

DENSO (PHILS.), INC., PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND KAYAMANAN DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 75000. February 27, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

On June 23, 1984, at about 11 o'clock in the evening, a fire broke out at the Nippondenso Building at Pasong Tamo Ext., Makati, Metro Manila. The building was owned by the Kayamanan Development Corporation (hereafter, simply referred to as KAYAMANAN), and was then under lease to Denso (Phils.), Inc. (hereafter, simply DENSO). The fire caused extensive damage. DENSO and its correspondent firm in Japan, NIPPONDENSO, reportedly suffered losses amounting to P6,131,976.65 and P682,212.58, respectively. On the other hand, KAYAMANAN's loss was placed at P1,750,000.00.[1]

A year or so later, KAYAMANAN instituted an action against DENSO in the Regional Trial Court at Makati, which was docketed as Civil Case No. 10768, for recovery of (a) unpaid rentals from June, 1984 to March, 1985, amounting to an aggregate of P471,546.69; (b) the cost of repairing the damage caused by the fire to the leased building, it being alleged that DENSO was bound to bear said cost under their lease agreement; and (c) unrealized monthly rents and attorney's fees.[2]

Summons was served on DENSO on June 10, 1985. It would seem, however, that the summons (together with the accompanying copy of the complaint) was not referred by DENSO to its counsel until June 22, 1985. This prompted the latter to file on June 25, 1985 a "MOTION FOR EXTENSION OF TIME TO FILE ANSWER", pleading the late referral, the need to attend to other legal work of equal importance, as well as the time requirement for study of the factual and legal points involved in the action, and praying, in consequence, for an additional period of 15 days from June 25 within which to present the requisite responsive pleading.[3] The motion closed with a "Notice of Hearing" addressed to the Clerk of Court, asking that the motion be submitted to the court for consideration and approval immediately upon its receipt; and a notation that a copy of the motion had been furnished plaintiff KAYAMANAN's counsel.[4] The copy of the motion was actually received by KAYAMANAN's counsel the following day, June 26, 1985.[5]

The motion for extension was however denied by Order of Judge Teofilo Guadiz, Jr. dated June 26, 1985, "considering", according to His Honor, "that there was no proof of service that plaintiff received a copy of said motion." [6] At 4 o'clock in the afternoon of that same day, June 26, 1985, KAYAMANAN presented an "Ex-parte Motion to Declare Defendant in Default" asserting that the reglementary period of 15 days for DENSO to file answer had expired on June 25, 1985 without any answer having been filed, but making no reference to DENSO's motion for extension which, as above stated, had been received by it on June 26, 1985.[7] On the same day, June 26, 1985, Judge Guadiz promulgated an Order deeming the motion for default to be "well-taken", and accordingly declaring DENSO in default and setting the reception of KAYAMANAN's evidence ex-parte on the following

day, June 27, 1985, at 2 o'clock in the afternoon.[8] At that appointed date and time, the Court did receive KAYAMANAN's evidence ex-parte; and four (4) days later, on July 1, 1985, Judge Guadiz rendered judgment by default, sentencing DENSO to pay to KAYAMANAN P471,546.69 as accumulated monthly rentals and cost of services from June, 1984 to March, 1985; P2,856,000.30 as the reasonable cost of repair of the "damage building" (sic); and 10% of the total amounts awarded, as attorney's fees.[9]

While all this was happening, and evidently in complete ignorance thereof, DENSO's counsel drew up its answer to the complaint, which was completed on July 5, 1985 and filed on July 8, 1985. To this pleading were appended copies of letters from DENSO to KAYAMANAN — appealing for a 30% rental rebate due to the prejudicial consequences of the fire of June 23, 1984; giving notice of the termination of the lease on May 12, 1985; and formally turning over the leased premises — as well as a copy of the Police Arson Investigation Report of the fire.[10]

Inevitably, DENSO learned of the order of default and the judgment by default. It then filed on August 2, 1985 a verified motion for reconsideration of said order and judgment.[11] Acting thereon, the Trial Court promulgated an Order dated September 3, 1985, setting aside, "in the interest of substantial justice", the order of default dated June 26, 1985 as well as the decision dated July 1, 1985; but hearing was re-scheduled only for the presentation of defendant DENSO's evidence, the Court explicitly stating that the evidence already presented (by KAYAMANAN) would remain on record "without the right of cross examination on the part of the defendant." [12] The hearing was set on October 2, 1985 but at DENSO's instance, was re-scheduled on October 24, 1985.

At the hearing on October 24, 1985, DENSO orally asked the Court to reconsider its Order of September 3, 1985 and accord it the opportunity to cross-examine KAYAMANAN's witnesses, who had given their testimony ex-parte. The Court opted to give DENSO time to move formally for reconsideration [13] and reset the hearing to November 21, 1985 (which was again reset on January 9, 1986 because the Judge was on official leave in November). [14]

DENSO submitted its formal motion for reconsideration dated November 4, 1985 — praying for the right to cross-examine KAYAMANAN's witnesses — on November 6, 1985. [15] The record does not show that any opposition to the motion was ever filed. Two days later, however, on November 8, 1985, DENSO received notice of the Order of the Court dated October 24, 1985 (the date of the hearing), denying its (DENSO's) motion to be allowed to cross-examine KAYAMANAN's witnesses, and scheduling the initial hearing for the presentation of the defense witnesses on November 21, 1985. [16] Four days afterwards, on November 12, 1985, the Court promulgated another Order, denying DENSO's motion for reconsideration of November 4, 1985 for lack of merit. According to the Court:

"What is important is that defendant is afforded the opportunity to present its evidence and thus enable the Court to see the other side of the coin, the defendant being offered a chance to present its evidence in the Order dated September 3, 1985." [17]

DENSO did not however receive a copy of this Order of November 12, 1985 until January 9, 1986, the day finally set (by the Court) for the reception of its evidence. At this time, DENSO drew the Court's attention to its motion for reconsideration of November 4, 1985 which, as far as it knew, was yet unresolved. DENSO was thereupon furnished with a copy of the Order of November 12, 1985. DENSO then asked for deferment of the hearing so that it might elevate this adverse ruling to a higher court. [18] This was denied, and when DENSO declared itself as not ready to proceed with the presentation of evidence, the Court dictated an Order stating that "this being the third time that defendant failed to present its evidence notwithstanding the chance given to it, the 'Decision' dated July 1, 1985 is revived." [19]

Without awaiting service of the Order dictated on January 9, 1986, DENSO filed on January 15, 1986 a petition for certiorari with the Intermediate Appellate Court, docketed as AC-G.R. SP No. 08150, praying for the annulment of the series of orders of Judge Guadiz already referred to, starting with the order of default of June 26, 1985 and culminating in the order of January 9, 1986 reviving the judgment by default.

The Intermediate Appellate Court (Fourth Special Cases Division) considered the crucial issue to be "the propriety or impropriety" of the order of September 3, 1985 which, while setting aside the previous order of default and the judgment by default, prescribed that the evidence already presented would remain in the record and denied petitioner the right to cross-examine the respondent's witnesses who had testified at the ex-parte hearing. It declared unnecessary further consideration of the order of default and judgment by default thus set aside, and limited its review of the proceedings to the question of whether or not the petitioner was properly denied the right of cross-examination.[20]

On that question the Appellate Court ruled that the right of cross-examination, while a part of due process so that denial thereof amounts to depriving a party of his day in court, is nonetheless waivable; that since petitioner received on September 16, 1985 copy of the order of September 3, 1985 — setting the judgment by default aside and scheduling the case for hearing only for reception of defendant's evidence without right to cross-examine plaintiff's witnesses — but did not move for its reconsideration until October 24, 1985, or after a lapse of 38 days, such inaction amounted to a waiver of the claimed right to cross-examine; and, moreover, said motion for reconsideration came too late because the order sought to be reconsidered was by then already final, the applicable period of appeal being only fifteen (15) days from notice of said order,[21] and that (in any event) DENSO was guilty of laches.[22]

The error in these pronouncements is immediately apparent. They assume that the order in question is a final — and appealable — order, when it is in fact interlocutory. The distinction between final and interlocutory orders is a well-settled one.

"The concept of 'final' judgment, as distinguished from one which has 'become final' (or 'executory' as of right [final and executory]), is definite and settled. A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'

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"Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory', e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a 'final' judgment or order, which is appealable, as above

pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case." [23]

That the order of September 3, 1985 was interlocutory in character is beyond cavil. In setting aside the order of default and the succeeding judgment by default, it left the case open for further proceedings before the Trial Court, not the least of which was the reception of evidence for the petitioner. Therefore, it could not become final in the sense that final judgments become "final and executory". No appeal therefrom would lie except in the context and as part of an appeal from a subsequent final judgment on the merits, and a motion for reconsideration thereof was not subject to the limiting fifteen-day period of appeal prescribed for final judgments or orders.

Neither will the Court consider laches as having set in by reason of petitioner's allowing thirty-eight (38) days to pass before seeking a reconsideration of the order, having in mind not only that such a relatively brief period cannot by any reckoning be deemed an unreasonable length of time, but also the fact that while laches is a defense which operates independently of the statute of limitations and is subject to no fixed periods, it is also founded on equity and may be invoked only if the delay in asserting a claim has worked a change in the conditions such as would render unjust or inequitable grant of the relief sought.

"In order that the defense of laches may prosper, the following elements must be present: (1) conduct on the part of defendant, or one under whom he claims, giving rise to the situation complained of, (2) delay in asserting complainant's right after knowledge or notice of defendant's conduct and an opportunity to sue, (3) lack of knowledge or notice on the part of the defendant that complainant would assert the right on which he bases suit, and (4) injury or prejudice to defendant in the event relief is accorded. ***[24]

**** (I)t must be realized that, unlike prescription, the defense of laches is not dependent on the existence of a statutory period of limitation. It can be invoked without reckoning any specific or fixed period; it is sufficient that there be an unreasonable and unexplained delay in bringing the action that its maintenance would already constitute inequity or injustice to the party claiming it. ***[25]

No perceivable prejudice would attach to the respondent if the petitioner were allowed to cross-examine the witnesses it has presented. If said witnesses told the truth, respondent has nothing to fear from their cross-examination, the effect of which would only be to enhance their credibility.

Petitioner's motion for reconsideration of the order of September 3, 1985, therefore, hardly deserved the short shrift that it received from the Intermediate Appellate Court because it was in no sense untimely, and neither lapse of a statutory period nor laches could correctly be invoked to justify the summary refusal to inquire into the antecedents of said order. What that Court considered to be moot and academic — an inquiry into the merits of Judge Guadiz's separate orders of June 26, 1985 denying the motion for extension of time to file answer and declaring the petitioner in default — lay precisely at the heart of the matter before it and now before this Court. Both orders were premised on what the Judge perceived to be a failure to comply with the rule that notice of motions must be served by the movant on all parties concerned at least three (3) days prior to the hearing thereof.[26] What His Honor evidently overlooked — and this was error — was that the rule on notice is not unqualifiedly applicable to all motions, and that there are motions which may be heard ex-parte, as the Rules themselves clearly acknowledge.[27] Among the latter class of motions are precisely those seeking extension of time to plead, and the reason these are not strictly held to the requirement of notice is that they are non-contentious and do not as a rule involve the substantial rights of the other parties in the suit.

**** The motion for extension of time within which a party may plead is not a litigated motion where notice to the adverse party is necessary to afford the latter an opportunity to resist the application, but an ex-parte motion 'made to the court in behalf of one or the other of the parties to the action, in the absence and usually without the knowledge of the other party or parties.' As 'a general rule, notice of motion is required where a

party has a right to resist the relief sought by the motion and principles of natural justice demand that his rights be not affected without an opportunity to be heard ...'

"It has been said that 'ex-parte motions are frequently permissible in procedural matters, and also in situations and under circumstances of emergency; and an exception to a rule requiring notice is sometimes made where notice or the resulting delay might tend to defeat the objection (sic) of the motion.'"[28]

Upon similar premises, this Court has consistently held, since as early as in 1946,[29] that motions for extension of time to file record on appeal may be filed and passed upon ex-parte, and the rulings on that point are applicable, without differentiation, to motions for extension of time to file answer.

Petitioner's motion for extension of time to file answer was, therefore, improperly denied for lack of proof of service on the respondent, said motion having been seasonably filed and, as already fully shown, there being no impediment to its being heard ex-parte. No pretense is made that the motion was denied as having been filed merely for delay, but even if that ground were read into the otherwise clear terms of the order of denial which do not even hint thereat, it would still be belied by the fact that what was sought was only an extension of the original reglementary period as well as that prima facie meritorious reasons were pleaded for the desired extension. The petitioner's answer, alleging defenses[30] which, if established, could defeat the respondent's claim, wholly or in part, was filed well within the period of extension prayed for. All these considered, the order declaring petitioner in default for alleged failure to timely file answer was clearly arbitrary; it ought not to have been issued and should be struck down.

While the order of default was in fact set aside by the Trial Judge on motion of the petitioner, he failed to afford petitioner the complete relief that the arbitrary and improper issuance of said order and of the earlier order denying the motion for extension clearly called for. Ideally, the slate should have been wiped clean by setting aside also the hearing at which the respondent presented its evidence ex-parte, so that the parties would stand on even terms with neither having the advantage of the other. Instead, the Judge prescribed that the evidence presented by the KAYAMANAN would remain in the record without right on the part of DENSO to cross-examine the witnesses who had already testified, and by necessary implication, also denied DENSO the right to object to the documentary evidence submitted by respondent. This, too, was abuse of discretion. If a defendant is improperly declared in default — his time to answer not having expired because of a timely ex-parte motion for extension — he should be entitled to relief which should consist not only in the admission of his responsive pleading, but of the right to cross-examine the witnesses presented and to object to the exhibits offered in his absence, if not indeed to have trial commence all over again. He should not, under these circumstances, be penalized by loss of the right to cross-examine. This would be grossly unwarranted and unfair; it would amount to a denial of due process.

The Appellate Court's observation that "**** it cannot be denied that the petitioner had other remedies at hand after the court a quo had set aside the questioned Order of default and Default Judgment ****"[31] is somewhat perplexing. Given the character of said orders, particularly of the order of default, this Court is hard put to conceive how DENSO could have acted to protect its rights otherwise than as it did here, namely: by exhausting all recourse toward a reconsideration before the Trial Court and then applying for corrective relief in the Intermediate Appellate Court.

WHEREFORE, the petition is granted. The Decision of the Intermediate Appellate Court under review is reversed and set aside. Petitioner's answer to the respondent's complaint in Civil Case No. 10768 is ordered admitted. All the orders issued in said case and complained of in the petition, the judgment by default rendered therein, and the ex-parte proceeding of June 27, 1985 at which the respondent presented its evidence are vacated. Civil Case No. 10768 shall stand for proceedings de novo as if only complaint and answer had been filed therein. Costs against

the respondent.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Rollo, pp. 79-80.

[2] Id., pp. 49-53.

[3] Rollo, p. 59.

[4] Id., p. 60.

[5] Id., p. 61.

[6] Id., p. 62.

[7] Id., p. 63.

[8] Rollo, p. 65.

[9] Id., pp. 81-82.

[10] Id., pp. 66-80.

[11] Rollo, pp. 83-103.

[12] Id., p. 104.

[13] Id., p. 202.

[14] Rollo, pp. 12, 234; KAYAMANAN for its part claims that the Court orally denied DENSO's plea to be allowed to cross-examine the former's witnesses. (Comment of March 1, 1980; Rollo, p. 180).

[15] Id., pp. 105-122.

[16] Id., pp. 11, 123.

[17] Id., p. 124.

[18] Rollo, pp. 12-13, 141, 142.

[19] Id., pp. 125, 234.

[20] Annex "B", Petition; Rollo, pp. 45-48.

[21] Rollo, p. 47, citing Sec. 19(a), Interim Rules.

[22] Id., p. 48.

[23] Investments, Inc. vs. Court of Appeals, G.R. No. 60036, Jan. 27, 1987; PLDT Employees' Union v. PLDT Co. Free Tel. Workers' Union, 97 Phil. 424, citing Moran, Comments on the Rules, 1952 ed., Vol. 1, pp. 894-895, Nico v. Blanco, 81 Phil. 213 and Hodges v. Villanueva, 90 Phil. 255; Mejia v. Alimorong, 4 Phil. 572; Rios v. Ros, 79 Phil. 243; Kapisanan ng mga Manggagawa sa MRR Co. vs. Yard Crew Union, et al., 109 Phil. 1150; Antonio v. Samonte, 1 SCRA 1072; Acting Director, National Bureau of Investigation vs. Hon. Caluag, et al., 2 SCRA 541; Bairan v. Tan Siu Lay, et al., 18 SCRA 1239; Dela Cruz v. Hon. Paras and San Miguel, 69 SCRA

556; Valdez v. Hon. Bagaso, et al., 82 SCRA 22.

[24] Abraham vs. Recto-Kasten, 4 SCRA 298, citing Villoria vs. Secretary of Agriculture and Natural Resources, 107 Phil. 879; see also Mejia de Lucas vs. Gamponia, 100 Phil. 277.

[25] San Miguel Corporation vs. Cruz, 31 SCRA 819.

[26] Rule 15, Sec. 4, Rules of Court.

[27] Rule 13, Sec. 2, id.

[28] "objection" should read "object"; Amante vs. Suñga, 64 SCRA 192, citing Sturz v. Fisher, 36 N.Y.S. 893, 15 Mis. 410; 25 N.Y. Civ. Proc. 202, 2 N.Y. Ann. Code, 365; 60 C.J.S. 5, 16; Hunderfold vs. Cushing, 2 Wis. 411; McDonald v. Severy, 59 P. 2d 98, 6 Cal. 2d 629; Petition of Volpe, 66 N.E. 2d 146; Dougherty v. Manhattan Rubber Mfg. Co., 29 S.W. 2d 126, cited in 60 C.J.S. 15.

[29] In Moya vs. Barton, 76 Phil. 831; see also Yap vs. Court of Appeals, 115 SCRA 104, citing Que Tiac vs. Republic, 43 SCRA 56, and Commercial Union Assurance Company Limited vs. Lepanto Consolidated Mining Company, 86 SCRA 79, 98; E & L Mercantile, Inc. vs. Intermediate Appellate Court, 142 SCRA 386; and Corsino vs. Nicolas, 87 SCRA 58.

[30] Rollo, pp. 68-72.

[31] Rollo, p. 47.

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