

THIRD DIVISION

[G.R. No. 138777, September 22, 2004]

JOY G. TAN, PETITIONER, VS. SALIC B. DUMARPA, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Suits should as much as possible be decided on the merits and not on technicalities. In this regard, we have often admonished courts to be liberal as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to petitioner and the possibility of such serious consequences necessitates a careful examination of the grounds upon which petitioner asks that it be set aside.^[1]

Before us is a petition for review on certiorari^[2] assailing the Judgment by Default^[3] dated January 28, 1999 and the Order^[4] dated May 3, 1999, both rendered by the Regional Trial Court, Branch 9, Marawi City, Lanao del Sur in Civil Case No. 1474-97, "*Salic B. Dumarpa vs. Joy Tan, doing business under the name and style of Casa Blanca Restaurant.*"

The factual antecedents as borne by the records are:

On May 30, 1995, Prosecutor Ortillano D. Tan and other prosecutors of Region XII filed with the Office of the Ombudsman in Mindanao a criminal complaint for malversation of public funds and violation of Section 3 (e) of R.A. No. 3019^[5] against then Regional State Prosecutor Salic B. Dumarpa, respondent herein, docketed as Case No. OMB-MIN-95-0506.

The complaint alleges that sometime in October 1992, Prosecutor Tan engaged the services of Joy G. Tan, petitioner, as caterer for the Witness Protection Security and Benefit Program seminar conducted on October 16, 1992 at Marawi City. After the seminar, Prosecutor Tan paid petitioner, through Wilfredo C. Sotto, ₱11,632.00 in cash and ₱10,000.00 in PNB Check No. 33060 for her catering services. In turn, petitioner issued to Tan the corresponding receipt dated October 16, 1992 (cash invoice no. 10931). Later, Prosecutor Tan found that Regional Prosecutor Dumarpa, respondent, to cover his cash advance of ₱30,000.00 from the Department of Justice, obtained surreptitiously from petitioner another receipt (cash invoice no. 10887) showing his payment for the latter's catering services for two seminars conducted purportedly in Cotabato City and Marawi City. In support of the above criminal complaint were affidavits of petitioner and Wilfredo C. Sotto.

Meantime, petitioner's affidavit denouncing respondent for malversation of government funds was published in the Manila Standard, Manila Times, Bandera, and other newspapers of general circulation. Respondent claimed that such malicious publication discredited his honor and reputation. Thus, he filed with the

Office of the City Prosecutor of Marawi City a criminal complaint for libel against petitioner, docketed as I.S. No. 97D-0110. The City Prosecutor found probable cause and recommended that petitioner be charged with libel in court. Respondent also filed with the Regional Trial Court, Branch 9, Marawi City **Civil Case No. 1474-97** against her for damages with prayer for issuance of a writ of attachment.

Subsequently, petitioner filed in **Civil Case No. 1474-97** her answer with motion to dismiss the complaint on the ground of failure to state a cause of action. She alleged that her affidavit against respondent was executed in good faith and without malice. **Being merely a supporting affidavit to a criminal complaint for malversation filed by Prosecutor Tan against respondent, the same is absolutely privileged and, therefore, not actionable.**

On March 26, 1998, the trial court **denied petitioner's motion to dismiss** the complaint and set the pre-trial conference on July 30, 1998. But during the pre-trial, petitioner and counsel did not appear. According to the trial court, they were duly notified. Thus, petitioner was declared as in default and respondent was allowed to present his evidence ex-parte. After he rested his case, the trial court rendered the assailed Judgment by Default dated January 28, 1999, the dispositive portion of which reads:

"The plaintiff, having proven his claim preponderantly, judgment is hereby rendered in favor of plaintiff Salic B. Dumarpa and against defendant Joy Tan, ordering said defendant:

1. To pay unto plaintiff Salic Dumarpa the sum of Seven Hundred Thousand (P700,000.00) Pesos as actual and compensatory damages;
2. To pay unto plaintiff the sum of One Million (P1,000,000.00) Pesos as moral damages; and the further sum of P100,000.00 as attorney's fees and costs.

SO ORDERED."

On February 26, 1999, petitioner filed a motion for reconsideration of the Judgment by Default on the ground **that her counsel did not receive a copy of the Order denying her motion to dismiss and setting the pre-trial conference on July 30, 1998.** On March 11, 1999, respondent filed a motion for execution and opposition to the motion for reconsideration.

On May 3, 1999, the trial court issued an Order resolving petitioner's motion for reconsideration and respondent's motion for execution. In this Order, the trial court denied petitioner's motion for reconsideration on the ground that it does not allege specifically the findings of fact which are not supported by evidence or conclusion contrary to law. The trial court then ruled that the motion is *pro forma* and does not toll the running of the period to appeal. Thus, the Judgment by Default has become final and executory. The trial court then granted respondent's motion for execution.

Hence, petitioner, on June 1, 1999, directly filed with this Court the instant **petition for review on certiorari** assailing -

"1. THE PROPRIETY OF FILING RESPONDENT'S CIVIL COMPLAINT FOR DAMAGES (BASED ON AN ALLEGED LIBELOUS ACT COMMITTED BY PETITIONER WHEN SHE EXECUTED AN AFFIDAVIT BEFORE THE OFFICE OF THE CITY PROSECUTOR) EVEN BEFORE THE RESOLUTION OF THE CRIMINAL COMPLAINT FOR LIBEL .

"2. THE APPLICABILITY OF THE LAW ON PRIVILEGED COMMUNICATION ON PETITIONER'S AFFIDAVIT."

Respondent, in his comment, contends that the instant petition should be denied, not being the proper remedy.

In *Indiana Aerospace University vs. Commission on Higher Education*,^[6] we held:

"The remedies available to a defendant declared in default are as follows: (a) a motion to set aside the order of default under Section 3 (b), Rule 9 of the Rules of Court, if the default was discovered before judgment could be rendered; (2) **a motion for new trial under Section 1(a) of Rule 37, if the default was discovered after judgment but while appeal is still available;** (3) a petition for relief under Rule 38, if judgment has become final and executory; and (4) **an appeal from the judgment under Section 1, Rule 41, even if no petition to set aside the order of default has been resorted to.**"

Here, petitioner came to know of the Judgment by Default after it was promulgated by the trial court while appeal was still available. In fact, she filed a motion for reconsideration which was denied. Thereafter, what she should have done pursuant to the Rules, was to file with the trial court a motion for new trial or **an ordinary appeal^[7] with the Court of Appeals**. Instead, she came directly to this Court *via* the instant **petition for review on certiorari**.

However, in the interest of justice, we consider the instant petition, *pro hac vice*, a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. It appears *prima facie* from petitioner's allegations **that the trial court committed grave abuse of discretion** in rendering the Judgment by Default. If such allegations are true and the trial court's fatal error remains uncorrected, then petitioner will suffer great injustice.

Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the Rules, we will not hesitate to relax the same in the interest of substantial justice.^[8]

In *Cusi-Hernandez vs. Diaz*,^[9] this Court, speaking through Mr. Justice Artemio V. Panganiban, held that "cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better."

In fact, "procedural rules are created not to hinder or delay but to facilitate and promote the administration of justice. It is far better to dispose of the case on the merits which is a primordial end rather than on a technicality, if it be the case that may result in injustice."^[10]