

NELSON L. YOUNG AND VIOLETA YOUNG, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND INDUSTRIAL FINANCE CORPORATION, RESPONDENTS.

G.R. No. 81239, December 04, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court to set aside the decision^[1] of 24 August 1987 of respondent Court of Appeals in C.A.-G.R. CV No. 07484^[2] which affirmed in toto the decision of Branch 135 of the Regional Trial Court of Makati, Metro Manila of 3 May 1985 in Civil Case No. 1219.

The factual and procedural antecedents are not disputed.

On 3 July 1981, herein private respondent (hereinafter referred to as IFC), as assignee of a deed of sale with chattel mortgage and the accompanying promissory note, filed a complaint against the petitioners with the then Court of First Instance (now Regional Trial Court) of Rizal (at Pasig, Metro Manila) for the payment of the total sum of P157,588.39 which became due on the note by reason of its acceleration clause, the interest thereon, and of attorney's fees. The note was executed by petitioners in favor of Baroq Motor Sales, Inc. in connection with their purchase of a cargo truck on installment basis. The case was docketed as Civil Case No. 41881 and was assigned to Branch VI of said court.

For failure to file their Answer within the reglementary period, the Pasig court, upon motion of IFC, declared petitioners in default in its order of 25 September 1981 and allowed IFC to present its evidence ex-parte on 30 October 1981. However, on 30 September 1981, petitioners filed an Answer With Counterclaim and a Motion to Admit Third-Party Complaint against Worldwide Insurance Co., Inc. with which they insured against loss or damage the cargo truck for P180,000.00. The Pasig court granted this motion on 15 October 1981.

On 15 October 1981, IFC filed its reply to the Answer. On 27 October 1981, petitioners filed a motion to reconsider the default Order of 25 September 1981, which the court granted on 30 October 1981.

On 4 December 1981, the Third-Party defendant filed its Answer with Compulsory Counterclaim.

Then, on 17 December 1981, the Pasig court set the case for pre-trial conference on 29 March 1982 at 8:00 A.M.

When the case was called for pre-trial on 28 March 1982, neither petitioners nor their counsel appeared despite due notice. Upon motion of IFC, the Pasig court issued an Order declaring petitioners in default, allowing IFC to present its evidence ex-parte before a Commissioner and dismissing the third-party complaint without prejudice; however, since petitioners arrived shortly thereafter, the court gave them five (5) days from receipt of the Order within which to file any motion they may deem necessary.

At 2:35 o'clock in the afternoon of 30 March 1982, IFC presented its evidence before the Commissioner designated by the Pasig court and rested its case.

On 7 April 1982, petitioners filed a motion to reconsider the 29 March 1982 Order declaring them in default and dismissing the third-party complaint. They prayed that the order be lifted and that the case be set for pre-trial conference.

On 20 May 1982, the Pasig court issued the following Order:

"Finding the motion for reconsideration filed by the defendants dated April 6, 1982, to be well-taken and in the interest of justice, the Court grants the same. The Order dated March 29, 1982 declaring defendants in default and dismissing the third party complaint is hereby reconsidered and set aside. Plaintiff's evidence, however, stands." (underscoring supplied for emphasis)

Upon manifestation of IFC on 21 July 1982, the Pasig court set the case for hearing on 15 October 1982. In a Notice of Hearing dated 11 October 1982, the hearing was reset to 21 January 1983. Then, on 14 December 1982, on the ground that the presiding judge was on leave, a notice was issued resetting "the case" for 9 March 1983. No hearing took place on the latter date because of the reorganization of the judiciary in January 1983.

The case was subsequently transferred to Branch 135 of the Regional Trial Court of Makati, Metro Manila, then presided over by Judge Rafael T. Mendoza, and was docketed therein as Civil Case. No. 1219. This Branch (hereinafter referred to as the Makati Court) issued on 20 April 1983 a Notice of Hearing/Pre-Trial Conference setting the hearing of the case for 24 June 1983 at 8:30 A.M.; however, due to the absence of the third-party defendant, the court, upon agreement of the parties present, reset the pre-trial conference to 2 September 1983.

On 2 September 1983, IFC, its counsel and the third-party defendant did not appear thus prompting the Makati court to issue the following Order:

"For failure of the plaintiff and counsel to appear today, despite due notice, as well as the third party defendant and counsel, as prayed for by the defendant, through counsel, the complaint is hereby dismissed, and the third party defendant declared as in default and third party plaintiff is allowed to present its evidence ex parte on September 8, 1983, at 2:00 P.M. in support of his third party complaint."

IFC received a copy of this Order on 20 September 1983.

Petitioners did not present their evidence.

On 25 May 1984, the Makati court issued the following Order:

"It appearing that despite the lapse of time plaintiff has failed to take the necessary steps to prosecute its case, this Court hereby orders the instant case dismissed for lack of interest to prosecute."

Upon IFC's motion for reconsideration of 13 September 1984, wherein it gave as reason for its failure to actively prosecute the case its occasional substitution of counsel and the transfer of the case from Pasig to Makati,[3] the Makati court issued on 25 September 1984 an Order reading as follows:

"Motu proprio this Court hereby modifies its order dated May 25, 1984 in the sense that between the words 'time' and 'plaintiff', the words 'third-party' should be inserted. In all other aspect (sic), the aforesaid order stands.

Accordingly, the motion of the plaintiff thru counsel dated September 11, 1984 is deemed moot and academic."

As thus modified, the 25 May 1984 Order was then clearly directed against herein petitioners who did not present, ex-parte, their evidence on 8 September 1983.

On 27 September 1984, IFC filed with the Makati court a manifestation and motion praying that the latter's Order

of 2 September 1983 dismissing the complaint be reconsidered and set aside, the case be submitted for decision based on the evidence presented by the IFC and that petitioners' right to present their evidence be considered to have been waived.

Petitioners on the other hand assert that they were not furnished with copies of the manifestation and motion and of the order of the court of 12 October 1984 requiring them to comment thereon which was sent to their counsel, but returned to the court with the stamped notation "Unclaimed." [4]

On 14 February 1985, IFC filed a manifestation and motion reiterating its prayer that the case be submitted for decision on the basis of the evidence it had presented. Reacting, petitioners again claim that neither they nor their counsel received a copy thereof. [5] Pursuant thereto, the Makati court issued on 25 February 1985 an Order directing the court stenographer who took down the stenographic notes of the proceedings in the case before the Pasig court to submit the transcripts thereof within ten (10) days from notice, after which "the instant case will be deemed submitted for decision."

On 3 May 1985, the Makati court rendered its decision in Civil Case No. 1219, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter to pay plaintiff jointly and severally:

1. The amount of P134,472.34 plus penalty charges thereon at the rate of 3% per month from the filing of the complaint until fully paid;
2. The sum of P10,000.00 as attorney's fees;
3. Costs of suit." [6]

Petitioners appealed from the decision to the Court of Appeals, which docketed the case as C.A.-G.R. CV No. 07484. They asserted therein that the Makati court erred in setting aside its 2 September 1983 Order dismissing IFC's complaint and thereafter rendering a decision in the latter's favor, and contended in support thereof that said order had long become final and had the effect of an adjudication on the merits pursuant to Section 3, Rule 117 of the Rules of Court. [7]

The respondent court defined the issue before it in this wise:

"x x x whether plaintiffs' [IFC's] failure to appear at the hearing set on September 2, 1983 -- during which for such failure the Order dismissing the complaint was issued -- may be considered a failure to prosecute or a failure to comply with the rules or with an order of the court below on the part of the plaintiff within the contemplation of Rule 17, Section 3, supra." [8]

Respondent court rejected the petitioners' contention. It held that pre-trial was set by the Pasig court for 29 March 1982. However, petitioners were declared in default; it was at that stage that the requirement of Section 1, Rule 20 of the Rules of Court was deemed to have been complied with, and what was subsequently set by the Makati court, first on 24 June 1983 and then on 2 September 1983 upon a so-called "Notice of Hearing/Pre-Trial Conference," "was and should have been a hearing and not a pre-trial," considering "that at that particular stage (on September 2, 1983) all of the pleadings had already been submitted by the parties and plaintiff had already adduced its evidence." Furthermore, it was held in *Jalover vs. Ytoriaga* [9] that where the plaintiff had already adduced evidence and rested its case before the dismissal of said case, the absence of the plaintiff at a subsequent hearing cannot be considered a failure to prosecute on plaintiffs' part; it can only be construed as a waiver of the right to cross-examine the witnesses which the opposite party might present at the hearing and to object to the

admissibility of the evidence of the latter.[10] Moreover, respondent court considered as satisfactory IFC's explanation for its failure to prosecute the case. Hence, in the decision promulgated on 24 August 1987, respondent Court of Appeals affirmed in toto the decision of the Makati court. Their motion for its reconsideration having been denied in the resolution of 21 December 1987, petitioners came to this Court via this petition for review which they filed on 5 February 1988.[11] They urge Us to set aside respondent court's decision because it erred:

- (1) "in not passing upon the issue of finality of the order dated September 2, 1983 -- dismissing plaintiff-appellee's complaint;"
- (2) "in not concluding that the order dated September 2, 1983 x x x being final and executory, the lower court has lost jurisdiction to set aside the same;"
- (3) "in misapplying the doctrine enunciated x x x in the case of Jalover vs. Ytoriaga, 80 SCRA 100, to the case at bar;"
- (4) "in not concluding that after the order dated September 2, 1983 x x x became final and executory, the subsequent proceedings and the decision rendered anew by the trial court dated May 3, 1985 are null and void." [12]

We required the respondents to comment on the petition; [13] IFC complied with the order on 27 July 1988. [14]

We then gave the petition due course and required the parties to submit their respective Memoranda, [15] which petitioners complied with on 28 October 1988 [16] and the IFC only on 17 July 1990. [17]

The principal issue in this case is whether or not the Makati court's order of 2 September 1983 dismissing IFC's complaint for failure to appear on said date had long become final such that it was error for the former to issue its order of 25 February 1985 granting IFC's 27 September 1984 motion (to set aside said order of 2 September 1983 and to decide the case on the basis of the evidence it earlier presented ex-parte pursuant to the default order of 29 March 1982). The issue in turn revolves on the propriety and validity of the said dismissal order. If such order is valid, then certainly it became final upon the lapse of fifteen (15) days from receipt thereof by IFC. Both IFC and petitioners agree that the former received the order on 20 September 1983. Accordingly, per Section 39 of B.P. Blg. 129, IFC had until 5 October 1983 within which to either file a motion to reconsider the order or to appeal therefrom. Upon the other hand, if the Order was null and void, as IFC claims, it never became final.

As to be expected, petitioners assert that the Order was valid since what was set for 2 September 1983 was the pre-trial of the case; it was a re-setting of the pre-trial scheduled on 24 June 1983. Indeed, the Order of 24 June 1983 reads:

"By agreement, pre-trial is reset to September 2, 1983." [18]

Since IFC accepted the notice of pre-trial for 24 June 1983 and agreed to its re-setting, it is now estopped from claiming that the Makati court should not have set the case for pre-trial since one had already been had on 29 March 1982. Petitioners then conclude that since IFC failed to appear for pre-trial on 2 September 1983, the Makati court correctly dismissed the complaint pursuant to Section 2, Rule 20 of the Rules of Court which provides:

"SECTION 2. Failure to appear at pre-trial conference. -- A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

and that such dismissal amounts to an adjudication on the merits per Section 3, Rule 17 of the Rules of Court, which reads as follows:

"SECTION 3. Failure to prosecute. -- If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

Hence, it was error for the Makati court to set aside this Order in its 25 February 1985 Order on the basis of IFC's 27 September 1984 manifestation and motion.

IFC does not dispute the fact that it neither filed a motion to reconsider or appealed from the order of 2 September 1983. It, however, claims that the Makati court erred in dismissing the case on 2 September 1983 since it had already offered its evidence on 30 March 1982 pursuant to the default order of 28 March 1982 and that per the Order of 20 May 1982, while the default order was set aside, the court explicitly stated therein that "plaintiff's evidence, however, stands." In short, a party cannot be said "to have failed to prosecute when his evidence is already a part of the records of the case and the court can decide the case based on the evidence already presented." [19] It then went on to conclude that the 2 September 1983 Order is null and void and a void order is no order at all. Hence, even if it was received by IFC on 20 September 1983, it never became final and did not produce any legal or binding effect. [20]

Two (2) earlier cases decided eleven (11) years apart aid Us in resolving the issue in this case.

In *Pioneer Insurance and Surety Corp., et al. vs. Hontanosas, et al.*, [21] decided on 31 August 1977, a pre-trial was conducted between original plaintiffs and Pioneer on 5 May 1971. The latter opposed any amicable settlement; thereupon, plaintiffs marked their pre-trial exhibits, objections to which were reserved by Pioneer. The parties then agreed to set the trial on the merits on 11 June 1971. However, after the complaint was amended to include an additional party defendant, the court set the case again for pre-trial on the basis of the amended complaint, and because defendants failed to appear at such pretrial, it declared them as in default, allowed the plaintiffs to present their evidence ex-parte and thereafter rendered a decision in favor of the plaintiffs. This Court set aside the default order and ruled that the judge issued it with grave and serious abuse of discretion and in excess of jurisdiction since:

"x x x there is nothing in the Rules that empowers or authorizes the court to call a second pre-trial hearing after it has called a first pre-trial duly attended by the parties, and lacking such authority, the court perforce lacks authority to declare a failure to prosecute on the part of the plaintiff for failing to attend such second pre-trial; it also lacks the authority to declare the defendant 'as in default' by reason of the latter's failure to be present at the said second pre-trial."

The extended disquisition of the Court reads:

"Unquestionably, the present Rules make pre-trial mandatory. And the reason for making pre-trial mandatory is that pre-trial conferences bring the parties together, thus making possible an amicable settlement or doing away with at least the non-essentials of a case from the beginning. (*Borja vs. Roxas*, 73 Phil. 647).

Philippine jurisprudence has laid down the legal doctrine that while it is true that it is mandatory for the parties and their attorneys to appear before the trial court for a pre-trial conference to consider inter alia the possibility of an amicable settlement, the rule was by no means intended as an implacable bludgeon but as a tool to assist the trial court in the orderly and expeditious conduct of trials. The rule is addressed to the sound discretion of the trial court. (*Rice and Corn Administration vs. Ong Ante, et al.*, G.R. No. L-30558, Oct. 4, 1971).

Both client and counsel must appear at the pre-trial. This is mandatory. Failure of the client to appear is a ground for dismissal. (*American Ins. Co. vs. Republic* 1967D Phil. 63; *Hone Ins. Co. vs. United States Lines Co.*, 1967D Phil. 401, cited in *Saulog vs. Custombuilt Manufacturing Corp.* No. L-29612, Nov. 15, 1968; *Taroma v. Sayo*, L-37296, Oct. 30, 1975 (67 SCRA 508).

In the case of Insurance Co. of North America vs. Republic, et al., G.R. No. L--26794, Nov. 15, 1967, 21 SCRA 887, the Supreme Court, speaking thru Justice Bengzon, held that Sec. 1, Rule 20 of the Rules requires the court to hold a pre-trial before the case is heard and since in this case, a pre-trial has already been had, the fact that an amended complaint was later filed, did not necessitate another pre-trial. It would have been impractical, useless and time-consuming to call another pre-trial.

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The defendant Pioneer Insurance & Surety Corp. having complied with the order of the Court to appear and attend this pre-trial, and had manifested its opposition to settling the case amicably, said party may no longer be compelled to attend a second pre-trial hearing, and neither may it be punished by the court by its order declaring said defendant as in default. The mandatory character of a pre-trial and the serious consequences confronting the parties in the event that each party fails to attend the same must impose a strict application of the Rule such that where we find no authority for the Court to call another pre-trial hearing, as in fact there is none in said Rule, the conclusion is inescapable that the respondent Judge committed a grave and serious abuse of discretion and acted in excess of jurisdiction in declaring defendant Pioneer Insurance & Surety Corp. 'as in default' for failure to attend the second pre-trial called by the Judge on February 29, 1972. In other words, there is nothing in the Rules that empowers or authorizes the court to call a second pre-trial hearing after it has called a first pre-trial duly attended by the parties, and lacking such authority, the court perforce lacks the authority to declare a failure to prosecute on the part of the plaintiff for failing to attend such second pre-trial; it also lacks the authority to declare the defendant 'as in default' by reason of the latter's failure to be present at the said second pre-trial.

It serves no purpose for the court to call again another pre-trial where the parties had previously agreed to disagree, where the issues had been joined and where the court itself had been satisfied that a hearing on the merits is the next step to conduct as in the instant case where the court, after the pre-trial on May 5, 1971, set the trial of the case on its merits for June 11, 1971. Indeed, a second pre-trial is impractical, useless and time-consuming."

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In *Development Bank of the Philippines vs. Court of Appeals, et al.*, [22] decided on 26 January 1989, at a first pre-trial conference, the defendants were declared by the trial court to be as in default and the plaintiff Development Bank of the Philippines (DBP) was allowed, as in fact it did, present its evidence ex-parte. But on motion of defendants, the order of default was set aside and the case re-scheduled for pre-trial on which occasion, however, DBP was declared non-suited because the challenge of defendants concerning the "adequacy and efficacy" of the power of attorney granted by DBP to its Assistant Manager to appear for it at pre-trial was sustained by the trial court. The Court of Appeals having sustained the court a quo, this Court ruled that the effect of the following successive incidents therein, to wit: the joinder of the issues, the scheduling of the pre-trial conference, the failure of defendants to appear at pre-trial, the declaration of defendant, and the ex-parte presentation of evidence by the plaintiff was "to terminate the pre-trial stage of the action and to limit the effect of the subsequent lifting of the order of default issued against the private respondents to the restoration of their right to notice of subsequent proceedings and to take part in the trial.[23] Such lifting, as has also been held by this Court on another occasion, did not revert the action to the pre-trial stage or authorize, much less render mandatory, a second pre-trial." [24]

We went on to say that:

"The scheduling of a second pre-trial after DBP had finished presenting its evidence frustrated, rather than advanced, the primary purpose of pre-trials of abbreviating trial by limitation and simplification of the issues, if not indeed of dispensing altogether with the necessity of trial. Neither is that purpose served by non-suiting a

plaintiff at such a stage of the action. The correct course would have been to proceed with the trial, in fact already well under way, allowing the defendants (private respondents) to cross-examine the plaintiff's (DBP's) witnesses and thereafter to offer their evidence."

In the present case, it is quite obvious that the Pasig court had no intention of reverting the case to its pre-trial stage. This is easily borne out by the fact that its Order of 20 May 1982 is silent as to the prayer in petitioner's motion of 7 April 1982 that "the case be set for pre-trial conference with due notice to all parties concerned." Moreover, it subsequently sent a notice of hearing setting the hearing of the case on 15 October 1982, which was reset to 21 January 1983 in the notice dated 11 October 1982. Yet, while this may be so, the parties herein and the Makati court failed to fully comprehend the situation, which could have been due to the transfer of the case from the Pasig court and their failure to examine the records.

Thus, it is not clear whether the Makati court initially set the case for pre-trial or for hearing. The heading of its 20 April 1983 Notice is rather vague, if not misleading. It reads "Notice of Hearing/Pre-Trial Conference." But, as the respondent court noted, its body refers to a setting of the "hearing of the case" on 24 June 1983.^[25] Its personnel in charge of notices may have used the mimeographed blank forms but forgot to cancel the inappropriate words in the heading. In any case, the parties considered the notice as one for pre-trial for, on 24 June 1983, due to the absence of the third-party defendant, IFC and the petitioners agreed to reset the pre-trial to 2 September 1983 and the court issued the corresponding order. In essence, therefore, the parties in this case had voluntarily agreed that the case be set anew for pre-trial. And the Makati court, by its order, yielded, in effect, to the agreement of the parties. This fact brings this case out of the doctrine enunciated in the Pioneer and DBP cases, and ingrafts an exception thereto. No one can question the soundness and wisdom of the doctrine that the pre-trial stage is completed after a party had been ordered non-suited or declared as in default, as the case may be, and that an order lifting it does not revert the action to its pretrial stage, or authorize, much less, a second pre-trial. However, neither the Rules nor the doctrine bars the parties from agreeing, after such lifting, to hold a pre-trial and to effectively accomplish its objectives which could not have been done at the first pre-trial because of the absence of the plaintiff, resulting in his non-suit, or the absence of the defendant, resulting in his being declared as in default. The necessity for a second pre-trial may have been felt by the parties in this case considering that defendant had a third-party complaint and the third-party defendant had set up a compulsory counterclaim. At such pre-trial, the parties could consider the matter of an amicable settlement, the simplification of the issues and the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof which would, at the very least, shorten the proceedings. It must be remembered that the factual milieu surrounding the default order in this case is entirely different from that in Pioneer where the defaulted party attended the first pre-trial and rejected any amicable settlement of the case. DBP involved the non-suit at the second pre-trial of a party which had already adduced its evidence ex-parte at the first pre-trial after defendant was declared in default and was present at the second pre-trial; DBP was declared non-suited simply because the authority of its representative was challenged.

Elsewise stated, IFC had waived the effect of the lifting of the order of default and had voluntarily agreed to have another pre-trial.

For its failure to appear at the pre-trial on 2 September 1983, IFC could be validly non-suited and its complaint dismissed. Even if We follow the arguments of the respondent court and the IFC that the Makati court could not validly set the case for pre-trial and that the 2 September 1983 setting was in fact for a hearing - - and, therefore, for the cross-examination of the witness for IFC whose evidence had been adduced ex-parte on 30 March 1982 -- the Makati court could undoubtedly dismiss the complaint under Section 3, Rule 17 of the Rules of Court because neither IFC nor its counsel appeared and worse, its witness could not be cross-examined. Said section reads:

"SECTION 3. Failure to prosecute. -- If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication on the merits unless otherwise provided by court."

When cross-examination is not done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is rendered incompetent and should be stricken from the record.[26]

In the instant case, the Makati court did not provide in its order of 2 September 1983 that the dismissal of the complaint was without prejudice. Hence, it had the effect of an adjudication on the merits.[27] This Order was received by IFC on 20 September 1983. IFC knew that it was an order issued in connection with the 2 September 1983 pre-trial conference -- or hearing on the merits if it forgot the agreement it entered into with the adverse party on 24 June 1983. Its counsel knew, or was supposed to know, that it had only fifteen (15) days from receipt of a copy thereof within which to either move for its reconsideration or appeal therefrom. Yet, it did nothing until 27 September 1984, when it filed a manifestation and motion to set aside the order and decide the case on the basis of the evidence it had presented on 30 March 1982.

Undoubtedly, at the time it filed the manifestation and motion, the 2 September 1983 order had long become final. Neither appeal nor a petition for relief from judgment was available to IFC. The Makati court had lost jurisdiction over the case. It had no authority to modify, annul or set aside the final order. Once a decision becomes final and executory, it is removed from the power and jurisdiction of the court which rendered it to further alter or amend it, much less revoke it.[28] This doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of the courts must become final at some definite date fixed by law.[29] To allow courts to amend final judgments will result in endless litigation.[30]

The foregoing discussions are more than sufficient to abort the theory of IFC that the Order of 2 September 1983 was null and void and never had any binding effect because it had already presented its evidence and, per *Jalover vs. Ytoriaga*, supra., such a party can not be considered to have failed to prosecute. *Jalover* is not applicable in this case.

The conclusion we have reached may be harsh on IFC. But, it is quite clear from the records that it slept on its rights. It did nothing -- absolutely nothing -- for more than a year after receipt of the dismissal order of 2 September 1983. It slept too long on whatever right it had. Laws come to the assistance of the vigilant, not to those who sleep on their rights. *Vigilantibus, non dormientibus, jura subveniunt*. If IFC's counsel neglected his duties, appropriate action under the Code of Professional Responsibility may be taken against him.

It follows then that the Order of the Makati court of 25 February 1985 setting aside its 2 September 1983 order and considering the case submitted for decision on the basis of the evidence of IFC, and said court's decision of 3 May 1985 are null and void. Respondent court then committed a reversible error in affirming such decision.

WHEREFORE, the instant petition is GRANTED. The decision of the respondent court in C.A.-G.R. CV No. 07484 promulgated on 24 August 1987 and its resolution of 21 December 1987 in C.A.-G.R. CV No. 07484, and the decision of the Regional Trial Court of Makati, Branch 135, of 3 May 1985 in Civil Case No. 1219 are hereby SET ASIDE.

Costs against private respondent.

IT IS SO ORDERED.

Gutierrez, Jr., Bidin, and Romero, JJ., concur.

Fernan, C.J., on leave.

[1] Per Associate Justice Lorna S. Lombos-dela Fuente, concurred in by Associate Justices Ricardo J. Francisco and Alfredo L. Benipayo; Rollo, 28-35.

[2] Entitled "Industrial Finance Corp. vs. Nelson Young and Violeta Yong."

[3] Rollo, 51.

[4] Id., 12.

[5] Rollo, 13.

[6] Id.

[7] Rollo, 32.

[8] Id.

[9] 80 SCRA 100, 107.

[10] Rollo, 32-34.

[11] Id., 8-27.

[12] Id., 14.

[13] Rollo, 58.

[14] Id., 65, et seq.

[15] Id., 98-A.

[16] Id., 99.

[17] Id., 125.

[18] Rollo, 109.

[19] IFC's Memorandum, 8, citing Jalover vs. Ytoriaga, supra.; Rollo, 132.

[20] Id., 133, 134.

[21] 78 SCRA 447.

[22] 169 SCRA 409.

[23] Citing Section 2, Rule 18, Rules of Court.

[24] Citing Pioneer Insurance and Surety Corp. vs. Hontanosas, 78 SCRA 447, 460.

[25] Rollo, 51.

[26] MORAN, Comments on the Rules of Court, vol. 6, 1980 ed., 83.

[27] MORAN, Comments on the Rules of Court, vol. 1, 1979 ed., 519, and the cases cited. See also Olivares vs. Gonzales, 159 SCRA 33; Vergara vs. IAC, 185 SCRA 29.

[28] PLDT vs. Court of Appeals, 178 SCRA 94; Olympia International, Inc. vs. Court of Appeals, 180 SCRA 353; Commercial Credit Corp. of Cagayan de Oro vs. Court of Appeals, 169 SCRA 1; United CMC Textile Workers Union vs. Labor Arbiter, 149 SCRA 424.

[29] Philippine Rabbit Bus Lines vs. Arciaga, 148 SCRA 433.

[30] Villanueva vs. CFI of Oriental Mindoro, 119 SCRA 289.

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