

MANILA ELECTRIC COMPANY, PETITIONER, VS. LA CAMPANA FOOD PRODUCTS, INC., JUDGE BENIGNO T. DAYAW, PRESIDING JUDGE, RTC, BRANCH 80, QUEZON CITY, AND DEPUTY SHERIFF JOSE MARTINEZ, ...

G.R. No. 97535. August 04, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

A complaint was filed on August 21, 1990, by private respondent La Campana Food Products, Inc. (hereinafter La Campana) against petitioner Manila Electric Company (hereinafter Meralco) for recovery of a sum of money with preliminary injunction after it was served a notice of disconnection by the latter for alleged non-payment of the following billings: (a) the differential billing in the sum of P65,619.26, representing the value of electric energy used but not registered in the meter due to alleged tampering of the metering installation discovered on September 22, 1986; and (b) the underbilling in the sum of P169,941.29 (with a balance of P28,323.55) rendered from January 16, 1987, to December 16, 1987, due to meter multiplier failure.

Summons and a copy of the complaint were duly served upon Meralco on August 23, 1990.

The case, docketed as Civil Case No. Q-90-6480, was initially assigned on August 21, 1990 to Branch 78 of the Regional Trial Court of Quezon City presided over by Judge Percival M. Lopez, but was re-raffled on September 25, 1990 to Branch 80, presided over by public respondent Judge Benigno T. Dayaw, after Judge Lopez inhibited himself from hearing the case upon Meralco's oral motion.

On September 7, 1990, Meralco filed a motion for extension of time of fifteen days from said date within which to file an answer to the complaint at the Office of the Clerk of Court after the clerk of Branch 78 allegedly refused to receive the same because the case had already been re-raffled. The motion, however, was not acted upon because it did not contain a notice of hearing as required by Sections 4 and 5, Rule 15 of the Rules of Court.

Meralco's "Answer With Counterclaim" was actually received at Branch 78 only on September 21, 1990 which is beyond the period to answer but within the requested extension.

On account of Meralco's failure to file an answer to the complaint within the reglementary period which expired on September 7, 1990, La Campana filed on September 28, 1990 an "Ex-Parte Motion to Declare Defendant in Default;" which Judge Dayaw granted in an order of default dated October 8, 1990.

After hearing and receiving La Campana's evidence ex parte, the court a quo rendered a decision dated November 20, 1990, the decretal portion of which reads thus:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff as against the defendant, ordering:

- 1) Defendant to reconnect within twenty-four (24) hours from receipt of a copy of this decision the disconnected electric service in plaintiff's building situated at No. 13 Serrano Laktaw St., Quezon City under

Account No. 05373-0470-17 and/or plaintiff is hereby authorized to engage the services of a duly licensed electrician to reconnect the said electric service at the expense of the defendant;

2) Defendant to return the amount of P141,617.74 with 12% interest per annum from the time that the same was paid by plaintiff to defendant, until the same is fully reimbursed; [and]

3) [Defendant] To pay attorney's fees in the amount of P50,000.00 plus costs of suit.

SO ORDERED."

Instead of appealing the said decision to the Court of Appeals under Section 2, Rule 41 of the Rules of Court, Meralco filed on December 3, 1990, a "Motion to Set Aside Judgment by Default and/or for New Trial" on the ground that it filed an answer to the complaint and that the judgment by default was obtained by fraud.

In an order dated January 10, 1991, Judge Dayaw denied the said motion and opined that Meralco cannot presume that its motion for extension will be granted by the court, especially in this case where its motion for extension was defective in that it did not contain any notice of date and place of hearing. He also stated that the motion to set aside judgment by default and/or for new trial was a pro forma motion because it did not set forth the facts and circumstances which allegedly constituted the fraud upon which the motion was grounded.

On January 28, 1991, Meralco filed a notice of appeal. This was opposed by La Campana on the ground that it was filed out of time since the motion to set aside judgment by default and/or for new trial did not stop the running of the period to appeal, which expired on December 14, 1990, or fifteen days from the time Meralco received the decision on November 29, 1990.

The trial court, in an order dated February 22, 1991, denied Meralco's notice of appeal and granted the motion for execution earlier filed by La Campana. On March 11, 1991, respondent Judge appointed respondent Deputy Sheriff Jose Martinez of Branch 96 of the same court as special sheriff to enforce/implement the writ of execution which was issued on March 12, 1991.

Meralco filed the instant petition for certiorari and prohibition with prayer for the issuance of a restraining order and/or preliminary injunction on March 15, 1991, claiming that Judge Dayaw committed grave abuse of discretion in rendering his decision dated November 20, 1990. On March 20, 1991, the Court's First Division issued a temporary restraining order in favor of Meralco.

After examining the trial court's assailed decision and orders, as well as the pleadings and evidence presented below, we are convinced that respondent Judge committed no abuse of discretion, much less grave abuse of discretion, in the proceedings below.

The attention of Meralco is drawn to the fact that it indeed failed to indicate in its motion for extension of time to file an answer a notice of place and date of hearing, an omission for which it could offer no explanation. As we declared in the case of *Gozon, et al. v. Court of Appeals*:^[1]

"It is well-entrenched in this jurisdiction that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon."

Meralco was aware of the importance of such a notice since it insisted in its motion to set aside judgment by default and/or for new trial that it should have received notice of hearing of the motion to declare it in default which La Campana filed ex parte. La Campana correctly rebutted this argument by citing the early case of *Pielago v. Generosa*^[2] where the Court, in applying Section 9, Rule 27 of the old Rules of Court (now covered by Section 9 of Rule 13), laid down the doctrine that a defendant who fails to file an answer within the time provided by the

Rules of Court is already in default and is no longer entitled to notice of the motion to declare him in default.

Thus, when it filed in Branch 78 its answer with counterclaim on September 21, 1990, fourteen days after the expiration of the period within which to file an answer, Meralco was already in default and, naturally, it had to bear all the legal consequences of being in default.

The judgment by default of November 20, 1990 was based solely on the evidence presented by La Campana. No abuse of discretion attended such decision because, as stated above, Meralco was already in default.

The records indicate that Meralco was not certain at this juncture what remedy to adopt: a motion to set aside the judgment by default or a motion for new trial? Meralco chose to play it safe by using the "and/or" option.

It must be clarified that under the Rules, what an aggrieved party seeks to set aside is the order of default, an interlocutory order which is, therefore, not appealable, and not the judgment by default, which is a final disposition of the case and appealable to the Court of Appeals. Notice that in the following pertinent provisions, the Rules expressly state that what may be set aside is the order of default, while the judgment itself may be appealed to a higher court:

"Sec. 3. Relief from order of default. — A party declared in default may at any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. [Rule 18]

Sec. 9. Service upon party in default. — No service of papers other than substantially amended or supplemental pleadings and final orders or judgments shall be necessary on a party in default unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. [Rule 13]

Sec. 2. Judgments or orders subject to appeal. —

x x x x x x x x

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 petition for relief to set aside the order of default has been presented by him in accordance with Rule 38. [Rule 41]" [Italics supplied]

Granting arguendo that the motion to set aside judgment by default was proper, it was still correctly denied by respondent Judge for failure to show that Meralco's omission to answer was due to any of the causes mentioned in Section 3 of Rule 18. At best, the motion only stressed that it was filed on September 21, 1990, within the requested period of extension, which, as earlier discussed, cannot be presumed to be granted.

On the other hand, as a motion for new trial grounded on fraud, Meralco's motion likewise fails to convince. The fraud it claims is in the ex-parte motion of La Campana to declare it in default. Meralco claims that the reason for the ex-parte motion was "to deprive the defendant of the opportunity to oppose it, knowing that defendant actually filed its answer." But how could La Campana have known about the answer with counterclaim when it was actually received only on October 8, 1990, as evidenced by the registry return receipt attached to Meralco's Annex "H,"[3] while the ex-parte motion to declare Meralco in default was filed much earlier on September 27, 1990? "Fraud, as a ground for new trial, must be extrinsic or collateral, that is, it is the kind of fraud which prevented the aggrieved party from having a trial or presenting his case to the court, or was used to procure the judgment without fair submission of the controversy." [4] Meralco's failure to go to trial in this case is solely attributable to

its failure to comply with the Rules of Court.

We agree with respondent Judge that Meralco's motion to set aside judgment by default and/or for new trial is a mere pro forma motion inasmuch as it does not specify the facts constituting the alleged fraud which under the Rules must be alleged with particularity.[5] Being a pro forma motion, it did not interrupt the running of the period to appeal. Accordingly, having received the decision on November 29, 1990, Meralco had until December 14, 1990, within which to file a notice of appeal. The notice of appeal which it filed on January 28, 1991, was clearly filed out of time.

Having lost its right to appeal, Meralco cannot take refuge in the instant petition for certiorari and prohibition. The Court has always maintained that the special civil action of certiorari cannot be a substitute for a lost appeal, and there appears to be no cogent reason why such policy should be waived in this case.

WHEREFORE, the instant petition for certiorari and prohibition is DISMISSED and the TEMPORARY RESTRAINING ORDER issued on March 20, 1991, is hereby DISSOLVED. The decision dated November 20, 1990, as well as the Orders dated January 10, 1991 and March 11, 1991, issued by respondent Judge Dayaw in Civil Case No. Q-90-6480 entitled "La Campana Food Products, Inc. v. Manila Electric Company," are hereby declared FINAL. Accordingly, the Writ of Execution dated March 12, 1991 is hereby declared VALID.

Costs against the petitioner.

SO ORDERED.

Feliciano, J., (Chairman), in the result.
Melo and Vitug, JJ., concur.

[1] G.R. No. 105781, June 17, 1993.

[2] 73 Phil. 654; reiterated in *De Guzman, Jr. v. Santos*, No. L--22636, June 11, 1970, 33 SCRA 464 (citing *Duran v. Arboleda*, 20 Phil. 253; *Inchausti & Co. v. De Leon*, 24 Phil. 224; *Monteverde v. Jaranilla*, 60 Phil. 297; *Manila Motor Co. v. Endencia*, 72 Phil. 130); *Philippine British Co., Inc., et al. v. De los Angeles, et al.*, L-33720-21, March 10, 1975, 63 SCRA 50.

[3] *Rollo*, p. 43.

[4] *Regalado*, Remedial Law Compendium, I, 5d, p. 244.

[5] Section 5, Rule 8, Rules of Court.

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