



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**ELOISA R. NARCISO,**  
Petitioner,

**G.R. No. 196877**

Present:

- versus -

VELASCO, JR., J., *Chairperson,*  
DEL CASTILLO,\*  
ABAD,  
PEREZ,\*\* and  
MENDOZA, JJ.

**ESTELITA P. GARCIA,**  
Respondent.

Promulgated:

21 November 2012

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**DECISION**

**ABAD, J.:**

This case is about the propriety of declaring a defendant in default when the time for filing the answer has not yet elapsed.

**The Facts and the Case**

Plaintiff Estelita P. Garcia (respondent in this case) filed a complaint for damages against defendant Eloisa R. Narciso (petitioner) before the Regional Trial Court (RTC) of San Fernando, Pampanga. Narciso filed a motion to dismiss the complaint, alleging that the RTC had no jurisdiction over the subject matter of the complaint since it averred facts constitutive of

\* Designated Acting Member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 1352 dated November 7, 2012.

\*\* Designated Acting Member, per Special Order 1299 dated August 28, 2012.

forcible entry. Narciso also assailed the venue as improperly laid since the acts Garcia complained of were committed in Angeles City.

Plaintiff Garcia opposed the motion to dismiss and at the same time sought to have defendant Narciso declared in default. Garcia cited the Supreme Court's administrative circular that discouraged the filing of a motion to dismiss in lieu of answer. Since the time to file an answer had already elapsed, said Garcia, she was entitled to have Narciso declared in default.

The RTC set the two motions for hearing on November 5, 2004 at which hearing it deemed the incidents submitted for resolution. On November 30, 2004, the RTC denied Narciso's motion to dismiss and, as a consequence, declared her in default for failing to file an answer.

On December 22, 2004 defendant Narciso filed a motion for reconsideration of the orders denying her motion to dismiss and declaring her in default for failing to file an answer, which motion Garcia opposed. In her opposition, the latter also sought to present her evidence *ex parte*. Meantime, the presiding judge, Pedro M. Sunga, retired and Judge Divina Luz Aquino-Simbulan replaced him as acting judge of the concerned RTC branch.

Judge Simbulan referred the case for mediation on June 23, 2005. When mediation failed, on August 1, 2005 the trial court set the case for judicial dispute resolution (JDR) as component of pre-trial, presided over by Judge Maria Amifaith S. Fider-Reyes. Since the JDR also failed, the case was re-raffled for pre-trial proper and trial to Branch 44, presided over by Judge Esperanza Paglinawan-Rozario.

On March 26, 2007, having noted that the court had not yet acted on Narciso's motion for reconsideration of the orders denying her motion to

dismiss and declaring her in default, the trial court set the case for hearing and required the parties to submit their respective written manifestations to the court.

On August 24, 2007 the trial court denied Narciso's motion for reconsideration. It ruled that since she had already been declared in default as early as November 30, 2004 and since she had not filed any motion to lift the order of default within the allowable time, Narciso could no longer assail such default order.

On September 3, 2007 Narciso filed a motion to lift the order of default against her. She claimed that the protracted resolution of her motion for reconsideration and the referral of the case for mediation prevented her from filing an answer. She also pointed out that she filed a case for ejectment against Garcia and succeeded in obtaining a decision against the latter.

On April 8, 2008 the trial court denied Narciso's motion. She filed a motion for reconsideration of this order but the court also denied the same on October 13, 2008, prompting Narciso to file a petition for *certiorari* before the Court of Appeals (CA). On December 8, 2010<sup>1</sup> the CA denied her petition and affirmed the RTC's order. The CA held that, while a motion to lift order of default may be filed at any time after notice and before judgment, Narciso needed to allege facts constituting fraud, accident, mistake, or excusable negligence that prevented her from answering the complaint. She also needed to show a meritorious defense or that something would be gained by having the order of default set aside.<sup>2</sup> For the CA, petitioner failed to do these things. It denied Narciso's motion for reconsideration of its decision on April 11, 2011.<sup>3</sup>

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<sup>1</sup> Penned by Associate Justice Jose C. Reyes, Jr. with the concurrence of Justices Antonio L. Villamor and Samuel H. Gaerlan, *rollo*, pp. 20-28.

<sup>2</sup> RULES OF COURT, Rule 9, Section 3(b).

<sup>3</sup> *Rollo*, p. 29.

Claiming that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction, Narciso filed the present petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) and injunction. In a Resolution dated June 8, 2011 the Court issued a TRO in the case, enjoining the RTC from proceeding with its hearing until further orders.<sup>4</sup>

### **The Issue Presented**

The sole issue presented in this case is whether or not the CA gravely abused its discretion in affirming the order of default that the RTC issued against petitioner Narciso.

### **The Court's Ruling**

Section 3, Rule 9 of the Rules of Court provides that a defending party may be declared in default upon motion of the claiming party with notice to the defending party, and proof of failure to file an answer within the time allowed for it. Thus:

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

Here, however, defendant Narciso filed a motion to dismiss plaintiff Garcia's complaint against her before filing an answer. Section 1, Rule 16 allows her this remedy. Thus:

SEC. 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: x x x.

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<sup>4</sup> Id. at 762.

As a consequence of the motion to dismiss that defendant Narciso filed, the running of the period during which the rules required her to file her answer was deemed suspended. When the trial court denied her motion to dismiss, therefore, she had the balance of her period for filing an answer under Section 4, Rule 16 within which to file the same but in no case less than five days, computed from her receipt of the notice of denial of her motion to dismiss. Thus:

SEC. 4. *Time to plead.* — If the motion is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

But apart from opposing defendant's motion to dismiss, plaintiff Garcia asked the trial court to declare Narciso in default for not filing an answer, altogether disregarding the suspension of the running of the period for filing such an answer during the pendency of the motion to dismiss that she filed in the case. Consequently, when the trial court granted Garcia's prayer and simultaneously denied Narciso's motion to dismiss and declared her in default, it committed serious error. Narciso was not yet in default when the trial court denied her motion to dismiss. She still had at least five days within which to file her answer to the complaint.

What is more, Narciso had the right to file a motion for reconsideration of the trial court's order denying her motion to dismiss. No rule prohibits the filing of such a motion for reconsideration. Only after the trial court shall have denied it does Narciso become bound to file her answer to Garcia's complaint. And only if she did not do so was Garcia entitled to have her declared in default. Unfortunately, the CA failed to see this point.

**WHEREFORE,** the Court **ANNULS and SETS ASIDE** the Decision of the Court of Appeals dated December 8, 2010 and Resolution

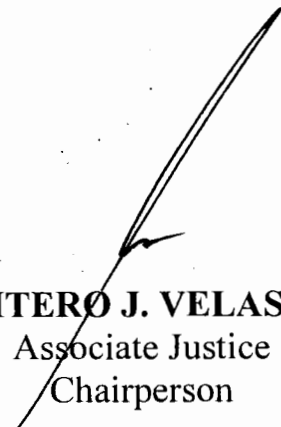
dated April 11, 2011 in CA-G.R. SP 106425, **LIFTS** the order of default that the Regional Trial Court of San Fernando, Pampanga, Branch 44, entered against petitioner Eloisa Narciso, and **DIRECTS** that court to allow her to file her answer to the complaint and proceed to hear the case with dispatch. The court **DISSOLVES** the temporary restraining order that it issued on June 8, 2011 to enable the trial court to resume proceedings in the case.

**SO ORDERED.**



**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**MARIANO C. DEL CASTILLO**  
Associate Justice



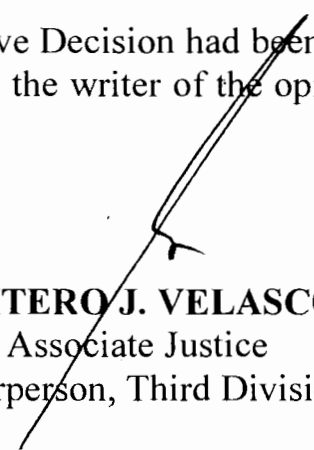
**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice

***ATTESTATION***

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson, Third Division

***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice