

Republic of the Philippines
COURT OF APPEALS
Manila

THIRD DIVISION

COMMISSIONER OF CUSTOMS,
Petitioner,

CA-G.R. SP No. 38525

Members:

-VERSUS-

VERZOLA, E., *Chairman*
RIVERA, C., and
TOLENTINO, A., *J.*

COURT OF TAX APPEALS and
SATURN INTERNATIONAL, INC.,
Respondents

Pronulgated:

OCT 28 2002

X

[Signature] 5:30 pm *

DECISION

VERZOLA, E., J.:

Before us is a petition for certiorari seeking the review and annulment of the Resolution¹ of the Court of Tax Appeals dated August 22, 1995, denying petitioner's Motion for Reconsideration and its Resolution² dated July 5, 1995 in C.T.A. Case No. 5207, which confirmed the order given in open court on June 27, 1995 declaring petitioner in default allegedly for failing to file its Answer on June 22, 1995, as ordered in its Resolution³ dated June 9, 1995.

The antecedent facts of the case are as follows:

On March 6, 1995, petitioner received the summons issued by respondent court for CTA Case No. 5207. The Special Counsel for the Bureau of Customs, Atty. Magdalena Soriano, moved for an extension of time to file the required Answer, more specifically until May 21, 1995. The same was granted by respondent court.

¹ Rollo, pp. 20-22.

² Rollo, pp. 23-24.

³ Rollo, pp. 25-27.

On April 27, 1995, the case was indorsed for legal assistance to the Office of the Solicitor General (OSG). However, due to an honest mistake on the part of the Associate Solicitor to whom the case was assigned in noting the due date for the submission of the Answer, the same was not filed on time. Upon discovery of her mistake on May 23, 1995, the Associate Solicitor filed a verified manifestation and motion explaining her "mistake" and praying for a new period of thirty (30) days or until June 22, 1995 within which to file the answer.

On June 9, 1995, respondent court granted petitioner's motion and denied private respondent's motion to declare petitioner in default. Pertinent portions of the said resolution read as follows:

"We are not unmindful of the rule that a lawyer is expected to adopt a system whereby he/she will receive and record properly all judicial notices from the court. It must however be recognized that occurrences such as the one experienced by counsel for respondent which can disrupt the system, are sometimes unavoidable. Although, the negligence shown is not slight, we are inclined, in the interest of substantial justice, to allow her to file the Answer with the admonition that another omission of this sort in the future will not be as leniently dealt with as in this instance.

WHEREFORE, petitioner's motion to declare respondent in default is hereby DENIED and as prayed for by counsel for respondent, she is allowed to file the Answer until June 22, 1995. As agreed by the parties, this case is set for hearing on June 27, 1995 at 9:00 a.m.

SO ORDERED."⁴

On June 22, 1995, instead of filing the required Answer, petitioner filed another motion for extension of time. Petitioner prayed that it be given ten (10) more days or until July 2, 1995, within which to file the Answer.

On the scheduled date for the hearing, June 27, 1995, petitioner failed to appear. Upon motion of private respondent, petitioner was declared in default.

⁴ Rollo, pp. 26-27.

Petitioner finally filed its Answer³ on June 29, 1995.

In the assailed resolution dated July 5, 1995, the respondent court confirmed the said order of default issued in open court on June 27, 1995.

Petitioner filed a Motion for Reconsideration⁶ of the July 5, 1995 resolution, stating:

"There is no intention on the part of respondent and his counsel to ignore this Court's Admonition in its June 9, 1995 resolution. Said admonition pertains to lapses in monitoring the period for filing the answer. It was precisely because undersigned counsel was closely monitoring the period given to her that she filed the aforesated motion for extension.

On June 29, 1995, the Answer was filed with this Court, through personal service. x x x x x x x. As can be seen on its face, the Answer was filed within the period sought for in the aforesated motion for extension.

Since respondent's answer was filed before he was declared in default, it should be admitted as no prejudice could have been caused to petitioner. Respondent could not be declared in default after he had answered petitioner's complaint (Lesaca vs. CA, 215 SCRA 17). As such, the resolution declaring respondent in default should be lifted and respondent be given an opportunity to object to petitioner's evidence and present his own evidence. x x x x x⁷

Respondent court, in its resolution dated August 22, 1995, denied petitioner's motion for reconsideration, stating in part as follows:

"Contrary to the contention of respondent, the order declaring respondent in default was issued in open Court during the hearing on June 27, 1995. The Resolution dated July 5, 1995 was merely a confirming order sent to

³ Rollo, pp. 34-41.

⁴ Rollo, pp. 28-33.

⁷ Rollo, pp. 29-30, Motion for Reconsideration, pp. 2-3.

respondent to inform him of such order considering the failure of his counsel to appear on said hearing date. The case of *Lesaca* cannot be invoked because in this case, respondent has already been declared in default on June 27, 1995 and he filed an Answer only on June 29, 1995, which is two days late from the order declaring him in default. x x x x x⁸

Petitioner is before us now, raising the following issues:

1. Whether respondent court gravely abused its discretion when it declared petitioner in default;
2. Whether it was grave abuse of discretion for respondent court to deny petitioner's Motion for Reconsideration.⁹

We resolve to deny the petition.

As can be clearly read in the Order of respondent court dated June 9, 1995, the petitioner was given until June 23, 1995 within which to file its answer. It even warned the petitioner that "another omission of this sort in the future will not be as leniently dealt with as in this instance."¹⁰ Considering the tenor of the resolution, the petitioner's counsel, the Office of the Solicitor General (OSG) should have been prompted to strictly comply with the resolution and submit the required Answer on or before the date specified by the court, i.e., June 23, 1995. Since it failed to do so, the respondent court declared petitioner in default.

In a long line of cases, the Supreme Court, ruling on orders of default issued by courts, has held: "It is within the discretion of the trial court to set aside an order of default and permit the filing of defendant's answer even beyond the reglementary period, or to refuse to set aside the default order where it finds no justification for the delay in the filing of the answer"¹¹ and where the failure of defendant to reasonably file her answer is excusable and the lifting of the default order will not in any way prejudice the plaintiff's substantial rights, the court should apply the rules liberally and set aside the default order.¹² Likewise, "Courts should be liberal in setting aside orders of default, for a default judgment may amount to a positive and considerable injustice to the defendant

⁸ Rollo, pp. 20-21, Court of Tax Appeals Resolution, dated August 22, 1995, pp. 2-3.

⁹ Rollo, pp. 6-7, Petition.

¹⁰ Rollo, p. 27, Court of Tax Appeals Resolution dated June 9, 1995, p. 3.

¹¹ *Malipolva, Tan*, 35 SCRA 203 (1974).

¹² *Santos vs. De la Fuente Samson, et al.*, 110 SCRA 215 (1981); *Akut vs. CA, et al.*, 116 SCRA 213 (1982); *Atan, et al vs. Castro, et al.*, 433 SCRA 271 (1984).

¹³ *Rollo*, p. 20.

"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. x x x x

x x x

x x x

(b) Relief from order of default - A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence *and* that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (*italics supplied*)

x x x

x x x."

From time to time, orders of default issued by lower courts have been set aside for having been issued whimsically, or when the grounds for relief set forth in the aforementioned provision exist and yet the motion to set aside the order of default filed by the prejudiced party is denied.

We, however, find no cogent reason to set aside the order of default in this instance because petitioner has dismally failed to show that its non-compliance with the order for it to file its Answer within the extended period was due to fraud, accident, mistake or excusable negligence. We find that respondent court already applied the law with compassion when it denied private respondent's motion to have petitioner declared in default as can be gleaned in its June 9, 1995 resolution, notwithstanding two earlier extensions granted to it. We quote the Supreme Court, speaking through Justice Panganiban, as it ruled "x x x" while we understand the OSG's predicament, its oft-repeated excuse of being saddled with a huge caseload, which is resorted to almost everytime it applies for extensions of time for appeal and filing of comments/replies/briefs, has already lost its flavor, if not gone stale entirely. Certainly, by this time the OSG must have already developed a system for keeping track of all its deadlines and monitoring the progress of work being done on the cases it is handling.

After all, government service really entails hard work and perennial, unceasing pressure to meet deadlines.¹⁶

Based on the foregoing discussion, we also do not find that the respondent court abused its discretion in denying petitioner's motion for reconsideration in the assailed resolution dated August 22, 1995.

WHEREFORE, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ORIGINAL SIGNED

EUBULO G. VERZOLA

(Associate Justice)

WE CONCUR

ORDERED

CANDIDO V. RIVERA

(Associate Justice)

ORIGINAL SIGNED

AMELITA G. TOLENTINO

(Associate Justice)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

EUBULO G. VERZOLA

*(Chairman
Third Division)*

O/R

¹⁶ Videogram Regulatory Board vs. Court of Appeals, 265 SCR A 504 (1996).

CERTIFIED TRUE COPY

for **ATTY. CAROLINE OCAMPO-PERALTA**
Division Clerk of Court