6

PID

Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **April 20, 2015,** *which reads as follows:*

"G.R. No. 148828 - CARLOS A. VELEZ, Petitioner, v. ELIZABETH O. CHANG, Respondent.

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to overturn the Decision[1] dated April 28, 2000 and the Resolution[2] dated July 4, 2001 of the Court of Appeals in CA-G.R. CV No. 47895, entitled "*Carlos A. Velez v. Elizabeth O. Chang.*" The appellate court annulled and set aside the Decision[3] dated March 25, 1992 of the Regional Trial Court (RTC), Makati City, Branch 63 in Civil Case No. 90-3513. The March 25, 1992 RTC Decision rendered judgment on petitioner's complaint for sum of money and recovery of personal property, with damages and prayer for the issuance of the writ of *replevin* against respondent. The trial court had previously declared respondent in default and, thus, received petitioner's evidence *ex parte* before arriving at the aforementioned decision.

The assailed April 28, 2000 Decision of the Court of Appeals summed the factual backdrop of this case in this wise:

---

1 *Rollo*, pp. 19-25; penned by Associate Justice Eloy R. Bello, Jr. with Associate Justices Delilah Vidallon-Magtolis and Mercedes Gozo-Dadole, concurring.
2 Id. at 27.
3 Id. at 39-45.

On December 27, 1990, [petitioner] Carlos A. Velez filed a complaint for sum of money and recovery of personal property, with damages and prayer for the issuance of a writ of *replevin* against herein [respondent] Elizabeth O. Chang, alleging in substance that [respondent], as lessor of the subject premises located at No. 2 San Lorenzo Drive corner Pasay Road, San Lorenzo Village, Makati, Metro Manila, better known as the "Faces Disco", refused to return to [petitioner], as lessee, his deposit in the amount of Four Hundred Twenty Thousand Pesos (₱420,000.00) despite repeated demands and turn-over of the leased premises, and; his two (2) unit compressors of two (2) 5-ton Allenaire air conditioners.

[Respondent] in her answer alleged that [petitioner] failed to honor the spirit of their Lease Contract, particularly paragraphs 3 and 8 thereof which are hereby reproduced as follows:

x x x x

> 3. DEPOSIT AND ADVANCE RENTALS – Upon execution of this Contract, the LESSEE shall deposit in cash with the LESSOR the amount of TWO HUNDRED FORTY THOUSAND PESOS (₱240,000.00), Philippine Currency, to guarantee the faithful compliance by the LESSEE of the period of this contract as well as the other covenants and conditions herein and to answer for damages and other monetary liabilities or obligations of the LESSEE incurred under this contract, plus EIGHTY THOUSAND PESOS (₱80,000.00), Philippine Currency, equivalent to two (2) months advance rentals. At the expiration of this contract, said deposit is to be returned by the LESSOR to the LESSEE after the leased premises shall have been completely vacated and redelivered by the LESSEE to the LESSOR, less whatever amount the LESSEE might be owing to the LESSOR.
>
> x x x x
>
> 8. IMPROVEMENTS, ALTERATIONS AND REPAIR – The LESSOR hereby agree to allow the LESSEE to make alterations on the existing leased premises at the expense of the LESSEE, subject, however to the prior written consent and approval of the LESSOR.
>
> All fixed improvements on the leased premises which cannot be removed without causing irreparable damage or injury to the leased premises, as determined by the LESSOR, the same shall become the property of the LESSOR at the termination of the leased contract, without reimbursement of the cost or value thereof. x x x.

On May 20, 1991, the case was set for a pre-trial conference. [Petitioner] filed [his] Pre-Trial Brief on May 2, 1991 and [respondent] on May 20, 1991.

The pre-trial was, however, re-set to July 3, 1991, there being no proof of service of the notice to [petitioner] and counsel, and considering that the [respondent] has changed address per information given by [respondent's] counsel. x x x.

On the above date, pre-trial was terminated, there being no possibility of settling the case amicably. Counsel for the [petitioner] was given two (2) days to submit his list of witnesses to be subpoenaed and likewise, [respondent] was given two days from receipt thereof to submit her comment and two (2) days thereafter to submit list of her witnesses and documents to be subpoenaed. The initial trial of the case was also set on September 23, 1991.

[Petitioner], through his Manifestation dated July 3, 1991, submitted his list of witnesses, namely, Carlos A. Velez and Jose Velez.

However, on the scheduled September 23, 1991 initial hearing, [petitioner's] witness was absent which prompted [respondent's] counsel to move for the dismissal of the case for [petitioner's] lack of interest to prosecute. Said Motion was granted in an order issued in open court.

Hence, on October 4, 1991, [petitioner] filed his Motion for Reconsideration to which [respondent] filed her Opposition thereto.

The lower court granted [petitioner's] Motion, in the interest of justice, and re-set the initial hearing of the case to January 15, 1992.

On said date, however, [respondent] and her counsel failed to appear. And on motion of [petitioner's] counsel, [respondent] was declared as in default and [petitioner] was allowed to present his evidence ex parte on the very same date x x x. Subsequently, in an Order dated February 18, 1992, the court amended its Order dated January 15, 1992, as follows:

> "The order dated January 15, 1992 is hereby amended, accordingly to read as follows:
>
> For failure of the defendant and her counsel to appear in today's initial trial despite proper notice, upon motion of plaintiff's counsel that defendant be declared to have waived her right to present evidence and to allow plaintiff to present his evidence ex-parte; finding the verbal motions to be in order, the same are hereby GRANTED."

> In view thereof, the defendant is hereby declared to have waived her right to present evidence and plaintiff is hereby allowed to present his evidence ex-parte.
>
> x x x x
>
> The aforesaid Order was received by the [respondent] only on March 6, 1992.
>
> Thereafter, appellant filed her "Motion to Set Aside Order Declaring Defendant As In Default" on March 27, 1992.
>
> Previously, however, or on March 25, 1992, the lower court already rendered the assailed decision which was received by [respondent's] counsel on April 14, 1992.
>
> [Respondent] filed her "Motion for New Trial", on the ground of excusable negligence, on April 21, 1992 and [petitioner] filed his Opposition thereto on May 6, 1992.
>
> It appears from the record, however, that [respondent's] "Motion to Set Aside Order Declaring Defendant As In Default" was only ruled upon by the lower court in its Order dated May 14, 1992, thus:
>
> IN VIEW THEREOF, the Motion to Set Aside Order of Default is hereby DENIED for lack of merit.
>
> x x x x
>
> [Respondent's] "Motion for New Trial" was also denied in an Order dated October 6, 1993.[4]

Respondent then brought an appeal to the Court of Appeals to set aside on due process grounds the March 25, 1992 RTC Decision, the dispositive portion of which states:

> WHEREFORE, judgment is hereby ordered as follows:
>
> 1. Ordering [respondent] to pay [petitioner] the amount of ₱400,000.00 with the legal rate of interest per annum from December 27, 1990, until fully paid;
>
> 2. Ordering [respondent] to return to [petitioner] the two (2) compressors of the two (2) 5-ton Allenaire air conditioners;
>
> 3. Ordering [respondent] to pay [petitioner] a sum equivalent to 25% of the total amount due plaintiff by way of attorney's fees; and,

---

4 Id. at 20-22.

4. Ordering [respondent] to pay [petitioner] the cost of suit.[5]

Essentially, respondent argued that she was denied her day in court when the trial court hastily declared her in default and, thereafter, rendered a verdict based solely on the evidence of petitioner.

The appellate court ruled favorably on respondent's appeal and ordered the trial court to rehear the case to allow respondent's presentation of evidence. The dispositive portion of the assailed April 28, 2000 Decision of the Court of Appeals reads:

> **WHEREFORE**, the decision appealed from is hereby **ANNULLED and SET ASIDE**. The case is remanded to the lower court for further hearing and reception of the appellant's evidence.

Dissatisfied with the appellate court's ruling, petitioner comes before this Court pleading that the ruling of the Court of Appeals be reversed since it is not in accord with law and jurisprudence.

In fine, the issue to be resolved in this case is whether or not the Court of Appeals erred when it issued the April 28, 2000 Decision as well as the subsequent July 4, 2001 Resolution which annulled and vacated the March 25, 1992 Decision of the trial court.

Petitioner argues that the judgment by default rendered by the RTC should be upheld because the trial court was correct in previously declaring respondent to have waived her right to present evidence. The order of default was granted upon motion by petitioner's counsel on the ground that respondent and her counsel failed to appear at the initial hearing of the case at issue. By virtue of which, the trial court allowed petitioner to present his evidence *ex parte* and, on the basis of said evidence, issued the judgment by default. Petitioner maintains that the trial court's verdict followed procedural rules and that respondent should not be rewarded for her flagrant noncompliance with the prescribed rules of procedure.

On the other hand, respondent asserts that the trial court erred when it declared her in default notwithstanding that: (1) an answer was already filed; and (2) the pre-trial was already held and terminated. Furthermore, respondent claims that the trial court likewise made a mistake when it declared her to have waived her right to present evidence by failing to

---

[5] Id. at 45.

attend just one hearing date which was an absence that she had adequately explained.

The petition is without merit.

Relevant to the resolution of the case at hand are the provisions on default under the Rules of Court.

First, we consider the first paragraph of Section 3, Rule 9 of the 1997 Rules of Civil Procedure which is reproduced as follows:

> 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. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court. (Emphasis supplied.)

Stated differently, the aforementioned procedural rule provides that a defending party may be declared in default upon motion of the claiming party with notice to the defending party, and proof of failure to file an answer within the time allowed for it.[6] The effect of an order of default is that a party in default shall be entitled to notice of subsequent proceedings but not take part in the trial.[7]

Equally significant to the issue at hand are Section 5, Rule 18, which details the consequences of nonappearance at pre-trial, and Section 3(c), Rule 29 of the 1997 Rules of Civil Procedure, which provides for one of the effects of the failure or refusal by any party to comply with modes of discovery, to wit:

> Sec. 5. *Effect of failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. **A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.**
>
> x x x x

---

6 *Narciso v. Garcia*, G.R. No. 196877, November 21, 2012, 686 SCRA 244, 248.
7 1997 Rules of Civil Procedure, Rule 9, Section 3(a).

> Sec. 3. *Other consequences.* - If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:
>
> x x x x
>
> (c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or **rendering a judgment by default against the disobedient party**[.] (Emphases supplied.)

Thus, according to law and jurisprudence, a declaration of default and its effects may only be applied in the following instances: (1) when there is an actual default for failure to file a responsive pleading; (2) failure to appear in the pre-trial conference; and (3) refusal to comply with modes of discovery under the circumstance in Section 3(c), Rule 29.[8]

None of the enumerated circumstances are present in the case at bar. In fact, a review of the records of this case clearly show that the event which gave rise to the order of default that barred respondent from presenting her evidence in court was the absence of both respondent and her counsel at the first hearing for the presentation of petitioner's evidence. This default order is patently erroneous considering that the failure to appear at a trial hearing does not constitute as a ground for the issuance of an order of default under the rules.

We quote with approval the findings made by the Court of Appeals in the assailed April 28, 2000 Decision regarding this matter:

> In this case, [respondent] was outrightly declared as in default in the court *a quo*'s initial order despite appellant's submission of her answer and her presence in the pre-trial conference. Realizing, however, its mistake, the court subsequently amended its erroneous order and instead declared appellant to have waived her right to present evidence when she failed to appear at the second or re-scheduled initial hearing of the case on January 15, 1992. It should be noted that previous to the said re-scheduled initial hearing, (the first being on September 23, 1991) the instant case was already dismissed by the court, on motion of the [respondent], for [petitioner's] lack of interest to prosecute his case. The

---

8 *Monzon v. Relova*, 587 Phil. 289, 300 (2008).

> lower court only reconsidered its order in the interest of justice, on motion of the [petitioner]. Hence, the reinstatement of the case and the re-setting of the initial hearing on January 15, 1992.
>
> When [respondent], however, failed to appear on the very same day, the lower court allowed [petitioner] to present his evidence ex parte and from there, the court decided the case with undue haste in favor of the [petitioner], without considering the defense of the [respondent] as alleged in her answer.
>
> [Respondent], therefore, did not have the chance to present evidence in her favor nor regain her standing in court, even after satisfactorily explaining her absence at the initial hearing. A review of the record would reveal that [respondent] and her counsel were not properly notified as the notice itself was received by a certain Elma Baluyot, former maid of the [respondent's] counsel, who happened to be only visiting the latter when the corresponding notice was served. That being without expertise and training in legal matters, said maid not only forgot and misplaced the said notice but also failed to call the attention of the [respondent's] counsel and left without informing the latter whether she misplaced the notice or had accidentally taken it with her. x x x.[9]

Verily, the trial court erred and acted precipitately when it issued the order of default against respondent and, subsequently, rendered the default judgment. Respondent was obviously denied her day in court because the trial court hastily chose the path of a one-sided exposition of the truth instead of cautiously adhering to the guiding principle set out by this Court that justice could only be achieved if both sides of a case are adequately heard. Time and again, this Court has espoused a policy of liberality in setting aside orders of default which are frowned upon, as a case is best decided when all contending parties are able to ventilate their respective claims, present their arguments, and adduce evidence in support thereof.[10] In *Mortel v. Kerr*,[11] we emphasized that the issuance of orders of default should be a rare practice and that it should only be reserved for cases wherein the litigant obstinately refuses or inordinately neglects to comply with the orders of the court, to wit:

> In *Leyte v. Cusi*, the Court has admonished against precipitate orders of default because such orders have the effect of denying a litigant the chance to be heard. Indeed, we have reminded trial courts that although there are instances when a party may be properly defaulted, such instances should be the exception rather than the rule and should be

---

9 *Rollo*, pp. 23-24.
10 *Imperial v. Joson*, G.R. No. 160067, November 17, 2010, 635 SCRA 71, 93.
11 G.R. No. 156296, November 12, 2012, 685 SCRA 1, 10-11.

allowed only in clear cases of a litigant's obstinate refusal or inordinate neglect to comply with the orders of the court. Without such a showing, the litigant must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law.

In light of the foregoing, we uphold the assailed ruling of the Court of Appeals and affirm its pronouncement that the case be remanded to the trial court so that respondent may be given a chance to present evidence in support of her cause.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court
502-A

Mr. Carlos A. Velez
Petitioner
(no forwarding address)

Atty. Ruben M. Cleofe
Counsel for Petitioner
75 Visayas Avenue
Project 6, 1100 Quezon City

Judgment Division (x)
Supreme Court

Court of Appeals (x)
Manila
(CA-G.R. CV No. 47895)

BRITANICO BRITANICO &
ASSOCIATES LAW OFFICES
Counsel for Respondent
No. 4 Matiwasay St., UP Village
Diliman 1128 Quezon City

The Hon. Presiding Judge
Regional Trial Court, Br. 63
1200 Makati City
(Civil Case No. 90-3513)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M. No. 12-7-1-SC)

SR