

FILINVEST LAND, INC., PETITIONER, VS. THE HON. COURT OF APPEALS AND PHILIPPINE UNDERWRITERS FINANCE CORPORATION, RESPONDENTS.

G.R. No. 78885. February 26, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this case is whether or not the respondent was properly declared in default. We are asked to review the decision of the Court of Appeals, the dispositive portion of which reads:

ACCORDINGLY, for all the foregoing considerations, all the appealed Orders, Decision, and Resolution are hereby nullified, lifted and set aside, the defendant's Answer with counterclaim, as well as the Third-Party Complaint, admitted, and the case remanded to the court a quo for further proceedings. No costs.

The following facts as found by the Court of Appeals are not in dispute:

"On October 10, 1983, plaintiff Filinvest Land Incorporated filed with the Regional Trial Court of Makati, Metro Manila, a complaint dated September 30, 1983, against the defendant Philippine Underwriters Finance Corporation, both corporations being organized and existing under Philippines laws, for Recovery of Possession of a parcel of land, Lot No. 3, Block 13 of the consolidation-subdivision plan (LRC) Pcs-6254, containing an area of 999 square meters, located along Benavidez Street, Legaspi Village, Makati, Metro Manila, including an unfinished seven-storey building thereon, alleging that it is the owner thereof as evidenced by Transfer Certificate of Title No. S-109458, issued in its favor on July 28, 1981, but which is occupied by the defendant to house some of its offices, and who, inspite of repeated demands by the plaintiff, has refused to vacate the same.

"Summons, together with a copy of the complaint, was served upon the defendant on October 13, 1983. A motion dated October 24, 1983 was filed by defendant, through Atty. Emerito T. Salva, requesting for an extension of twenty (20) days from October 28, 1983, or up to November 17, 1983, on the ground that undersigned counsel had to confer with the officers of the corporation conversant with the facts of the case and to go over voluminous documents and other related cases, which was granted by the court. A second motion for extension of fifteen (15) days dated November 16, 1983, or up of December 2, 1983, to file an answer was filed by the defendant, through Atty. Pastor M. Reyes, Jr., on the ground that the transactions involved voluminous records and in order to prepare an intelligent answer, undersigned counsel had to read all the records in his possession in addition to the heavy pressure of work in other equally important cases, which was also granted by the court Then a third motion for extension to file an answer dated December 1, 1983 for ten (10) days was filed by defendant, through Atty. Angel D. Bautista, Jr., or up to December 12, 1983, on the ground that the lawyer assigned to handle this case was quite busy preparing for his wedding, as well as daily court appearances, which was similarly granted by the court on December 5, 1983.

"In a motion dated December 10, 1983, an urgent request for another extension of twenty (20) days from December 12, 1983, on the ground that the issues to be brought up for judicial scrutiny in the answer and in the third party complaint of defendant are very controversial, complicated and difficult requiring careful analysis,

study and research, was filed by defendant, through Atty. Magno F. Salva, and which was likewise granted by the court.

"Then for the fifth time, defendant filed another urgent motion for extension of time to file its answer, dated December 28, 1983, asking for another twenty (20) days from January 1, 1984, on the following grounds: the heavy pressure of work in pending cases before the Securities and Exchange Commission; the preparation of other pleadings, motions, memoranda and papers in other cases; the preparation and attendance in the trial of cases before the Regional Trial Courts of Metro Manila, all of which would prevent counsel for defendant from being able to file their answer on or before January 1, 1984. This was also granted by the court, but only for five (5) days from receipt of the order dated January 3, 1984, which was received by defendant's counsel on January 4, 1984, and which would then expire on January 9, 1984.

"Finally, another verified urgent motion dated January 7, 1984, asking for a final and last extension of ten (10) days from January 9, 1984, was filed by defendant's counsel on the ground that Atty. Emerito Salva, who was the one personally studying and preparing the answer, was stricken ill and collapsed in his house due to lobar pneumonia on December 18, 1983, and was bedridden for ten (10) days, as shown by the sworn medical certificate issued by his attending physician (Annex "A"). Besides, even while still recuperating, he had to file a lengthy motion for reconsideration in the case of Philfinance, pending before the SEC, regarding the order of liquidation thereon, as well as a brief in IAC Case No. DV-00931. This motion was denied on January 9, 1984.

"On January 10, 1984, the day immediately following the extended period up to January 9, 1984, plaintiff, through counsel, filed a motion to declare defendant in default and be allowed to adduce evidence ex-parte. On the same date, January 10, 1984, the lower court issued an order which was received by defendant on January 17, 1984, declaring the defendant in default, and allowing the plaintiff to adduce evidence ex-parte. A hearing ex-parte was conducted and terminated that same day, January 10, 1984.

"The very next day, January 11, 1984, a two-page decision was rendered by the lower court in favor of the plaintiff and against the defendant, the dispositive portion of which is hereunder quoted:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to vacate the building and lot thereon, and turn over the possession thereof to the plaintiff."

SO ORDERED."

"A verified Answer with Counterclaim dated January 9, 1984, consisting of fifteen (15) pages, excluding its annexes, was filed by the defendant on January 12, 1984, at 8:00 o'clock in the morning, which denied plaintiff's claims and averred that Transfer Certificate of Title No. S-109458 and Transfer Certificate of Title No. 109809, and all the transactions or documents executed by Hermilo V. Rodis, Sr., President of defendant Philfinance, in favor of the Aboitiz Group, which led to the issuance of said titles were without consideration and thus null and void, illegal and invalid, as well as unauthorized, and the deed of sale between the Aboitiz Group and the plaintiff was done in bad faith, and that while said parcel of land and the unfinished seven-storey building thereon were under receivership by the Securities and Exchange Commission, the defendant was still the owner thereof and entitled to its possession.

"On January 25, 1984, defendant filed a sworn and verified motion/petition for: (a) the reconsideration of the order dated January 9, 1984 in order to admit defendant's answer filed on January 12, 1984 at 8:00 o'clock A.M.; (b) the setting aside of the default order dated January 10, 1984, and the default judgment dated January 11, 1984; and (c) leave to file, and the admission of defendant's Third Party Complaint attached to the motion/petition, against Filinvest Credit Corp., Aboitiz & Co., Inc., Pillsbury Mindanao Flour Milling Co., Inc., Cebu Shipyard & Engineering Works, Inc., Enrique M. Aboitiz, Vidal Aboitiz, Lucy Ugarte and Alberto Rotaeche as Third-Party Defendants.

"On February 7, 1984, plaintiff filed its opposition to defendant's motion/petition, to which defendant filed a verified reply on February 17, 1984, both pleadings substantially reiterating their prior arguments and issues raised in their earlier pleadings.

"In a rather long and extended 12-page single-space Resolution dated March 19, 1984, the lower court denied defendant's motion/petition in this wise:

"WHEREFORE, finding the neglect of defendant's counsel to file the answer to the complaint for a period of ninety (90) days to be inexcusable; that there being no prima facie case showing that defendant has a meritorious defense to warrant the change of the decision already rendered and considering that the matter alleged in the third-party complaint is foreign to the issues subject of the complaint which is only proper to be a subject of a separate complaint, this Court hereby denies defendant's motion/petition for (a) reconsideration of the order dated January 9, 1984; (b) setting aside of the default judgment dated January 11, 1984 and (c) leave to file and admission of defendant's third-party complaint." (At p. 89-92, Rollo)

As earlier stated, the Court of Appeals set aside the trial court's order, decision, and resolution.

The petitioner alleges that the Court of Appeals erred:

I — In finding that private respondent's failure to answer the complaint in a period of ninety (90) days is excusable and that having been declared in default is a denial to have its day in court:

II — In finding that there was substantial compliance by private respondent of the requirements of submission of affidavit of merits in its motion to admit answer; lift order of default and default judgment and also erred in citing jurisprudence not applicable to the case:

III — In faulting the lower court for the failure of private respondent to prove its meritorious defense:

IV — ruling that the third-party complaint by private respondent should be admitted on the sole ground that the third-party defendant is the predecessor in interest of petitioner: (At page 15, Rollo)

As earlier stated, the real issue in this case is whether or not the Court of Appeals committed reversible error in setting aside the order of default dated January 10, 1984 of the lower court.

While it is true that this Court in many earlier cases has remained faithful to the principle that courts should be liberal in setting aside orders of default for default judgments are frowned upon (*Montinola, Jr. v. Republic Planters Bank*, 161 SCRA 45 [1988]) the Court finds that the order of default must be sustained in the case at bar.

The petitioner filed its complaint on October 10, 1983. Summons and a copy of the complaint were served on the private respondent on October 13, 1983. From October 28, 1983 up to January 9, 1984, private respondent's counsel, through four (4) of its lawyers filed less than six (6) motions for extension of time asking for a total of ninety eight (98) days from October 13, 1983 to January 21, 1984 to answer the complaint.

The lower court granted the five (5) motions and denied the sixth motion before it declared Philfinance in default. All in all, the lower court gave the private respondent eighty-eight (88) days to answer the complaint, so it can not be stated that the trial court has in any way unduly favored the petitioner neither can it be considered that private respondent has been denied due process.

In reversing the default judgment, the respondent court relied on the contention that Philfinance was placed under receivership making it difficult for its lawyers to have access to the records of the corporation. The court stated:

"xxx It is a matter of official record that the defendant Philippine Underwriters Finance Corporation (Philfinance for short) had been placed under receivership by the Securities and Exchange Commission (SEC), thus making it rather difficult for the defendant's counsel to have access to the records of said corporation.

Such records, as would naturally be expected of a corporation of its size and type of business, are voluminous, and ferreting the relevant facts and documents to support them would not be an easy task, as it proved to be. Besides, the placing of the defendant under receivership by the SEC deprived the corporation's officers of the full control of its operations, assets and records. (Rollo, p. 93)

Certainly, the trial court took into consideration the private respondent's situation which is the reason why it allowed the several extensions of time in the exercise of extreme leniency. But much as we would like to sympathize with private respondent's plight and agree that its counsel indeed had difficulty with the records of the corporation, such reason is not only insufficient to explain six motions for postponement but was also belatedly raised. It was a mere afterthought on the part of counsel when he raised such reason after they were already adjudged in default. In all of the six (6) motions, the private respondent's counsel choose to justify their requests on the basis of the inability to read the records because of too much work, or heavy pressure of work, illness of counsel or a rather frivolous reason such as the unexpected wedding of one of the counsel. The firm had several lawyers and the motions were alternately filed by the four counsel. If the sixth motion had not been denied then the court would probably have had another succession of requests for extensions of time. The pattern of inexcusable neglect, if not deliberate delay is all too clear. (*Development Insurance Corporation v. Intermediate Appellate Court*, 143 SCRA 62 [1986]. Equity and justice should also be considered for both party litigants. The private respondent was given extraordinary opportunity to have its day in court when the lower court had given it a total of eighty-eight (88) days from service of summons to file its answer to the complaint. The inability of four (4) lawyers to prepare the answer for this long period of time is to our mind not justified.

We reiterate the Court's ruling in the case of *Pahilanga v. Luna*, 164 SCRA 725 [1988], where we stated that:

"It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer. In motions for reconsideration of an order of default, the moving party has the burden of showing such diligence as would justify his being excused from not filing the answer within the reglementary period as provided by the Rules of Court, otherwise, these guidelines for an orderly and expeditious procedure would be rendered meaningless. Unless it is shown clearly that a party has justifiable reason for the delay the court will not ordinarily exercise its discretion in his favor (*Italics supplied*)."

Going over the records, we agree that the motion to lift the order of default was properly denied in view of the absence of any meritorious defense interposed by the private respondent.

Philfinance has not asserted any leasehold or other possessory right over the properties independent of their ownership. It mainly anchors its claim of ownership upon the contention that Filinvest's Torrens Title to the property is void because the original transfer of the properties from Philfinance to Filinvest's immediate predecessor-in-interest, Aboitiz and Company, Inc. (Aboitiz Group) was not authorized by Philfinance's Board of Directors. This Court gives more credence to the lower court's finding, to wit:

Contrary to the allegation of the defendant that the deed of assignment of the premises in question executed by the former President of Philfinance was without the knowledge and approval by the Board of Directors, records show that said deed of assignment was executed pursuant to the authority given by the Board of Directors of Philfinance in Resolution No. SB-81 passed during the meeting of the Board of Directors held on February 25, 1981 as per Secretary's Certificate issued by Mr. Vivencio R. Alcasid, the duly elected and qualified Corporate Secretary of Philfinance (Annex 'A' — Plaintiff's opposition to defendant's motion/petition).

In its efforts to prove that there was no meeting of the Board of Directors of defendant Philfinance on February

25, 1981 which passed Resolution No. SB-81 aforementioned, defendant, in its reply to opposition to motion/petition, submitted copies of the affidavits of several persons (Annexes K to K?15). Examination of these affidavits, however, disclosed that the affiants did not execute their affidavits as members of the Board of Directors or as officers of defendant Philfinance, but as members of the Board of Directors of Sterling Life Assurance Corporation and that of Filriters Guaranty Assurance Corporation attesting to the fact that there were no meetings of the Board of Directors of said corporation on February 25, 1981 whereby minutes were allegedly passed authorizing Atty. Hermilo V. Rodis to assign to Insular Bank of Asia and America its rights over the deed of sale with mortgage of Units A; B; C and D of the Sterlinglife Condominium and the assignment of the rights of Filriters Guaranty Corp. of the 3rd and 4th floors of Sterlinglife Condominium and the disposal of its CBCI'S.

Defendant also attached in its reply, copy of the affidavit of Mr. Vivencio R. Alcasid, the duly elected and qualified Secretary to the Board of Directors of Philfinance who issued and signed the Secretary's Certificate (Annex A-Plaintiff's opposition). Said affidavit of Mr. Alcasid, however, was executed by him in his capacity as the duly elected and qualified Corporate Secretary of the Filriters Guaranty Assurance Corporation and he was talking on matters relative to assets of said company. There was nothing mentioned on resolution No. SB-81 by the Board of Directors of Philfinance.

While it is true that Mr. Ricardo C. Silverio, Sr. executed his affidavit (Annex K) as the Chairman of the Board of Directors of defendant Philfinance, nevertheless, he only denied that there was board meeting on February 25, 1981 whereby a resolution was allegedly passed authorizing Mr. Hermilo V. Rodis to pledge the shares of stocks of Insular Bank of Asia and America and the assignment of rights over 1st, 2nd 3rd and 4th floors of Sterling Life Condominium. There was nothing therein which mentioned Resolution No. SB-81 and of the lot and building subject of the present case. The same manner also as to the affidavit of Mr. Bienvenido L. Reyes, the Assistant Corporate Secretary of Philfinance. All the said annexes, therefore, have no value or weight in assailing the due execution of Resolution No. SB-81 (Annex A-Opposition) as well as the Deed of Assignment executed by Mr. Hermilo V. Rodis (Annex A - Answer). So to speak, nothing has been done yet by the Board of Directors of defendant Philfinance in assailing the validity of said resolution and deed of assignment, not until now when the instant complaint was filed, but by mere allegations without documentary proofs. The inaction by the Board of Directors of defendant Philfinance in assailing Resolution No. SB-81 and the deed of assignment aforementioned for the last three (3) years and up to the present, clearly indicates its acquiescence or knowledge of the matters subject thereof." (Rollo, pp. 82-83)

Considering the above, we fail to see how mere denials can prevail over convincing evidence on record.

Furthermore, in assailing the transfer said properties to Aboitiz Group, Philfinance alleges that there was no valid consideration given in exchange of the deed of assignment. It prayed that its third-party complaint against the Aboitiz Group be admitted considering that the money placement made by Aboitiz in the amount of P19,800,000.00 was illegal and anomalous and that the trading of commercial papers relative thereto was unlawful and fraudulent since said commercial papers were fake and spurious. Hence, the deed of assignment of the premises in question (in favor of Aboitiz) was null and void and without effect.

We agree with the lower court that the third-party complaint of Philfinance against Aboitiz does not pass the test of admissibility. For a third-party complaint to be admissible, it must be shown that the third-party defendant may be held liable to the defendant or to the plaintiff for all of the latter's claim against the defendant. The allegations of the third-party complaint (re: legality or illegality of the money placements) involve transactions purely between Aboitiz and Philfinance. Whatever defenses the Aboitiz Group may have against Philfinance can not be validly raised against Filinvest's claim since said transaction between Philfinance and Aboitiz is entirely different and foreign to Filinvest's complaint for the recovery of possession of the subject premises. Filinvest merely relies on the indefeasibility and incontrovertibility of the Transfer Certificate of Title of the Aboitiz Group over the

subject properties. As an innocent purchaser for value of a registered land, it has all the right to depend on the conclusiveness and indefeasibility of the title as guaranteed under the Torrens System of Registration.

Considering private respondent's failure to establish a valid defense, we therefore do not find any abuse of discretion on the part of the lower court in denying the motion to lift the order of default. As we stated in the Pahilanga case, (supra):

"xxx [N]othing would be gained by having the order of default set aside where the party held in default has no valid defense in his favor for in such case, he will just the same fail on the merits even if the default order is lifted [Development Insurance Corporation v. Intermediate Appellate Court, G.R. No. 71360, July 16, 1986, 143 SCRA 62]".

This Court reiterates that it is concerned with the heavy caseloads of courts at all levels. Most of the delays for which the justice system is assailed come from failure of counsel to cooperate with candor and will in the speedy resolution of cases. We have instituted continuous trial. We are revising the Rules of Court to make them responsive to current problems. We call judges to task when their cases are not adjudicated with accuracy and dispatch. The least we can do is sustain them when they come across litigants like the private respondent in this case.

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby GRANTED. The questioned decision of the Court of Appeals is REVERSED and SET ASIDE and the resolution of the Regional Trial Court dated March 19, 1984 is REINSTATED.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.

Feliciano, J., no part. Petitioner represented by his former firm.

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