

THIRD DIVISION

[G.R. No. 196877, November 21, 2012]

**ELOISA R. NARCISO, PETITIONER, VS. ESTELITA P. GARCIA,
RESPONDENT.**

D E C I S I O N

ABAD, J.:

This case is about the propriety of declaring a defendant in default when the time for filing the answer has not yet elapsed.

The Facts and the Case

Plaintiff Estelita P. Garcia (respondent in this case) filed a complaint for damages against defendant Eloisa R. Narciso (petitioner) before the Regional Trial Court (RTC) of San Fernando, Pampanga. Narciso filed a motion to dismiss the complaint, alleging that the RTC had no jurisdiction over the subject matter of the complaint since it averred facts constitutive of forcible entry. Narciso also assailed the venue as improperly laid since the acts Garcia complained of were committed in Angeles City.

Plaintiff Garcia opposed the motion to dismiss and at the same time sought to have defendant Narciso declared in default. Garcia cited the Supreme Court's administrative circular that discouraged the filing of a motion to dismiss in lieu of answer. Since the time to file an answer had already elapsed, said Garcia, she was entitled to have Narciso declared in default.

The RTC set the two motions for hearing on November 5, 2004 at which hearing it deemed the incidents submitted for resolution. On November 30, 2004, the RTC denied Narciso's motion to dismiss and, as a consequence, declared her in default for failing to file an answer.

On December 22, 2004 defendant Narciso filed a motion for reconsideration of the orders denying her motion to dismiss and declaring her in default for failing to file an answer, which motion Garcia opposed. In her opposition, the latter also sought to present her evidence ex parte. Meantime, the presiding judge, Pedro M. Sunga, retired and Judge Divina Luz Aquino-Simbulan replaced him as acting judge of the concerned RTC branch.

Judge Simbulan referred the case for mediation on June 23, 2005. When mediation failed, on August 1, 2005 the trial court set the case for judicial dispute resolution (JDR) as component of pre-trial, presided over by Judge Maria Amifait S. Fider-Reyes. Since the JDR also failed, the case was re-raffled for pre-trial proper and trial to Branch 44, presided over by Judge Esperanza Paglinawan-Rozario.

On March 26, 2007, having noted that the court had not yet acted on Narciso's motion for reconsideration of the orders denying her motion to dismiss and declaring her in default, the trial court set the case for hearing and required the parties to submit their respective written manifestations to the court.

On August 24, 2007 the trial court denied Narciso's motion for reconsideration. It ruled that since she had already been declared in default as early as November 30, 2004 and since she had not filed any motion to lift the order of default within the allowable time, Narciso could no longer assail such default order.

On September 3, 2007 Narciso filed a motion to lift the order of default against her. She claimed that the protracted resolution of her motion for reconsideration and the referral of the case for mediation prevented her from filing an answer. She also pointed out that she filed a case for ejectment against Garcia and succeeded in obtaining a decision against the latter.

On April 8, 2008 the trial court denied Narciso's motion. She filed a motion for reconsideration of this order but the court also denied the same on October 13, 2008, prompting Narciso to file a petition for *certiorari* before the Court of Appeals (CA). On December 8, 2010^[1] the CA denied her petition and affirmed the RTC's order. The CA held that, while a motion to lift order of default may be filed at any time after notice and before judgment, Narciso needed to allege facts constituting fraud, accident, mistake, or excusable negligence that prevented her from answering the complaint. She also needed to show a meritorious defense or that something would be gained by having the order of default set aside.^[2] For the CA, petitioner failed to do these things. It denied Narciso's motion for reconsideration of its decision on April 11, 2011.^[3]

Claiming that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, Narciso filed the present petition for certiorari with prayer for the issuance of a temporary restraining order (TRO) and injunction. In a Resolution dated June 8, 2011 the Court issued a TRO in the case, enjoining the RTC from proceeding with its hearing until further orders.^[4]

The Issue Presented

The sole issue presented in this case is whether or not the CA gravely abused its discretion in affirming the order of default that the RTC issued against petitioner Narciso.

The Court's Ruling

Section 3, Rule 9 of the Rules of Court provides that a defending party may be declared in default upon motion of the claiming party with notice to the defending party, and proof of failure to file an answer within the time allowed for it. Thus:

SEC. 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. x x x