

THIRD DIVISION

[G.R. NO. 156336, August 31, 2006]

PNB CREDIT CARD CORPORATION, PETITIONER, VS. MATILDE M. RODRIGUEZ, RESPONDENT.

DECISION

CARPIO MORALES, J.:

Allegedly failing to settle her account arising from her availment of her PNB Credit Card to which she charged her purchases in the amount of ₱34,417.44 inclusive of interest and penalty as of February 2, 1992, PNB Credit Card Corporation, herein petitioner, filed a complaint^[1] on March 6, 1992 before the Regional Trial Court (RTC) of Makati against Matilde M. Rodriguez (Matilde), together with Lorenzo Y. Villalon (Villalon), her co-obligor.

The main issue in the present petition being whether the trial court's first or second order dismissing without prejudice petitioner's complaint had become final, a recital of the incidents in the case is in order.

Acting on the complaint, Branch 136 of the RTC of Makati issued summons to the defendants Matilde and Villalon on March 11, 1992.

On even date the summons was received for service by Genaro M. Adona (Adona), a process server.^[2]

More than a year later or on March 26, 1993, Judge Francisco Donato Villanueva, Acting Presiding Judge of Branch 136 of the Makati RTC, by Order of even date, **dismissed the complaint "for lack of interest to prosecute . . . without prejudice."**^[3] The records do not show that the defendants were furnished copy of this order.

In the meantime or on April 30, 1993,^[4] process server Adona filed an Officer's Return of even date stating that on April 23, 1993, he served the summons personally upon Matilde.

Strangely, however, before April 30, 1993, or on April 22, 1993, petitioner filed an Urgent Motion for Reconsideration^[5] dated April 14, 1993 seeking the setting aside of the March 26, 1993 Order of the trial court, alleging that upon verification, it found out that "the summons was taken out or received by the process server of another branch of the Regional Trial Court – Makati and up to the month of March, had not yet filed his return"; and that upon further verification, its counsel learned that "said process server had **just filed** his return on the instant case . . ."^[6] Parenthetically, **no date was stated by petitioner in its Motion for Reconsideration filed on April 22, 1993 when it received the March 26, 1993 order** which, if the

handwritten notation on the dorsal side of the original of the order^[7] is to be believed, was sent by registered mail on March 26, 1993 (a Friday). No copy of petitioner's motion was furnished Matilde.

Petitioner's Urgent Motion for Reconsideration^[8] dated April 14, 1993 was set by its counsel for hearing "[i]n April 1993 at 9:00 a.m."^[9]

On October 27, 1993,^[10] petitioner filed a "Notice of Hearing" addressed to the Branch Clerk of Court requesting that its Motion for Reconsideration dated April 14, 1993 be set "for the consideration and approval . . . on November 5, 1993 at 9:00 A.M." A copy of the Notice of Hearing was sent by registered mail to Matilde on October 27, 1993, bearing registry receipt No. 55018.^[11]

A day after the filing by petitioner of the above-said Notice of Hearing, however, of its Motion for Reconsideration, or on October 28, 1993, several days **before** the requested setting on November 5, 1993, Presiding Judge Jose R. Bautista granted^[12] petitioner's Motion for Reconsideration and ordered the case reinstated to the docket of the court. In the same order, Judge Bautista directed petitioner to show proof that the other defendant, Villalon, was similarly served with summons and if not, to cause the service thereof upon him with a copy of the complaint within ten days from receipt of the order.

On petitioner's motion, an "Alias" Summons^[13] dated March 24, 1994 was issued and served on March 29, 1994 on Villalon "thru his niece Ms. Jennifer G. James by the instruction of the said defendant Villalon."

On May 25, 1994, petitioner filed a Motion to Declare Defendants in Default and to be allowed to present evidence *ex parte*.^[14]

By Order of November 8, 1994,^[15] Judge Bautista granted petitioner's Motion for declaration in default with respect to Matilde but not with respect to Villalon who had priorly sought extension of time to file answer. In the same order, the court allowed petitioner to present evidence *ex parte* with respect to Matilde "before the Officer-In-Charge who [was] directed to submit a report thereon within twenty (20) days from the date the case is submitted for . . . decision . . ." A copy of the Order sent to Matilde appears to have been received on "2-16-94" [sic].

By Order of February 22, 1995, the trial court, **for the second time, dismissed the case without prejudice** "[f]or failure of petitioner to comply with the [November 8, 1994] Order allowing it to present evidence *ex parte* against Matilde, despite the lapse of an unreasonable lenght [sic] of time."^[16]

On May 18, 1995, petitioner filed a Motion for Reconsideration^[17] of the trial court's order of February 22, 1995 dismissing the case, which order it claimed to have received on May 5, 1995, alleging as follows:

1. The order of this Honorable Court dated **8 November 1994** declaring defendant Matilde Rodriguez in default and requiring plaintiff to "present its evidence *ex-parte* as against said defendant Matilde Rodriguez before the Officer-In[-]Charge" was only received

on **16 February 1995**. (Annex "A").

2. On the said date, or on 16 February 1995, only two (2) active lawyers remained with plaintiff corporation who are in charge of the prosecution of more or less 200 collection cases of plaintiff. The former handling counsel of said case, Atty. Buenaventura R. Puentebella hastily resigned effective 31 January 1994. Likewise, the OIC Chief Legal Counsel of plaintiff, Atty. Vicente R. Posadas, has not been regularly reporting. He also resigned effective 31 March 1995 without any formal turn over of cases.
3. The instant case has not moved for sometime and was recently discovered in a peerless box after plaintiff made an inventory of all the cases it filed. This happened after plaintiff transferred its place of business from Makati to Pasay City on 11 May 1995.
4. Plaintiff is very much interested to prosecute the instant case but was precluded to do so in view of the foregoing reasons. It was only on 16 May 1995 that undersigned counsel was fully apprised of the status of this case.
5. This motion is made in good faith (Emphasis and underscoring in the original),

and praying that the Order of February 22, 1995 be set aside and that it be allowed to present evidence ex parte "on a date and time most convenient" to the court. Petitioner's Motion for Reconsideration contained a Notice of Hearing^[18] addressed to the Clerk of Court requesting her "to submit the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof" and that it had moved to its new address at "2/F Legal Department, PNB Financial Center, PNB Complex, Roxas Boulevard, Pasay City." Copy of the motion was furnished Matilde as well as Villalon.^[19]

On June 5, 1995, the trial court's Officer-In-Charge *motu proprio* issued a notice advising that petitioner's motion for reconsideration "is set for hearing . . . on June 30, 1995 at 8:30 a.m."^[20]

To petitioner's Motion for Reconsideration, Villalon filed on June 9, 1995^[21] an Opposition, alleging that the court's February 22, 1995 Order had "already become final." Copy of Villalon's motion was furnished petitioner.^[22]

By Order dated June 30, 1995,^[23] the trial court, finding that petitioner's Motion for Reconsideration "appear[ed] to be meritorious," reconsidered its February 22, 1995 order dismissing the case and gave petitioner ten days from [June 30, 1995] to present its evidence *ex parte* failing which it would dismiss the case with prejudice. In the same order, the trial court designated the Officer-In-Charge as commissioner for the purpose of receiving evidence *ex parte* with the directive to submit his report within 20 days "from the date of the submission of the case."

On **July 10, 1995**,^[24] petitioner finally presented evidence *ex parte* before the Officer-In-Charge.

On October 19, 1995, Judge Bautista rendered judgment in favor of petitioner, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendant Matilde M. Rodriguez, ordering the latter, as follows:

1. To pay plaintiff the sum of ₱29,913.53, with interest thereon at the rate of 2% per month and month penalty of 1%, both commencing January 11, 1992 until fully paid.
2. To pay the sum equivalent to 18% of the amount due for and as attorney's fees;
3. To pay the cost of suit.

SO ORDERED.^[25]

On January 19, 1996, Matilde filed a Motion for Reconsideration of the Decision of October 19, 1995 which she claimed to have received on January 5, 1996, alleging that 1) petitioner's motion for reconsideration of the first order of dismissal failed to comply with Sections 4 to 6, Rule 15 of the Rules, a) there being no proof of service of copy of the motion to her and her co-defendant, Villalon, b) the motion was not set for hearing on a specified date, and c) no actual hearing on the motion was conducted; and 2) petitioner's subsequent filing of a separate Notice of Hearing on October 27, 1993 was "useless," the 15-day period to assail the first order of dismissal having expired, and the trial court's granting of the motion, without conducting a hearing thereon, was improper. Matilde thus concluded that the actions subsequent to the finality of the first order of dismissal were void, citing *Del Castillo v. Aguinaldo*.^[26]

On the trial court's decision, Matilde opined that petitioner failed to prove its case against her, citing her reasons therefor.

After the filing by petitioner of its Opposition to Matilde's Motion for Reconsideration of the trial court's decision, the latter's Reply and Supplemental Reply, the trial court denied the Motion in this wise:

The dismissal order on February 22, 1995, was without prejudice and therefore, the plaintiff can revive the case anytime, **even** after the lapse of the 15-day period from receipt of the first order of dismissal.

The first Motion for Reconsideration of the order of dismissal was **treated by the Court as Motion to Revive.**

The second Motion for Reconsideration of the second order of dismissal of the case was seasonably filed by plaintiff. What defendant-movant should have done was to file an answer immediately after the second order of dismissal was set aside.

On the second assertion of defendant-movant in her Motion to set aside the Decision, suffice it to state that the same is supported by evidence of

the plaintiff.

WHEREFORE, the Motion for Reconsideration filed by defendant-movant, thru counsel, is hereby denied for lack of merit.^[27] (Emphasis and underscoring supplied)

On appeal by Matilde, the appellate court, by Decision of November 21, 2002,^[28] set aside the trial court's decision in light of the following observations:

As noted elsewhere, in its Order dated March 26, 1993, the lower court dismissed the case without prejudice for plaintiff's failure to prosecute (p. 9, record). On April 22, 1993, plaintiff (herein appellee) filed an Urgent Motion for Reconsideration of the aforesaid Order of dismissal (p. 12, record). As pointed by defendant-appellant, the timeliness of the filing of the aforesaid urgent Motion for Reconsideration could not be ascertained inasmuch as movant (plaintiff-appellee) did not indicate therein the date that it received the 26 March 1993 Order of dismissal. Further, the motion did not set a specific date for the hearing thereof (p. 13, record). In its attempt to cure the aforesaid defect, plaintiff-appellee's counsel filed a separate notice of hearing for said motion (p. 14, record). The record shows that the said notice of hearing was filed by plaintiff-appellee on October 27, 1993 and the hearing of the Motion for Reconsideration was set for November 5, 1993. The record, however, shows that plaintiff-appellee's Motion for Reconsideration was granted by the lower court on October 28, 1993 or before the supposed date of hearing of said motion (November 5, 1993). It is therefore clear that **defendant-appellant was not heard on the said Urgent Motion for Reconsideration**. And as if such procedural anomaly was not enough, the record further shows that **defendant-appellant was not served a copy of the October 28, 1993 Order which granted plaintiff-appellee's Urgent Motion for Reconsideration**. It appears that a copy of said order was sent only to plaintiff-appellee's counsel (back of p. 15, record). There is truth therefore to defendant-appellant's protestation that her failure to file an answer to the complaint which subsequently resulted in an Order of Default issued on November 8, 1994 was due to the fact that as far as she knew the case was already dismissed in an Order dated March 26, 1993 and she was completely unaware that the case was subsequently reinstated in an Order dated November 28, 1993, of which she was not served a copy, pursuant to plaintiff-appellee's Urgent Motion for Reconsideration of which she was never heard.

Undoubtedly, plaintiff-appellee's Urgent Motion for Reconsideration of the March 26, 1993 Order of dismissal which was only filed on April 22, 1993 was **fatally flawed for the reason that the timeliness of its filing could not be ascertained** inasmuch as the Motion did not state the date of receipt by movant of the Order sought to be reconsidered and for lack of the requisite notice of hearing. While plaintiff-appellee attempted to cure the latter defect by subsequently filing a separate Notice of Hearing for the aforesaid Motion for Reconsideration, **no hearing thereof was actually conducted by the lower court** because nine (9) days before the supposed date of hearing of said motion or on October 28, 1993 to be precise, the lower court had already issued an Order