

FIRST DIVISION

[G.R. No. 134222, September 10, 1999]

**DON TINO REALTY AND DEVELOPMENT CORPORATION,
PETITIONER, VS. JULIAN FLORENTINO, RESPONDENT.**

DECISION

PUNO, J.:

This appeal seeks to set aside the decision^[1] of the Court of Appeals in CA-G.R. SP No. 45162 which ordered the admission of a late and defective answer in an ejectment case.

The case at bar started on February 6, 1997 when petitioner Don Tino Realty and Development Corporation (Don Tino) filed against the respondent Julian Florentino an ejectment suit. In its complaint, Don Tino alleged that it is the owner and in peaceful possession of a parcel of land covered by TCT No. 32422 situated at Barrio San Juan, Balagtas, Bulacan. By means of force, strategy and stealth, respondent occupied a portion of the said parcel of land and built his house thereon.

Falling within the provisions of the Revised Rule on Summary Procedure, summons were served upon respondent on February 13, 1997 requiring him to answer within ten (10) days from receipt thereof.

On February 24, 1997, respondent filed his answer through Roel G. Alvear, president of the Samahang Magkakapitbahay ng RMB, San Juan, Balagtas, Bulacan. The answer is not verified. The trial court^[2] set the case for preliminary conference on April 13, 1997.

On March 21, 1997, Don Tino filed a motion for rendition of judgment and motion to cancel the preliminary conference on the ground that the answer of respondent was defective and filed out of time.^[3]

On March 26, 1997, the trial court granted the motions. It declared that respondent failed to comply with Section 3 (b)^[4] and Section 5^[5] of the Revised Rule on Summary Procedure. It also noted that Roel G. Alvear has no authority to represent the respondent as there is no special power of attorney executed in his favor. Thus, it cancelled the preliminary conference and considered the case submitted for decision in accordance with Section 6^[6] of the said Rules.^[7]

On April 8, 1997, the trial court rendered its decision ordering respondent to vacate the premises and to deliver its possession to Don Tino. The amount of two thousand pesos (P2,000.00) was fixed as the reasonable rental for the use of the land by respondent from March 25, 1996 until he vacates the same. Respondent was further ordered to remove the improvements he made on the land. The other claims of Don

Tino were dismissed for lack of evidence.^[8]

On April 11, 1997, respondent filed a Manifestation With Motion to Lift Order Dated March 26, 1997^[9] through his counsel Antonio R. Roque. He alleged that his answer was filed late and by a non-lawyer because he is economically destitute. He asked the trial court to consider the same as an honest mistake and excusable negligence. Though a decision was already rendered, the trial court admitted the motion and set it for resolution on April 24, 1997.

On April 25, 1997, his motion still unresolved, respondent filed a notice of appeal to the Municipal Trial Court which was approved on April 30, 1997.^[10]

On August 8, 1997, the Regional Trial Court, Branch 14^[11] at Malolos Bulacan rendered its decision affirming in toto the decision of the Municipal Trial Court. It held:

"Defendant-appellant (Juan Florentino) contends that he was deprived of due process when the lower court disregarded his Answer for having been filed late and that there was allegedly no forcible entry, strategy or stealth on his part.

"The fundamental rule of due process requires that a person be accorded notice and an opportunity to be heard. (Rubenecia v. Civil Service Commission, 244 SCRA 640). The records shows that defendant received his copy of the [s]ummons on February 13, 1997 which directed him to answer the complaint of the plaintiff within ten (10) days from notice. The [a]nswer of the defendant was filed only on February 24, 1997, or one day late. From this alone, defendant cannot claim deprivation of due process for he was given the opportunity to be heard.

"Under Sec. 6 of the rules on Summary Procedure, 'should the defendant fail to answer the complaint within the period above-provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein xxx.' Thus, when the lower court in this case rendered judgment on the basis of the complaint, it just did so in compliance with the aforesaid section.

"Assuming arguendo that the answer was filed on time, the same cannot still be considered by the court for the following reasons: (1) the [a]nswer was not verified, in contravention of Sec. 3 (b) of the rules on Summary Procedure, and (2) that the person who filed the said pleading does not appear to be an authorized representative of the defendant for want of a Special Power of Attorney required under Art. 1878, par. 3 of the Civil Code."^[12]

On appeal, as aforesaid, the Court of Appeals reversed the decision of the Regional Trial Court. It held that there would be no substantial prejudice and damage on the part of Don Tino if the answer will be admitted. On the other hand, Juan Florentino will suffer injustice and injury if the answer is not considered. It explained:

"We are not unaware that under Section 6 of the Rules on Summary Procedure, a defendant is required to answer the complaint within ten (10) days from summons otherwise judgment may, upon motion of the plaintiff or motu proprio, be rendered as may be warranted by the facts alleged in the complaint and limited to what is prayed fortherein. While this is a veritable provision to achieve the goals of the summary rules, it is still subject to the liberal construction rule in order to assist the parties in obtaining a just, speedy and inexpensive resolution of the case. It can be gainsaid that the liberal construction of the rules and the pleading is the controlling principle to effect substantial justice (*Pacific Asia Overseas Shipping Corp. vs. NLRC*, 161 SCRA 122 [1988]; *Interbank vs. IAC*, 163 SCRA 296 [1988]) and indication should, as much as possible, be that suits are to be decided on their merits and not on technicalities. These are deeply rooted in our jurisdiction and are inherent in the summary rules. Every party litigant must be accorded the amplest opportunity for the proper determination of his cause, free from any unexpected plea of technicalities (*Sison vs. CA*, 190 SCRA 31 [1990]) xxx"

"Measuring up the above disquisitions and legal aphorisms to the facts of the case indubitably renders imperative that the liberal construction rule should have been applied for the following reasons: (1) the answer was filed only a day late by a non-lawyer who is not conscious of, or not well informed nor knowledgeable of our adjective laws; (2) that pragmatically the inferior court had already taken cognizance of the said answer, albeit belatedly filed, when it issued the order setting the case for preliminary conference; (3) that the 'Motion For Rendition Of Judgment And Motion To Cancel Preliminary Conference' submitted by respondent Don Tino partakes the nature of a motion to declare defendant in default which is a prohibited pleading under Section 19-(h) of the Summary Rules, and should not have been granted in the first place; (4) the same motion for rendition of judgment suffers a fatal defect because it violates Sections 4 and 5 of Rule 15 of the 1997 Rules on Civil Procedure requiring motions to be set for hearing with notice to all parties concerned. Here, the notification only says to submit the motion for the consideration and approval of the court immediately upon receipt thereof. The omission renders the motion as a mere scrap of paper which the court may not act upon (*Clederia vs. Sarmiento*, 39 SCRA 56 [1971]; *Andrada vs. CA*, 60 SCRA 379 [1974]; *Sembrano vs. Ramirez*, 166 SCRA 30 [1988]); (5) the lack of verification of the answer is a mere formal defect, not jurisdictional, the absence of which does not of itself justify a court in refusing to act on a case (71 C.J.S. 744, 645) specially so, when the subject responsive pleading anchors on a legal defense of prior possession of the subject premises even before the respondent Don Tino acquired ownership thereof, a good and valid strong point against a forcible entry suit; lastly, the fact that the one who signed the answer is not a lawyer cannot be a ground to condemn a destitute litigant who may not even be capable of securing the services of a counsel. Emphasis must also be made that Roel G. Alvear is the president of their duly registered Magkakapitbahay association precisely organized to protect the right of its members to the possession of the subject property, among others. After all, petitioner Florentino did not repudiate the answer submitted