

CIRCLE FINANCIAL CORPORATION, PETITIONER, VS. COURT OF APPEALS AND SPOUSES ROBERTO JURADO AND FORTUNATA JURADO, RESPONDENTS.

G.R. No. 77315. April 22, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

On September 23, 1982, the spouses Roberto Jurado and Fortunata Jurado executed a deed of mortgage over real property belonging to them in favor of Tacing Regoso as security for a loan obtained from the latter in the sum of P40,150.65. The promissory note evidencing the obligation stipulated payment thereof by the Jurados in eighteen (18) monthly installments.

Two days afterwards, with the spouses' consent, Tacing Regoso assigned all his rights and interests over the promissory note and the deed of mortgage in favor of Circle Financial Corporation.[1]

Some nineteen (19) months later, or on April 12, 1984, Circle Financial Corporation (hereafter, simply Circle) sent a letter to the Jurado spouses, together with a statement of account, demanding payment of P12,186.00, alleged to be the balance of their obligation. A subsequent letter, from Circle's attorney, also demanded payment in the amount of P11,752.90.

The letters having gone unheeded, Circle requested the Provincial Sheriff of Bulacan to extrajudicially foreclose the mortgage constituted over the Jurados' land. The Sheriff scheduled the auction sale on July 10, 1984 at 10:00 in the morning. Notice of the sale was received by the Jurados on July 2, 1984. On the same day the spouses sent a letter to the Provincial Sheriff, Victorino Evangelista, and his deputy, Benjamin Hao, advising them that the loan secured by the mortgage had already been paid. A copy of the letter was given to Circle.

The extrajudicial foreclosure sale nevertheless proceeded as scheduled, and the property was awarded to Circle as the lone bidder at its proffered price of P24,484.60.

The Jurado spouses thereupon filed a complaint in the Regional Trial Court of Bulacan for the annulment of the foreclosure sale, and for recovery of damages. The action thereby initiated was docketed as Civil Case No. 7264-M and was in due course assigned to Branch XIV of the Court.

Circle filed an answer with counterclaim. It alleged inter alia that:

- 1) the Jurado spouses had given post-dated checks to Circle in anticipated payment of their indebtedness but these had been dishonored on presentment because drawn against a dormant account;
- 2) every time a check was dishonored, and Circle asked the Jurados to replace the same, the Jurados would make cash payments which were, however, invariably insufficient to cover the amount of the due installments;
- 3) this cycle — of check presentment and dishonor followed by short cash payments — went on until the last of the post-dated checks was dishonored, with the result that as of April 5, 1984, the maturity date of the obligation

agreed upon, there was still a balance of P12,160.00 owing to Circle; and

4) two (2) letters of demand were sent by Circle to the Jurados who, on receipt of each letter, paid P500.00 in cash, with promises to pay the balance, promises that were never fulfilled.

Issues having thus been joined, the Trial Court set the case for pre-trial on December 20, 1984, notices whereof were sent to the parties and their counsel by registered mail.

On the day appointed for the pre-trial, there was no appearance by Circle or its co-defendants or any of their counsel. Consequently, they were declared in default and evidence of the Jurado spouses was received ex parte on the same day, December 20, 1984.[2] On May 13, 1985, the Trial Court rendered judgment against all the defendants, the dispositive portion of which reads as follows:[3]

"WHEREFORE, judgment is hereby rendered for the plaintiffs, declaring the foreclosure of the property of the plaintiffs null and void; ordering defendants to pay jointly and severally P5,000.00 as attorney's fee ** (and) P5,000.00 as exemplary damages.

"SO ORDERED."

Notice of this judgment was served on Circle on May 17, 1985. On May 28, 1985 it filed a "Verified Urgent Motion to Set Aside Order of Default and Judgment," alleging that it had not received notice of the pre-trial on December 20, 1984 and drawing attention to what it claimed to be valid defenses set forth in its answer. To its motion Circle also attached the certification of the President-Manager of the Rural Bank of Meycauayan, Inc., in substantiation of its claim of dishonor of the Jurados' checks. It set the motion for hearing on June 7, 1985 at 8:30 o'clock in the morning, with notice to the Jurados' counsel. But the motion was peremptorily denied as "not meritorious" three days after its filing, by Order dated May 31, 1985.

On the other hand, by an earlier Order dated May 29, 1985, the separate motion filed by Circle's co-defendants, the Provincial Sheriff and his Deputy, also praying for the setting aside of the default order and judgment, was granted, and the decision of May 18, 1985 was reconsidered and set aside as far as the sheriffs were concerned. The case was then re-scheduled for pre-trial on June 13, 1985 as to the defendant sheriffs only. At said pre-trial, the Jurados declared that they did not intend to hold the sheriffs liable along with Circle. The Court therefore issued another order declaring the claim for damages against the sheriffs waived and withdrawn.

Circle appealed to the Court of Appeals. In that Court it imputed to the Trial Court two errors, to wit:

- 1) in not notifying it of the order of default and hastily receiving plaintiffs' evidence ex parte on the same date as the pre-trial; and
- 2) in denying its verified motion to set aside the default order and judgment.

The verdict of the Court of Appeals went against Circle. In its Decision promulgated on July 31, 1986, the Appellate Tribunal affirmed the appealed judgment. It declared that "the receipt slips" pasted on the back page of the notice of hearing for December 20, 1984 (in the record of the case), showed that copies of said notice were in truth received by Circle on December 20, 1984 and by its former counsel on December 13, 1984; and that moreover, Circle had failed to present an "affidavit of merit * * * alleging that the notice of hearing was not relayed to it," or the affidavit of its former lawyer explaining her failure to appear at the pre-trial. Nor had Circle, according to the Court, explained on appeal "its defense or defenses by producing returned checks and letters and an accounting to offset Exhibits D and D-24 totalling P45,648.44."

Circle moved for reconsideration, alleging that if the Trial Court, instead of immediately denying its "Verified Urgent Motion to Set Aside, etc.," had conducted a hearing thereon on the date and time specified therein, it could

have presented proof of its negative averment that it had not received notice of the pre-trial, and that it had valid defenses. After the appellee spouses had filed a comment thereon, and Circle, a reply to the comment, the Court of Appeals denied the motion for reconsideration by Resolution promulgated on January 26, 1987.

Circle has appealed to this Court and here submits that the decision and resolution of the Appellate Tribunal are "not in accordance with law, jurisprudence or settled principles."

The issue is whether or not the Court of Appeals erred in upholding the Trial Court's refusal to set aside the declaration of default entered against Circle and the default judgment thereafter rendered.

That the order of default was correctly handed down must be conceded. It is explicitly warranted by Section 2, Rule 20 of the Rules of Court, viz.: "A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

So, too, the reception of the plaintiffs' evidence ex parte and the rendition of judgment on the basis thereof, must be considered proper, being justified by Section 1, Rule 18 of the Rules of Court, in relation to Section 2, Rule 20, just mentioned.

The remedy against an order of default is that provided for by Section 3, Rule 18, i.e., the filing by the party of "a motion under oath to set aside the order * * * upon proper showing that his failure to answer (or appear at the pre-trial) was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense." On the other hand, the remedy against a judgment by default is a motion for new trial under Rule 37 — filed "(w)ithin the period for perfecting appeal"[4] — in relation to the third paragraph of Section 2, Rule 41,[5] of the Rules of Court. This was the remedy availed of by Circle, a motion evidently grounded, more particularly, on Section 1 (a) of Rule 37, i.e., "fraud, accident, mistake or excusable negligence against which ordinary prudence could not have guarded and by which the movant has probably been substantially prejudiced in his substantial rights."

Now, the Rules require that a motion for new trial on this ground should be accompanied by —

- 1) an affidavit or affidavits alleging the facts demonstrative of the fraud, accident, mistake or excusable negligence invoked as ground for relief, and
- 2) an affidavit of merit, stating facts constituting a valid cause of action or a meritorious defense.[6]

These affidavits may be drawn up in separate documents and appended to the motion for new trial. Alternatively, the facts which should otherwise be set out in said separate affidavits and affidavits of merits may with equal effect be alleged and incorporated in the motion itself; and this will be deemed a substantial compliance with the formal requirements of the law provided, of course, that the movant, or other individual with personal knowledge of the facts, take oath as to the truth thereof, in effect converting the entire motion for new trial into an affidavit.

This latter form or mode was adopted by Circle. In its motion (entitled "Verified Urgent Motion To Set Aside, etc.") it alleged under oath, through its manager:

- 1) that it and its co-defendants had not received notice of the pre-trial, and if its counsel had in fact received notice, "the same was not relayed to the defendants," this being the reason for their failure to appear; and
- 2) that it had valid defenses against the plaintiffs' claim, in that some of the checks given by plaintiff spouses in payment of their loan, for which receipts had been given, had been dishonored on presentment, an assertion supported by the certification of the Meycauayan Rural Bank, Inc. "depository bank of plaintiff spouses."

The motion was filed within the reglementary period set by law, and complied with the requisites prescribed by Rule 15: i.e., it contained a notice of hearing, and the motion with said notice was served by the movant on the

Jurado spouses more than three (3) days in advance of the date appointed therefor.

What now intrigues this Court is why the Trial Court did not choose to hear the parties, specially the defendants-movants, on the date and time fixed in the motion, but opted to deny the motion within three (3) days from its filing on the laconic ground that it had found the motion "not meritorious."

This is not to say that the "Verified Urgent Motion to Set Aside, etc." was entirely free of defect. It was not. There was no specification of the facts allegedly constituting the fraud, accident, mistake or excusable negligence. However, this matter — and also the existence of valid defenses, attempted to be made out in the motion and the certification of the manager of the Meycauayan Rural Bank, Inc., taken together with those of the answer with counterclaim — might have been inquired into and definitely resolved at the hearing of the motion set thirteen days from its filing. The possibility of a positive and considerable injustice to the defendant, so this Court has held, necessitates a careful and liberal examination of the grounds upon which the defendant may seek to set it aside.[7]

What further intrigues this Court is why Circle's co-defendants, who also failed to appear at the pre-trial and were consequently also subjected to a default declaration and judgment, were accorded a different treatment. As above stated, on May 29, 1985, the Court granted the latter's motion to set aside the judgment by default and re-scheduled the case for pre-trial, on June 13, 1985. Yet two days later, on May 31, 1985, it simply denied as "not meritorious" a similar motion filed by Circle. On that day, June 13, 1985, or on the date of hearing of Circle's motion to set aside, June 7, 1985, or any day reasonably proximate thereto, the Trial Court could very well have also heard Circle on its plea for relief. At that point, the case had not been so considerably delayed as to cause substantial prejudice to the Jurado spouses by the Court's taking time to hear petitioner Circle's motion.

These considerations, and the well known axiom invoked by said petitioner that judgments by default are not looked upon with favor when a trial on the merits may be conducted without significant delay or material prejudice to any party,[8] would appear to indicate a grant of relief to Circle.

On the other hand, it must be stressed that a satisfactory showing by a party of fraud, accident, mistake or excusable neglect does not ordinarily warrant the setting aside of a judgment under Rule 37. It is essential, to boot, that that party demonstrate that he has a meritorious cause of action or defense; otherwise, nothing would be gained by setting the default order aside.[9]

It was for this reason that this Court deemed it expedient to inquire into the merits of Circle's basic defense, of dishonor on presentment of several of the post-dated checks given by the Jurados corresponding to the stated monthly installments.

In a Resolution dated February 17, 1988, the Court drew attention to the "six (6) checks of respondent Mrs. Fortunata Jurado (which, according to the certification of the Meycauayan Rural Bank) were 'returned due to insufficiency of funds,'" but as to which "the respondents assert that 'the questioned checks were not returned anymore because * * * (they) were able to redeem all those checks by way of making payment in cash,'" and required the Jurado spouses "to submit * * * authentic copies of the receipts or other documents evidencing the payments mentioned by them corresponding to the 'redeemed checks' * * * ."[10] In response, the Jurados transmitted to this Court what appear to be the originals of the twenty-five (25) official receipts issued to them by Circle, marked in evidence in the Court a quo as Exhibits D, D-1 to D-24.[11]

In another Resolution dated April 18, 1988, the Court further required the Jurados "to submit a sworn statement particularly specifying whether or not the checks mentioned in ** (certain of the annexes thus transmitted) were in fact returned for lack of funds or other invalidating defect and if so, what evidence establishes their payment of the amounts covered by said checks." [12] In compliance therewith, the affidavit of Roberto Jurado was submitted

in which he declares that —

- 1) he had issued several checks with dates corresponding to those of the stipulated monthly installments;
- 2) the agreement was that he would actually pay each installment in cash, at which time the corresponding check would be returned to him, with the number thereof being indicated in the official receipt;
- 3) this was the mode of payment in fact actually observed;
- 4) contrary to the certification of the Manager of the Meycauayan Rural Bank — who happens to be the wife of Circle's manager — no checks were in fact dishonored; otherwise, those dishonored checks would have remained in possession of Circle, but the truth is, all checks were eventually returned to the Jurados;
- 5) unfortunately, all said checks were subsequently misplaced and may no longer be located.

Although Circle had notice of the submission of the official receipts (Exhs. D, D-1 to D-24) and the affidavit of Roberto Jurado, it has nonetheless not dealt with those matters at all, either in its memorandum, or in any other pleading which it could have obtained leave to file. All it has done is to reiterate its contention that some of the Jurados' checks had been dishonored on presentment — relying on the certification of the manager of the Meycauayan Rural Bank, and an affidavit of its Manager executed on September 21, 1988 submitted for the first time on appeal, to reiterate its assertion that it could have shown the facts constituting the accident, mistake or excusable neglect had the Trial Court held a hearing on its "Urgent Motion to Set Aside, etc.;" and to invoke this Court's rulings that judgments by default are not normally looked upon with favor. It overlooks other rulings of this Court, already adverted to, that where a movant for new trial fails to persuade the court that he has a meritorious cause of action or defense, the judgment will not be set aside even if he succeed in establishing fraud, accident, mistake or excusable negligence.[13]

As things stand, there is nothing in the record to show that the official receipts issued by Circle itself (Exhs. D, D-1 to D-24) are other than genuine. Indeed, a cursory examination of the receipts would show that they were given out in the ordinary course of business. The receipts, show, for instance, that rebates were given to the Jurados, presumably for prompt payments, and charges were added and exacted, presumably for late or defective payments. In fine, the Court is not persuaded that Circle has satisfactorily shown that it has a valid defense to the Jurados' suit, or that the Court of Appeals was in error when it characterized Circle's appeal as "baseless and futile" because of its failure to explain "its defense or defenses by producing returned checks and letters and an accounting to offset Exhibits D and D-24 totalling P45,648.44."

The Court therefore declares correct the pronouncement of both the Trial Court and the Court of Appeals that Circle's motion for new trial — entitled "Verified Urgent Motion to Set Aside, etc." — was defective, not only because it failed to allege either by separate affidavit or in the body of the motion itself, the particular facts claimed to constitute the fraud, accident, mistake or excusable negligence entitling it to relief, but also because it failed to demonstrate with any degree of persuasiveness, by affirmative averments, either in its aforesaid motion or in any other pleading, that it had in its favor a meritorious defense to the action for annulment of the foreclosure sale on the ground that the mortgage debt had been fully paid.

WHEREFORE, the Decision of the Court of Appeals in AC-G.R. CV No. 07269 promulgated on July 31, 1986, is **AFFIRMED**, with costs against the petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 14

[2] Id., p. 4

[3] Id., p. 13

[4] Fifteen (15) days counted from the notice of the final order or judgment appealed from Sec. 39, B.P. 129; Par. 19 (a), Interim Rules (Resolution of Court en Banc dated Jan. 11, 1983)

[5] "A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no * * * (motion) to set aside the order of default has been presented by him * * *."

[6] *Agravante v. Patriarca*, G.R. No. 48324, March 14, 1990

[7] *Flores v. Buencamino*, 81 SCRA 627 (1978), cited in *Moran*, op. cit., 1979, ed., Vol. 1, p. 532

[8] *Coombs v. Santos*, 34 Phil. 446; *Mercader v. Bonte*, 92 SCRA 635, 646; *Tecson v. Tecson*, 49 O.G. No. 4308

[9] *Carangdang v. Cabatuando*, 53 SCRA 383 (1973)

[10] Id., p. 59

[11] Id., pp. 63-72

[12] Id., p. 73

[13] See footnote 9, *supra*

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