FIFTH DIVISION

[CA-G.R. SP NO. 79143, August 04, 2006]

GEORGE GARCIA, PETER GARCIA, PAUL GARCIA, ROBERT GARCIA AND CARMEN GARCIA, PETITIONERS, VS. HON. JUDGE JOSE G. PANEDA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 220, QUEZON CITY, NATIONAL HOUSING AUTHORITY, HEIRS OF SANTIAGO MAGBUHAT, AS REPRESENTED BY THEIR ATTORNEY-IN-FACT HERNANI C. MAGBANUA AND HELEN FUENTEBELLA MAGBUHAT, RESPONDENTS.

D E C I S I O N

GUARIÑA III, J.:

Elevated to us on certiorari are two orders of the Regional Trial Court of Quezon City, Branch 220 : (1) the order on May 13, 2003 setting aside the order of July 3, 1997 declaring the defendants Heirs of Santiago Magbuhat as represented by their attorney-in-fact Hernani Magbanua in default and denying admission to the answer of Helen Fuentebella Magbuhat who is directed to secure the proper representation from either the Heirs of Santiago Magbuhat or the executor or administrator of his Estate, and (2) the order of July 10, 2003 denying the motion for reconsideration of the order of May 13, 2003.

The case in which these orders were issued is an action for injunction filed in June 1996 by the petitioners George, Peter, Paul, Robert and Carmen, all surnamed Garcia and docketed as Q-96-27877.[1] Brought in as defendants were the National Housing Authority as represented by its Administrator, and the Heirs of Santiago Magbuhat represented by their attorney-in-fact Hernani Magbanua. The officer's return shows that on June 26, 1996, he caused the service of the summons on the NHA through the NHA Legal Department and on Hernani Magbanua who refused to acknowledge receipt.[2] To the summons was attached a notice of hearing presumably in connection with the application for preliminary injunction.

A year later, on July 3, 1997, a pre-trial hearing was called in which plaintiff George Garcia with his counsel Atty. Alvin Dysangco and Atty Ma. Magdalena De Leon-Siacon for defendant NHA appeared before Branch 220 to which the case was raffled. Atty. Dysangco reported that the Heirs of Santiago Magbuhat were already served with summons through Hernani Magbanua and had yet to file a responsive pleading. Since the reglementary period for filing the answer was apparently over, he moved for a declaration of default of the heirs. The court was then presided over by Judge Prudencio Castillo Jr. He issued an open-court order declaring in default the Heirs of Santiago Magbuhat as represented by Hernani Magbanua for failure to file the responsive pleading within the reglementary period.[3]

After five years, the case was still pending. On October 14, 2002, Helen Fuentebella

Magbuhat, who claims to be the widow of Leonardo Magbuhat, one of the heirs of Santiago Magbuhat, filed a motion to set aside the order of default with motion to admit answer with counterclaim.[4] The plaintiffs opposed the twin motions, leading the court to issue its first disputed ruling – the order of May 13, 2003 penned by Judge Jose Paneda.[5]

The court applied Section 3, Rule 9 of the 1997 Rules of Civil Procedure in recalling and setting aside the July 3, 1997 order of default. The cited rules were a thoroughgoing revision of the 1964 Rules of Court that came into effect only two days before the default order was handed down, and the provision on default was one of the major changes carried out therein. The court discerned that under these rules, it may no longer declare a defendant in default *motu proprio*. There must be a motion to the effect by the plaintiff with proof of failure of defendant to file the answer despite notice. Unlike in the old rules when a defendant need not be served with notice of the motion, he must now be notified of the motion. The court also noted that in order for it to acquire jurisdiction over the defendants-heirs, the summons should be served on all of them or the administrator or executor of the estate. There was no showing that Hernani Magbanua on whom the summons was served either represented the heirs or was the executor or administrator of the estate. In the same breath that it set aside the default order, the court refused to admit the answer of movant Helen Magbuhat and instead ordered her to secure the proper representation from the heirs or the estate. These pronouncements were reaffirmed in the order of July 10, 2003 denying the motion for reconsideration filed by the plaintiffs.

Now as petitioners, the Garcias seek the long arm of certiorari to reverse these issuances and reinstate the initial July 3, 1997 default order. They maintain their opinion that Hernani Magbanua is a representative or agent of the Heirs of Santiago Magbuhat and service of summons on a representative party is allowed under Section 3, Rule 3 of the 1997 Rules. The heirs were, therefore, required to file the answer on pain of being declared in default if they failed to do so within the reglementary period. The petitioners also posit that the court erroneously acted on the motion of Helen Magbuhat who is not a party defendant. They press the view that under Section 3, Rule 9, only a party declared in default may file a motion to set aside the order of default.

These contentions are not grounded on a proper understanding of the rules. Verily, the summons for the defendants-heirs was served only on Hernani Magbanua whose name appears in the compliant in one introductory sentence – *defendant Heirs of Santiago Magbuhat are represented by their attorney-in-fact Hernani Magbanua with address at 4 Maningning Street, Sikatuna Village, Quezon city where he may be served with summons*.[6] An attorney-in-fact is but an agent to whom a general or special power of attorney is issued by his principal. Laviña vs Court of Appeals 171 SCRA 691. Nothing in the complaint or its attachments reveal to us the full scope of the agency of Hernani Magbanua, not even its Annex B[7] which is a letter of Magbanua to the NHA and in which he seems to be only acting out the role of a negotiator for the Magbuhats.

Be that as it may, the critical question of whether he can receive summons for his principals will have to be resolved within the framework of the 1997 Rules. One of the first principles in the institution of civil actions, whether under the past or