



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

LUI ENTERPRISES, INC.  
Petitioner,

G.R. No. 193494

Present:

VELASCO, JR., *J.*, Chairperson,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, *JJ.*

-versus-

ZUELLIG PHARMA  
CORPORATION and the  
PHILIPPINE BANK OF  
COMMUNICATIONS,  
Respondents.

Promulgated:  
March 12, 2014

*Alcopranis*

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DECISION

LEONEN, *J.*:

There should be no inexplicable delay in the filing of a motion to set aside order of default. Even when a motion is filed within the required period, excusable negligence must be properly alleged and proven.

This is a petition for review on certiorari of the Court of Appeals' decision<sup>1</sup> dated May 24, 2010 and resolution<sup>2</sup> dated August 13, 2010 in CA-G.R. CV No. 88023. The Court of Appeals affirmed *in toto* the Regional

<sup>1</sup> *Rollo*, pp. 28-41. This decision was penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring.

<sup>2</sup> *Id.* at 43-44.

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Trial Court of Makati's decision<sup>3</sup> dated July 4, 2006.

The facts as established from the pleadings of the parties are as follows:

On March 9, 1995, Lui Enterprises, Inc. and Zuellig Pharma Corporation entered into a 10-year contract of lease<sup>4</sup> over a parcel of land located in Barrio Tigatto, Buhangin, Davao City. The parcel of land was covered by Transfer Certificate of Title No. T-166476 and was registered under Eli L. Lui.<sup>5</sup>

On January 10, 2003, Zuellig Pharma received a letter<sup>6</sup> from the Philippine Bank of Communications. Claiming to be the new owner of the leased property, the bank asked Zuellig Pharma to pay rent directly to it. Attached to the letter was a copy of Transfer Certificate of Title No. 336962 under the name of the Philippine Bank of Communications.<sup>7</sup> Transfer Certificate of Title No. 336962 was derived from Transfer Certificate of Title No. T-166476.<sup>8</sup>

Zuellig Pharma promptly informed Lui Enterprises of the Philippine Bank of Communications' claim. On January 28, 2003, Lui Enterprises wrote to Zuellig Pharma and insisted on its right to collect the leased property's rent.<sup>9</sup>

Due to the conflicting claims of Lui Enterprises and the Philippine Bank of Communications over the rental payments, Zuellig Pharma filed a complaint<sup>10</sup> for interpleader with the Regional Trial Court of Makati. In its complaint, Zuellig Pharma alleged that it already consigned in court ₱604,024.35 as rental payments. Zuellig Pharma prayed that it be allowed to consign in court its succeeding monthly rental payments and that Lui Enterprises and the Philippine Bank of Communications be ordered to litigate their conflicting claims.<sup>11</sup>

The Philippine Bank of Communications filed its answer<sup>12</sup> to the complaint. On the other hand, Lui Enterprises filed a motion to dismiss<sup>13</sup> on the ground that Zuellig Pharma's alleged representative did not have

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<sup>3</sup> Id. at 74-79.

<sup>4</sup> Id. at 53-66.

<sup>5</sup> Record, p. 44.

<sup>6</sup> *Rollo*, p. 68.

<sup>7</sup> Id. at 69-70.

<sup>8</sup> Id. at 77, decision dated July 4, 2006.

<sup>9</sup> Id. at 71.

<sup>10</sup> Id. at 47-52, complaint dated May 7, 2003.

<sup>11</sup> Id. at 30.

<sup>12</sup> Record, pp. 37-47.

<sup>13</sup> *Rollo*, pp. 80-82.

authority to file the complaint for interpleader on behalf of the corporation. Under the secretary's certificate<sup>14</sup> dated May 6, 2003 attached to the complaint, Atty. Ana L.A. Peralta was only authorized to "initiate and represent [Zuellig Pharma] in the civil proceedings for consignment of rental payments to be filed against Lui Enterprises, Inc. and/or [the Philippine Bank of Communications]."<sup>15</sup>

According to Lui Enterprises, an earlier filed nullification of deed of dation in payment case pending with the Regional Trial Court of Davao barred the filing of the interpleader case.<sup>16</sup> Lui Enterprises filed this nullification case against the Philippine Bank of Communications with respect to several properties it dationed to the bank in payment of its obligations. The property leased by Zuellig Pharma was among those allegedly dationed to the Philippine Bank of Communications.<sup>17</sup>

In the nullification of deed of dation in payment case, Lui Enterprises raised the issue of which corporation had the better right over the rental payments.<sup>18</sup> Lui Enterprises argued that the same issue was involved in the interpleader case. To avoid possible conflicting decisions of the Davao trial court and the Makati trial court on the same issue, Lui Enterprises argued that the subsequently filed interpleader case be dismissed.

To support its argument, Lui Enterprises cited a writ of preliminary injunction<sup>19</sup> dated July 2, 2003 issued by the Regional Trial Court of Davao, ordering Lui Enterprises and the Philippine Bank of Communications "[to maintain] status quo"<sup>20</sup> with respect to the rent. By virtue of the writ of preliminary injunction, Lui Enterprises argued that it should continue collecting the rental payments from its lessees until the nullification of deed of dation in payment case was resolved. The writ of preliminary injunction dated July 2, 2003 reads:

WHEREAS, on June 30, 2003, the Court issued an Order, a portion of which is quoted:

WHEREFORE, PREMISES CONSIDERED, let a Writ of Preliminary Injunction issue, restraining and enjoining [the Philippine Bank of Communications], its agents or [representative], the Office of the Clerk of Court-Sheriff and all persons acting on their behalf, from conducting auction sale on the properties of [Lui Enterprises] in EJF-REM Case No. 6272-03 scheduled on July 3, 2003 at 10:00 a.m. at the Hall of Justice, Ecoland,

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<sup>14</sup> Id. at 52.

<sup>15</sup> Id.

<sup>16</sup> Record, p. 405.

<sup>17</sup> *Rollo*, p. 81.

<sup>18</sup> Record, pp. 77-80.

<sup>19</sup> Id. at 87.

<sup>20</sup> *Rollo*, p. 81.

Davao City, until the final termination of the case, upon plaintiff [sic] filing of a bond in the amount of ₱1,000,000.00 to answer for damages that the enjoined parties may sustain by reason of the injunction if the Court should finally decide that applicant is not entitled thereto.

WHEREAS, that plaintiff posted a bond of ₱1,000,000.00 duly approved by this Court.

IT IS HEREBY ORDERED by the undersigned Judge that, until further orders, [the Philippine Bank of Communications] and all [its] attorneys, representatives, agents and any other persons assisting [the bank], are directed to restrain from conducting auction sale on the Properties of [Lui Enterprises] in EJF-REM Case No. 6272-03 scheduled on July 3, 2003 at 10:00 a.m. at the Hall of Justice, Ecoland, Davao City, until the final termination of the case.<sup>21</sup>

Zuellig Pharma filed its opposition<sup>22</sup> to the motion to dismiss. It argued that the motion to dismiss should be denied for having been filed late. Under Rule 16, Section 1 of the 1997 Rules of Civil Procedure, a motion to dismiss should be filed within the required time given to file an answer to the complaint, which is 15 days from service of summons on the defendant.<sup>23</sup> Summons was served on Lui Enterprises on July 4, 2003. It had until July 19, 2003 to file a motion to dismiss, but Lui Enterprises filed the motion only on July 23, 2003.<sup>24</sup>

As to Lui Enterprises' claim that the interpleader case was filed without authority, Zuellig Pharma argued that an action interpleader "is a necessary consequence of the action for consignment."<sup>25</sup> Zuellig Pharma consigned its rental payments because of "the clearly conflicting claims of [Lui Enterprises] and [the Philippine Bank of Communications]."<sup>26</sup> Since Atty. Ana L.A. Peralta was authorized to file a consignment case, this authority necessarily included an authority to file the interpleader case.

Nevertheless, Zuellig Pharma filed in court the secretary's certificate dated August 28, 2003,<sup>27</sup> which expressly stated that Atty. Ana L.A. Peralta was authorized to file a consignment and interpleader case on behalf of Zuellig Pharma.<sup>28</sup>

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<sup>21</sup> Record, p. 87.

<sup>22</sup> Id. at 93-98.

<sup>23</sup> RULES OF COURT, Rule 11, sec. 1.

<sup>24</sup> *Rollo*, pp. 30-31.

<sup>25</sup> Record, p. 94.

<sup>26</sup> Id. at 95.

<sup>27</sup> Id. at 98.

<sup>28</sup> Id., secretary's certificate dated August 28, 2003, states:

RESOLVED, that the Board of Directors of ZUELLIG PHARMA CORPORATION (the "Corporation") hereby authorize ATTY. ANA L.A. PERALTA with address as that of the Corporation, to initiate, represent and act on behalf of the Corporation, including the authority to execute verifications and certificate of non-forum shopping, in the civil proceedings for consignment of rental payments and interpleader and in all other legal suits or proceedings to be filed against Lui

With respect to the nullification of deed of dation in payment case, Zuellig Pharma argued that its pendency did not bar the filing of the interpleader case. It was not a party to the nullification case.<sup>29</sup>

As to the writ of preliminary injunction issued by the Regional Trial Court of Davao, Zuellig Pharma argued that the writ only pertained to properties owned by Lui Enterprises. Under the writ of preliminary injunction, the Regional Trial Court of Davao enjoined the July 3, 2003 auction sale of Lui Enterprises' properties, the proceeds of which were supposed to satisfy its obligations to the Philippine Bank of Communications. As early as April 21, 2001, however, the Philippine Bank of Communications already owned the leased property as evidenced by Transfer Certificate of Title No. 336962. Thus, the writ of preliminary injunction did not apply to the leased property.<sup>30</sup>

Considering that Lui Enterprises filed its motion to dismiss beyond the 15-day period to file an answer, Zuellig Pharma moved that Lui Enterprises be declared in default.<sup>31</sup>

In its compliance<sup>32</sup> dated September 15, 2003, the Philippine Bank of Communications "[joined Zuellig Pharma] in moving to declare [Lui Enterprises] in default, and in [moving for] the denial of [Lui Enterprises'] motion to dismiss."<sup>33</sup>

The Regional Trial Court of Makati found that Lui Enterprises failed to file its motion to dismiss within the reglementary period. Thus, in its order<sup>34</sup> dated October 6, 2003, the trial court denied Lui Enterprises' motion to dismiss and declared it in default.<sup>35</sup>

Lui Enterprises did not move for the reconsideration of the order dated October 6, 2003. Thus, the Makati trial court heard the interpleader case without Lui Enterprises' participation.

Despite having been declared in default, Lui Enterprises filed the manifestation with prayer<sup>36</sup> dated April 15, 2004. It manifested that the

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Enterprises, Inc. and/or Philippine Bank of Communications, and to be the Corporation's true and lawful attorney-in-fact, in its name, place and stead.

<sup>29</sup> Record, p. 95.

<sup>30</sup> Id. at 95-96.

<sup>31</sup> Id. at 96.

<sup>32</sup> Id. at 101-103.

<sup>33</sup> Id. at 101.

<sup>34</sup> Id. at 111-113.

<sup>35</sup> Id. at 112.

<sup>36</sup> Id. at 208-209.

Regional Trial Court of Davao allegedly issued the order<sup>37</sup> dated April 1, 2004, ordering all of Lui Enterprises' lessees to "observe status quo with regard to the rental payments"<sup>38</sup> and continue remitting their rental payments to Lui Enterprises while the nullification of deed of dation in payment case was being resolved. The order dated April 1, 2004 of the Regional Trial Court of Davao reads:

#### ORDER

Posed for Resolution is the Motion for Amendment of Order filed by [Lui Enterprises] on September 23, 2003 seeking for the preservation of status quo on the payment/remittance of rentals to [it] and the disposal/construction of the properties subject matter of this case.

x x x x

As elsewhere stated, [the Philippine Bank of Communications] did not oppose the instant motion up to the present. In fact, during the hearing held on March 15, 2004, [the bank's] counsel manifested in open court that except for the rentals due from [Zuellig Pharma] which are the subject of a consignment suit before a Makati Court, the other rental payments are continuously received by [Lui Enterprises].

There being no objection from [the Philippine Bank of Communications], and in order to protect the right of [Lui Enterprises] respecting the subject of the action during the pendency of this case, this Court, in the exercise of its discretion hereby grants the motion.

Accordingly, consistent with the order of this Court dated June 30, 2003, the parties are hereby directed to further observe status quo with regard to the rental payments owing or due from the lessees of the properties subject of the first set of deeds of dacion and that the defendants are enjoined from disposing of the properties located at Green Heights Village, Davao City until the case is finally resolved.

With the order dated April 1, 2004 issued by the Regional Trial Court of Davao as basis, Lui Enterprises argued that Zuellig Pharma must remit its rental payments to it and prayed that the interpleader case be dismissed.

The Regional Trial Court of Makati only noted the manifestation with prayer dated April 15, 2004.<sup>39</sup>

It was only on October 21, 2004, or one year after the issuance of the order of default, that Lui Enterprises filed a motion to set aside order of default<sup>40</sup> in the Makati trial court on the ground of excusable negligence. Lui Enterprises argued that its failure to file a motion to dismiss on time "was

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<sup>37</sup> Id. at 210-211.

<sup>38</sup> Id. at 211.

<sup>39</sup> Id. at 215, in an order dated April 29, 2004.

<sup>40</sup> Id. at 402-409.

caused by the negligence of [Lui Enterprises'] former counsel."<sup>41</sup> This negligence was allegedly excusable because "[Lui Enterprises] was prejudiced and prevented from fairly presenting [its] case."<sup>42</sup>

For its allegedly meritorious defense, Lui Enterprises argued that the earlier filed nullification of deed of dation in payment case barred the filing of the interpleader case. The two actions allegedly involved the same parties and the same issue of which corporation had the better right over the rental payments. To prevent "the possibility of two courts x x x rendering conflicting rulings [on the same issue],"<sup>43</sup> Lui Enterprises argued that the subsequently filed interpleader case be dismissed.

Zuellig Pharma filed its opposition<sup>44</sup> to the motion to set aside order of default. It argued that a counsel's failure to file a timely answer was inexcusable negligence which bound his client.

Further, Zuellig Pharma argued that the pending case for nullification of deed of dation in payment "[did] not preclude [Zuellig Pharma] from seeking the relief prayed for in the [interpleader case]."<sup>45</sup>

While the motion to set aside order of default was still pending for resolution, Lui Enterprises filed the manifestation and motion to dismiss<sup>46</sup> dated April 21, 2005 in the Makati trial court. It manifested that the Davao trial court issued another order<sup>47</sup> dated April 18, 2005 in the nullification of deed of dation in payment case. In this order, the Davao trial court directed the Philippine Bank of Communications to inform Zuellig Pharma to pay rent to Lui Enterprises while the Davao trial court's order dated April 1, 2004 was subsisting. The order dated April 18, 2005 of the Davao trial court reads:

#### ORDER

Plaintiffs move for execution or implementation of the Order dated September 14, 2004. In substance, [Lui Enterprises] seek[s] to compel the remittance in their favor of the rentals from [Zuellig Pharma], one of the lessees alluded to in the September 14, 2004 Order whose rental payments "must be remitted to and collected by [Lui Enterprises]." [The Philippine Bank of Communications] did not submit any opposition.

It appears from the records that sometime in February 2003, after being threatened with a lawsuit coming from [the Philippine Bank of

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<sup>41</sup> Id. at 402.

<sup>42</sup> Id.

<sup>43</sup> Id. at 405.

<sup>44</sup> Id. at 393-395.

<sup>45</sup> Id. at 394.

<sup>46</sup> *Rollo*, pp. 83-88.

<sup>47</sup> Id. at 89-90.

Communications], [Zuellig Pharma] stopped remitting its rentals to [Lui Enterprises] and instead, has reportedly deposited the monthly rentals before a Makati court for consignment.

As aptly raised by the plaintiffs, a possible impasse may insist should the Makati Court's ruling be contrary to or in conflict with the status quo order issued by this Court. To preclude this spectacle, Zuellig Pharma should accordingly be advised with the import of the Order dated September 14, 2004, the salient portion of which is quoted:

x x x prior to the institution of the instant case and by agreement of the parties, plaintiffs were given as they did exercise the right to collect, receive and enjoy rental payments x x x.

Since the April 1, 2004 status quo order was a necessary implement of the writ of preliminary injunction issued on June 30, 2003, it follows that plaintiff's right to collect and receive rental payments which he enjoyed prior to the filing of this case, must be respected and protected and maintained until the case is resolved. As such, all rentals due from the above-enumerated lessees must be remitted to and collected by the Plaintiffs.

Status quo simply means the last actual peaceable uncontested status that preceded the actual controversy. (Searth Commodities Corp. v. Court of Appeals, 207 SCRA 622).

As such, the [Philippine Bank of Communications] [is] hereby directed to forthwith inform [Zuellig Pharma] of the April 1, 2004 status quo order and the succeeding September 14, 2004 Order, and consequently, for the said lessee to remit all rentals due from February 23, 2003 and onwards to [Lui Enterprises] in the meanwhile that the status quo order is subsisting.

In its manifestation and motion to dismiss, Lui Enterprises reiterated its prayer for the dismissal of the interpleader case to prevent "the possibility of [the Regional Trial Court, Branch 143, Makati City] and [the Regional Trial Court, Branch 16, Davao City] rendering conflicting rulings [on the same issue of which corporation has the better right to the rental payments]."<sup>48</sup>

Without resolving the motion to set aside order of default, the Makati trial court denied the manifestation with motion to dismiss dated April 21, 2005 on the ground that Lui Enterprises already lost its standing in court.<sup>49</sup>

Lui Enterprises did not file any motion for reconsideration of the denial of the manifestation and motion to dismiss dated April 21, 2005.

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<sup>48</sup> Id. at 87.

<sup>49</sup> Record, p. 451, in an order dated May 3, 2005.



In its decision<sup>50</sup> dated July 4, 2006, the Regional Trial Court of Makati ruled that Lui Enterprises “[was] barred from any claim in respect of the [rental payments]”<sup>51</sup> since it was declared in default. Thus, according to the trial court, there was no issue as to which corporation had the better right over the rental payments.<sup>52</sup> The trial court awarded the total consigned amount of ₱6,681,327.30 to the Philippine Bank of Communications and ordered Lui Enterprises to pay Zuellig Pharma ₱50,000.00 in attorney’s fees.<sup>53</sup>

Lui Enterprises appealed to the Court of Appeals.<sup>54</sup>

The Court of Appeals found Lui Enterprises’ appellant’s brief insufficient. Under Rule 44, Section 13 of the 1997 Rules of Civil Procedure, an appellant’s brief must contain a subject index, page references to the record, table of cases, textbooks and statutes cited, and the statement of issues, among others. However, Lui Enterprises’ appellant’s brief did not contain these requirements.<sup>55</sup>

As to the denial of Lui Enterprises’ motion to dismiss, the Court of Appeals sustained the trial court. The Court of Appeals found that Lui Enterprises filed its motion to dismiss four days late.<sup>56</sup>

With respect to Lui Enterprises’ motion to set aside order of default, the Court of Appeals found that Lui Enterprises failed to show the excusable negligence that prevented it from filing its motion to dismiss on time. On its allegedly meritorious defense, the Court of Appeals ruled that the nullification of deed of dation in payment case did not bar the filing of the interpleader case, with Zuellig Pharma not being a party to the nullification case.<sup>57</sup>

On the award of attorney’s fees, the Court of Appeals sustained the trial court since “Zuellig Pharma x x x was constrained to file the action for interpleader with consignation in order to protect its interests x x x.”<sup>58</sup>

Thus, in its decision<sup>59</sup> promulgated on May 24, 2010, the Court of

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<sup>50</sup> *Rollo*, pp. 74-79.

<sup>51</sup> *Id.* at 77.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 78-79.

<sup>54</sup> Court of Appeals *rollo*, pp. 17-38.

<sup>55</sup> *Rollo*, pp. 33-35.

<sup>56</sup> *Id.* at 35-36.

<sup>57</sup> *Id.* at 36-37.

<sup>58</sup> *Id.* at 40.

<sup>59</sup> *Id.* at 28-41.

Appeals dismissed Lui Enterprises' appeal and affirmed *in toto* the Regional Trial Court of Makati's decision.

Lui Enterprises filed a motion for reconsideration.<sup>60</sup>

The Court of Appeals denied Lui Enterprises' motion for reconsideration in its resolution promulgated on August 13, 2010.<sup>61</sup> Hence, this petition.

In this petition for review on certiorari,<sup>62</sup> Lui Enterprises argued that the Court of Appeals applied "the rules of procedure strictly"<sup>63</sup> and dismissed its appeal on technicalities. According to Lui Enterprises, the Court of Appeals should have taken a liberal stance and allowed its appeal despite the lack of subject index, page references to the record, table of cases, textbooks and statutes cited, and the statement of issues in its appellant's brief.<sup>64</sup>

Lui Enterprises also claimed that the trial court should have set aside the order of default since its failure to file a motion to dismiss on time was due to excusable negligence.<sup>65</sup>

For its allegedly meritorious defense, Lui Enterprises argued that the pending nullification of deed of dation in payment case barred the filing of the interpleader case. The nullification of deed of dation in payment case and the interpleader case allegedly involved the same issue of which corporation had the better right to the rent. To avoid conflicting rulings on the same issue, Lui Enterprises argued that the subsequently filed interpleader case be dismissed.<sup>66</sup>

No attorney's fees should have been awarded to Zuellig Pharma as argued by Lui Enterprises. Zuellig Pharma filed the interpleader case despite its knowledge of the nullification of deed of dation in payment case filed in the Davao trial court where the same issue of which corporation had the better right over the rental payments was being litigated. Thus, Zuellig Pharma filed the interpleader case in bad faith for which it was not entitled to attorney's fees.<sup>67</sup>

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<sup>60</sup> Court of Appeals *rollo*, pp. 128-137.

<sup>61</sup> *Rollo*, pp. 43-44.

<sup>62</sup> *Id.* at 6-26.

<sup>63</sup> *Id.* at 16.

<sup>64</sup> *Id.* at 14-16.

<sup>65</sup> *Id.* at 18-19.

<sup>66</sup> *Id.* at 20-21.

<sup>67</sup> *Id.* at 22-23.

The Philippine Bank of Communications filed its comment<sup>68</sup> on the petition for review on certiorari. It argued that Lui Enterprises failed to raise any error of law and prayed that we affirm *in toto* the Court of Appeals' decision.

For Zuellig Pharma, it manifested that it was adopting the Philippine Bank of Communications' arguments in its comment.<sup>69</sup>

The issues for our resolution are:

- I. Whether the Court of Appeals erred in dismissing Lui Enterprises' appeal for lack of subject index, page references to the record, table of cases, textbooks and statutes cited, and the statement of issues in Lui Enterprises' appellant's brief;
- II. Whether the Regional Trial Court of Makati erred in denying Lui Enterprises' motion to set aside order of default;
- III. Whether the annulment of deed of dation in payment pending in the Regional Trial Court of Davao barred the subsequent filing of the interpleader case in the Regional Trial Court of Makati; and
- IV. Whether Zuellig Pharma was entitled to attorney's fees.

Lui Enterprises' petition for review on certiorari is without merit. However, we delete the award of attorney's fees.

## I

### ***Lui Enterprises did not comply with the rules on the contents of the appellant's brief***

Under Rule 50, Section 1, paragraph (f) of the 1997 Rules of Civil Procedure, the Court of Appeals may, on its own motion or that of the appellee, dismiss an appeal should the appellant's brief lack specific requirements under Rule 44, Section 13, paragraphs (a), (c), (d), and (f):

Section 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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<sup>68</sup> Id. at 104-121.

<sup>69</sup> Id. at 129-130.

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(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d), and (f) of Rule 44.

These requirements are the subject index of the matter in brief, page references to the record, and a table of cases alphabetically arranged and with textbooks and statutes cited:

Section 13. *Contents of the appellant's brief.* – The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

x x x x

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the controversy, with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

x x x x

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

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Lui Enterprises' appellant's brief lacked a subject index, page references to the record, and table of cases, textbooks and statutes cited. Under Rule 50, Section 1 of the 1997 Rules of Civil Procedure, the Court of Appeals correctly dismissed Lui Enterprises' appeal.

Except for cases provided in the Constitution,<sup>70</sup> appeal is a "purely statutory right."<sup>71</sup> The right to appeal "must be exercised in the manner

<sup>70</sup> CONSTL., Art. VIII, sec. 5, par. 2 provides:

Sec. 5. The Supreme Court shall have the following powers:

prescribed by law”<sup>72</sup> and requires strict compliance with the Rules of Court on appeals.<sup>73</sup> Otherwise, the appeal shall be dismissed, and its dismissal shall not be a deprivation of due process of law.

In *Mendoza v. United Coconut Planters Bank, Inc.*,<sup>74</sup> this court sustained the Court of Appeals’ dismissal of Mendoza’s appeal. Mendoza’s appellant’s brief lacked a subject index, assignment of errors, and page references to the record. In *De Liano v. Court of Appeals*,<sup>75</sup> this court also sustained the dismissal of De Liano’s appeal. De Liano’s appellant’s brief lacked a subject index, a table of cases and authorities, and page references to the record.

There are exceptions to this rule. In *Philippine Coconut Authority v. Corona International, Inc.*,<sup>76</sup> the Philippine Coconut Authority’s appellant’s brief lacked a clear and concise statement of the nature of the action, a summary of the proceedings, the nature of the judgment, and page references to the record. However, this court found that the Philippine Coconut Authority substantially complied with the Rules. Its appellant’s brief “apprise[d] [the Court of Appeals] of the essential facts and nature of the case as well as the issues raised and the laws necessary [to dispose of the case].”<sup>77</sup> This court “[deviated] from a rigid enforcement of the rules”<sup>78</sup> and ordered the Court of Appeals to resolve the Philippine Coconut Authority’s appeal.

In *Go v. Chaves*,<sup>79</sup> Go’s 17-page appellant’s brief lacked a subject index. However, Go subsequently filed a subject index. This court excused Go’s procedural lapse since the appellant’s brief “[consisted] only of 17 pages which [the Court of Appeals] may easily peruse to apprise it of [the case] and of the relief sought.”<sup>80</sup> This court ordered the Court of Appeals to

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

- (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
- (c) All cases in which the jurisdiction of any lower court is in issue.
- (d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.
- (e) All cases in which only an error or question of law is involved.

<sup>71</sup> *Mendoza v. United Coconut Planters Bank, Inc.*, G.R. No. 165575, February 2, 2011, 641 SCRA 333, 345 [Per J. Peralta, Second Division].

<sup>72</sup> *De Liano v. Court of Appeals*, 421 Phil. 1033, 1040 (2001) [Per J. De Leon, Jr., Second Division].

<sup>73</sup> *Mendoza v. United Coconut Planters Bank, Inc.*, G.R. No. 165575, February 2, 2011, 641 SCRA 333, 345 [Per J. Peralta, Second Division].

<sup>74</sup> *Id.* at 333.

<sup>75</sup> 421 Phil. 1033 (2001) [Per J. De Leon, Jr., Second Division].

<sup>76</sup> 395 Phil. 742 (2000) [Per J. Kapunan, First Division].

<sup>77</sup> *Id.* at 750.

<sup>78</sup> *Id.*

<sup>79</sup> G.R. No. 182341, April 23, 2010, 619 SCRA 333 [Per J. Del Castillo, Second Division].

<sup>80</sup> *Id.* at 344.

resolve Go's appeal "in the interest of justice."<sup>81</sup>

In *Philippine Coconut Authority and Go*, the appellants substantially complied with the rules on the contents of the appellant's brief. Thus, this court excused the appellants' procedural lapses.

In this case, Lui Enterprises did not substantially comply with the rules on the contents of the appellant's brief. It admitted that its appellant's brief lacked the required subject index, page references to the record, and table of cases, textbooks, and statutes cited. However, it did not even correct its admitted "technical omissions"<sup>82</sup> by filing an amended appellant's brief with the required contents.<sup>83</sup> Thus, this case does not allow a relaxation of the rules. The Court of Appeals did not err in dismissing Lui Enterprises' appeal.

Rules on appeal "are designed for the proper and prompt disposition of cases before the Court of Appeals."<sup>84</sup> With respect to the appellant's brief, its required contents are designed "to minimize the [Court of Appeals'] labor in [examining] the record upon which the appeal is heard and determined."<sup>85</sup>

The subject index serves as the brief's table of contents.<sup>86</sup> Instead of "[thumbing] through the [appellant's brief]"<sup>87</sup> every time the Court of Appeals Justice encounters an argument or citation, the Justice deciding the case only has to refer to the subject index for the argument or citation he or she needs.<sup>88</sup> This saves the Court of Appeals time in reviewing the appealed case. Efficiency allows the justices of the appellate court to substantially attend to this case as well as other cases.

Page references to the record guarantee that the facts stated in the appellant's brief are supported by the record.<sup>89</sup> A statement of fact without a page reference to the record creates the presumption that it is unsupported by the record and, thus, "may be stricken or disregarded altogether."<sup>90</sup>

As for the table of cases, textbooks, and statutes cited, this is required so that the Court of Appeals can easily verify the authorities cited "for

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<sup>81</sup> Id. at 342.

<sup>82</sup> *Rollo*, p. 14.

<sup>83</sup> *Mendoza v. United Coconut Planters, Bank, Inc.*, G.R. No. 165575, February 2, 2011, 641 SCRA 333, 348 [Per J. Peralta, Second Division].

<sup>84</sup> Id.

<sup>85</sup> *De Liano v. Court of Appeals*, 421 Phil. 1033, 1041 (2001) [Per J. De Leon, Jr., Second Division], citing *Estiva v. Cawil*, 59 Phil. 67, 68-69 (1933) [Per J. Malcolm, En Banc].

<sup>86</sup> Id. at 1042.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id. at 1044.

<sup>90</sup> Id.

accuracy and aptness.”<sup>91</sup>

Lui Enterprises’ appellant’s brief lacked a subject index, page references to the record, and a table of cases, textbooks, and statutes cited. These requirements “were designed to assist the appellate court in the accomplishment of its tasks, and, overall, to enhance the orderly administration of justice.”<sup>92</sup> This court will not disregard rules on appeal “in the guise of liberal construction.”<sup>93</sup> For this court to liberally construe the Rules, the party must substantially comply with the Rules and correct its procedural lapses.<sup>94</sup> Lui Enterprises failed to remedy these errors.

All told, the Court of Appeals did not err in dismissing Lui Enterprises’ appeal. It failed to comply with Rule 44, Section 13, paragraphs (a), (c), (d), and (f) of the 1997 Rules of Civil Procedure on the required contents of the appellant’s brief.

## II

***Lui Enterprises failed to show that its failure to answer the complaint within the required period was due to excusable negligence***

When a defendant is served with summons and a copy of the complaint, he or she is required to answer within 15 days from the day he or she was served with summons.<sup>95</sup> The defendant may also move to dismiss the complaint “[w]ithin the time for but before filing the answer.”<sup>96</sup>

Fifteen days is sufficient time for a defendant to answer with good defenses against the plaintiff’s allegations in the complaint. Thus, a defendant who fails to answer within 15 days from service of summons either presents no defenses against the plaintiff’s allegations in the complaint or was prevented from filing his or her answer within the required period due to fraud, accident, mistake or excusable negligence.<sup>97</sup>

In either case, the court may declare the defendant in default on plaintiff’s motion and notice to defendant.<sup>98</sup> The court shall then try the case

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<sup>91</sup> Id. at 1045-1046.

<sup>92</sup> Id. at 1040.

<sup>93</sup> *Mendoza v. United Coconut Planters Bank, Inc.*, G.R. No. 165575, February 2, 2011, 641 SCRA 333, 348 [Per J. Peralta, Second Division].

<sup>94</sup> Id.

<sup>95</sup> RULES OF COURT, Rule 11, sec.1.

<sup>96</sup> RULES OF COURT, Rule 16, sec. 1.

<sup>97</sup> *Gochangco v. The Court of First Instance of Negros Occidental, Branch IV*, 241 Phil. 48, 67 (1988) [Per C.J. Narvasa, En Banc].

<sup>98</sup> RULES OF COURT, Rule 9, sec. 3.

until judgment without defendant's participation<sup>99</sup> and grant the plaintiff such relief as his or her complaint may warrant.<sup>100</sup>

A defendant declared in default loses his or her standing in court.<sup>101</sup> He or she is "deprived of the right to take part in the trial and forfeits his [or her] rights as a party litigant,"<sup>102</sup> has no right "to present evidence [supporting his or her] allegations,"<sup>103</sup> and has no right to "control the proceedings [or] cross-examine witnesses."<sup>104</sup> Moreover, he or she "has no right to expect that [the court] would [act] upon [his or her pleadings]"<sup>105</sup> or that he or she "may [oppose] motions filed against him [or her]."<sup>106</sup>

However, the defendant declared in default "does not [waive] all of [his or her] rights."<sup>107</sup> He or she still has the right to "receive notice of subsequent proceedings."<sup>108</sup> Also, the plaintiff must still present evidence supporting his or her allegations "despite the default of [the defendant]."<sup>109</sup>

Default, therefore, is not meant to punish the defendant but to enforce the prompt filing of the answer to the complaint. For a defendant without good defenses, default saves him or her "the embarrassment of openly appearing to defend the indefensible."<sup>110</sup> As this court explained in *Gochangco v. The Court of First Instance of Negros Occidental, Branch IV*:<sup>111</sup>

It does make sense for a defendant without defenses, and who accepts the correctness of the *specific relief* prayed for in the complaint, to forego the filing of the answer or any sort of intervention in the action at all. For even if he did intervene, the result would be the same: since he would be unable to establish any good defense, having none in fact, judgment would inevitably go against him. And this would be an acceptable result, if not being in his power to alter or prevent it, provided that the judgment did not go beyond or differ from the *specific relief* stated in the complaint. x x x.<sup>112</sup> (Emphasis in the original)

<sup>99</sup> RULES OF COURT, Rule 9, sec. 3 (a).

<sup>100</sup> RULES OF COURT, Rule 9, sec. 3.

<sup>101</sup> *Otero v. Tan*, G.R. No. 200134, August 15, 2012, 678 SCRA 583, 591 [Per J. Reyes, Second Division].

<sup>102</sup> *Mediserv, Inc. v. China Banking Corporation*, 408 Phil. 745, 755 (2001) [Per J. Gonzaga-Reyes, Third Division].

<sup>103</sup> *SSS v. Hon. Chaves*, 483 Phil. 292, 301 (2004) [Per J. Quisumbing, First Division].

<sup>104</sup> *Otero v. Tan*, G.R. No. 200134, August 15, 2012, 678 SCRA 583, 591 [Per J. Reyes, Second Division].

<sup>105</sup> *Id.* at 591-592.

<sup>106</sup> *Id.* at 592.

<sup>107</sup> *SSS v. Hon. Chaves*, 483 Phil. 292, 301 (2004) [Per J. Quisumbing, First Division].

<sup>108</sup> *Mediserv, Inc. v. China Banking Corporation*, 408 Phil. 745, 755 (2001) [Per J. Gonzaga-Reyes, Third Division].

<sup>109</sup> *SSS v. Hon. Chaves*, 483 Phil. 292, 302 (2004) [Per J. Quisumbing, First Division].

<sup>110</sup> *Gochangco v. The Court of First Instance of Negros Occidental, Branch IV*, 241 Phil. 48, 67 (1988) [Per C.J. Narvasa, En Banc].

<sup>111</sup> 241 Phil. 48 (1988) [Per C.J. Narvasa, En Banc].

<sup>112</sup> *Id.* at 67.



On the other hand, for a defendant with good defenses, “it would be unnatural for him [or her] not to set x x x up [his or her defenses] properly and timely.”<sup>113</sup> Thus, “it must be presumed that some insuperable cause prevented him [or her] from [answering the complaint].”<sup>114</sup> In which case, his or her proper remedy depends on when he or she discovered the default and whether the default judgment was already rendered by the trial court.

After notice of the declaration of default but before the court renders the default judgment, the defendant may file, under oath, a motion to set aside order of default. The defendant must properly show that his or her failure to answer was due to fraud, accident,<sup>115</sup> mistake<sup>116</sup> or excusable negligence.<sup>117</sup> The defendant must also have a meritorious defense. Rule 9, Section 3, paragraph (b) of the 1997 Rules of Civil Procedure provides:

Section 3. *Default; declaration of.* – 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.

If the defendant discovers his or her default after judgment but prior to the judgment becoming final and executory, he or she may file a motion for new trial under Rule 37, Section 1, paragraph (a) of the 1997 Rules of Civil Procedure.<sup>118</sup> If he or she discovers his or her default after the judgment has become final and executory, a petition for relief from judgment under Rule 38, Section 1 of the 1997 Rules of Civil Procedure may be filed.<sup>119</sup>

Appeal is also available to the defendant declared in default. He or she may appeal the judgment for being contrary to the evidence or to the law under Rule 41, Section 2 of the 1997 Rules of Civil Procedure.<sup>120</sup> He or she may do so even if he or she did not file a petition to set aside order of default.<sup>121</sup>

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<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> *Ong Guan Can v. Century Insurance Co.*, 45 Phil. 667 (1924) [Per J. Johnson, En Banc], cited in *The Mechanics of Lifting an Order of Default*, Annotation, December 14, 1981, 110 SCRA 223, 226.

<sup>116</sup> *Tanchan v. Court of Appeals*, 365 Phil. 34 (1999) [Per J. Purisima, Third Division].

<sup>117</sup> *Santos v. Hon. Samson*, 196 Phil. 398 (1981) [Per C.J. Concepcion, Jr., Second Division].

<sup>118</sup> *David v. Judge Gutierrez-Fruelda*, 597 Phil. 354, 361 (2009) [Per Acting C.J. Quisumbing, Second Division].

<sup>119</sup> Id.

<sup>120</sup> Id.

<sup>121</sup> Id.

A petition for certiorari may also be filed if the trial court declared the defendant in default with grave abuse of discretion.<sup>122</sup>

The remedies of the motion to set aside order of default, motion for new trial, and petition for relief from judgment are mutually exclusive, not alternative or cumulative. This is to compel defendants to remedy their default at the earliest possible opportunity. Depending on when the default was discovered and whether a default judgment was already rendered, a defendant declared in default may avail of only one of the three remedies.

Thus, if a defendant discovers his or her default before the trial court renders judgment, he or she shall file a motion to set aside order of default. If this motion to set aside order of default is denied, the defendant declared in default cannot await the rendition of judgment, and he or she cannot file a motion for new trial before the judgment becomes final and executory, or a petition for relief from judgment after the judgment becomes final and executory.

Also, the remedies against default become narrower and narrower as the trial nears judgment. The defendant enjoys the most liberality from this court with a motion to set aside order of default, as he or she has no default judgment to contend with, and he or she has the whole period before judgment to remedy his or her default.

With a motion for new trial, the defendant must file the motion within the period for taking an appeal<sup>123</sup> or within 15 days from notice of the default judgment. Although a default judgment has already been rendered, the filing of the motion for new trial tolls the reglementary period of appeal, and the default judgment cannot be executed against the defendant.

A petition for relief from judgment is filed after the default judgment has become final and executory. Thus, the filing of the petition for relief from judgment does not stay the execution of the default judgment unless a writ of preliminary injunction is issued pending the petition's resolution.<sup>124</sup>

Upon the grant of a motion to set aside order of default, motion for new trial, or a petition for relief from judgment, the defendant is given the chance to present his or her evidence against that of plaintiff's. With an appeal, however, the defendant has no right to present evidence on his or her behalf and can only appeal the judgment for being contrary to plaintiff's

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<sup>122</sup> *Sps. Delos Santos v. Judge Carpio*, 533 Phil. 42, 53-54 (2006) [Per J. Austria-Martinez, First Division]; *Acance v. Court of Appeals*, 493 Phil. 676, 685 (2005) [Per J. Callejo, Sr., Second Division]; *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483, 497 (2001) [Per C.J. Panganiban, Third Division].

<sup>123</sup> RULES OF COURT, Rule 37, sec. 1.

<sup>124</sup> RULES OF COURT, Rule 38, sec. 5.

evidence or the law.

Similar to an appeal, a petition for certiorari does not allow the defendant to present evidence on his or her behalf. The defendant can only argue that the trial court committed grave abuse of discretion in declaring him or her in default.

Thus, should a defendant prefer to present evidence on his or her behalf, he or she must file either a motion to set aside order of default, motion for new trial, or a petition for relief from judgment.

In this case, Lui Enterprises had discovered its default before the Regional Trial Court of Makati rendered judgment. Thus, it timely filed a motion to set aside order of default, raising the ground of excusable negligence.

Excusable negligence is “one which ordinary diligence and prudence could not have guarded against.”<sup>125</sup> The circumstances should be properly alleged and proved. In this case, we find that Lui Enterprises’ failure to answer within the required period is inexcusable.

Lui Enterprises’ counsel filed its motion to dismiss four days late. It did not immediately take steps to remedy its default and took one year from discovery of default to file a motion to set aside order of default. In its motion to set aside order of default, Lui Enterprises only “conveniently blamed its x x x counsel [for the late filing of the answer]”<sup>126</sup> without offering any excuse for the late filing. This is not excusable negligence under Rule 9, Section 3, paragraph (b)<sup>127</sup> of the 1997 Rules of Civil Procedure. Thus, the Regional Trial Court of Makati did not err in refusing to set aside the order of default.

Lui Enterprises argued that the Regional Trial Court of Makati should have been liberal in setting aside its order of default. After it had been declared in default, Lui Enterprises filed several manifestations informing the Makati trial court of the earlier filed nullification of deed of dation in payment case which barred the filing of the interpleader case. Lui Enterprises’ president, Eli L. Lui, and counsel even flew in from Davao to Makati to “formally [manifest that] a [similar] action between [Lui

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<sup>125</sup> *Magtoto v. Court of Appeals*, G.R. No. 175792, November 21, 2012, 686 SCRA 88, 101 [Per J. Del Castillo, Second Division].

<sup>126</sup> *Rollo*, p. 36.

<sup>127</sup> RULES OF COURT, Rule 9, sec. 3, par. (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.

Enterprises] and [the Philippine Bank of Communications]”<sup>128</sup> was already pending in the Regional Trial Court of Davao. However, the trial court did not recognize Lui Enterprises’ standing in court.

The general rule is that courts should proceed with deciding cases on the merits and set aside orders of default as default judgments are “frowned upon.”<sup>129</sup> As much as possible, cases should be decided with both parties “given every chance to fight their case fairly and in the open, without resort to technicality.”<sup>130</sup>

However, the basic requirements of Rule 9, Section 3, paragraph (b) of the 1997 Rules of Civil Procedure must first be complied with.<sup>131</sup> The defendant’s motion to set aside order of default must satisfy three conditions. First is the time element. The defendant must challenge the default order before judgment. Second, the defendant must have been prevented from filing his answer due to fraud, accident, mistake or excusable negligence. Third, he must have a meritorious defense. As this court held in *SSS v. Hon. Chaves*:<sup>132</sup>

Procedural rules are not to be disregarded or dismissed simply because their non-observance may have resulted in prejudice to a party’s substantive rights. Like all rules[,] they are to be followed, except only when for the most persuasive of reasons they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x.<sup>133</sup>

As discussed, Lui Enterprises never explained why its counsel failed to file the motion to dismiss on time. It just argued that courts should be liberal in setting aside orders of default. Even assuming that it had a meritorious defense and that its representative and counsel had to fly in from Davao to Makati to personally appear and manifest in court its meritorious defense, Lui Enterprises must first show that its failure to answer was due to fraud, accident, mistake or excusable negligence. This Lui Enterprises did not do.

Lui Enterprises argued that Zuellig Pharma filed the interpleader case to compel Lui Enterprises and the Philippine Bank of Communications to litigate their claims. Thus, “[d]eclaring the other claimant in default would

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<sup>128</sup> Id. at 18.

<sup>129</sup> *Republic v. Sandiganbayan*, 565 Phil. 172, 185 (2007) [Per J. Quisumbing, Second Division]; *Samartino v. Raon*, 433 Phil. 173, 187 (2002) [Per J. Ynares-Santiago, First Division]; *Tanchan v. Court of Appeals*, 365 Phil. 34, 41 (1999) [Per J. Purisima, Third Division].

<sup>130</sup> *Tanchan v. Court of Appeals*, 365 Phil. 34, 41 (1999) [Per J. Purisima, Third Division].

<sup>131</sup> *David v. Judge Gutierrez-Fruelda*, 597 Phil. 354, 362 (2009) [Per Acting C.J. Quisumbing, Second Division].

<sup>132</sup> 483 Phil. 292 [Per J. Quisumbing, First Division].

<sup>133</sup> Id. at 301.

ironically defeat the very purpose of the suit.”<sup>134</sup> The Regional Trial Court of Makati should not have declared Lui Enterprises in default.

Under Rule 62, Section 1 of the 1997 Rules of Civil Procedure, a person may file a special civil action for interpleader if conflicting claims are made against him or her over a subject matter in which he or she has no interest. The action is brought against the claimants to compel them to litigate their conflicting claims among themselves. Rule 62, Section 1 of the 1997 Rules of Civil Procedure provides:

Section 1. *When interpleader proper.* – Whenever conflicting claims upon the same subject matter are or may be made against a person who claims no interest whatever in the subject matter, or an interest which in whole or in part is not disputed by the claimants, he may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves.

An interpleader complaint may be filed by a lessee against those who have conflicting claims over the rent due for the property leased.<sup>135</sup> This remedy is for the lessee to protect him or her from “double vexation in respect of one liability.”<sup>136</sup> He or she may file the interpleader case to extinguish his or her obligation to pay rent, remove him or her from the adverse claimants’ dispute, and compel the parties with conflicting claims to litigate among themselves.

In this case, Zuellig Pharma filed the interpleader case to extinguish its obligation to pay rent. Its purpose in filing the interpleader case “was not defeated”<sup>137</sup> when the Makati trial court declared Lui Enterprises in default.

At any rate, an adverse claimant in an interpleader case may be declared in default. Under Rule 62, Section 5 of the 1997 Rules of Civil Procedure, a claimant who fails to answer within the required period may, on motion, be declared in default. The consequence of the default is that the court may “render judgment barring [the defaulted claimant] from any claim in respect to the subject matter.”<sup>138</sup> The Rules would not have allowed claimants in interpleader cases to be declared in default if it would “ironically defeat the very purpose of the suit.”<sup>139</sup>

The Regional Trial Court of Makati declared Lui Enterprises in

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<sup>134</sup> *Rollo*, p. 19.

<sup>135</sup> *Pasricha v. Don Luis Dison Realty, Inc.*, 572 Phil. 52, 69 (2008) [Per J. Nachura, Third Division]; *Ocampo v. Tirona*, 495 Phil. 55, 68 (2005) [Per J. Carpio, First Division].

<sup>136</sup> *Pasricha v. Don Luis Dison Realty, Inc.*, 572 Phil. 52, 69 (2008) [Per J. Nachura, Third Division]; *Ocampo v. Tirona*, 495 Phil. 55, 68 (2005) [Per J. Carpio, First Division].

<sup>137</sup> *Rollo*, p. 19.

<sup>138</sup> RULES OF COURT, Rule 62, sec. 5.

<sup>139</sup> *Rollo*, p. 19.

default when it failed to answer the complaint within the required period. Lui Enterprises filed a motion to set aside order of default without an acceptable excuse why its counsel failed to answer the complaint. It failed to prove the excusable negligence. Thus, the Makati trial court did not err in refusing to set aside the order of default.

### III

***The nullification of deed in dation in payment case did not bar the filing of the interpleader case. Litis pendentia is not present in this case.***

Lui Enterprises allegedly filed for nullification of deed of dation in payment with the Regional Trial Court of Davao. It sought to nullify the deed of dation in payment through which the Philippine Bank of Communications acquired title over the leased property. Lui Enterprises argued that this pending nullification case barred the Regional Trial Court of Makati from hearing the interpleader case. Since the interpleader case was filed subsequently to the nullification case, the interpleader case should be dismissed.

Under Rule 16, Section 1, paragraph (e) of the 1997 Rules of Civil Procedure, a motion to dismiss may be filed on the ground of *litis pendentia*:

Section 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 x

(e) That there is another action pending between the same parties for the same cause;

x x x x

*Litis pendentia* is Latin for “a pending suit.”<sup>140</sup> It exists when “another action is pending between the same parties for the same cause of action x x x.”<sup>141</sup> The subsequent action is “unnecessary and vexatious”<sup>142</sup> and is instituted to “harass the respondent [in the subsequent action].”<sup>143</sup>

The requisites of *litis pendentia* are:

<sup>140</sup> *Feliciano v. Court of Appeals*, 350 Phil. 499, 505 (1998) [Per J. Bellosillo, First Division].

<sup>141</sup> *University Physicians Services, Inc. v. Court of Appeals*, 381 Phil. 54, 67 (2000) [Per J. Gonzaga-Reyes, Third Division].

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

- (1) Identity of parties or at least such as represent the same interest in both actions;
- (2) Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and
- (3) The identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.<sup>144</sup>

All of the requisites must be present.<sup>145</sup> Absent one requisite, there is no *litis pendentia*.<sup>146</sup>

In this case, there is no *litis pendentia* since there is no identity of parties in the nullification of deed of dation in payment case and the interpleader case. Zuellig Pharma is not a party to the nullification case filed in the Davao trial court.

There is also no identity of rights asserted and reliefs prayed for. Lui Enterprises filed the first case to nullify the deed of dation in payment it executed in favor of the Philippine Bank of Communications. Zuellig Pharma subsequently filed the interpleader case to consign in court the rental payments and extinguish its obligation as lessee. The interpleader case was necessary and was not instituted to harass either Lui Enterprises or the Philippine Bank of Communications.

Thus, the pending nullification case did not bar the filing of the interpleader case.

Lui Enterprises cited *Progressive Development Corporation, Inc. v. Court of Appeals*<sup>147</sup> as authority to set aside the subsequently filed interpleader case. In this cited case, petitioner Progressive Development Corporation, Inc. entered into a lease contract with Westin Seafood Market, Inc. The latter failed to pay rent. Thus, Progressive Development Corporation, Inc. repossessed the leased premises, inventoried the movable properties inside the leased premises, and scheduled the public sale of the inventoried properties as they agreed upon in their lease contract.

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<sup>144</sup> *Feliciano v. Court of Appeals*, 350 Phil. 499, 505-506 (1998) [Per J. Bellosillo, First Division].

<sup>145</sup> *University Physicians Services, Inc. v. Court of Appeals*, 381 Phil. 54, 67 (2000) [Per J. Gonzaga-Reyes, Third Division].

<sup>146</sup> *Id.*

<sup>147</sup> 361 Phil. 566 (1999) [Per J. Bellosillo, Second Division].

Westin Seafood Market, Inc. filed for forcible entry with damages against Progressive Development Corporation, Inc. It subsequently filed an action for damages against Progressive Development Corporation for its “forcible takeover of the leased premises.”<sup>148</sup>

This court ordered the subsequently filed action for damages dismissed as the pending forcible entry with damages case barred the subsequently filed damages case.

*Progressive Development Corporation, Inc.* does not apply in this case. The action for forcible entry with damages and the subsequent action for damages were filed by the same plaintiff against the same defendant. There is identity of parties in both cases.

In this case, the nullification of deed of dation in payment case was filed by Lui Enterprises against the Philippine Bank of Communications. The interpleader case was filed by Zuellig Pharma against Lui Enterprises and the Philippine Bank of Communications. A different plaintiff filed the interpleader case against Lui Enterprises and the Philippine Bank of Communications. Thus, there is no identity of parties, and the first requisite of *litis pendentia* is absent.

As discussed, Lui Enterprises filed the nullification of deed of dation in payment to recover ownership of the leased premises. Zuellig Pharma filed the interpleader case to extinguish its obligation to pay rent. There is no identity of reliefs prayed for, and the second requisite of *litis pendentia* is absent.

Since two requisites of *litis pendentia* are absent, the nullification of deed of dation in payment case did not bar the filing of the interpleader case.

Lui Enterprises alleged that the Regional Trial Court of Davao issued a writ of preliminary injunction against the Regional Trial Court of Makati. The Regional Trial Court of Davao allegedly enjoined the Regional Trial Court of Makati from taking cognizance of the interpleader case. Lui Enterprises argued that the Regional Trial Court of Makati “should have respected the orders issued by the Regional Trial Court of Davao.”<sup>149</sup> Lui Enterprises cited *Compania General de Tabacos de Filipinas v. Court of Appeals*<sup>150</sup> where this court allegedly held:

x x x [T]he issuance of the said writ by the RTC of Agoo, La Union not only seeks to enjoin Branch 9 of the RTC of Manila from proceeding

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<sup>148</sup> Id. at 581.

<sup>149</sup> *Rollo*, p. 22.

<sup>150</sup> 422 Phil. 405 (2001) [Per J. De Leon, Jr., Second Division].



with the foreclosure case but also has the effect of pre-empting the latter's orders. x x x.<sup>151</sup>

*Compania General de Tabacos de Filipinas* is not an authority for the claim that a court can issue a writ of preliminary injunction against a co-equal court. The cited sentence was taken out of context. In *Compania General de Tabacos de Filipinas*, this court held that the Regional Trial Court of Agoo had no power to issue a writ of preliminary injunction against the Regional Trial Court of Manila.<sup>152</sup> A court cannot enjoin the proceedings of a co-equal court.

Thus, when this court said that the Regional Trial Court of Agoo's writ of preliminary injunction "not only seeks to enjoin x x x [the Regional Trial Court of Manila] from proceeding with the foreclosure case but also has the effect of pre-empting the latter's orders,"<sup>153</sup> this court followed with "[t]his we cannot countenance."<sup>154</sup>

At any rate, the Regional Trial Court of Davao's order dated April 18, 2005 was not a writ of preliminary injunction. It was a mere order directing the Philippine Bank of Communications to inform Zuellig Pharma to pay rent to Lui Enterprises while the status quo order between Lui Enterprises and the Philippine Bank of Communications was subsisting. The Regional Trial Court of Davao did not enjoin the proceedings before the Regional Trial Court of Makati. The order dated April 18, 2005 provides:

As such, [the Philippine Bank of Communications] [is] hereby directed to forthwith inform Zuellig Pharma Corp., of the April 1, 2004 status quo order and the succeeding September 14, 2004 Order, and consequently, for the said lessee to remit all rentals due from February 23, 2003 and onwards to plaintiff Lui Enterprises, Inc., in the meanwhile that the status quo order is subsisting.<sup>155</sup>

Thus, the Regional Trial Court of Davao did not enjoin the Regional Trial Court of Makati from hearing the interpleader case.

All told, the trial court did not err in proceeding with the interpleader case. The nullification of deed of dation in payment case pending with the Regional Trial Court of Davao did not bar the filing of the interpleader case with the Regional Trial Court of Makati.

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<sup>151</sup> Id. at 422.

<sup>152</sup> Id.

<sup>153</sup> Id.

<sup>154</sup> Id.

<sup>155</sup> *Rollo*, p. 90.

#### IV

#### *The Court of Appeals erred in awarding attorney's fees*

In its ordinary sense, attorney's fees "represent the reasonable compensation [a client pays his or her lawyer] [for legal service rendered]." <sup>156</sup> In its extraordinary sense, attorney's fees "[are] awarded x x x as indemnity for damages [the losing party pays the prevailing party]." <sup>157</sup>

The award of attorney's fees is the exception rather than the rule. <sup>158</sup> It is not awarded to the prevailing party "as a matter of course." <sup>159</sup> Under Article 2208 of the Civil Code, attorney's fees cannot be recovered in the absence of stipulation, except under specific circumstances:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;

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<sup>156</sup> *Philippine National Construction Corporation v. APAC Marketing Corporation*, G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449 [Per C.J. Sereno, First Division], citing *Benedicto v. Villaflores*, G.R. No. 185020, October 6, 2010, 632 SCRA 446.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 450.

<sup>159</sup> *Id.*

- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.<sup>160</sup>

Even if a party is "compelled to litigate with third persons or to incur expenses to protect his [or her] rights,"<sup>161</sup> attorney's fees will not be awarded if no bad faith "could be reflected in a party's persistence in a case."<sup>162</sup>

To award attorney's fees, the court must have "factual, legal, [and] equitable justification."<sup>163</sup> The court must state the award's basis in its decision.<sup>164</sup> These rules are based on the policy that "no premium should be placed on the right to litigate."<sup>165</sup>

In this case, the Court of Appeals awarded attorney's fees as "[Zuellig Pharma] was compelled to litigate with third persons or to incur expenses to protect [its] interest[s]."<sup>166</sup> This is not a compelling reason to award attorney's fees. That Zuellig Pharma had to file an interpleader case to consign its rental payments did not mean that Lui Enterprises was in bad faith in insisting that rental payments be paid to it. Thus, the Court of Appeals erred in awarding attorney's fees to Zuellig Pharma.

All told, the Court of Appeals' award of ₱50,000.00 as attorney's fees must be deleted.

**WHEREFORE**, in view of the foregoing, the petition for review on certiorari is **DENIED**. The Court of Appeals' decision and resolution in CA-G.R. CV No. 88023 are **AFFIRMED with MODIFICATION**. The award of ₱50,000.00 attorney's fees to Zuellig Pharma Corporation is **DELETED**.

**SO ORDERED.**

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

<sup>160</sup> CIVIL CODE, Art. 2208.

<sup>161</sup> *Philippine National Construction Corporation v. APAC Marketing Corporation*, G.R. No. 190957, June 5, 2013, 697 SCRA 441, 449 [Per C.J. Sereno, First Division], citing *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499 (1999).

<sup>162</sup> *Id.*


<sup>163</sup> *Id.* at 450.

<sup>164</sup> *Id.*

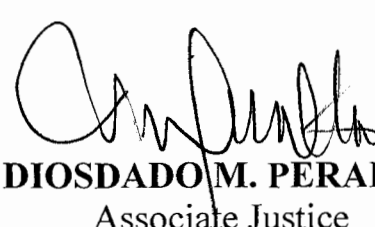
<sup>165</sup> *Id.* at 449.

<sup>166</sup> *Rollo*, p. 40.


WE CONCUR:



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



**DIOSDADO M. PERALTA**  
Associate Justice




**ROBERTO A. ABAD**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice

**ATTESTATION**

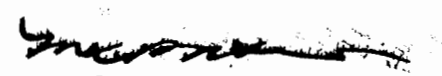
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**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