

FOURTEENTH DIVISION

[CA-G.R. SP NO. 88809, September 27, 2006]

**JOSE JIMENA, PETITIONER, VS. HON. JOSE L. MADRID, AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH
51, SORSOGON, AND SPOUSES VICTOR LEE, SR. AND ESTER E.
LEE, RESPONDENTS.**

DECISION

VIDAL, M.D., J.:

In this Petition for Certiorari under Rule 65 of the Revised Rules of Court, Petitioner JOSE JIMENA (hereinafter Petitioner) is seeking the reversal of the three Orders dated 19 May 2004,¹ 20 August 2004² and 11 November 2004³ respectively of the Regional Trial Court (RTC), Fifth Judicial Region, Branch 51, Sorsogon City in Civil Case No. 2002-6983 for *Quieting of Title and Recovery of Possession with Damages*.

THE FACTS

On 25 March 2002, Respondent Spouses VICTOR LEE, Sr. and ESTER E. LEE filed a Complaint for Quieting of Title and Recovery of Possession with Damages against the Petitioner and one CRISTOBAL BANIEL. Summons were issued by the court *a quo* on 25 April 2002. Petitioner's daughter received the summons and signed the return, while the summons for the Petitioner's co-defendant, CRISTOBAL BANIEL, was received by the latter's wife, who refused to sign the return.

On 16 May 2002, Petitioner's former counsel, Atty. ISAGANI OCAMPO, filed an *Entry of Appearance with Motion For Extension of Time To Plead*, which was given due course by the court *a quo* in an Order dated 17 May 2002⁴ granting the Petitioner 15 days from 17 May 2002 to file his answer. However, no responsive pleading was filed by the Petitioner. Hence, on 25 September 2002, or four months after the extended period, the Respondents filed a *Motion to Declare Defendants in Default*⁵ which was granted by the court *a quo* on 27 September 2002.⁶ Accordingly, Respondents presented evidence *ex parte*.

On 13 October 2003, the court *a quo* rendered its Decision,⁷ the dispositive portion of which reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered:

- 1) Ordering the defendants to vacate the residential land denominated as Lot No. 9, Psd-05566216-013416, covered by Transfer Certificate No. T-47365, under Tax Declaration No. ARP-1999-14-003-0243, in the name of ESTER E. LEE and restore the peaceful possession to the**

plaintiffs;

2) Ordering the defendants to pay the plaintiffs jointly and solidarily the following:

- a) commissioner's fee in the amount of Php7,000.00;**
- b) attorney's fee in the amount of Php20,000.00;**
- c) appearance fee, Php1,000.00; and**
- d) litigation expenses in the amount of Php10,000.00.⁸**

On 5 December 2003, Petitioner filed a *Motion for New Trial (with Affidavit of Merit)*⁹ on the following grounds, to wit:

1) that excusable negligence which ordinary prudence could not have guarded against and by reason of which the herein defendant-movant has probably been impaired of his ri[g]hts – that is[,] due to gross negligence of counsel of the herein defendant-movant;

2) the default order and judgment were issued in violation of the rules because the herein defendant-movant was not furnished with a notice or copy of the motion to declare him in default; and

3) that the herein defendant-movant has a valid and meritorious defense of tenancy to transferee of the land subject matter of the case, thus, at the inception the honorable court has no jurisdiction to take cognizance of the instant case, but the DARAB.¹⁰

Respondents filed an opposition thereto dated 10 December 2003.¹¹ On 19 May 2004, the court *a quo* denied the said motion.

On 19 August 2004, Petitioner filed a Notice of Appeal with a *Motion to Litigate as Pauper and be Exempt from the Payment of Appeal Docket and Other Fees*. On 20 August 2004, the court *a quo* rendered an Order denying the appeal and the motion, the pertinent portion thereof states:

ACCORDINGLY, for non-compliance of (sic) Rule 15, Sections 4, 5 and 6 of the Rules of Court and for filing an inconsistent Notice of Appeal the same is DENIED.¹²

Petitioner's *Motion for Reconsideration* of 13 September 2004 was denied by the court *a quo* on 11 November 2004.¹³

Hence, the instant Petition, raising the following issues for Our resolution:

WHETHER OR NOT RESPONDENT HONORABLE PRESIDING JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDER OF MAY 19, 2004 DENYING PETITIONER'S MOTION FOR NEW TRIAL[;]

II

WHETHER OR NOT THE RESPONDENT HONORABLE JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDERS OF AUGUST 20, 2004 AND NOVEMBER 11, 2004 DENYING PETITIONER'S APPEAL AND MOTION TO LITIGATE AS PAUPER[.]¹⁴

OUR RULING

We uphold the court *a quo's* Order of 19 May 2002 and reverse the Orders of 20 August 2004 and 11 November 2004.

Anent the ***first issue***, the Petitioner argued that his failure to file an answer was the fault of his negligent former counsel, whom he, being unlettered and ignorant of procedural technicalities, unquestioningly trusted. While the general rule is that the mistake of the lawyer binds the client, the law allows an exception when reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or when the interests of justice so require.¹⁵ The Petitioner also argues that he was not furnished copies of the *Motion to Declare Defendants in Default* and the Order granting the same.¹⁶

In denying the Petitioner's motion, *supra*, the court *a quo* ratiocinated as follows:

Firstly, the defendant-movant was himself at fault for not being so vigilant and vigorous in protecting his right or interest, if ever he maintained meritorious defense against plaintiff's claims. Nonetheless, it was his own gross negligence for not updating his case with his chosen counsel, who, as record shows, failed to file the necessary answer despite being validly served with summons. As a person whose interest in the property subject of this case is at stake, the defendant should have been more vigilant, prudent and circumspect in protecting that right. Failure to do so (sic), the declaration of default against his favor was obviously his own undoing.

Secondly, record shows that his counsel Atty. Isagani Ocampo was duly notified of the order of default contrary to the claim of the movant. It is elemental (sic) that notice to the counsel is itself a notice to his client. In such case, the procedural remedy available for the defendant was to file a motion to set aside the order of default issued by the Court. For failure to do so, the

plaintiffs were correct in asking from the Court to present their evidence *ex parte*, which was the Court's basis in rendering judgment.

Lastly, the contention of the defendant-movant that it should be the DAR who has the jurisdiction over the case on the alleged ground that the former is a tenant of the plaintiff holds no legal basis. It is a basic rule of procedure that jurisdiction of the court over the subject matter is determined by the allegation of the complaint (*Eugenio vs. Velez*, 185 SCRA 425). *The jurisdiction of the court cannot be made to depend upon the defenses set up in the answer or upon motion to dismiss for otherwise the question of jurisdiction would almost entirely depend upon the defendant* (*D.C. Crystal vs. Malaya*, 170 SCRA 734). What really determines the jurisdiction of the court is the nature of the action pleaded as appearing from the allegations in the complaint.

Lastly (*sic*), granting *arguendo* that the defendant-movant's motion is warranted under the circumstances, and that new trial should be conducted over the case, the Court however would still not waver to alter or set aside its decision. An exhaustive review of the case clearly shows that movant has no meritorious defense to counter the plaintiff's claim. Indeed, it would appear that on the strength of the preponderance of evidence in favor of the plaintiffs, e.g. the Certificate of Title, Relocation Survey, [t]he Court's ruling that plaintiffs are the owners of the property, would legally stand. No evidence on record in favor of the defendant could influence the Court to change its mind.¹⁷

We agree with the court *a quo*.

A party may be entitled to relief from an order of default when the failure to answer was due to fraud, accident, mistake or excusable negligence and when the party has a meritorious defense.¹⁸ The Petitioner has not shown that his failure to answer was due to any of the abovementioned reasons. In passing the blame to his errant counsel, he cannot claim excusable negligence for he is expected to be put on guard of the action commenced against him after being properly summoned and given proper notice. As correctly pointed out by the court *a quo*, the Petitioner, as the party whose rights were potentially at risk, was charged with the duty to vigilantly follow up with his counsel from time to time.

The ruling of the Supreme Court in *Pahilanga v. Luna*,¹⁹ is highly relevant, thus:

It is within the sound discretion of the court to set aside an order of default and to permit a defendant to file his answer and to be heard on the merits even after the reglementary period for the filing of the answer has expired, **but it is not error, or an abuse of discretion, on the part of the court to refuse to set aside its order of default and to refuse to accept the answer where it finds no justifiable reason for the delay in the filing of the answer.** In motions for reconsideration of an order of default, the moving party has the burden