



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

\*\*\*

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

CV Case No. 0186

For: Recovery of Ill-gotten  
Wealth with Damages

-vs-

ATLAS TEXTILE &  
DEVELOPMENT INC., ET AL.,

Defendant.

Present:

LAGOS, J., Chairperson  
MENDOZA-ARCEGA, and  
CRUZ, JJ. \*\*\*

Promulgated:

September 05, 2017 *lal*

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RESOLUTION

**MENDOZA-ARCEGA, J.:**

For consideration is the Motion for Reconsideration of the Order Declaring Defendant Jose R. Tengco, Jr., in Default, filed by defendant Jose R. Tengco, Jr., through counsel, on May 29, 2017.

The defendant-movant prays for the lifting of the Default Order stating he should not be bound by the reckless and gross negligence of his former counsel which according to him deprived him of his right to due process of law. He seeks the indulgence of the Court explaining that he was not negligent or neglectful of his

\*\*\* Sitting as special member pursuant to Administrative Order No. 025-2017 dated 1 February 2017.

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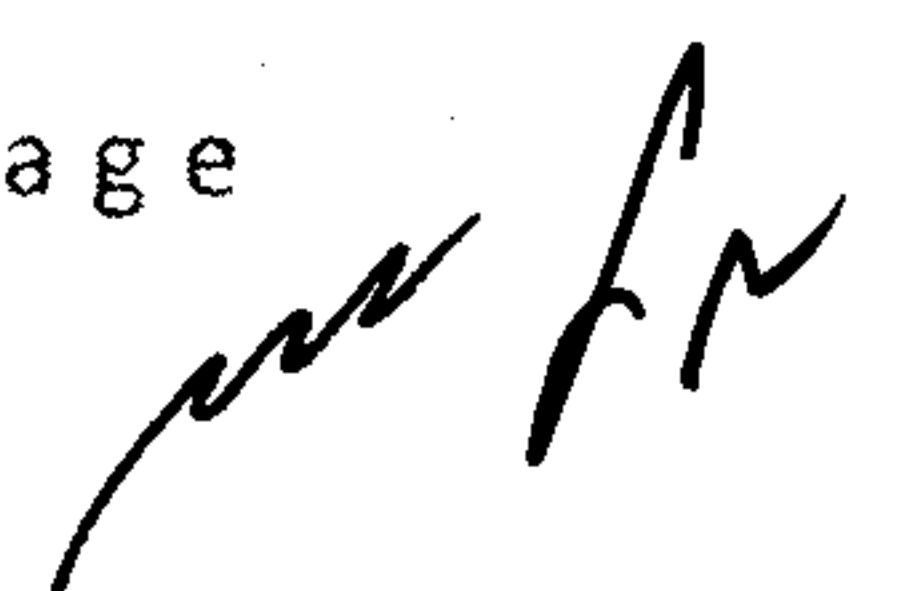
duty to be vigilant in protecting his rights. He said that his absence in the Preliminary Conference and Pre-trial on June 16, 2016 and June 23, 2016 was due to a valid cause as he was suffering from Dementia and Parkinson's Disease since March 2013 and was unable to carry out basic and fundamental activities of daily living, hence, he could no longer physically and mentally keep himself abreast of the status of his case, much less attend the scheduled Preliminary Conference and Pre-Trial. He and his family were of the belief that the present case was already dismissed as they have not heard anything from his former counsel, following the dismissal by the Sandiganbayan of numerous cases filed against him. It was only on January 24, 2017, when Atty. Federico N. Alday asked his children to attend a hearing before the Fifth Division as he was indisposed, that his family realized that there is still one case against him that has not been resolved. Moreover, his counsel never informed them that he has been declared in default in the present case. He added that all the court processes were addressed and sent to his former counsel, thus, they have no way of knowing the status of the case, unless said counsel would inform them. Upon learning of the default order on August 23, 2016, they immediately sought legal advice regarding the matter. Finally, he is appealing to the Court to not be bound by the gross negligence of his counsel, which deprived him of due process and prevented him from presenting his defense in the present case.

On July 4, 2017, the prosecution filed its Comment stating that the present motion was filed nine (9) months beyond the period prescribed by the Court, thus, it should be denied. The negligence of Atty. Alday to file a motion for reconsideration on the subject order of default necessarily binds defendant-movant. While the defendant-movant's children were told by Atty. Alday to attend the January 24, 2017 hearing, the records show that none of them appeared despite notice from their former counsel. Moreover, even if all the Court processes were sent only to his counsel, it is also the defendant-movant's duty to constantly communicate with his lawyer to keep himself abreast of the status of his case, however, the defendant-movant and his children were remiss in doing the same, thus it cannot be denied that there was negligence on the part of the defendant-movant and his children. Furthermore, the prosecution submits that allowing the defendant-movant to present evidence at this late stage would greatly prejudice plaintiff inasmuch as it would have to go through the process of pre-trial and trial all over again even when it has already terminated its presentation of evidence and the case is already ripe for decision. Finally, the prosecution took note of the fact that the instant case has been dragging on for more than fifteen (15) years already, hence any further delay due to the negligence of the defendant-movant and his counsel would cause grave injustice to plaintiff which has been steadfast in prosecuting its case.

Hence, this resolution.

Section 4 of Rule 18 of the Rules of Court states:

Section 4. *Appearance of parties.* – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to





enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

In the present case, the defendant-movant only discovered the default order of the Court dated August 23, 2016 on May 8, 2017 or nearly nine (9) months after its issuance, thus on May 29, 2017 he filed the instant motion, raising the justification that he should not be bound by the negligence and recklessness of his counsel, which effectively prevented him from presenting his defense and in effect deprived him of his right to due process. In support, the defendant-movant's children allege that they were only informed of the pendency of the instant case on January 14, 2017 and upon learning of the default order they immediately sought legal advice and filed the instant motion.

The motion is impressed with merit.

As stated in the abovementioned provision, the non-appearance of the defendant-movant may be excused for a valid cause, and in this particular case, the Court is persuaded by the defendant-movant, after considering the respective positions of the parties.

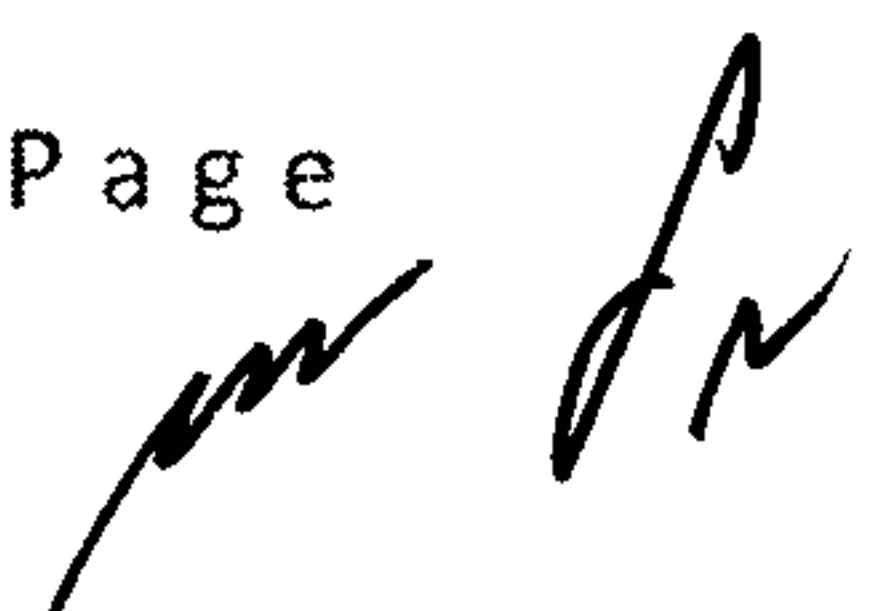
A perusal of the records of the present case, shows that the private counsel of the defendant-movant was remiss in his duties. As counsel, he was expected to extend the highest quality of service as a lawyer; however, said counsel appears to have abandoned the cause of the defendant-movant.

A lawyer owes his entire devotion to the interest of his client, warmth and zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability, to the end that nothing can be taken or withheld from his client except in accordance with the law<sup>1</sup>.

In the present case, the defendant-movant was able to file his Answer through his counsel; however, he failed to appear at the pre-trial conference and the pre-trial as he is suffering from dementia and parkinson's disease since March 2013, thus he can no longer physically and mentally keep himself abreast of the status of his case. On the other hand, his counsel, despite his condition, failed to defend and protect his rights by his repeated failure to attend the scheduled hearings despite notices from the Court. Moreover, his formal counsel did nothing when the Court issued a default order against the defendant-movant, he miserably failed in his duty to exercise his utmost learning and ability in maintaining his client's cause. In effect, the defendant-movant was unduly deprived of his right to refute the evidence presented against him and to proffer evidence in his behalf. The former counsel's failure to inform the defendant-movant of the issuance of the default order and his subsequent failure to move for the reconsideration of the same demonstrates negligence, so reckless and gross in character as to effectively deprive his client of the opportunity to present his case without due process of law.

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<sup>1</sup> Legarda v. Court of Appeals, G.R. No. 94457, March 18, 1991, 195 SCRA 418; Canon of Professional Ethics.





In the case of *Escudero vs. Judge Dually*,<sup>2</sup> the Supreme Court held that:

xxx while as a rule, clients are bound by the mistake of their counsel, the rule should not be applied automatically to their case, as their trial counsel's blunder in procedure and gross ignorance of existing jurisprudence changed their cause of action and violated their substantial rights.

While the Court is cognizant of the rule that a client is bound by the negligence and mistakes of his counsel, exceptions should be made in the instant case because the gross negligence of his former counsel is inexcusable in the light of the circumstances present in the case. To adhere to the general rule would be to allow the defendant-movant to suffer the consequences of the inexcusable blunder of his former counsel that dispossessed herein defendant-movant of his constitutionally enshrined right to due process of law.

As the late Chief Justice Moran well put it: "the Rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. If a technical and rigid enforcement of the rules is made, their aim would be defeated. The general object of procedure is 'to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is created 'not to under and delay but to facilitate and promote the administration of justice.' And in proceeding to apply justice, courts must strive 'to assist the parties in obtaining just, speedy, and inexpensive determination' of their rival claims. The procedure, therefore, must be not order only, just and speedy but also as inexpensive as possible, for expensive litigations are sometimes equivalent to denial of justice."<sup>3</sup>

The Court has time and again as in the case of *Mercader vs. Bonto*<sup>4</sup> enjoined trial judges to act with circumspection, and not to misuse and abuse the rules of procedure as instruments for the denial of substantial justice and equity. It has ever cautioned them that this Court "frowns upon such application of procedural rules with pedantic rigor" and that "default is not a mechanical gadget for the acceleration of judicial litigations" and remind them that they should not act precipitately in declaring a party in default because judgments by default are never looked upon with favor.

The Court believes that the observance of the technical rules of procedure must give way to the interest of substantial justice. The hapless defendant-movant should not be made to suffer the capital penalty of a Default Order, it is his counsel who should face the consequence of an appropriate disciplinary action in view of his gross negligence which is in violation of his duty as a lawyer.

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<sup>2</sup> G.R. No. L-60578, February 23, 1988.

<sup>3</sup> Moran's Rules of Court 1970 ed., 103-104.

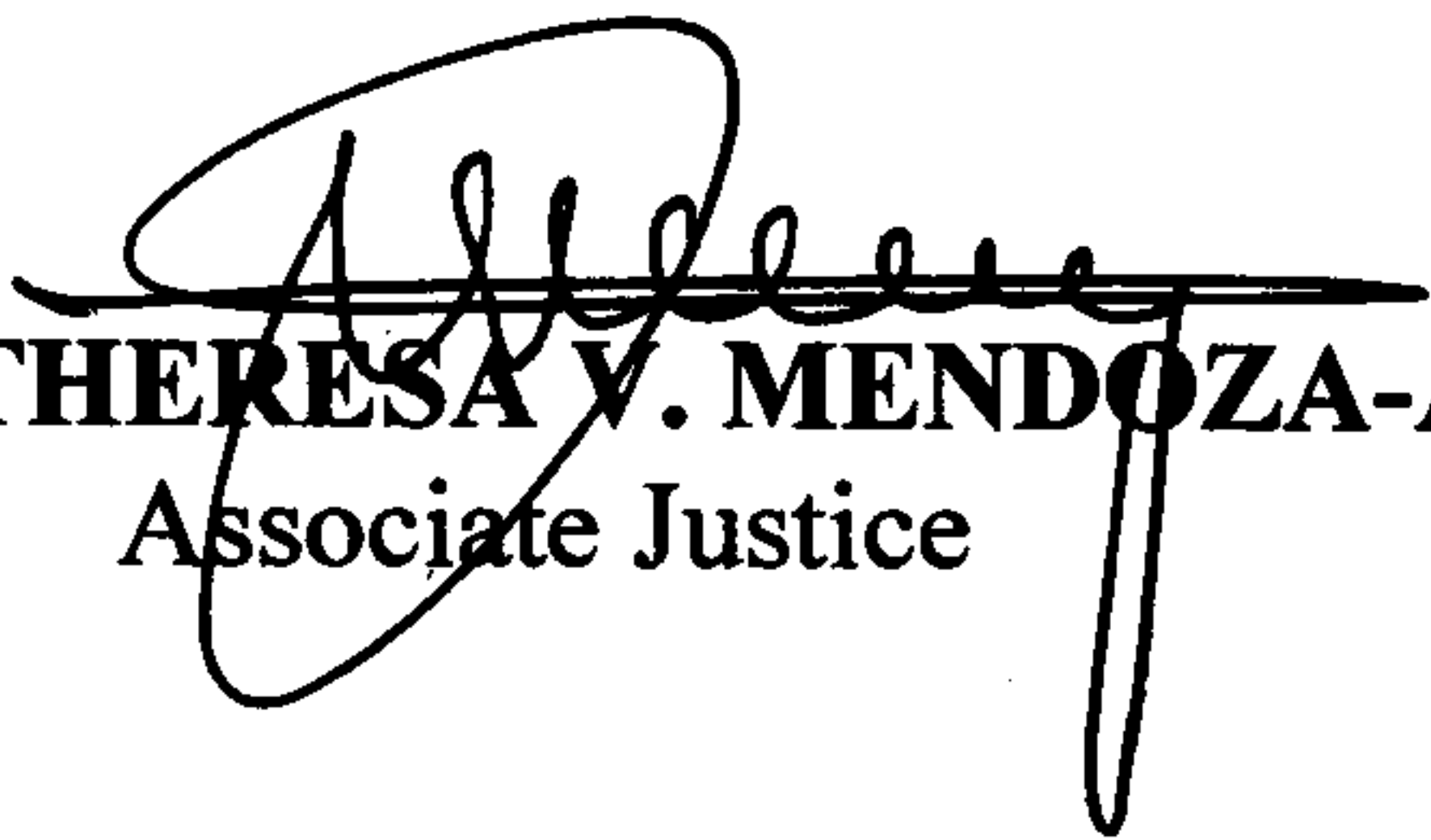
<sup>4</sup> L-48564, August 20, 1979.

In view of the foregoing, this Court finds the gross negligence of Atty. Alday to be an effective and compelling reason to set aside the order of default previously issued.

**WHEREFORE**, in the interest of substantial justice, the Motion for Reconsideration is hereby **GRANTED**.

Accordingly, the default order dated August 23, 2016 is set aside and the defendant-movant is hereby allowed to present his evidence.

**SO ORDERED.**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

**WE CONCUR:**

  
**RAFAEL R. LAGOS**  
Chairperson

  
**REYNALDO P. CRUZ**  
Associate Justice