

## FIRST DIVISION

[ G.R. NO. 144568, July 03, 2007 ]

**GUILLERMA S. SABLAS, JOINED BY HER HUSBAND, PASCUAL LUMANAS, PETITIONERS, VS. ESTERLITA S. SABLAS AND RODULFO S. SABLAS, RESPONDENTS.**

### D E C I S I O N

#### **CORONA, J.:**

This case traces its roots to a complaint for judicial partition, inventory and accounting filed by respondents Esterlita S. Sablas and Rodolfo S. Sablas against petitioner spouses Pascual Lumanas and Guillerma S. Sablas in the Regional Trial Court of Baybay, Leyte, Branch 14<sup>[1]</sup> on October 1, 1999.<sup>[2]</sup>

Petitioner spouses were served with summons and a copy of the complaint on October 6, 1999. On October 21, 1999, they filed a motion for extension of time requesting an additional period of 15 days, or until November 5, 1999, to file their answer. However, they were able to file it only on November 8, 1999. While the trial court observed that the answer was filed out of time, it admitted the pleading because no motion to declare petitioner spouses in default was filed.<sup>[3]</sup>

The following day, November 9, 1999, respondents filed a motion to declare petitioner spouses in default.<sup>[4]</sup> It was denied by the trial court in an order dated December 6, 1999.<sup>[5]</sup> Respondents moved for reconsideration but it was also denied.<sup>[6]</sup> Thereafter, they challenged the December 6, 1999 order in the Court of Appeals in a petition for certiorari<sup>[7]</sup> alleging that the admission of the answer by the trial court was contrary to the rules of procedure and constituted grave abuse of discretion amounting to lack of jurisdiction.

In a decision dated July 17, 2000,<sup>[8]</sup> the appellate court ruled that the trial court committed grave abuse of discretion because, pursuant to Section 3, Rule 9 of the Rules of Court, the trial court had no recourse but to declare petitioner spouses in default when they failed to file their answer on or before November 5, 1999. Thus, the Court of Appeals granted the petition, vacated the December 6, 1999 order and remanded the case to the trial court for reception of plaintiffs' evidence.

Aggrieved, petitioner spouses (defendants in the trial court) now assail the July 17, 2000 decision of the Court of Appeals in this petition for review on certiorari.<sup>[9]</sup>

Petitioner spouses contend that the Court of Appeals decision was not in accord with the rules of procedure as it misconstrued Section 3, Rule 9 of the Rules of Court and was in contravention of jurisprudence.

We agree.

## **Where There Is No Motion, There Can Be No Declaration of Default**

The elements of a valid declaration of default are:

1. the court has validly acquired jurisdiction over the person of the defending party either by service of summons or voluntary appearance;<sup>[10]</sup>
2. the defending party failed to file the answer within the time allowed therefor and
3. a motion to declare the defending party in default has been filed by the claiming party with notice to the defending party.

An order of default can be made only upon motion of the claiming party.<sup>[11]</sup> It can be properly issued against the defending party who failed to file the answer within the prescribed period only if the claiming party files a motion to that effect with notice to the defending party.

In this connection, Section 3, Rule 9 of the Rules of Court provides:

*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. (emphasis supplied)

Three requirements must be complied with before the court can declare the defending party in default: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare him in default and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rules of Court.<sup>[12]</sup>

The rule on default requires the filing of a motion and notice of such motion to the defending party. It is not enough that the defendant fails to answer the complaint within the reglementary period.<sup>[13]</sup> The trial court cannot *motu proprio* declare a defendant in default<sup>[14]</sup> as the rules leave it up to the claiming party to protect his or its interests. The trial court should not under any circumstances act as counsel of the claiming party.

## **WHERE THERE IS NO DECLARATION OF DEFAULT, ANSWER MAY BE ADMITTED EVEN IF FILED OUT OF TIME**

It is within the sound discretion of the trial court to permit the defendant to file his answer and to be heard on the merits even after the reglementary period for filing the answer expires.<sup>[15]</sup> The Rules of Court provides for discretion on the part of the trial court not only to extend the time for filing an answer but also to *allow an answer to be filed after the reglementary period*.<sup>[16]</sup>