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FIRST DIVISION

[G.R. No. 192477, July 27, 2016]

MOMARCO IMPORT COMPANY, INC., PETITIONER, VS. FELICIDAD VILLAMENA, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

A default judgment is frowned upon because of the policy of the law to hear every litigated case on the merits. But the default judgment will not be vacated unless the defendant satisfactorily explains the failure to file the answer, and shows that it has a meritorious defense.

The Case

Under challenge by the petitioner is the affirmance on January 14, 2010 by the Court of Appeals (CA)[1] of the trial court's default judgment rendered against it on August 23, 1999 in Civil Case No. C-18066 by the Regional Trial Court (RTC), Branch 126, in Caloocan City.[2] The defendant hereby prays that the default judgment be undone, and that the case be remanded to the RTC for further proceedings, including the reception of its evidence.[3]

Antecedents

Civil Case No. C-18066 is an action the respondent initiated against the petitioner for the nullification of a deed of absolute sale involving registered real property and its improvements situation in Caloocan City as well as of the transfer certificate of title issued in favor of the latter by virtue of said deed of absolute sale on the ground of falsification.

The following factual and procedural antecedents are summarized by the CA in its assailed decision, to wit:

> On September 23, 1997, plaintiff filed against defendant a complaint for "Nullification of Deed of Sale and of the Title Issued" pursuant thereto alleging that she is the owner of a parcel of land with improvements located in Caloocan City and covered by Transfer Certificate of Title No. 204755. A letter from defendant corporation dated June 12, 1997, informed plaintiff that TCT No. 204755 over aforesaid property had been cancelled and TCT No. C-319464 was issued in lieu thereof in favor of defendant corporation on the strength of a purported Special Power of Attorney executed by Dominador Villamena, her late husband, appointing her, plaintiff Felicidad Villamena, as his attorney-in-fact and a deed of absolute sale purportedly executed by her in favor of defendant corporation on May 21, 1997, the same date as the Special Power of

> Attorney. The Special Power of Attorney dated May 21, 1997 is a forgery. Her husband Dominador died on June 22, 1991. The deed of sale in favor of defendant corporation was falsified. What plaintiff executed in favor of Mamarco was a deed of real estate mortgage to secure a loan of P100,000.00 and not a deed of transfer/conveyance.
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> On August 19, 1998, plaintiff filed a motion to declare defendant corporation in default for failure of aforesaid defendant to file its answer as of said date despite the filing of an Entry of Appearance by its counsel dated May 4, 1998.
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> On September 10, 1998 defendant corporation filed its Answer with Counterclaim which denied the allegations in the complaint; alleged that plaintiff and her daughter Lolita accompanied by a real estate agent approached the President of Momarco for a loan of P100,000.00; offered their house and lot as collateral; and presented a Special Power of Attorney from her husband. She was granted said loan. Aforesaid loan was not repaid. Interests accumulated and were added to the principal. Plaintiff offered to execute a deed of sale over the property on account of her inability to pay. Plaintiff presented to defendant corporation a deed of sale and her husband's Special of Power Attorney already signed and notarized.[4]

Under the order dated October 15, 1998, the petitioner was declared in default, and its answer was ordered stricken from the records. Thereafter, the RTC allowed the respondent to present her evidence *ex parte*.

On August 23, 1999, the RTC rendered the default judgment nullifying the assailed deed of absolute sale and the transfer certificate of title issued pursuant thereto; and ordering the Register of Deeds of Caloocan, City to cancel the petitioner's Transfer Certificate of Title No. C-319464, and to reinstate the respondent's Transfer Certificate of Title No. 204755.[5] It concluded that the act of the petitioner's counsel of formally entering an appearance in the case had mooted the issue of defective service of summons; and that the respondent had duly established by preponderance of evidence that the purported special power of attorney was a forgery.[6]

The petitioner appealed the default judgment to the CA, arguing that the RTC had gravely erred in nullifying the questioned deed of absolute sale and in declaring it in default.

On January 14, 2010, the CA promulgated the assailed decision affirming the default judgment upon finding that the RTC did not commit any error in declaring the petitioner in default and in rendering judgment in favor of the respondent who had successfully established her claim of forgery by preponderance of evidence.[7]

On May 31, 2010, the CA denied the petitioner's motion for reconsideration.[8]

Hence, this appeal by the petitioner.

Issue

The petitioner raises the lone issue of whether or not the CA gravely erred in upholding the default judgment of the RTC; in ordering its answer stricken off the records; in allowing the respondent to adduce her evidence exparte; and in rendering the default judgment based on such evidence.[9]

Ruling of the Court

The appeal lacks merit.

The petitioner claims denial of its right to due process, insisting that the service of summons and copy of the complaint was defective, as, in fact, there was no sheriff's return filed; that the service of the alias summons on January 20, 1998 was also defective; and that, accordingly, its reglementary period to file the answer did not start to run.

The claim of the petitioner is unfounded. The filing of the formal entry of appearance on May 5, 1998 indicated that it already became aware of the complaint filed against it on September 23, 1997. Such act of counsel, because it was not for the purpose of objecting to the jurisdiction of the trial court, constituted the petitioner's voluntary appearance in the action, which was the equivalent of the service of summons.[10] Jurisdiction over the person of the petitioner as the defendant became thereby vested in the RTC, and cured any defect in the service of summons.[11]

Under Section 3,[12] Rule 9 of the *Rules of Court*, the three requirements to be complied with by the claiming party before the defending party can be declared in default are: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule.[13] It is plain, therefore, that the default of the defending party cannot be declared *motu proprio*.[14]

Although the respondent filed her motion to declare the petitioner in default with notice to the petitioner only on August 19, 1998, all the requisites for properly declaring the latter in default then existed. On October 15, 1998, therefore, the RTC appropriately directed the answer filed to be stricken from the records and declared the petitioner in default. It also received *ex parte* the respondent's evidence, pursuant to the relevant rule.[15]

The petitioner's logical remedy was to have moved for the lifting of the declaration of its default but despite notice it did not do the same before the RTC rendered the default judgment on August 23, 1999. Its motion for that purpose should have been under the oath of one who had knowledge of the facts, and should show that it had a meritorious defense,[16] and that its failure to file the answer had been due to fraud, accident, mistake or excusable negligence. Its urgent purpose to move in the

RTC is to avert the rendition of the default judgment. Instead, it was content to insist in its comment/opposition vis-a-vis the motion to declare it in default that: (1) it had already filed its answer; (2) the order of default was generally frowned upon by the courts; (3) technicalities should not be resorted to; and (4) it had a meritorious defense. It is notable that it tendered no substantiation of what was its meritorious defense, and did not specify the circumstances of fraud, accident, mistake, or excusable negligence that prevented the filing of the answer before the order of default issued - the crucial elements in asking the court to consider vacating its own order.

The policy of the law has been to have every litigated case tried on the merits. As a consequence, the courts have generally looked upon a default judgment with disfavor because it is in violation of the right of a defending party to be heard. As the Court has said in *Coombs v. Santos*:[17]

> A default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside.

In implementation of the policy against defaults, the courts have admitted answers filed beyond the reglementary periods but before the declaration of default.[18]

Considering that the petitioner was not yet declared in default when it filed the answer on September 10, 1998, should not its answer have been admitted?

The petitioner raised this query in its motion for reconsideration in the CA, pointing out that the RTC could no longer declare it in default and order its answer stricken from the records after it had filed its answer before such declaration of default. However, the CA, in denying the motion for reconsideration, negated the query, stating as follows:

> Unfortunately, we find the foregoing arguments insufficient to reverse our earlier ruling. These points do little to detract from the fact that Defendant-Appellant filed its Answer only after a period of more than four months from when it entered its voluntary appearance in the case *a quo*, and only after almost a month from when Plaintiff-Appellee moved to have it declared in default.
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> Verily, Defendant-Appellant's temerity for delay is also betrayed (sic) by the fact that it had waited for a judgment to be rendered by the court *a quo* before it challenged the order declaring it in default. If it truly believed that it had a "meritorious defense[,] which if properly ventilated could have yielded a different conclusion [by the trial court]," then it could very well have moved to set aside the Order of Default immediately after notice thereof or anytime before judgment. Under the circumstances, that would have been the most expeditious remedy. Inauspiciously, Defendant-Appellant instead elected to wager on a