

## FIRST DIVISION

**[ G.R. No. 182075, September 15, 2010 ]**

**THE PHILIPPINE AMERICAN LIFE & GENERAL INSURANCE  
COMPANY, PETITIONER, VS. JOSEPH ENARIO, RESPONDENT.**

### DECISION

**PEREZ, J.:**

The consequences of the failure of defendant to attend the pre-trial is the central issue in this case.

Assailed in this petition is the Decision<sup>[1]</sup> dated 28 September 2007, as well as the Resolution<sup>[2]</sup> dated 6 March 2008 of the Court of Appeals in CA-G.R. CV No. 82353, vacating and setting aside the orders dated 3 June 2003<sup>[3]</sup> (June Order) and 24 November 2003<sup>[4]</sup>, and the decision dated 24 February 2004<sup>[5]</sup> of the Regional Trial Court of Manila<sup>[6]</sup> declaring respondent Joseph Enario in default and ordering him to pay Philamlife P1,122,781.66.

Respondent was appointed as agent of Philamlife on 12 November 1991.<sup>[7]</sup> Aside from being an active agent of Philamlife, respondent was appointed unit manager where he also regularly received his override commissions. He was afforded the privilege of receiving cash advances from Philamlife, which the latter charges or debits against future commissions due respondent, and the arrangement continued until his resignation in February 2000.<sup>[8]</sup>

At the time of respondent's resignation, Philamlife allegedly discovered that respondent had an outstanding debit balance of P1,237,336.20, which he was obligated to settle and liquidate pursuant to the Revised Agency Contract he signed at the time of his employment, the pertinent portion of which provides:

35. The Agent shall immediately at any time upon demand or without necessity of demand upon termination of this Contract, return to the Company and all documents, agency materials, paraphernalia, and such other properties which he may have received therefrom to effectively discharge and perform his duties and obligations.<sup>[9]</sup>

Philamlife sent three (3) successive demand letters to respondent for the settlement of his outstanding debit account.<sup>[10]</sup> On 31 October 2000, respondent requested that he be given time to review and settle his accountabilities as he was still trying to reconcile his records. <sup>[11]</sup>

When the parties failed to reach an agreement regarding the settlement of the

outstanding debit balance, Philamlife filed a complaint for collection of a sum of money against respondent before the Regional Trial Court (RTC) of Manila on 22 June 2001.

In his Answer, respondent denied the allegations that he had an outstanding debit balance of P1,237,336.20 considering that he and Philamlife had yet to reconcile the records of remittances with his compensation, as well as overriding commissions. Respondent prayed for the dismissal of the complaint and counterclaimed for damages.<sup>[12]</sup>

On 30 October 2002, the RTC set the pre-trial conference on 3 and 17 December 2002. The parties were directed to file their respective pre-trial briefs before the date of the pre-trial conference.<sup>[13]</sup> Respondent moved for the postponement of the pre-trial to 14 January 2003 due to conflict of schedule,<sup>[14]</sup> which motion the RTC received on 2 December 2002.<sup>[15]</sup>

On 14 January 2003, the opposing counsels agreed to amicably settle the case, prompting the RTC to reset the pre-trial to 8 May, 3 June and 1 July 2003.<sup>[16]</sup>

On 7 May 2003, respondent sent a telegram requesting for another postponement of the pre-trial scheduled on the following day due to medical reasons.

On 3 June 2003, respondent failed to appear. Consequently, Philamlife manifested that respondent be declared in default for failure to appear at the pre-trial. The RTC granted the manifestation and allowed Philamlife to present its evidence on 1 July 2003.<sup>[17]</sup> The June Order reads:

Appearance by Atty. Marivel A. Bautista Deodores, for the plaintiff. No appearance by Atty. Casiano C. Vailoces, for the defendant.

Atty. Bautista-Deodores manifested that defendant be declared in default for failure to appear four (4) times and that she be given 15 days from today to file a memorandum.

All manifestations, GRANTED. Plaintiff is allowed to present their evidence on July 1, 2003 at 8:30 in the morning as previously scheduled.

SO ORDERED.<sup>[18]</sup>

It was only on the following day, 4 June, that the RTC received respondent's motion for postponement of the 3 June 2003 hearing, which was mailed on 30 May 2003.<sup>[19]</sup>

The 1 July 2003 hearing was reset to 28 August 2003 and Philamlife was ordered to present its evidence *ex parte*.<sup>[20]</sup>

Respondent filed a motion for reconsideration of the June Order.

Despite notice, respondent still failed to appear on the 28 August 2003 pre-trial.

Philamlife was then allowed to present its evidence *ex parte*, which it did on that same hearing. Meanwhile, Philamlife was also ordered to comment on the motion for reconsideration of the order of default filed by respondent.<sup>[21]</sup> Respondent denied receiving a notice of hearing for 28 August 2003.<sup>[22]</sup>

In its Formal Offer of Evidence, Philamlife submitted statements of account to prove that respondent has an outstanding debit account balance amounting to P1,237,390.26; and a summary of sale underwriter vouchers (SUV) as evidence of cash advances, among others.<sup>[23]</sup>

On 24 November 2003, the trial court issued an Order denying the motion for reconsideration of the order of default and admitted Philamlife's Formal Offer of Evidence.<sup>[24]</sup>

On 24 February 2004, the trial court rendered judgment ordering respondent to pay the following amount to Philamlife:

1. One Million One Hundred Twenty-two Thousand Seven Hundred Eighty- One and 66/100 (P1,122,781.66);
2. P10,000 as attorney's fees;
3. Costs of Suit.<sup>[25]</sup>

Respondent elevated the case to the Court of Appeals via petition for certiorari under Rule 65 of the Rules of Court. On 28 September 2007, the Court of Appeals reversed the trial court's decision and ruled, thus:

WHEREFORE, the orders dated June 3, 2003 and November 24, 2003 and the decision dated February 24, 2004 of the Regional Trial Court of Manila (Branch 8) are VACATED and SET ASIDE and the case REMANDED to that court for pre-trial and other proceedings.

SO ORDERED.<sup>[26]</sup>

The appellate court found that "respondent's failure to appear for pre-trial on 3 June 2003 does not constitute obstinate refusal to comply with the lower court's order."<sup>[27]</sup> Further, the appellate court held that the trial court erred in issuing an Order of Default since Section 5, Rule 18 of the Rules of Court explicitly provides that failure to appear for pre-trial on the part of the defendant shall be cause to allow the plaintiff to present evidence *ex parte* and the court to render judgment on the basis thereof. <sup>[28]</sup>

Philamlife filed a motion for reconsideration, which was denied by the Court of Appeals in its Resolution dated 6 March 2008.

Hence, this petition for certiorari was filed by Philamlife which attributes error on the

part of the Court of Appeals in vacating and setting aside the RTC's default order as a consequence of respondent's failure to appear during pre-trial. Philamlife concedes that the Court of Appeals correctly relied on Justice Florenz Regalado's annotation in his book, REMEDIAL LAW COMPENDIUM, that instead of defendant being declared in default by reason of his non-appearance, Section 5 Rule 18 of the Rules of Court spells out that the procedure will be to allow the *ex parte* presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. Likewise from Justice Regalado, Philamlife argues that the reference to the word "default" which had been deleted in the present rules solely for semantical propriety and terminological accuracy, is not an error as the standing procedure was followed by the trial court in allowing the *ex parte* presentation of Philamlife's evidence. Philamlife insists that since pre-trial is mandatory in any action, when a party fails to appear therein, he may be non-suited or declared in default.<sup>[29]</sup>

On the other hand, respondent maintains that the RTC committed an egregious error when it issued an order of default against him for failure to appear for pre-trial on 3 June 2003.

The fundamental issue is whether or not the RTC erred in declaring respondent in default and allowing Philamlife to present its evidence *ex parte*.

The resolution of this issue hinges on the interpretation and application of Section 5, Rule 18 of the Rules of Court, which states:

Section 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.

The "next preceding" section mandates that:

Section 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Note that nowhere in the first aforementioned provision was the word "default" mentioned. Prior to the 1997 Revised Rules of Civil Procedure, the phrase "as in default" was initially included in Rule 20 of the old rules, and which read as follows:

Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

It was however amended in the 1997 Revised Rules of Civil Procedure. Justice Regalado, in his book REMEDIAL LAW COMPENDIUM, explained the rationale for the deletion of the phrase "as in default" in the amended provision, to wit:

1. This is a substantial reproduction of Section 2 of the former Rule 20 with the change that, instead of defendant being declared "as in default" by reason of his non-appearance, this section now spells out that the procedure will be to allow the *ex parte* presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. While actually the procedure remains the same, the purpose is one of semantical propriety or terminological accuracy as there were criticisms on the use of the word "default" in the former provision since that term is identified with the failure to file a required answer, not appearance in court.<sup>[30]</sup>

Still, in the same book, Justice Regalado clarified that while the order of default no longer obtains, its effects were retained, thus:

Failure to file a responsive pleading within the reglementary period, and not failure to appear at the hearing, is the sole ground for an order of default, except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed, that is, the plaintiff shall be allowed to present evidence *ex parte* and a judgment based thereon may be rendered against defendant.<sup>[31]</sup>

As the rule now stands, if the defendant fails to appear for pre-trial, a default order is no longer issued. Instead, the trial court may allow the plaintiff to proceed with his evidence *ex parte* and the court can decide the case based on the evidence presented by plaintiff.

The position of Philamlife is in accord with the Rule. Indeed, the amendment did not change the essence of the original provision. The legal ramification of defendant's failure to appear for pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.

Therefore, the June Order cannot be completely vacated because semantics aside, the order substantially complied with Section 5 in relation to Section 4, Rule 18 of the Rules of Court.

The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*<sup>[32]</sup>, the Court, citing *Tiu v. Middleton*<sup>[33]</sup>, delved on the significance of pre-trial, thus: