

## THIRD DIVISION

[ G.R. No. 143794, July 13, 2004 ]

**VIKING INDUSTRIAL CORPORATION, PETITIONER, VS. THE COURT OF APPEALS AND JOSE L. LUISON, JR., RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

Litigation is not a "trial and error" proceeding. A party who moves for a new trial on the ground of "honest mistake" must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate.

In this petition for review on certiorari, petitioner Viking Industrial Corporation assails the Court of Appeals **(a)** Decision<sup>[1]</sup> dated February 29, 2000 in CA-G.R. SP No. 55253 finding grave abuse of discretion on the part of Judge Vivencio S. Baclig, Regional Trial Court (RTC), Branch 77, Quezon City, in granting petitioner's motion for new trial; and **(b)** Resolution<sup>[2]</sup> dated June 28, 2000 denying its motion for reconsideration.

The facts are as follows:

In 1993, petitioner extended to respondent Jose L. Luison, Jr. a loan amounting to ₱2,000,000.00 secured by a promissory note and a real estate mortgage. Two years thereafter, petitioner demanded from respondent the payment of ₱19,102,916.39, purportedly representing the principal amount of the loan, plus interest and penalties. Respondent disputed the accuracy of the amount. Thus, petitioner threatened to foreclose the real estate mortgage, prompting respondent to file a petition for prohibition and declaratory relief <sup>[3]</sup> with the RTC, Branch 77, Quezon City, docketed as Civil Case No. Q-96-27553. Petitioner refused to answer the petition because it was erroneously impleaded as "**Viking Trading Corporation**," instead of "**Viking Industrial Corporation**." Consequently, the court, upon motion of respondent, declared petitioner in default and allowed respondent to present his evidence *ex parte*.

On July 8, 1996, the RTC, then presided by Judge Ignacio L. Salvador, rendered a judgment by default in favor of respondent, the decretal portion of which reads:

**"WHEREFORE, PREMISES CONSIDERED,** judgment is hereby rendered as follows:

- 1. holds that the principal amount of the loan is only ₱1,453,500.00;**
2. orders the reduction of the interest stipulated in the promissory note and deed of real estate mortgage from 60% per annum to

30% per annum only to commence on the first week of October 1993;

3. orders the injunction permanent until and/or unless respondent (now petitioner) makes the necessary adjustment or correction of its computation of petitioner's (now respondent's) total indebtedness as determined by this Court in page six (6) of this Decision;
4. orders respondent (now petitioner) to pay petitioner by way of attorney's fees the amount of ₱150,000.00;

**SO ORDERED."**

Petitioner received a copy of the above judgment on August 9, 1996. However it did not interpose an appeal.

Upon respondent's motion, the RTC issued an Order dated October 15, 1996, directing the issuance of a writ of execution. Thereupon, the judgment was fully executed and satisfied. The Sheriff's Return issued by Deputy Sheriff Angel L. Doroni states that:

"Pursuant to the Order of the honorable Court dated October 15, 1996 ordering the undersigned to implement the dispositive portion of the Decision dated July 8, 1996 rendered on the above-entitled case, undersigned accordingly implement the same by tendering to respondent Far East Bank Cheque provided SEVEN HUNDRED NINETY THOUSAND SIX HUNDRED FIVE PESOS AND FIFTY NINE CENTAVOS (₱790,605.59) ONLY which was received by respondent thru Mr. Brilly Bernardez who claimed that said amount was only a partial payment and who instructed Mrs. Rosalie Pascual to issue a receipt thereof. However, **pursuant to said dispositive portion of the Decision and on the basis of petitioner's Manifestation dated November 15, 1996 in favor of respondent, the said dispositive portion of the Decision has been fully paid and satisfied upon receipt by respondent of said Far East Bank Cheque covering the said amount.**

Quezon City, Philippines, November 15, 1996."

Petitioner refused to acknowledge the full satisfaction of the judgment by default. Thus, respondent filed two motions, to wit: **(1)** "Ex-Parte Motion to Require Viking Industrial Corporation (petitioner) to Cause the Cancellation of the Annotation of Mortgage and to Return (to respondent) the Transfer Certificate of Title No. 100313" dated November 29, 1996; and **(2)** "Urgent Ex-Parte Motion to Enjoin the Ex-officio Sheriff of Quezon City or his Authorized Deputies from Selling at Public Auction the Subject Property" dated January 3, 1997.

The RTC, this time, presided by Judge Normandie B. Pizarro, denied respondent's twin motions in its Order dated February 5, 1997. **Ironically, the same Order set aside the judgment by default on the ground that the RTC did not acquire jurisdiction over petitioner because of improper service of summons. Summons was served upon "Viking Trading Corporation," not upon petitioner "Viking Industrial Corporation."**

Upon respondent's motion for reconsideration, the RTC **overturned its order** and **reinstated** the judgment by default.<sup>[4]</sup> The court also granted respondent's twin motions earlier mentioned. Petitioner filed a motion for reconsideration but was denied.<sup>[5]</sup>

Petitioner then filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 45643.<sup>[6]</sup> On June 11, 1998, the Court of Appeals issued its Decision dismissing the petition and held that Judge Pizarro did not commit grave abuse of discretion in **reinstating** the judgment by default, ratiocinating as follows:

"We rule for respondents.

**"Concededly, as the trial court had aptly observed, summons and other court processes, before the amendment in the designation of the corporation's name from Viking *Trading* Corporation to that of Viking *Industrial* Corporation, were received by agents of Viking *Trading* Corporation which turned out to be the same employees working for Viking *Industrial* Corporation.** We quote:

'It is glaringly clear in this case that summons was served at No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City and received by a certain ROSALIE PASCUAL, who appears to be an agent or at least connected with VIKING INDUSTRIAL CORPORATION. This conclusion is bolstered by another fact that this ROSALIE PASCUAL was the same person who was instructed by Mr. Brilly Bernardez to prepare a receipt for the amount tendered by the Deputy Sheriff of this court for the satisfaction of the dispositive portion of the Decision dated July 8, 1996. Admittedly, Mr. Brilly Bernardez is the President of VIKING INDUSTRIAL CORPORATION (See Order dated December 20, 1996). The Court likewise notes that the signature of said ROSALIE PASCUAL, as appearing in the receipt she issued to the Deputy Sheriff of this Court, appears to be the same signature appearing in some notices and orders issued and sent by this Court to VIKING TRADING CORPORATION at No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City.

That is not all. The initial notice of hearing for the application of temporary restraining order was served upon respondent VIKING TRADING CORPORATION thru a certain LUZ GRAGASIN at NO. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City (Ref.: Officer's Return dated May 24, 1996). However, the subsequent notice of hearing of the ex-parte motion for execution and Order dated October 8, 1996, was served upon VIKING INDUSTRIAL CORPORATION at No. 315 Roosevelt Avenue, San Francisco del Monte, Quezon City again thru LUZ GRAGASIN (Ref.: Return dated October 8, 1996).' (Order dated 13 June 1997, Annex 'F', Rollo at p. 58)

**"From all that appear on record and by petitioner's own admissions, all summons, notices and orders issued by the trial court were duly served on Viking *Trading* Corporation and/or Viking *Industrial* Corporation with its place of business at No. 315, Roosevelt Avenue, San Francisco del Monte, Quezon City.**

**"Furthermore, circumstances indicate a waiver on the part of petitioner Viking of any alleged defect in the jurisdiction over its person arising from defective or even want of process for its failure to raise the question of jurisdiction in the trial court at the first opportunity.**

**"It should be noted that Viking never raised the issue of improper service of summons until the trial court issued a writ of execution pursuant to its Decision dated July 8, 1996. The issue of jurisdiction was belatedly raised only when private respondent Luison moved to cause the cancellation of the annotation of mortgage and for Viking to return the Transfer Certificate of Title No. 100313 to Luison.**

**"Moreover, even when court notices were in the name of then Viking *Trading* Corporation, one Mr. Brilly Bernardez, President of Viking *Industrial* Corporation, voluntarily appeared before the court *a quo* to represent petitioner Viking *Trading* Corporation (Hearing of 6 June 1996). As the trial court declared:**

'x x x VIKING INDUSTRIAL CORPORATION thru its President, Mr. Brilly Bernardez, personally appeared during the hearing of June 6, 1996, and expressly and unqualifiedly admitted being the respondent in the present case. That Mr. Brilly Bernardez was not authorized to appear and represent VIKING INDUSTRIAL CORPORATION is clearly untenable for his appearance before the court was under the color of authority and he is now estopped from questioning the same. Hence, from this consideration alone, the voluntary appearance of the President of respondent VIKING INDUSTRIAL CORPORATION may be considered as equivalent to service (Sec. 23, Rule 14 of the Rules of Court). Thus, the Court may validly declare the respondent in default for failure to file its answer within the reglementary period.' (*Ibid.* at p. 57)

**"Ergo, by seeking affirmative reliefs through the filing of responsive pleadings (i.e., Annexes 'T', 'W', 'X', Rollo) before the trial court, not to mention its various participation in the proceedings in said court by its President, Brilly Bernardez, and its counsel, Atty. Luciano S. Borja, other than to object to lack of jurisdiction, petitioner Viking had in effect voluntarily submitted itself to the jurisdiction of the court.**

x x x

**"WHEREFORE, the petition is DISMISSED for lack of merit.**