

SECOND DIVISION

[G.R. No. 187720, May 30, 2011]

**TRINIDAD ALICER AND ADMINISTRATOR OF INTESTATE ESTATE
OF HEIRS OF ARTURO ALICER, PETITIONERS, VS. ALBERTO
COMPAS, WINEFREDA AND AMANDO PINEDA, RURAL BANK OF
CARIGARA, INC., AND EDGAR SELDA, RESPONDENTS.**

R E S O L U T I O N

The Case

This petition for review^[1] assails the 29 May 2007 Decision^[2] and the 17 April 2009 Resolution^[3] of the Court of Appeals in CA-G.R. CEBU-SP No. 00920. The Court of Appeals upheld the default order dated 25 July 2003 of the Regional Trial Court, Branch 9, Tacloban City (trial court) in Civil Case No. 97-11-203 for Reconveyance of Title with Damages and the trial court's succeeding orders dated 23 February 2005 and 12 May 2005 denying the motion to lift order of default and motion for reconsideration, respectively.

The Facts

The facts as found by the Court of Appeals are as follows:

The instant petition stems from the complaint filed by Alberto Compas against Winefreda Pineda and Amando Pineda, Trinidad Alicer and Heirs of Arturo Alicer, Edgar Selda and the Rural Bank of Carigara (Leyte) docketed before the Regional Trial Court, Branch 9, Tacloban City as Civil Case No. 97-11-203 for Reconveyance of Title and Damages.

After all the answers have been filed and preliminary matters disposed of, the court *a quo* on December 10, 2002 set the pre-trial conference on February 20, 2003 which was rescheduled to March 13-14, 2003 upon motion of defendant Rural Bank of Carigara (Leyte) per Order dated January 29, 2003.

However, prior to the March 13-14, 2003 pre-trial conference, counsel for the plaintiff Alberto Compas moved for the postponement of the hearings to March 20-21, 2003 on the ground of prior commitment.

Likewise on the same ground, defendants Trinidad Alicer and Administrator of Intestate Estate of the deceased Arturo Alicer through counsel moved for postponement of the suggested March 20 and 21, 2003 hearing dates to May 8, 2003.

It appears that both motions for postponement did not reach the trial court on time hence the case was still called for hearing on March 13, 2003. On the said date only the following parties were in attendance:

Edgar Selda and his counsel Atty. Alexander Ang, Rural Bank of Carigara (Leyte) and its counsel Atty. Nilo Aldrin Lucinario and Trinidad Alicer and one of her counsels Atty. Samuel Lagunzad. Incidentally, the pre-trial conference was rescheduled to June 5, 2003 which was once more reset to July 25, 2003.

When the case was called for pre-trial on July 25, 2003, all parties were present except for defendants Trinidad Alicer and the heirs of Arturo Alicer and their counsel/s. Upon motion of counsel for the plaintiff, said defendants were declared in default by the court *a quo*. Afterward, pre-trial proceeded and after which a pre-trial order was issued by the trial court of even date. Thereafter, trial of the case ensued.

On August 13, 2004, defendants Trinidad Alicer and the Heirs of Arturo Alicer filed a "Motion to Lift Default Order dated July 25, 2003" alleging *inter alia* that they did not receive a notice of the pre-trial scheduled on July 25, 2003, which motion was denied by the trial court on February 23, 2005 for insufficiency in form and substance of the motion and for not being accompanied by an affidavit of merit. A motion for reconsideration thereon was also denied on May 12, 2005, hence the instant petition for certiorari.^[4]

Petitioners filed with the Court of Appeals a petition for certiorari, alleging that they did not receive a resolution from the trial court denying or granting their motion for postponement^[5] dated 8 March 2003, requesting that the pre-trial conference be moved to 8 May 2003. Furthermore, they asserted that they were also not served a copy of the notice setting the pre-trial conference on 25 July 2003 and that such notice should have been served on Atty. Melencio Emata (Atty. Emata) and not on co-counsel Atty. Samuel Lagunzad (Atty. Lagunzad).

The Ruling of the Court of Appeals

The Court of Appeals dismissed the petition, finding no grave abuse of discretion on the part of the trial court. The Court of Appeals stressed that it should never be presumed that a motion for postponement would be granted. Petitioners' counsel should have been put on guard when they received no action from the trial court regarding their motion.

On the alleged lack of notice of the pre-trial conference, the Court of Appeals found that the notice and a copy of the pre-trial order were actually sent to Atty. Lagunzad, one of the counsels of petitioner Trinidad Alicer. Contrary to petitioners' claim that Atty. Emata is the sole counsel of record for petitioners, the records reveal that petitioner Trinidad Alicer is actually represented by three counsels, namely, Atty. Emata, Atty. Lagunzad, and Atty. Von Kaiser Soro, who separately appeared in court on different dates and filed pleadings on behalf of petitioner Trinidad Alicer. Citing Section 2, Rule 13 of the Revised Rules of Court, the Court of Appeals held that if a party is represented by several counsels, service of pleadings, judgments and other papers may be made on any of them and that notice to one of the counsels is equivalent to notice to all.

With regard to petitioner heirs of Arturo Alicer, the Court of Appeals found that the trial court furnished both Atty. Lagunzad and Atty. Emata with the order dated 13

March 2003 scheduling the pre-trial on 5 June 2003, the order dated 5 June 2003 resetting the pre-trial to 25 July 2003 and the pre-trial order dated 25 July 2003. The Court of Appeals held that notice sent to Atty. Emata is deemed service of notice to the heirs of Arturo Alicer. If Atty. Emata failed to receive the notice, it was because of his negligence in informing the trial court of his change of address. As explained by the Court of Appeals:

Undeniably, due service of such orders were sent to Atty. Melecio Emata. It is legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed. It has also been held that "when a mail matter is sent by registered mail, there exists a presumption, set forth under Section 3(v), Rule 131 of the Rules of Court, that it was received in the regular course of mail. Accordingly, notice sent to Atty. Melecio Emata is deemed service of notice to the heirs of Arturo Alicer.

At this juncture, it is not amiss to highlight Atty. Melecio Emata's use of various office addresses which according to private respondent Alberto Compas, generated bewilderment as to said counsel's exact and official address. We take cognizance of private respondent Alberto Compas' declaration that in the Answer to the "Amended [Amended] Complaint" dated September 10, 2001 filed by Atty. Emata for and on behalf of petitioners, he supplied the following address: Ground Floor, Door B, Lagasca Apartments, 8259 Constanica Street, Makati City. Thereafter, said counsel sometime in the middle of 2001 used another address, to wit: Rm. 416 Margarita Bldg., J. Rizal Ave., Cor. Cardona, Makati City. In the answer to the "Amended Complaint" dated September 25, 2002 filed by Atty. Emata for and on behalf of the Administrator of the Intestate Estate of Arturo Alicer and the Heirs of Arturo Alicer the address given this time is Constanica Street, Makati City. We note however that in the Order dated January 29, 2003 the address of Atty. Emata as appearing therein is the Cardona, Makati City address which is likewise the same address provided by private respondent Compas in his "Motion to Transfer Hearing" dated February 10, 2003. But in the contentious "Motion for Postponement" dated March 8, 2003 in response to the "Motion to Transfer Hearing" of private respondent Compas, Atty. Emata once more utilized the Constanica Street, Makati City address. Finally, in the "Motion to Lift Default Order" dated July 25, 2003, Atty. Melecio Emata gave a third address, that is, FH Center, LDS Chapel Compound, Dela Costa cor. Solaiman Streets, Salcedo Village, Makati which address is currently being used.

Evidently, Atty. Emata's employing simultaneous and different addresses has muddled the service of pleadings and court notices and orders. It is elementary that it is a counsel's duty to make of record in the court his address and notify the court of any change thereof. The fact that counsel used a different address in later pleadings does not constitute the notice required for indicating his change of address. Jurisprudence teaches that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds