

## SECOND DIVISION

[ G.R. No. 200134, August 15, 2012 ]

**ROBERTO OTERO, PETITIONER, VS. ROGER TAN, RESPONDENT.**

### **R E S O L U T I O N**

**REYES, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision<sup>[1]</sup> dated April 29, 2011 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 02244, which affirmed the Judgment<sup>[2]</sup> dated December 28, 2007 issued by the Regional Trial Court (RTC), Cagayan de Oro City, Branch 23 in Civil Case No. 2007-90.

#### **The Antecedent Facts**

A Complaint<sup>[3]</sup> for collection of sum of money and damages was filed by Roger Tan (Tan) with the Municipal Trial Court in Cities (MTCC), Cagayan de Oro City on July 28, 2005 against Roberto Otero (Otero). Tan alleged that on several occasions from February 2000 to May 2001, Otero purchased on credit petroleum products from his Petron outlet in Valencia City, Bukidnon in the aggregate amount of P270,818.01. Tan further claimed that despite several verbal demands, Otero failed to settle his obligation.

Despite receipt of the summons and a copy of the said complaint, which per the records of the case below were served through his wife Grace

R. Otero on August 31, 2005, Otero failed to file his answer with the MTCC. On November 18, 2005, Tan filed a motion with the MTCC to declare Otero in default for his failure to file his answer. Otero opposed Tan's motion, claiming that he did not receive a copy of the summons and a copy of Tan's complaint. Hearing on the said motion was set on January 25, 2006, but was later reset to March 8, 2006, Otero manifesting that he only received the notice therefor on January 23, 2006. The hearing on March 8, 2006 was further reset to April 26, 2006 since the presiding judge was attending a convention. Otero failed to appear at the next scheduled hearing, and the MTCC issued an order declaring him in default. A copy of the said order was sent to Otero on May 9, 2006. Tan was then allowed to present his evidence *ex parte*.

Tan adduced in evidence the testimonies of Rosemarie Doblado and Zita Sara, his employees in his Petron outlet who attended Otero when the latter made purchases of petroleum products now the subject of the action below. He likewise presented various statements of account<sup>[4]</sup> showing the petroleum products which Otero purchased from his establishment. The said statements of account were prepared and checked by a certain Lito Betache (Betache), apparently likewise an employee

of Tan.

### **The MTCC Decision**

On February 14, 2007, the MTCC rendered a Decision<sup>[5]</sup> directing Otero to pay Tan his outstanding obligation in the amount of P270,818.01, as well as attorney's fees and litigation expenses and costs in the amounts of P15,000.00 and P3,350.00, respectively. The MTCC opined that Otero's failure to file an answer despite notice is a tacit admission of Tan's claim.

Undeterred, Otero appealed the MTCC Decision dated February 14, 2007 to the RTC, asserting that the MTCC's disposition is factually baseless and that he was deprived of due process.

### **The RTC Decision**

On December 28, 2007, the RTC rendered a Judgment<sup>[6]</sup> affirming the MTCC Decision dated February 14, 2007. The RTC held that the statements of account that were presented by Tan before the MTCC were overwhelming enough to prove that Otero is indeed indebted to Tan in the amount of P270,818.01. Further, brushing aside Otero's claim of denial of due process, the RTC pointed out that:

As to the second assignment of error, suffice to say that as borne out by the record of the case, defendant-appellant was given his day in Court contrary to his claim. His wife, Grace R. Otero received a copy of the summons together with a copy of the Complaint and its corresponding annexes on August 31, 2005, per Return of Service made by Angelita N. Bandy, Process Server of OCC-MTCC of Davao City. He was furnished with a copy of the Motion to Declare Defendant in Default on November 18, 2005, per Registry Receipt No. 2248 which was received by the defendant. Instead of filing his answer or any pleading to set aside the Order of default, he filed his Comment to the Motion to Declare Defendant in Default of which plaintiff filed his Rejoinder to Defendant's Comment.

The case was set for hearing on January 23, 2006, but defendant through counsel sent a telegram that he only received the notice on the day of the hearing thereby he was unable to appear due to his previous scheduled hearings. Still, for reasons only known to him, defendant failed to lift the Order of Default.

The hearing on January 23, 2006 was reset on March 8, 2006 and again reset on April 26, 2006 by agreement of counsels x x x.

It is not therefore correct when defendant said that he was deprived of due process.<sup>[7]</sup>

Otero sought reconsideration of the Judgment dated December 28, 2007 but it was denied by the RTC in its Order<sup>[8]</sup> dated February 20, 2008.

Otero then filed a petition for review<sup>[9]</sup> with the CA asserting that both the RTC and the MTCC erred in giving credence to the pieces of evidence presented by Tan in support of his complaint. Otero explained that the statements of account, which Tan adduced during the *ex parte* presentation of his evidence, were prepared by a certain Betache who was not presented as a witness by Tan. Otero avers that the genuineness and due execution of the said statements of account, being private documents, must first be established lest the said documents be rendered inadmissible in evidence. Thus, Otero asserts, the MTCC and the RTC should not have admitted in evidence the said statements of account as Tan failed to establish the genuineness and due execution of the same.

### **The CA Decision**

On April 29, 2011, the CA rendered the assailed Decision<sup>[10]</sup> which denied the petition for review filed by Otero. In rejecting Otero's allegation with regard to the genuineness and due execution of the statements of account presented by Tan, the CA held that any defense which Otero may have against Tan's claim is already deemed waived due to Otero's failure to file his answer. Thus:

Otero never denied that his wife received the summons and a copy of the complaint. He did not question the validity of the substituted service. Consequently, he is charged with the knowledge of Tan's monetary claim. Section 1, Rule 9 of the Rules of Court explicitly provides that defenses and objections not pleaded are deemed waived. Moreover, when the defendant is declared in default, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant.

Due to Otero's failure to file his Answer despite being duly served with summons coupled with his voluntary appearance in court, he is deemed to have waived whatever defenses he has against Tan's claim. Apparently, Otero is employing dilatory moves to defer the payment of his obligation which he never denied.<sup>[11]</sup> (Citation omitted)

Otero's Motion for Reconsideration<sup>[12]</sup> was denied by the CA in its Resolution<sup>[13]</sup> dated December 13, 2011.

Hence, the instant petition.

### **Issues**

Essentially, the fundamental issues to be resolved by this Court are the following: *first*, whether Otero, having been declared in default by the MTCC, may, in the appellate proceedings, still raise the failure of Tan to authenticate the statements of account which he adduced in evidence; and *second*, whether Tan was able to prove the material allegations of his complaint.

### **The Court's Ruling**

The petition is denied.

## **First Issue: Authentication of the Statements of Account**

The CA, in denying the petition for review filed by Otero, held that since he was declared in default by the MTCC, he is already deemed to have waived whatever defenses he has against Tan's claim. He is, thus, already barred from raising the alleged infirmity in the presentation of the statements of account.

We do not agree.

### **A defendant who fails to file an answer loses his standing in court.**

The effect of a defendant's failure to file an answer within the time allowed therefor is primarily governed by Section 3, Rule 9 of the Rules of Court, viz:

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. x x x (Emphasis ours)

A defendant who fails to file an answer may, upon motion, be declared by the court in default. Loss of standing in court, the forfeiture of one's right as a party litigant, contestant or legal adversary, is the consequence of an order of default. A party in default loses his right to present his defense, control the proceedings, and examine or cross-examine witnesses. He has no right to expect that his pleadings would be acted upon by the court nor may he object to or refute evidence or motions filed against him.<sup>[14]</sup>

### **A defendant who was declared in default may nevertheless appeal from the judgment by default, albeit on limited grounds.**

Nonetheless, the fact that a defendant has lost his standing in court for having been declared in default does not mean that he is left *sans* any recourse whatsoever. In *Lina v. CA, et al.*,<sup>[15]</sup> this Court enumerated the remedies available to a party who has been declared in default, to wit:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec 3, Rule 18)

b) If the judgment has already been rendered when the defendant

discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1(a) of Rule 37;

c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and

d) **He may also appeal from the judgment rendered against him as contrary to the evidence or to the law**, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)<sup>[16]</sup> (Emphasis ours)

Indeed, a defending party declared in default retains the right to appeal from the judgment by default. However, the grounds that may be raised in such an appeal are restricted to any of the following: *first*, the failure of the plaintiff to prove the material allegations of the complaint; *second*, the decision is contrary to law; and *third*, the amount of judgment is excessive or different in kind from that prayed for.<sup>[17]</sup> In these cases, the appellate tribunal should only consider the pieces of evidence that were presented by the plaintiff during the *ex parte* presentation of his evidence.

A defendant who has been declared in default is precluded from raising any other ground in his appeal from the judgment by default since, otherwise, he would then be allowed to adduce evidence in his defense, which right he had lost after he was declared in default.<sup>[18]</sup> Indeed, he is proscribed in the appellate tribunal from adducing any evidence to bolster his defense against the plaintiff's claim. Thus, in *Rural Bank of Sta. Catalina, Inc. v. Land Bank of the Philippines*,<sup>[19]</sup> this Court explained that:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. **He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, *inter alia*, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated.** In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.

<sup>[20]</sup> (Citations omitted and emphasis ours)

Here, Otero, in his appeal from the judgment by default, asserted that Tan failed to prove the material allegations of his complaint. He contends that the lower courts