

SIXTH DIVISION

[CA-G.R. SP NO. 131591, May 30, 2014]

RAUL A. JOROLAN, PETITIONER, VS. HON. SELMA PALACIO ALARAS, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 62 AND AIDA MIRANDA, RESPONDENTS.

D E C I S I O N

CRUZ, R.A. J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the 1997 Rules on Civil Procedure assailing the Orders dated March 6, 2013 and August 7, 2013 issued by Respondent Judge Selma Palacio Alaras of the Regional Trial Court of Makati City, Branch 62, in Civil Case No. 12-835 entitled "Aida Miranda v. Raul A. Jorolan."

The dispositive portion of the Order^[1] dated March 6, 2013 reads as follows:

X X X

"WHEREFORE, defendant Raul J. Jordan's Verified Motion (to Lift Order of Default) is DENIED for lack of merit.

"This case shall be considered submitted for decision.

"SO ORDERED."

X X X

On the other hand, the dispositive portion of the Order^[2] dated August 7, 2013 reads as follows:

X X X

"WHEREFORE, defendant's Motion for Reconsideration is DENIED for lack of sufficient merit.

"SO ORDERED."

X X X

THE ANTECEDENTS

Petitioner Raul A. Jorolan is the defendant in Civil Case No. 12-835 which is a civil case for collection of sum of money filed against him by Private Respondent Aida Miranda as plaintiff. The Complaint alleges that plaintiff loaned defendant several amounts over a period of time from August to December 2005, subject to a monthly interest of 1.2%, with a total principal amount of Php1,970,000.00. He did not make

a single payment on the principal loans or their interest such that the loan obligation reached Php3,172,880.00, inclusive of interest. Defendant offered his property at Stonecrest Subdivision, San Pedro, Laguna to plaintiff as payment of his loan obligation. He also requested plaintiff to advance the payment of taxes and fees necessary for the sale and transfer and that he will just reimburse plaintiff after. Pursuant thereto, plaintiff paid the remaining unpaid real estate property tax over the Stonecrest Property in the amount of Php13,000.00, capital gains tax, transfer fee and documentary stamp tax pertaining to the sale of the Stonecrest Property in the total amount of Php100,199.95, and services rendered in facilitating the sale and transfer of title of the Stonecrest Property from defendant to plaintiff in the amount of Php28,000.00 which pertains to the share of defendant. Plaintiff later learned that the property has outstanding subdivision association dues amounting to Php112,672.56.

Sometime in August 2006, defendant offered for sale to plaintiff his Eurovilla Townhouse located in Sta. Mesa, Manila. Plaintiff gave defendant a total amount of \$90,000.00, equivalent to Php4,500,000.00 based on the exchange rate at that time of Php50.00 to a U.S. Dollar, to settle the arrears with Union Bank in connection with the said Eurovilla Property, with the agreement that the amount would constitute part of the purchase price of the property. When Union Bank continued to hold the title to the Eurovilla Property because defendant still had an outstanding car loan with the bank, plaintiff backed out of the sale. Defendant promised her that she will get her money back as soon as he was able to sell the property. Sometime in August 2008, defendant had finally sold Eurovilla Townhouse and initially paid plaintiff Php2,000,000.00. He executed a promissory note dated July 3, 2009 for the balance in the amount of Php2,500,00.00 payable monthly in the amount of Php25,000.00. Plaintiff failed to pay each and every amortization. The Complaint then prays that defendant be ordered to pay Php2,753,872.51 which he owes plaintiff with interest thereon computed at the legal rate and reckoned from the time of filing of the suit until fully paid, Php100,000.00 as moral damages, Php100,000.00 as exemplary damages and P100,000.00 as attorney's fees.

Records show that defendant, Our petitioner in this case, was duly served with Summons on September 26, 2012, giving him until October 11, 2012 to file his responsive pleading. Petitioner was not able to secure the services of a counsel to file his Answer on time, prompting plaintiff, Our private respondent in this case, to file a Motion to Declare Defendant in Default which was set to be heard on November 9, 2012.

Petitioner finally secured the services of a counsel who filed a Comment/Opposition dated November 6, 2012 in response to the Motion to Declare in Default.

In an Order dated November 14, 2012, Respondent Judge declared petitioner in default, finding as follows:

x x x

"After carefully examining the record, it is revealed that defendant has, to date never filed any motion asking for leave to file and admit his responsive pleading. Which recourse could have easily convinced the Court to deny plaintiff's motion pursuant to Sec. 11, Rule 11 which grants discretion to the trial court to allow an answer or other pleading to be filed after the reglementary period, upon motion and on such terms as

may be just. Unfortunately, this was not taken by the appearing counsel and the lapse shall therefore bind the defendant.”

X X X

Petitioner was able to file his verified Answer with Compulsory Counterclaim only on November 29, 2012.

He subsequently filed, on December 5, 2012, a verified Motion (to Lift Order of Default) invoking the court's liberality in setting aside orders of default. Attached to his motion is an affidavit of merit detailing why he was not able to file his Answer on time, blaming it on a serious miscommunication between his consultant Joey Romblon and his lawyer Atty. George Coronacion and his financial difficulties disallowing him from hiring another lawyer. He included a statement that he repleads and incorporates the specific denials, affirmative and special defenses raised in his Answer as part of the affidavit as proof of his meritorious defense.

He also filed, on the same date, an Opposition to private respondent's prayer for attachment.

Public respondent, in her Order dated March 16, 2012, found petitioner's motion insufficient to give him back his standing in the case, *viz.:*

X X X

“Defendant sweepingly stated that declarations of default are frowned upon, that he should be given the opportunity to present evidence in the interest of substantial justice, he is a victim of circumstance, and that he did not intend to violate the rule or the order of this Court. Unfortunately, there was complete absence of an allegation from the verified motion as well as in his affidavit of merit that he has meritorious defense. Worse, there is no mention of what evidence he intends to present if his motion is granted. If defendant is truly possessed of meritorious defense, he should have so stated what kind of evidence he has to resist plaintiff's complaint. Leaning a little back towards defendant's answer, which in legal contemplation does not exist, there is dearth of evidence attached to support the allegations therein stated from which this Court could have derived sound judgment.”

X X X

Petitioner filed a Motion for Reconsideration on the ground that a perusal of his Motion to Lift Order of Default and Affidavit of Merit shows that he has a meritorious defense. He submitted anew an affidavit of merit attached to the Motion for Reconsideration which states that:

X X X

“4. Hereunder are said defenses and my comments on why, with all due respect to the RTC, my affidavit of merit in repleading my Answer is sufficient compliance with the Rules and the requirement of a statement of evidence as being required by the RTC:

- The Complaint failed to state a cause of action.

In my view, the ground of failure to state a cause of action as my defense in order to defeat the claim of the plaintiff does not need the presentation of evidence. I was advised by my counsel that this is determined by the sufficiency of the allegations of the Complaint and not by presentation of evidence.

- It must be recalled that Article 1197 of the Civil Code involves a two-step process. Courts must first determine that “the obligation does not fix a period” (or that the period is made to depend upon the will of the debtor), “but from the nature and the circumstances it can be inferred that a period was intended” (Art. 1197, pars. 1 and 2). Thereafter, courts must then proceed to the second step, and decide that period was “probably contemplated by the parties” (Do., par. 3). So that, ultimately, the Courts cannot fix a period merely because in its opinion it is or should be reasonable, but must set the time that the parties are shown to have intended.

As advised by my counsel, Article 1197 is a defense to support the dismissal of the complaint on the ground of prematurity. My counsel explained that in invoking the legal provision of the Civil Code on Article 1197, I do not need to present evidence since it is the application of the law on the particular set of facts pleaded in the complaint.

- Under Article 1193 of the Civil Code, obligations for whose fulfillment a day certain has been fixed shall be demandable only when that day comes. However, no such day certain was fixed in the promissory note. Plaintiff, therefore, cannot demand performance since no period was contemplated. Since the promissory note does not specify a period for payment, plaintiff should have petitioned the courts to fix the period in accordance with Article 1197 of the Civil Code. As no such action was filed by plaintiff aside from this rescission under Article 1191, the complaint was premature, the obligation not being demandable at this point.

As advised by my counsel, Article 1193 like Article 1197 is a defense to support the dismissal of the complaint on the ground of prematurity. My counsel explained that in invoking the legal provision of the Civil Code on Article 1193, in the same vein, I do not need to present evidence since it is the application of the law on the particular set of facts pleaded and admitted by plaintiff in the complaint.

- The alleged obligations mentioned in paragraphs 2.06 to 2.09.5 are unenforceable as they are not in writing.

As advised by my counsel, an obligation is unenforceable if not in writing. Again, this is a legal provision; hence, there is, with all due respect, no need for evidence.

- The First Cause of Action has been fully paid.

With respect to the defense of payment, it is obvious that my testimony will contradict the alleged verbal agreements to pay certain amounts. I will testify that our agreement was limited to what has been admitted to have been paid and no more. My testimony consistent with the legal position stated in my Answer is, according to my counsel, evidence in testimonial form.”

X X X

Public respondent denied the motion, hence, this petition.

During the pendency of this petition, the RTC rendered a Decision dated November 19, 2013, the dispositive portion of which reads:

X X X

"WHEREFORE, judgment by default is hereby rendered in favor of plaintiff AIDA MIRANDA against defendant RAUL A. JOROLAN as follows:

1. for the first cause of action, defendant to pay plaintiff the sum of one hundred forty one thousand one hundred nine nine & 95/100 (P141,199.95) Philippine currency plus interest at the legal rate of 12% per annum reckoned from filing on September 10, 2012 until fully paid:
2. for the second cause of action, the Promissory Note dated July 3, 2009 is hereby RESCINDED and defendant is ordered to return the sum of two million five hundred thousand (Php2,500,000.00) plus interest at the legal rate of 12% per annum reckoned from filing on September 10, 2012 until fully paid to herein plaintiff;

Further, defendant is ordered to pay plaintiff the following:

3. the sum of one hundred thousand (Php100,000.00) Philippine currency as moral damages.
4. The sum of one hundred thousand (Php100,000.00) Philippine currency as and by way of exemplary damages.
5. Attorneys' fees of twenty thousand (Php20,000.00) Philippine currency and costs of suit.

"SO ORDERED."

X X X

THE ISSUES BEFORE US

I

WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN ISSUING THE ORDER DATED MARCH 6, 2013, WHICH DENIED PETITIONER'S VERIFIED MOTION TO LIFT ORDER OF DEFAULT ON THE GROUND THAT THERE IS NO ALLEGATION OF A MERITORIOUS DEFENSE SINCE PETITIONER'S MOTION TO LIFT AND AFFIDAVIT OF MERIT CLEARLY ALLEGED THAT HE HAS A MERITORIOUS DEFENSE.

II

WHETHER OR NOT THE ISSUANCE OF THE ORDER DATED AUGUST 07, 2013 IS ALSO TAINTED WITH GRAVE ABUSE OF DISCRETION AS SAID ORDER DID NOT EVEN BOTHER TO DISCUSS THE ARGUMENTS RAISED IN PETITIONER'S MOTION FOR RECONSIDERATION PERFUNCTORILY