

Ponente: PARAS, J.

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**PARAS, J.:**

This is a petition for review on certiorari of the Decision[\*] of the then Intermediate Appellate Court promulgated on September 27, 1983 in AC-G.R. No. 00363, entitled “Ricardo O. Montinola, Jr. and Ramon Monfort, petitioners vs. Regional Trial Court, Branch XLVI of the Sixth Judicial District and Republic Planters, respondents”, the dispositive portion thereof reading viz:

“WHEREFORE, judgment is hereby rendered DISMISSING the present petition for certiorari, with costs against petitioners.”

“SO ORDERED.” (Rollo, p. 47)

as well as the resolution (Annex "B" of Petition; Rollo, p. 49) of the same court dated January 6, 1984 which denied petitioners' motion for reconsideration of said decision.

The petition referred to in the assailed decision of the respondent appellate court was filed by herein petitioners under Section 9 of Batas Pambansa Blg. 129 for the review and the setting aside of two (2) orders of the respondent Regional Trial Court, Branch XLVI, Sixth District[\*\*] in Civil Case No. 16905 entitled “Ricardo O. Montinola, Jr., et al. vs. Republic Planters Bank”, namely: the Order dated December 24, 1982, which lifted an order of default earlier issued on November 5, 1982; and the Order dated January 17, 1983, which denied petitioner's Motion for Reconsideration dated January 11, 1983 (Rollo, p. 10). Said petition likewise asked the respondent appellate court to render judgment on the merits of the case without need of remanding the case to the court a quo pursuant to the penultimate paragraph of Section 9 of Batas Pambansa Blg. 129 considering that petitioners had already submitted their evidence and rested their case before the aforestated questioned orders were issued (Ibid.).

The antecedent facts appear to be as follows:

Petitioners are sugar cane planters who have been banking as such with respondent bank, through the latter's Bacolod Branch, since September, 1978.

Petitioner Ricardo O. Montinola, Jr. holds a power of attorney from petitioner Ramon Monfort who is the brother-in-law of the former. No other person apart from Ricardo O. Montinola, Jr. is authorized to sign for or in behalf of both petitioners.

During the years 1979-1980 and 1980-81, and on all dates material to this case, petitioners and respondent bank

entered into a banking arrangement whereby respondent bank advanced in favor of petitioners certain loan and current accounts.

Each availment from the credit lines or loans was to be evidenced by a promissory note and disclosure statement to be executed by petitioner Ricardo O. Montinola, Jr. in behalf of petitioners, on printed forms of respondent bank. The credit lines or loans were secured by an assignment by petitioners to respondent of their share of the milled sugar produced from the sugar cane crops of their farms; the proceeds of the sales of said sugar were to be paid to respondent bank which in turn was to credit petitioners' loan accounts therefor, and transfer any surplus to petitioners' current account or as directed by the latter. If the proceeds of the sugar sales were less than the credit line or loan availments, petitioners would have a "deficit" which would be covered from the succeeding year's credit line or by a time loan or by such other arrangement as might be agreed upon by petitioners and respondent bank.

Allegedly, for the first time on or about March 23, 1981, petitioner Ricardo O. Montinola, Jr. was informed that his Agricultural Sugar Crop Loan (ASCL) and Demand Loan (DL) for 1981-82 were already overdrawn by forty seven thousand pesos (P47,000.00), although the credit line still had four (4) months to go. The approved loan or credit line totalled two million fifty nine thousand eight hundred pesos (P2,059,800.00), which was allegedly in excess of the amounts which Montinola knew he had already withdrawn. Montinola conducted a quiet investigation where he supposedly discovered forgeries and alterations made which he imputed to his Secretary, who had custody of his check books, bank statements, etc. Among others, petitioners, charged respondent bank with gross negligence due to failure to detect the forged signatures and alterations in the promissory notes, checks and supporting documents. Petitioners demanded that respondent bank make proper adjustments in petitioners' accounts for the sums set out with interest. Respondent bank refused (Complaint, Rollo, pp. 50-60).

Hence, sometime on June 28, 1982, petitioners filed a complaint (Annex "C" of Petition; Rollo, pp. 50-64) against the private respondent Republic Planters Bank before the defunct Court of First Instance of Negros Occidental praying that said respondent bank revert to their account the total sum of P1,993,510.65, representing what were allegedly withdrawn against their account with said bank by means of falsified checks and promissory notes, for reimbursement of expenses incurred by them in connection with the investigation of said forgeries of P125,000.00, and for moral damages of P1,000,000.00, exemplary damages of P1,000,000.00 and attorney's fees.

After summons and a copy of the complaint had been served upon the respondent Bank, the latter asked for several extensions of time to file its answer, the last of which should have expired last October 3, 1982 (Annex "H-1" of Petition; Rollo, p. 80), yet still failed to file its answer. Hence, on November 3, 1982, petitioners filed an urgent motion (Annex "I" of Petition; Rollo, pp. 81-82) to declare defendant in default and to have the case set for hearing for the reception of plaintiffs' evidence ex-parte, which was granted by the trial court in its Order dated November 5, 1982 (Annex "I-1" of Petition; Rollo, p. 83). Hearing was set for the reception of plaintiffs' evidence ex -parte on December 1 and 2, 1982.

On December 1, 1982, respondent Bank filed an urgent motion (Annex "M" of Petition; Rollo, pp. 98-102) dated November 27, 1982, praying that the order declaring defendant in default, as well as another order dated November 18, 1982 (Annex "L" of Petition; Rolo, p. 97) granting plaintiffs' motion (Annex "K" of Petition; Rollo, pp. 94-96) to strike from the records defendant's answer (Annex "J" of Petition; Rollo, pp. 84-93) which was filed after the declaration of defendant's default but without leave of court, be set aside or lifted. Respondent Bank alleged in the aforesaid motion that it was only on November 24, 1982 that it received a copy of the order of November 5, 1982 declaring it in default; that its failure to file its answer to the complaint on time was due to the honest mistake of its counsel, Atty. Diosdado B. Jimenez, and his filing clerk, Alberto Cordovez; and that it has valid and meritorious defenses to the complaint.

Atty. Jimenez, a senior member of the law firm San Juan, Africa, Cordovez and San Agustin, is the counsel-in-charge of a number of cases of Republic Planters Bank which included the subject case. He explained in his affidavit (Annex "A" of Comment; Rollo, pp. 189-190) attached to the motion to set aside the order of default that before the expiration of the last day for the filing of the answer, or specifically on September 30, 1982, he had already prepared such answer which he signed and delivered to the filing clerk Cordovez, with instructions to have the case filed on or before October 5, 1982; that it was only after he received a copy of the order of default of November 5, 1982 on November 24, 1982 that he found out that the answer was not filed before October 3, 1982; that upon inquiry from Cordovez, he learned that Cordovez did not file the answer in court because he noticed that the answer did not include the page bearing the verification of the answer, instead, he decided to bring the matter to the attention of Atty. Jimenez the following day, but the latter was out of town; that Cordovez placed the answer on top of Atty. Jimenez' incoming pleadings but the latter did not notice said answer believing that it had already been filed; that on November 9, 1982 he was requested by Cordovez to sign a verification to an answer to a complaint although he thought that the same referred to another case of Republic Planters Bank which was also assigned to him as counsel-in-charge (I.A.C. Decision, p. 2; Annex "A" of Petition; Rollo, p. 43).

In his affidavit (Annex "A-1" of Comment, p. 191) similarly attached to the said motion, Alberto Cordovez said that on September 30, 1982, he came across the aforestated answer among the outgoing files and noticed that the page bearing the verification was not attached, so he decided to refer the matter to Atty. Jimenez who unfortunately was out of town; that he had left the answer on the files of incoming pleadings of Atty. Jimenez, and all the while he thought that Atty. Jimenez had seen the answer and corrected the deficiency; that he learned that Atty. Jimenez had not yet corrected the deficiency only after several days when he was going after his incoming files to check those to be filed in their respective records or expediente and saw said answer still without the verification; that he asked Atty. Jimenez immediately to sign the verification of the answer without however informing him that the same answer referred to Civil Case No. 16905; and, after Atty. Jimenez signed it, Cordovez mailed the answer to the trial court (I.A.C. Decision, pp. 2-3; Annex "A" of Petition; Rollo, pp. 43-44).

An affidavit (Annex "B" of Comment, pp. 192-193) of Atty. Tito Tagarao, the branch counsel of Republic Planter Bank in Bacolod City, was also attached to the same motion, wherein he said that the bank has a valid and meritorious defense against plaintiff's complaint as stated in paragraphs 12 to 17 of the answer filed by the respondent Bank (I.A.C. Decision, p. 3; Annex "A" of Petition; Rollo, p. 44).

In their Opposition (Annex "O" of Petition; Rollo, pp. 105-131) dated December 9, 1982, and filed in the trial court on December 11, 1982, petitioners prayed for the denial of respondent Bank's urgent motion of November 27, 1982, alleging that the negligence of Atty. Jimenez was inexcusable and hence defendant should bear the consequences thereof; that the explanation of Atty. Jimenez and Cordovez attempting to justify defendant's failure to file the answer was neither credible nor constitutive of excusable negligence because it was only typical of hackneyed and habitual subterfuges of negligent counsel in making the office clerks the scapegoat to cover up his failures; and that defendant failed to show that it had a meritorious defense to the complaint as it failed to state the facts constituting such defense beyond its mere statement of conclusions of law. Respondent Bank replied thereto (Annex "P" of Petition; Rollo, pp. 132-139; Decision AC-G.R. No. 00363, Rollo, pp. 43-44).

The trial court however lifted and set aside the order of default dated November 5, 1982, per its Order of December 24, 1982 (Annex "Q" of Petition; Rollo, p. 140), "in the interest of simple justice and equity having in mind the staggering amount involved in this case which runs into millions of pesos," and further set the case for hearing for the cross-examination of the plaintiff Ricardo C. Montinola and his witnesses.

Petitioners moved for the reconsideration (Annex "R" of Petition; Rollo, pp. 141-143) of the said order of

December 24, 1983, and the respondent Bank opposed the latter (Annex "S" of Petition; Rollo, pp. 144-147). On January 17, 1983, the trial court issued its order (Annex "T" of Petition; Rollo, p. 148) denying said motion for reconsideration for lack of merit. Thereupon, petitioners filed their petition for certiorari before the respondent appellate court raising therewith the sole question of whether or not the trial court abused its discretion in setting aside the order of default dated November 5, 1982, but as earlier mentioned, said court ruled against them.

Hence, this petition.

In the resolution of August 13, 1984 (Rollo, p. 228) the petition was given due course and both parties were required to file simultaneous memoranda on the merits of the case particularly whether private respondent made proper showing that it has meritorious defenses.

The main issue presented before this Court is whether or not the circumstances described by private respondent constitute valid grounds to lift the Order of Default.

There is no dispute that the answer of respondent Bank was not filed on time and that an Order of Default was issued on November 5, 1982 by the Court of First Instance of Negros Occidental. There is likewise no doubt on the correctness of petitioners' assertion that the three requisites specified by law (Section 3, Rule 18, Rules of Court) of a motion to warrant the setting aside of an order of default for failure to file answer, are: (1) it must be made by motion under oath by one that has knowledge of the facts; (2) it must be shown that the failure to file answer was due to fraud, accident, mistake or excusable negligence; and (3) there must be a proper showing of the existence of a meritorious defense. (Rollo, pp. 17, 268).

True it is that the impugned motion to lift order of default was verified by Atty. Diosdado Jimenez, counsel for the respondent Bank, attaching therewith among others, the affidavit of Atty. Tito Tagarao, branch counsel of respondent Bank. But, this does not necessarily make Atty. Jimenez unknowledgeable of the facts alleged in the motion simply because it was Atty. Tagarao who detailedly narrated the facts which constitutes the so-called defense of the respondent Bank. Neither does it make Atty. Tagarao incompetent to swear to these facts despite his capacity as a mere branch counsel who is not directly involved in the day-to-day operations of the Bacolod Branch of said bank.

While the issue as to whether or not the negligence of Atty. Jimenez and his filing clerk Mr. Cordovez is excusable may appear debatable, the pattern of conduct of respondent's counsel does not disclose any intention on his part to delay the disposition of the case. On the contrary, there is every reason to believe the candidness of his explanation that he prepared the answer which he signed and delivered to his filing clerk before the expiration of the required period with specific instructions to have it filed on or before October 3, 1982. As admitted by said clerk, he did not file it as instructed and worse, he failed to call the attention of Atty. Jimenez as to its non-filing. The latter learned about it only after he received a copy of the Order of Default.

As found by the Court of Appeals, said counsel filed his answer to the complaint before the date set by the court for the reception of petitioners' evidence on December 1 and 2, 1982. Said answer was sent by registered mail on November 9, 1982, four (4) days after the issuance of the Order of Default which he claimed he received only on November 24, 1982.

More than that, both the trial court and the Court of Appeals found that respondent Bank has a meritorious defense. Among others, it claimed that the checks and promissory notes claimed by petitioners to be forged, appear complete and regular on their faces, and the signatures thereon were those of petitioner Ricardo C. Montinola, Jr., per his specimen signatures on file with respondent Bank; that the bank employees concerned had exercised proper care and diligence in handling petitioners' account in accordance with banking regulations, and

provisions of law (Decision, AC-G.R. SP No. 00363, Rollo, p. 45). It was further asserted that it was petitioner Montinola who had committed gross negligence by his over reliance on his Secretary in the handling of his check books and to whom he now imputes the forgeries in question and that it is not true that Montinola was unaware that he has overdrawn, the truth being that, he was fully aware of said withdrawals, as shown by the monthly statement of accounts sent to him for his information (Decision, Rollo, pp. 85-89).

Thus, it has been settled that whether the default order should be maintained under the circumstances of a particular case or whether it should be set aside depends on the sound discretion of the trial court. As a matter of fact, every presumption is in favor of the correctness of the court's action (*Pacweld Steel Corporation v. Asia Steel Corp.* 118 SCRA 232 [1982]; *Interisland Gas Service, Inc. v. De la Cerna*, 18 SCRA 386 [1966]).

This Court has declared fealty to the principle that courts should be liberal in setting aside orders of default, for a default judgment is frowned upon, and unless it clearly appears that the reopening of the case is intended to delay, it is best that the trial courts give both parties every chance to fight their case fairly and in the open without resort to technicality to afford petitioners their day in court (*Zenith Insurance Corp. v. Purisima*, 114 SCRA 62 [1982]).

Evidently in observance of such principle, the trial court in the case at bar, in its Order dated December 24, 1982 set aside the order declaring defendant in default, to give defendant an opportunity to present evidence on its behalf so that the case which involved a claim of about four and one-half million pesos can be decided by the court on its merits, on the basis of the evidence not only of petitioners but also of respondent. Conversely, setting aside the aforesaid Order of Default “in the interest of simple justice and equity having in mind the staggering amount involved in this case which runs into millions of pesos”, cannot be taken to mean that the amount involved in the litigation is a factor subject of consideration in deciding whether or not to lift an order of default, but rather in obedience to the constant reminder of this Court that a judgment by default presupposes proceedings where the defendant is absent and cannot possibly present any evidence in his behalf; a court should use it with thoughtful hesitation only as a last expedient to induce the defendant to join issue upon the allegations tendered by the plaintiff. Hence, time and again this Court has held that judgments by default are not looked upon with favor for such a judgment may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. Given a good reason, the trial court should set its order of default aside (*Continental Leaf Tobacco (Phil.) Inc. v. Intermediate Appellate Court*, 140 SCRA 270 (1985)).

Note that respondent Appellate Court found that the trial court had not yet rendered judgment by default. Neither had petitioners completed their presentation of evidence, so that no real and substantial prejudice to them is indicated, if the order of default is lifted and respondent Bank is allowed to present its evidence in its behalf, except perhaps the loss of advantage on the part of petitioners of having their case decided solely on the evidence presented by them. Had the trial court acted otherwise, it would be giving premium to technicalities at the sacrifice of substantial justice.

Consequently, the trial court cannot be faulted for having acted with commendable circumspection and fairness in setting aside aforesaid orders, to give the parties their day in court.

**PREMISES CONSIDERED**, this petition is **DENIED** for lack of merit. The case is **REMANDED** to the court a quo for the cross-examination of the witnesses of the petitioners, and the presentation of defense evidence. No costs.

**SO ORDERED.**

Yap, C.J., Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

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[\*] Penned by Justice Lino M. Patajo concurred in by Justices Simeon M. Gopengco and Jose F. Racela, Jr.

[\*\*] Formerly Court of First Instance of Negros Occidental, Branch IX, 12th Judicial District.

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