587 Phil. 289

THIRD DIVISION

[G.R. No. 171827, September 17, 2008]

TERESITA MONZON, PETITIONER, VS. SPS. JAMES & MARIA ROSA NIEVES RELOVA AND SPS. BIENVENIDO & EUFRACIA PEREZ, RESPONDENTS. VS. ADDIO PROPERTIES, INC., INTERVENOR.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* assailing the Decision[1] of the Court of Appeals dated 27 September 2005 and its Resolution dated 7 March 2006 in CA-G.R. CV No. 83507 affirming the Decision of the Regional Trial Court (RTC) of Tagaytay City, Branch 18.

The factual and procedural antecedents of this case are as follows:

On 18 October 2000, the spouses James and Maria Rosa Nieves Relova and the spouses Bienvenido and Eufracia Perez, respondents before this Court, filed against Atty. Ana Liza Luna, Clerk of Court of Branch 18 of the RTC of Tagaytay City, and herein petitioner Teresita Monzon an initiatory pleading captioned as a Petition for Injunction. The case, which was filed before the same Branch 18 of the RTC of Tagaytay City, was docketed as Civil Case No. TG-2069.

In their Petition for Injunction, respondents alleged that on 28 December 1998, Monzon executed a promissory note in favor of the spouses Perez for the amount of P600,000.00, with interest of five percent per month, payable on or before 28 December 1999. This was secured by a 300-square meter lot in Barangay Kaybagal, Tagaytay City. Denominated as Lot No. 2A, this lot is a portion of Psu-232001, covered by Tax Declaration No. 98-008-1793. On 31 December 1998, Monzon executed a Deed of Absolute Sale over the said parcel of land in favor of the spouses Perez.

Respondents also claim in their Petition for Injunction that on 29 March 1999, Monzon executed another promissory note, this time in favor of the spouses Relova for the amount of P200,000.00 with interest of five percent per month payable on or before 31 December 1999. This loan was secured by a 200 square meter lot, denominated as Lot No. 2B, another portion of the aforementioned Psu-232001 covered by Tax Declaration No. 98-008-1793. On 27 December 1999, Monzon executed a Deed of Conditional Sale over said parcel of land in favor of the spouses Relova.

On 23 October 1999, the Coastal Lending Corporation extrajudicially foreclosed the entire 9,967-square meter property covered by Psu-232001, including the portions mortgaged and subsequently sold to respondents. According to the Petition for

Injunction, Monzon was indebted to the Coastal Lending Corporation in the total amount of P3,398,832.35. The winning bidder in the extrajudicial foreclosure, Addio Properties Inc., paid the amount of P5,001,127.00, thus leaving a P1,602,393.65 residue. According to respondents, this residue amount, which is in the custody of Atty. Luna as Branch Clerk of Court, should be turned over to them pursuant to Section 4, Rule 68 of the Revised Rules of Civil Procedure. Thus, respondents pray in their Petition for Injunction for a judgment (1) finding Monzon liable to the spouses Perez in the amount of P1,215,000.00 and to the spouses Relova in the amount of P385,000.00; (2) ordering Atty. Luna to deliver said amounts to respondents; and (3) restraining Atty. Luna from delivering any amount to Monzon pending such delivery in number (2).

Monzon, in her Answer, claimed that the Petition for Injunction should be dismissed for failure to state a cause of action.

Monzon likewise claimed that respondents could no longer ask for the enforcement of the two promissory notes because she had already performed her obligation to them by *dacion en pago* as evidenced by the Deed of Conditional Sale and the Deed of Absolute Sale. She claimed that petitioners could still claim the portions sold to them if they would only file the proper civil cases. As regards the fund in the custody of Atty. Luna, respondents cannot acquire the same without a writ of preliminary attachment or a writ of garnishment in accordance with the provisions of Rule 57 and Section 9(c), Rule 39 of the Revised Rules of Civil Procedure.

On 5 December 2001, the RTC, citing the absence of petitioner and her counsel on said hearing date despite due notice, granted an oral Motion by the respondents by issuing an Order allowing the *ex parte* presentation of evidence by respondents.[2]

On 1 April 2002, the RTC rendered a Decision in favor of respondents. The pertinent portions of the Decision are as follows:

> That [petitioner] Teresita Monzon owes [herein respondents] certain sums of money is indisputable. Even [Monzon] have admitted to this in her Answer. [Respondents] therefore are given every right to get back and collect whatever amount they gave [Monzon] together with the stipulated rate of interest.
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> Likewise, it has been established that [petitioner] Teresita Monzon has the amount of P1,602,393.65 in the possession of the Clerk of Court, Atty. Ana Liza M. Luna. This amount, as is heretofore stated, represented the balance of the foreclosure sale of [Monzon's] properties.
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> By way of this petition, [respondents] would want to get said amount so that the same can be applied as full payment of [petitioner's] obligation. That the amount should be divided between the [respondents] in the amount they have agreed between themselves; [respondent] spouses Relova to receive the amount of P400.00.00, while the spouses Perez shall get the rest.
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> WHEREFORE, judgment is hereby rendered ordering the x x x Clerk of Court, Atty. Ana Liza M. Luna, to deliver unto [herein respondents] the

> amount of P1,602,393.65 plus whatever interest she may received if and when the said amount has been deposited in any banking institution.[3]

The Decision also mentioned that the Order allowing the *ex parte* presentation of evidence by respondents was due to the continuous and incessant absences of petitioner and counsel.[4]

On 25 April 2002, Monzon filed a Notice of Appeal, which was approved by the trial court. Monzon claims that the RTC gravely erred in rendering its Decision immediately after respondents presented their evidence *ex parte* without giving her a chance to present her evidence, thereby violating her right to due process of law.

On 14 June 2002, Addio Properties, Inc. filed before the trial court a Motion for Intervention, which was granted by the same court on 12 July 2002.

On 27 September 2005, the Court of Appeals rendered the assailed Decision dismissing the appeal. According to the Court of Appeals, Monzon showed tepid interest in having the case resolved with dispatch. She, thus, cannot now complain that she was denied due process when she was given ample opportunity to defend and assert her interests in the case. The Court of Appeals reminded Monzon that the essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense. What the law proscribes is lack of opportunity to be heard. Monzon's Motion for Reconsideration was denied in a Resolution dated 7 March 2006.

On 27 March 2006, Monzon filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Monzon claims anew that it was a violation of her right to due process of law for the RTC to render its Decision immediately after respondents presented their evidence *ex parte* without giving her a chance to present her evidence. Monzon stresses that she was never declared in default by the trial court. The trial court should have, thus, set the case for hearing for the reception of the evidence of the defense. She claims that she never waived her right to present evidence.

Monzon argues that had she been given the opportunity to present her evidence, she would have proven that (1) respondents' Exhibit A (mortgage of land to the spouses Relova) had been novated by respondent's Exhibit B (sale of the mortgage land to the spouses Relova); (2) respondents' Exhibit C (mortgage of land to the spouses Perez) had been novated by respondent's Exhibit B (sale of the mortgage land to the spouses Perez); and (3) having executed Exhibits "B" and "D," Monzon no longer had any obligation towards respondents.

The Order by the trial court which allowed respondents to present their evidence *ex parte* states:

> In view of the absence of [Monzon] as well as her counsel despite due notice, as prayed for by counsel for by [respondents herein], let the reception of [respondent's] evidence in this case be held ex-parte before a commissioner who is the clerk of court of this Court, with orders upon her to submit her report immediately upon completion thereof.[5]

It can be seen that despite the fact that Monzon was not declared in default by the RTC, the RTC nevertheless applied the effects of a default order upon petitioner under Section 3, Rule 9 of the Rules of Court:

> 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.**
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> (a) *Effect of order of default.--* **Aparty in default shall be entitled to notice of subsequent proceedings but not to take part in the trial**.

In his book on remedial law, former Justice Florenz D. Regalado writes that failure to appear in hearings is not a ground for the declaration of a defendant in default:

> 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 (*Rosario, et al. vs. Alonzo, et al., L-17320, June 29, 1963*), **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 the defendant (Section 5, Rule 18).[6] Also, a default judgment may be rendered, even if the defendant had filed his answer, under the circumstance in Sec. 3(c), Rule 29.[7]

Hence, according to Justice Regalado, the effects of default are followed only in three 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 Sec. 3(c), Rule 29.

In *Philippine National Bank v. De Leon*,[8] we held:

> We have in the past admonished trial judges against issuing precipitate orders of default as these have the effect of denying a litigant the chance to be heard, and increase the burden of needless litigations in the appellate courts where time is needed for more important or complicated cases. While there are instances when a party may be properly defaulted, **these should be the exception rather than the rule, and should be allowed only in clear cases of obstinate refusal or inordinate neglect to comply with the orders of the court** (Leyte vs. Cusi, Jr., 152 SCRA 496; Tropical Homes, Inc. vs. Hon. Villaluz, et al., G.R. No. L-40628, February 24, 1989).

It is even worse when the court issues an order not denominated as an order of default, but provides for the application of effects of default. Such amounts to the circumvention of the rigid requirements of a default order, to wit: (1) the court must have validly acquired jurisdiction over the person of the defendant either by service of summons or voluntary appearance; (2) the defendant failed to file his answer