

EN BANC

[G.R. NO. 167103, August 31, 2006]

**MAJOR GENERAL CARLOS F. GARCIA, AFP (RET.), PETITIONER,
VS. SANDIGANBAYAN AND THE REPUBLIC OF THE PHILIPPINES,
RESPONDENTS.**

R E S O L U T I O N

TINGA, J.:

The petition for forfeiture of unlawfully acquired property filed against petitioner Major General Carlos F. Garcia, his wife, and two sons (Garcia, *et al.*) before the Sandiganbayan spawned two petitions for certiorari involving different questions of law. The first petition, docketed as G.R. No. 165835, questioned the jurisdiction of the Sandiganbayan over petitions for forfeiture of unlawfully acquired property filed under Republic Act No. 1379 (RA 1379). The first petition was decided on 22 July 2005, with the Court dismissing the same and affirming the jurisdiction of the Sandiganbayan over such petitions for forfeiture.

This disposes of the second petition dated 2 March 2005 filed by petitioner Garcia assailing respondent Sandiganbayan's Resolution of 20 January 2005^[1] which denied his *Motion to Dismiss*, as well as its Resolution of 3 February 2005^[2] denying reconsideration thereof.

On 27 October 2004, the petition for forfeiture^[3] was filed by the Ombudsman against Garcia, *et al.* before the Sandiganbayan. On 17 November 2004, the last day for filing an answer, Garcia, *et al.* filed the aforementioned *Motion to Dismiss*^[4] in regard to the petition for forfeiture on the ground of lack of jurisdiction of respondent Sandiganbayan over special civil actions for forfeiture under RA 1379. On even date, Garcia filed before this Court the first petition for certiorari, G.R. No. 165835, which the court dismissed as earlier mentioned. While G.R. No. 165835 was pending before this Court, the action for forfeiture proceeded.

On 25 November 2004, the Republic filed a motion seeking: (1) to expunge the *Motion to Dismiss* of Garcia, *et al.*, (2) to declare Garcia, *et al.* to be in default, and (3) that judgment by default be rendered in favor of petitioner^[5] therein (herein respondent Republic). The Republic sought to have the *Motion to Dismiss* expunged on the ground that the motion contained a defective notice of hearing that set the same for hearing three (3) days beyond the ten (10)-day period provided for under Sec. 5, Rule 15 of the Rules of Court. Consequently, the Republic argued, the *Motion to Dismiss* is a mere scrap of paper which does not merit consideration and likewise does not toll the running of the period to file an answer. Hence, since Garcia, *et al.* failed to file an answer, they should be deemed to have waived their right to do so and be declared in default in accordance with Section 3, Rule 9 of the Rules of Court (Rules). The Republic also asked that it be allowed to commence presentation of its

evidence *ex parte*.

On 30 November 2004, Garcia, et al. filed their *Opposition*^[6] to the Republic's motion in view of the pendency before this Court of the petition in G.R. No. 165835.

On 20 January 2005, respondent Sandiganbayan issued a resolution denying the *Motion to Dismiss* and granting the Republic's motion of 25 November 2004 by declaring Garcia, et al. in default and setting the case for *ex parte* reception of evidence. In resolving the motion, the Sandiganbayan settled these issues: (a) whether it has jurisdiction over separate civil actions for forfeiture under R.A. No. 1379, and if it has such jurisdiction, who has authority to file the petition—whether the Solicitor General or the Office of the Ombudsman; (b) whether the *Motion to Dismiss* filed by petitioner interrupted the running of the prescriptive period to file the answer; and (c) whether the proceedings before it should be deferred in view of the pendency of G.R. No. 165835.

Resolving the first issue, the Sandiganbayan ruled that it has jurisdiction over petitions for forfeiture under R.A. No. 1379 and that the authority to file the petition for forfeiture of properties unlawfully acquired after 25 February 1986 is lodged with the Office of the Ombudsman.

As to the second issue, the graft court held that the *Motion to Dismiss* suffers from a fatal procedural defect in that it does not comply with the mandatory provision of Sec. 5, Rule 15 of the Rules of Court on notice of hearing. Hence, the motion is a mere scrap of paper and could not interrupt the running of the period to file an answer due to be filed not later than 17 November 2004.

Finally, it ruled that that the mere filing by Garcia of the petition in G.R. No. 165835 would not automatically warrant the deferment of the proceedings in the Sandiganbayan, especially where no writ of injunction or restraining order was issued in the special civil action for certiorari.

On 25 January 2005, Garcia, et al. filed their *Motion for Reconsideration and/or to Admit Attached Answer*,^[7] arguing that the pendency of the petition in G.R. No. 165835 had the effect of holding in abeyance the proceedings in the forfeiture case before the Sandiganbayan. Furthermore, the insistence of the Sandiganbayan on technicalities, especially in declaring Garcia, et al. in default and allowing presentation of evidence *ex parte*, would only pre-empt this Court's action in G.R. No. 165835. They added that the principle of judicial courtesy should be applied.

The Republic filed its *Opposition* to the motion for reconsideration on 31 January 2005, contending that (a) the motion for reconsideration is not the proper remedy to obtain relief from a declaration of default; (b) Garcia, et al. failed to establish any of the proper grounds for relief from an order of default; and (c) Garcia, et al. failed to establish that they have a meritorious defense to support their prayer that the order of default be set aside and their answer admitted.^[8]

The *Motion for Reconsideration and/or to Admit Answer* was denied on 3 February 2005. The Sandiganbayan ruled the principle of judicial courtesy is inapplicable to the case since it applies only when the action of the lower court in the course of its proceedings will result in rendering moot the very issue brought before the higher

court. In the present case, the continuation of the proceedings before the Sandiganbayan will not make academic the issue of jurisdiction raised before the Court in G.R. No. 165835. The Sandiganbayan further noted that the issue of application of the principle of judicial courtesy to the case was triggered by petitioner's act of forum shopping when they filed the petition in G.R. No. 165835 before this Court simultaneously with the filing of the *Motion to Dismiss* before the Sandiganbayan. In addition, the *Motion for Reconsideration and/or to Admit Attached Answer* does not comply with the requisites in Sec. 3 (b), Rule 9 of the Rules of Court which prescribes the relief from the order of default:

Sec. 3. *Default; declaration of.* – x x x

(b) *Relief from order of default.* – A party declared in default may at any time after notice hereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

According to the Sandiganbayan, the *Motion for Reconsideration and/or to Admit Attached Answer* does not show the fraud, accident, mistake or excusable negligence that caused their failure to file an answer or that they have a meritorious defense. Moreover, the motion contains a defective verification since it was only Garcia who verified the allegations in the motion when he should have been joined by the other respondents in the petition for forfeiture, and Garcia's verification was based only on "knowledge and belief" and not on "personal knowledge and authentic records."^[9]

Petitioner Garcia then filed the present *Petition* to set aside the Resolutions dated 20 January 2005 and 3 February 2005 of the Sandiganbayan. Garcia argues that the *Motion to Dismiss* was timely filed and thus tolled the running of the period to file an answer. While petitioner does not dispute that the hearing of the motion was set beyond the ten (10)-day period prescribed in the Rules, he argues that the underlying principle of the requirements for a notice of hearing is due process, that is, that the adverse party must be made aware of exactly when the motion shall be submitted so as to give him an opportunity to object thereto. Since the motion to dismiss was set for hearing on a definite date and time, the motion complies with the principle of due process.

In any event, petitioner argues that since the Sandiganbayan had denied the *Motion to Dismiss* based on the merits, he had less than five (5) days only within which to file its answer. Since he received the summons on 2 November 2004, he had until 17 November 2004 to file his answer. Petitioner filed the motion to dismiss on the last day. The assailed resolution of 20 January 2005 was received the following day, 21 January 2006. Hence, he had until 26 January 2005 to file the answer since the motion to dismiss tolled the running of the period to file the answer. The *Motion for Reconsideration and/or to Admit Attached Answer* was filed on 25 January 2005, or one (1) day before the deadline. The answer was thus timely filed and there is no basis to hold petitioner in default, so he concludes. Petitioner thus prays that the Resolutions of 20 January 2005 and 3 February 2005 be set aside.

On the other hand, respondent Republic contends that the Sandiganbayan correctly declared petitioner in default. Considering that R.A. No. 1379 does not provide for the procedure in cases where motions are filed, respondent posits that the 1997 Rules on Civil Procedure will apply in a suppletory character. Hence, as provided in Sections 4 and 5, Rule 15 of the Rules,^[10] every motion must be set for hearing on a certain date and the hearing date must not be later than ten (10) days after the filing of the motion. In petitioner's *Motion to Dismiss*, the date and time of the hearing are set beyond the period specified under the Rules, clearly in contravention of the mandatory character of Sec. 5, Rule 15. The Republic also finds ludicrous petitioner's claim that since his *Motion to Dismiss* was adjudged by the Sandiganbayan to be a mere scrap of paper and that such judgment is equivalent to a denial of his *Motion to Dismiss*, therefore he may still file his answer. Since the *Motion to Dismiss* is a mere scrap of paper, it is as if no pleading was filed within the reglementary period to file a responsive pleading and therefore did not stop the running of the period to file his answer. It was then proper to declare petitioner in default. Having been declared in default, the Republic further notes, petitioner's proper course of action would have been to file a motion to lift the order of default pursuant to Sec. 3 (b), Rule 9 of the Rules instead of the *Motion for Reconsideration and/or To Admit Attached Answer*. Such motion for reconsideration does not even allege that his failure to file answer was due to fraud, accident, mistake or excusable negligence, nor was he able to establish that he had a meritorious defense.^[11]

The Republic refutes Garcia's reliance on *Samartino v. Raon*^[12] and *Tan Tiac Chiong v. Cosico*^[13] to support his contention that courts have admitted responsive pleadings and appeals which had been filed beyond the reglementary periods for filing the same.^[14] *Samartino* involved a wrongful declaration of default by the trial court, based on a defective service of summons; in the case at bar, Garcia never alleged wrongful service of summons upon him. *Samartino* is an ejectment suit, an action *in personam*, while the present forfeiture proceeding is an action *in rem*. *Tan Tiac Chiong*, meanwhile, has no relevance to the case at bar, involving as it does an administrative matter against a Court of Appeals Associate Justice. According to respondent, the reference to these cases only makes it evident that that Garcia is seeking to overstretch the doctrine on liberal application of the rules by vainly attempting to apply by analogy the relaxation of the reglementary period for the filing of appeals.^[15] Respondent insists that while the dismissal of appeals based on purely technical grounds are generally frowned upon, this is inapplicable to the mandatory requirements of Sec. 5, Rule 15.^[16]

The main issue to be resolved is whether the Sandiganbayan committed grave abuse of discretion. In turn, the resolution of the issue depends on the determination of whether petitioner was properly declared in default.

Garcia alleges that the *Motion to Dismiss* was timely filed and thus tolled the running of the period to file an answer and invokes the principle of due process in arguing that the motion had substantially complied with the Rules and sufficiently notified the adverse party of the date and time of the hearing on the motion despite the defect in the notice of hearing. We disagree. To make short shrift of this argument, we refer to the case of *Bacelonia v. Court of Appeals*,^[17] also cited by the Sandiganbayan, which holds that Sec. 5, Rule 15 of the Rules uses the mandatory term "must" in fixing the period within which the motion shall be