Supreme Court E-Library

The rest of the judgment pertaining to the civil liability, and the crediting of the period of preventive imprisonment in favor of the accused as ordered by the trial court is *AFFIRMED.*

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Sandoval-Gutierrez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 139371. April 4, 2001]

INDIANA AEROSPACE UNIVERSITY, *petitioner, vs.* **COMMISSION ON HIGHER EDUCATION (CHED),** *respondent.*

SYNOPSIS

After the CHED enjoined the petitioner from using the word "university" in its corporate name and ordering it to revert to its authorized name, the petitioner filed a complaint for damages against the CHED, alleging that the public's confidence in it as an educational institution was undermined because of newspaper publications by the CHED stating that petitioner had misrepresented itself as a university. RTC denied respondent's motion to dismiss, and declared CHED in default for its failure to file an answer.

On *certiorari,* the CA granted CHED's Motion to Dismiss the complaint, grounded on failure to state a cause of action.

In this petition, petitioner claimed that *certiorari* cannot prosper because respondent did not first file a motion for reconsideration of the lower court's order; and that CHED should also have filed a motion to set aside the default order.

Supreme Court E-Library

The Supreme Court held that *certiorari* is the plain, speedy and adequate remedy for CHED, because: there is the special circumstance that unsuspecting students and parents must be protected from unauthorized operation of an educational institution; and the order declaring CHED in default, despite its filing of an answer, is intrinsically void. Petitioner's complaint, however, sufficiently stated a cause of action, thus, the court must pass upon such allegations, otherwise, there would be a denial of petitioner's right to due process.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE REQUIRING EXHAUSTION OF ALL OTHER AVAILABLE REMEDIES BEFORE RESORTING TO *CERTIORARI*; EXCEPTIONS; CASE AT BAR AN EXCEPTION.** — The general rule is that, in order to give the lower court the opportunity to correct itself, a motion for reconsideration is a prerequisite to *certiorari*. It is also basic that a petitioner must exhaust all other available remedies before resorting to *certiorari*. This rule, however, is subject to certain exceptions such as any of the following: (1) the issues raised are purely legal in nature, (2) public interest is involved, (3) extreme urgency is obvious or (4) special circumstances warrant immediate or more direct action. It is patently clear that the regulation or administration of educational institutions, especially on the tertiary level, is invested with public interest. Hence, the haste with which the solicitor general raised these issues before the appellate court is understandable. For the reason mentioned, we rule that respondent's Petition for *Certiorari* did not require prior resort to a motion for reconsideration.

2. **ID.; ID.; DEFAULT, DECLARATION OF; REMEDIES AVAILABLE TO A DEFENDANT VALIDLY DECLARED IN DEFAULT.** — *Lina v. Court of Appeals* discussed the remedies available to a defendant declared in default, as follows: (1) a motion to set aside the order of default under Section 3(b); Rule 9 of the Rules of Court, if the default was discovered before judgment could be rendered; (2) a motion for new trial under Section 1(a) of Rule 37, if the default was discovered after judgment but while appeal is still available; (3) a petition for relief under Rule 38, if judgment has become final and executory; and (4) an appeal

Supreme Court E-Library

from the judgment under Section 1, Rule 41, even if no petition to set aside the order of default has been resorted to. These remedies, however, are available only to a defendant who has been validly declared in default. Such defendant irreparably loses the right to participate in the trial.

3. **ID.; ID.; ID.; REMEDIES AVAILABLE TO A DEFENDANT IMPROVIDENTLY DECLARED IN DEFAULT.** — On the other hand, a defendant improvidently declared in default may retain and exercise such right after the order of default and the subsequent judgment by default are annulled, and the case remanded to the court of origin. The former is limited to the remedy set forth in Section 2, paragraph 3 of Rule 41 of the pre 1997 Rules of Court, and can therefore contest only the judgment by default on the designated ground that it is contrary to evidence or law. The latter, however, has the following options: to resort to this same remedy; to interpose a petition for *certiorari* seeking the nullification of the order of default, even before the promulgation of a judgment by default; or in the event that judgment has been rendered, to have such order and judgment declared void.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROHIBITION AGAINST APPEALS FROM INTERLOCUTORY ORDERS; WHEN NOT APPLICABLE; CASE AT BAR.** — In prohibiting appeals from interlocutory orders, the law does not intend to accord executory force to such writs, particularly when the effect would be to cause irreparable damage. If, in the course of trial, a judge proceeds without or in excess of jurisdiction, this rule prohibiting an appeal does not leave the aggrieved party without any remedy. In a case like this, a special civil action of *certiorari* is the plain, speedy and adequate remedy. Herein respondent controverts the judgment by default, not on the ground that it is unsubstantiated by evidence or that it is contrary to law, but on the ground that it is intrinsically void for having been rendered pursuant to a patently invalid order of default.

5. **ID.; GRANT OF WRIT OF PRELIMINARY INJUNCTION WITHOUT PLAINTIFF HAVING ESTABLISHED A CLEAR RIGHT THERETO, NOT PROPER; CASE AT BAR.** — We concur with the CA that the trial court acted with grave abuse of discretion in issuing the Writ of Preliminary Injunction against respondent. Petitioner failed to establish a clear right to continue

Supreme Court E-Library

representing itself to the public as a university. Indeed, it has no vested right to misrepresent itself. Before an injunction can be issued, it is essential that (1) there must be a right *in esse* to be protected, and (2) the act against which the injunction is to be directed must have violated such right. The establishment and the operation of schools are subject to prior authorization from the government. No school may claim to be a university unless it has first complied with the prerequisites provided in Section 34 of the Manual of Regulations for Private Schools. Section 3, Rule 58 of the Rules of Court, limits the grant of preliminary injunction to cases in which the plaintiff is clearly entitled to the relief prayed for. We also agree with the finding of the CA that the act sought to be enjoined by petitioner is not violative of the latter's rights. Respondent's Cease and Desist Order of July 30, 1997 merely restrained petitioner from using the term "university" in its name. It was not ordered to close, but merely to revert to its authorized name; hence, its proprietary rights were not violated.

6. ID.; CIVIL PROCEDURE; MOTION TO DISMISS; FAILURE TO STATE CAUSE OF ACTION IN THE COMPLAINT; CASE AT BAR. — [W]e find no grave abuse of discretion in the RTC's denial of the Motion to Dismiss, as contained in the August 14, 1998 Order. The CA erred in ruling otherwise. The trial court stated in its Decision that petitioner was an educational institution, originally registered with the Securities and Exchange Commission as the "Indiana School of Aeronautics, Inc." That name was subsequently changed to "Indiana Aerospace University" after the Department of Education, Culture and Sports had interposed no objection to such change. Respondent issued a formal Cease and Desist Order directing petitioner to stop using the word "university" in its corporate name. The former also published an announcement in the March 21, 1998 issue of *Freeman*, a local newspaper in Cebu City, that there was no institution of learning by that name. The counsel of respondent was quoted as saying in the March 28, 1998 issue of the newspaper *Today* that petitioner had been ordered closed by the respondent for illegal advertisement, fraud and misrepresentation of itself as a university. Such acts, according to the RTC undermined the public's confidence in petitioner as an educational institution. This was a clear statement of a sufficient cause of action. When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should

Supreme Court E-Library

be based only on the facts alleged in the complaint. The court must pass upon this issue based solely on such allegations, assuming them to be true. For it to do otherwise would be a procedural error and a denial of plaintiff's right to due process.

APPEARANCES OF COUNSEL

Albert L. Hontanosa Law Office and *Corpus & Associates* for petitioner.

The Solicitor General and *Joel Voltaire V. Mayo* for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

When the delayed filing of an answer causes no prejudice to the plaintiff, default orders should be avoided. Inasmuch as herein respondent was improvidently declared in default, its Petition for *Certiorari* to annul its default may be given due course. The act of the Commission on Higher Education enjoining petitioner from using the word "university" in it corporate name and ordering it to revert to its authorized name does not violate its proprietary rights or constitute irreparable damage to the school. Indeed, petitioner has no vested right to misrepresent itself to the public. An injunction is a remedy in equity and should not be used to perpetuate a falsehood.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, challenging the July 21, 1999 Decision[1] of the Court of Appeals (CA) in CA-GR SP No. 51346. The appellate court directed the Regional Trial Court (RTC) of Makati City, Branch 136, to cease and desist from proceeding with Civil Case No. 98-811 and to dismiss the Complaint for Damages filed by the "Indiana Aerospace University" against the

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[1] Penned by Justice Jose L. Sabio Jr. with the concurrence of Justices Hector L. Hofileña, Division Chairman, and Omar U. Amin, member. *Rollo*, pp. 19-32.

Supreme Court E-Library

Commission on Higher Education (CHED). The dispositive portion of the CA Decision reads as follows:

"WHEREFORE, in the light of the foregoing consideration, and pursuant to pertinent existing laws and jurisprudence on the matter, [the trial court] is hereby DIRECTED to cease and desist from proceeding with Civil Case No. 98-811 and to order the dismissal of [petitioner's] Petition dated March 31, 1999 in Civil Case No. 98-911 for lack of merit and valid cause of action."[2]

The Facts

The facts of this case are summarized by the CA, as follows:

"Sometime in October 1996, Dr. Reynaldo B. Vera, Chairman, Technical Panel for Engineering, Architecture, and Maritime Education (TPRAM) of [CHED], received a letter dated October 18, 1998 (Annex 'C') from Douglas R. Macias, Chairman, Board of Aeronautical Engineering, Professional Regulat[ory] Commission (PRC) and Chairman, Technical Committee for Aeronautical Engineering (TPRAME) inquiring whether [petitioner] had already acquired [u]niversity status in view of the latter's advertisement in [the] Manila Bulletin.

"In a letter dated October 24, 1996, Dr. Vera formally referred the aforesaid letter to Chairman Alcala with a request that the concerned Regional Office of [CHED] be directed to conduct appropriate investigation on the alleged misrepresentation by [petitioner]. Thereafter, [CHED] referred the matter to its Regional Director in Cebu City, requesting said office to conduct an investigation and submit its report. The [R]eport submitted in January 1997, stated in substance:

'x x x x x x x x x

'To recall it was in the month of May 1996, [that] Director Ma. Lilia Gaduyon met the school [p]resident in the regional office and verbally talked[with] and advised them not to use University when it first came out in an advertisement column of a local daily newspaper in Cebu City. It was explained that there was a violation [committed by] his institution [when it used] the term university unless the school ha[d] complied [with] the basic requirement of being a university as prescribed in CHED Memorandum Order No. 48, s. 1996.'

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[2] *Rollo*, p. 31.

Supreme Court E-Library

xxx xxx xxx.'

"As a consequence of said Report, [respondent's] Legal Affairs Service was requested to take legal action against [petitioner]. Subsequently, on February 3, 1997, [respondent] directed [petitioner] to desist from using the term University, including the use of the same in any of its alleged branches. In the course of its investigation, [respondent] was able to verify from the Securities and Exchange Commission (SEC) that [petitioner had] filed a proposal to amend its corporate name from Indiana School of Aeronautics to Indiana Aerospace University, which was supposedly favorably recommended by the Department of Education, Culture and Sports (DECS) per its Indorsement dated 17 July 1995, and on [that] basis, SEC issued to [petitioner] Certificate of Registration No. AS-083-002689 dated August 7, 1995. Surprisingly, however, it ought to be noted, that SEC Chairman Perfecto R. Yasay, Jr. wrote the following letter to the [c]hairman of [respondent]:

'Hon. Angel C. Alcala
Chairman
Commission on Higher Education
DAP Bldg., San Miguel Avenue
Ortigas Center, Pasig City

Dear Chairman Alcala:

This refers to your letter dated September 18, 1997 requesting this Commission to make appropriate changes in the Articles of Incorporation of Indiana School of aeronautics, Inc. due to its unauthorized use of the term 'University' in its corporate name.

Relative thereto, please be informed that our records show that the above-mentioned corporation has not filed any amended articles of incorporation that changed its corporate name to include the term 'University.'

In the case the corporation submit[s] an application for change of name, your Cease and Desist Order shall be considered accordingly.

Very truly yours,

(SGD.) PERFECTO R. YASAY, JR.
Chairman'

Supreme Court E-Library

"In reaction to [respondent's] order for [petitioner] to desist from using the word 'University,' Jovenal Toring, [c]hairman and [f]ounder of [petitioner] wrote a letter dated February 24, 1997 (Annex 'G') appealing for reconsideration of [respondent's] Order, with a promise to follow the provisions of CMO No. 48, pertinent portions of which have been quoted in the Petition, to wit:

> 'On 07 August 1995. in line with the call of the government to go for global competitiveness and our vision to help in the development of aerospace technology, the Board of Directors applied with the SEC for the amendment of Article I of the Articles of Incorporation to read as 'Indiana Aerospace University' instead of 'Indiana School of Aeronautics, Inc.'
>
> xxx xxx xxx
>
> 'In view thereof, we would like to appeal to you Fr. Delagoza to please reconsider your order of February 3, 1997, otherwise the school will encounter financial difficulties and suffer damages which will eventually result in the mass dislocation of x x x thousand[s] of students. The undersigned, being the [c]hairman and [f]ounder, will try our very best to follow the provisions of CHED MEMO No. 48, series of 1996 that took effect last June 18, 1996.
>
> xxx xxx xxx
>
> Thank you very much for giving me a copy of said CHED MEMO Order No. 48. More power and God Bless You.
>
> xxx xxx xxx.'

"The appeal of [petitioner] was however rejected by [respondent] in its decision dated July 30, 1998 and the [the latter] ordered the former to cease and desist from using the word 'University.' However, prior to said date, on April 2, 1998, [petitioner] filed a Complaint for Damages with prayer for Writ of Preliminary and Mandatory Injunction and Temporary Restraining Order against [respondent], docketed as Civil Case No. 98-811 before public respondent judge.

"On April 7, 1998, [respondent] filed a Special Appearance with Motion to Dismiss, based on 1) improper venue; 2) lack of authority of the person instituting the action; and 3) lack of cause of action. On April 17, 1998, [petitioner] filed its Opposition to the Motion to Dismiss [on] grounds stated therein, to which [respondent] filed a Reply on April 21, 1998, reiterating the same arguments in its Motion to Dismiss. After due

Supreme Court E-Library

hearing, [petitioner] formally offered its evidence on July 23, 1998 while [respondent] made a formal offer of evidence on July 28, 1998 to which [petitioner] filed its Comments/Objections and finally, [respondent] submitted its Memorandum relative thereto on October 1, 1998.

"Public respondent judge, in an Order dated August 14, 1998, denied [respondent's] Motion to Dismiss and at the same time, issued a Writ of Preliminary Injunction in favor of [petitioner]. [Respondent], in the same Order, was directed to file its Answer within fifteen (15)days from receipt of said Order, which was August 15, 1998.

xxx xxx xxx

'WHEREFORE, and in consideration of all the foregoing [respondent's] Motion to Dismiss is hereby denied, and the [respondent] is directed to file its [A]nswer to the [C]omplaint within fifteen (15) days from receipt of this Order.

In the meantime, [respondent], its officials, employees and all parties acting under its authority are hereby enjoined to observe the following during the pendency of this case.

1. Not to publish or circulate any announcement in the newspaper, radio or television regarding its Cease and Desist Order against xxx [petitioner];

2. Not to enforce the Cease and Desist Order issued against x x x [petitioner];

3. To maintain the *status quo* by not withholding the issuance of yearly school permits and special order to all graduates.

Let a Writ of Preliminary Injunction to that effect issue upon posting by [petitioner] of an injunction bond in the amount of One Hundred Thousand Pesos (₱100,000.00), and subject to the approval of the Court.

SO ORDERED.'

"On September 22, 1998, [petitioner] filed before public respondent a Motion To Declare [Respondent] in [D]efault pursuant to Section 3, Rule 9 in relation to Section 4, Rule 16 of the Rules of Court, as amended, and at the same time praying [for] the Motion to [S]et for [H]earing on October 30, 1998 at 8:30 a.m. On the same date, [respondent] filed a Motion For Extension of Time to File its Answer,

Supreme Court E-Library

x x x until November 18, 1998. On November 17, 1998, [respondent] filed its [A]nswer.

"[Petitioner], on November 11, 1998 filed its Opposition to the Motion for Extension of Time to File [Respondent's] Answer and on November 9, 1998, a Motion to Expunge [Respondent's] Answer and at the same time praying that its [M]otion be heard on November 27, 1998 at 9:00 a.m. On even date, public respondent judge issued an Order directing the Office of the Solicitor General to file within a period of ten (10) days from date its written Opposition to the Motion to Expunge [Respondent's] Answer and within the same period to file a written [N]otice of [A]ppearance in the case. Unable to file their written Opposition to the Motion to Expunge within the period given by public respondent, the OSG filed a Motion to Admit Written Opposition stating the reasons for the same, attaching thereto the Opposition with [F]ormal [E]ntry of [A]ppearance.

"In an Order dated December 9, 1998, (Annex 'A'), public respondent judge ruled on [Petitioner's] Motion to Declare [Respondent in Default], to wit:

> 'WHEREFORE, and in view of all the foregoing, the present motion is granted. [Petitioner] is hereby directed to present its evidence *ex-parte* before the [b]ranch [c]lerk of [c]ourt, who is designated as [c]ommissioner for the purpose, within ten (10) days from receipt of this [O]rder, and for the latter to submit his report within twenty (20) days from the date the case is submitted for decision."
>
> SO ORDERED.'"[3]

On February 23, 1999, respondent filed with the CA a Petition for *Certiorari*, arguing that the RTC had committed grave abuse of discretion (a) in denying the former's Motion to Dismiss, (b) in issuing a Writ of Preliminary Injunction, and (c) in declaring respondent in default despite its filing an Answer.

Ruling of the Court of Appeals

The CA ruled that petitioner had no cause of action against respondent. Petitioner failed to show any evidence that it had

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[3] CA Decision, pp. 1-6; *rollo*, pp. 19-24.

Supreme Court E-Library

been granted university status by respondent as required under existing law and CHED rules and regulations. A certificate of incorporation under an unauthorized name does not confer upon petitioner the right to use the word "university" in its name. The evidence submitted by respondent showed that the Securities and Exchange Commission (SEC) had denied that petitioner had ever amended its Articles of Incorporation to include "university" in its corporate name. For its part, the Department of Education, Culture and Sports (DECS) denied having issued the alleged Certification dated May 18, 1998, indorsing the change in petitioner's corporate name. Besides, neither the Corporation Code nor the SEC Charter vests the latter with the authority to confer university status on a corporation that it regulates.

For the same reason, the appellate court also ruled that the Writ of Preliminary Injunction had improvidently been issued. The doubtful right claimed by petitioner is subordinate to the public interest to protect unsuspecting students and their parents from the unauthorized operation and misrepresentation of an educational institution.

Respondent should not have been declared in default, because its Answer had been filed long before the RTC ruled upon petitioner's Motion to declare respondent in default. Thus, respondent had not obstinately refused to file an Answer; on the contrary, its failure to do so on time was due to excusable negligence. Declaring it in default did not serve the ends of justice, but only prevented it from pursuing the merits of its case.

Hence, this Petition.[4]

Issues

Petitioner alleges that the appellate court committed the following reversible errors:

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[4] This case was deemed submitted for decision upon this Court's receipt on November 17, 2000, of respondent's Memorandum signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Magdangal M. De Leon, and Solicitor Danilo D. Leyva. Petitioner's Memorandum, which was submitted on August 4, 2000, was signed by Atty. Albert L. Hontanosas.

Supreme Court E-Library

"A. In giving due course to respondent CHED's Petition for *Certiorari* filed way beyond the 60-day reglementary period prescribed by Section 4, Rule 65 of the Rules of Court;

B. In not requiring Respondent CHED to first file a Motion to Set Aside the Order of Default dated December 9, 1998; and

C. In ordering the dismissal of Civil Case No. 98-811."[5]

In its Memorandum, petitioner adds that the CA erred in dissolving the Writ of Preliminary Injunction issued by the RTC. We shall take up these issues in the following order: (1) timeliness of the *certiorari* petition, (2) validity of the default order, (3) validity of the preliminary injunction, and (4) dismissal of the Complaint.

This Court's Ruling

The Petition is partly meritorious.

First Issue: *Timeliness of Certiorari*

Petitioner claims that the Petition for *Certiorari* of respondent should have been dismissed by the CA, because it was filed out of time and was not preceded by a motion for reconsideration in the RTC. The copy of the Order of August 14, 1998 had been served at respondent's office on August 15, 1998, but its Answer was filed only after 180 days which, according to petitioner, could not be considered a reasonable period. On the other hand, the Office of the Solicitor General (OSG) argues that the Order is null and void and, hence, may be assailed at any time.

We hold that respondent's Petition for *Certiorari* was seasonably filed. In computing its timeliness, what should have been considered was not the Order of August 14, 1998, but the date when respondent received the December 9, 1998 Order declaring it in default. Since it received this Order only on January 13, 1999, and filed its Petition for *Certiorari* on February

[5] *Rollo*, p. 7.

Supreme Court E-Library

23, 1999, it obviously complied with the sixty-day reglementary period stated in Section 4, Rule 65 of the 1997 Rules of Court. Moreover, the August 14, 1998 Order was not a proper subject of *certiorari* or appeal, since it was merely an interlocutory order.

Exhaustion of Available Remedies

Petitioner also contends that *certiorari* cannot prosper in this case, because respondent did not file a motion for reconsideration before filing its Petition for *Certiorari* with the CA. Respondent counters that reconsideration should be dispensed with, because the December 9, 1998 Order is a patent nullity.

The general rule is that, in order to give the lower court the opportunity to correct itself, a motion for reconsideration is a prerequisite to *certiorari*. It also basic that petitioner must exhaust all other available remedies before resorting to *certiorari*. This rule, however, is subject to certain exceptions such as any of the following: (1) the issues raised are purely legal in nature, (2) public interest is involved, (3) extreme urgency is obvious or (4) special circumstances warrant immediate or more direct action.[6] It is patently clear that the regulation or administration of educational institutions, especially on the tertiary level, is invested with public interest. Hence, the haste with which the solicitor general raised these issues before the appellate court is understandable. For the reason mentioned, we rule that respondent's Petition for *Certiorari* did not require prior resort to a motion for reconsideration.

Second Issue:
Validity of the Default Order

Petitioner avers the RTC was justified in declaring respondent in default, because the August 14, 1998 Order directing the

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[6] *Liberty Insurance Corp. v. Court of Appeals*, 222 SCRA 37, 47, May 13, 1993; *Alindao v. Joson*, 264 SCRA 211, 220, November 14, 1996; *Tan v. Court of Appeals*, 275 SCRA 568, 574-575, July 17, 1997; and *Tan Jr. v. Sandiganbayan*, 292 SCRA 452, 457-458, July 10, 1998.

Supreme Court E-Library

filing of an answer had been served on August 25, 1998. And as late as October 30, 1998, respondent could only file a Motion for Extension of Time, which the trial court denied because of the expiry of the fifteen-day period. Petitioner adds that respondent's proper remedy would have been a Motion to Set Aside the Order of Default, pursuant to Section 3(b), Rule 9 of the Rules of Court.

Respondent, in turn, avers that *certiorari* was the only plain, speedy and adequate remedy in the ordinary course of law, because the default Order had improvidently been issued.

We agree with respondent. *Lina v. Court of Appeals*[7] discussed the remedies available to a defendant declared in default, as follows: (1) a motion to set aside the order of default under Section 3(b), Rule 9 of the Rules of Court, if the default was discovered before judgment could be rendered; (2) a motion for new trial under Section 1(a) of Rule 37, if the default was discovered after judgment but while appeal is still available; (3) a petition for relief under Rule 38, if judgment has become final and executory; and (4) an appeal from the judgment under Section 1, Rule 41, even if no petition to set aside the order of default has been resorted to.

These remedies, however, are available only to a defendant who has been validly declared in default. Such defendant irreparably loses the right to participate in the trial. On the other hand, a defendant improvidently declared in default may retain and exercise such right after the order of default and the subsequent judgment by default are annulled, and the case remanded to the court of origin. The former is limited to the remedy set forth in Section 2, paragraph 3 of Rule 41 of the pre 1997 Rules of Court, and can therefore contest only the judgment by default on the designated ground that it is contrary to evidence or law. The latter, however, has the following options: to resort to this same remedy; to interpose a petition for *certiorari* seeking the nullification of the order of default, even before

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[7] 135 SCRA 637, 642, April 9, 1985, per Relova, *J.*

Supreme Court E-Library

the promulgation of a judgment by default; or in the event that judgment has been rendered, to have such order and judgment declared void.

In prohibiting appeals from interlocutory orders, the law does not intend to accord executory force to such writs, particularly when the effect would be to cause irreparable damage. If in the course of trial, a judge proceeds without or in excess of jurisdiction, this rule prohibiting an appeal does not leave the aggrieved party without any remedy.[8] In a case like this, a special civil action of *certiorari* is the plain, speedy and adequate remedy.

Herein respondent controverts the judgment by default, not on the ground that it is unsubstantiated by evidence or that it is contrary to law, but on the ground that it is intrinsically void for having been rendered pursuant to a patently invalid order of default.[9]

Grave Abuse of Discretion

Petitioner claims that in issuing the default Order, the RTC did not act with grave abuse of discretion, because respondent had failed to file its answer within fifteen days after receiving the August 14, 1998 Order.

We disagree. Quite the contrary, the trial court gravely abused its discretion when it declared respondent in default despite the latter's filing of an Answer.[10] Placing respondent in default thereafter served no practical purpose.

Petitioner was lax in calling the attention of the Court to the fifteen-day period for filing an answer. It moved to declare respondent in default only on September 20, 1998, when the

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[8] *Akut v. Court of Appeals,* 116 SCRA 213, 219, August 30, 1982.

[9] *Matute v. Court of Appeals*, 26 SCRA 768, 798-799, January 31, 1969; and *Omico Mining & Industrial Corp. v. Vallejos*, 63 SCRA 285, 300-301, March 25, 1975.

[10] *Cathay Pacific v. Romillo Jr.,* 141 SCRA 451, 454-455, March 4, 1986.

Supreme Court E-Library

filing period had expired on August 30, 1998. The only conclusion in this case is that petitioner has not been prejudiced by the delay. The same leniency can also be accorded to the RTC, which declared respondent in default only on December 9, 1998, or twenty-two days after the latter had filed its Answer on November 17, 1998. Defendant's Answer should be admitted, because it had been filed before it was declared in default, *and* no prejudice was caused to plaintiff. The hornbook rule is that default judgments are generally disfavored.[11]

While there are instances when a party may be properly declared in default, these cases should be deemed exceptions to the rule and should be resorted to only in clear cases of obstinate refusal or inordinate neglect in complying with the orders of the court.[12] In the present case, however, no such refusal or neglect can be attributed to respondent.

It appears that respondent failed to file its Answer because of excusable negligence. Atty. Joel Voltaire Mayo, director of the Legal Affairs Services of CHED, had to relinquish his position in accordance with the Memorandum dated July 7, 1998, requiring all non-CESO eligibles holding non-career positions to vacate their respective offices. It was only on September 25, 1998, after CHED Special Order No. 63 had been issued, when he resumed his former position. Respondent also presented a meritorious defense in its Answer — that it was duty-bound to pursue that state policy of protecting, fostering and promoting the right of all citizens to affordable quality education at all levels. In stark contrast, petitioner neither qualified for nor was ever conferred university status by respondent.

Judges, as a rule, should avoid issuing default orders that deny litigants the chance to be heard. Instead, the former should give the latter every opportunity to present their conflicting

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[11] *Trajano v. Cruz,* 80 SCRA 712, 716-717, December 29, 1977.

[12] *Leyte v. Cusi*, 152 SCRA 496, 498-499, July 31, 1987; and *Tropical Homes, Inc. v. Villaluz*, 170 SCRA 577, 582-583, February 24, 1989.

Supreme Court E-Library

claims on the merits of the controversy, as much as possible avoiding any resort to procedural technicalities.[13]

Third Issue:
Preliminary Injunction

Petitioner contends that the RTC validly issued the Writ of Preliminary Injunction. According to the trial court, respondent's actions adversely affected petitioner's interests, faculty and students. In fact, the very existence of petitioner as a business concern would have been jeopardized had its proprietary rights not been protected.

We disagree. We concur with the CA that the trial court acted with grave abuse of discretion in issuing the Writ of Preliminary Injunction against respondent. Petitioner failed to establish a clear right to continue representing itself to the public as a university. Indeed, it has no vested right to misrepresent itself. Before an injunction can be issued, it is essential that (1) there must be a right *in esse* to be protected, and (2) the act against which the injunction is to be directed must have violated such right.[14] The establishment and the operation of schools are subject to prior authorization from the government. No school may claim to be a university unless it has first complied with the prerequisites provided in Section 34 of the Manual of Regulations for Private Schools. Section 3, Rule 58 of the Rules of Court, limits the grant of preliminary injunction to cases in which the plaintiff is clearly entitled to the relief prayed for.

We also agree with the finding of the CA that the act sought to be enjoined by petitioner is not violative of the latter's rights. Respondent's Cease and Desist Order of July 30, 1997 merely restrained petitioner from using the term "university" in its name.

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[13] *Tropical Homes, Inc. v. Villaluz, Ibid*; *Trajano v. Cruz*, *supra*, p. 718.

[14] *Saulog v. Court of Appeals*, 262 SCRA 51, 59-60, September 18, 1996; *Cagayan de Oro Landless Residents Association, Inc. v. Court of Appeals*, 254 SCRA 220, 229, March 4, 1996; and *Del Rosario v. Court of Appeals*, 255 SCRA 152, 158, March 15, 1996.

Supreme Court E-Library

It was not ordered to close, but merely to revert to its authorized name; hence, its proprietary rights were not violated.

Fourth Issue:
Dismissal of the Complaint

Petitioner claims that the CA went beyond its limited jurisdiction under Rule 65 when it reversed the trial court and dismissed the Complaint on the ground that petitioner had failed to state a cause of action. The RTC had yet to conduct trial, but the CA already determined the factual issue regarding petitioner's acquisition of university status, a determination that is not permitted in *certiorari* proceedings.

The CA ruled that the trial court gravely abused its discretion in denying respondent's Motion to dismiss on the ground of lack of cause of action because of petitioner's lack of legal authority or right to use the word "university." Said appellate court:

"x x x. No matter how we interpret the Corporation Code and the law granting the Securities and Exchange Commission its powers and duties, there is nothing there which grants it the power or authority to confer University Status to an educational institution. Fundamental is the rule that when there is no power granted, none exist[s], not even implied ones for there is none from where to infer. The mere fact of securing an alleged Certificate of Incorporation under an unauthorized name does not confer the right to use such name.

"But what makes the conclusion of [the trial court] even anomalous, to say the least, is that no less than the Chairman of the SEC in his letter to the [respondent] (Exh. "J") expressly said that [petitioner] never filed any Amended Articles of Incorporation so as to have a change of corporate name to include the term "University." Worse, the records officer of DECS issued a Certification dated May 18, 1998 (Annex "AA") to the effect that there was no Indorsement made by that office addressed to the SEC or the Proposed Amended Article of Incorporation of Indiana Aeronautics. x x x.

"Under such clear pattern of deceitful maneuvering to circumvent the requirement for acquiring University Status, it is [a] patently

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[15] CA Decision, pp. 10-11; *rollo*, pp. 28-29.

Supreme Court E-Library

reversible error for [the trial court] to hold that [petitioner] has a right to use the word "University" which must be protected. Dismissal of [petitioner's] Complaint for lack of a valid cause of action should have been the proper action taken by [the trial court] judge."[15]

An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling; it is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts — acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the court.[16]

In the case at bar, we find no grave abuse of discretion in the RTC's denial of the Motion to Dismiss, as contained in the August 14, 1998 Order. The CA erred in ruling otherwise. The trial court stated in its Decision that petitioner was an educational institution, originally registered with the Securities and Exchange Commission as the "Indiana School of Aeronautics, Inc." That name was subsequently changed to "Indiana Aerospace University" after the Department of Education, Culture and Sports had interposed no objection to such change.[17]

Respondent issued a formal Cease and Desist Order directing petitioner to stop using the word "university" in its corporate name. The former also published an announcement in the March 21, 1998 issue of *Freeman,* a local newspaper in Cebu City, that there was no institution of learning by that name. The counsel of respondent was quoted as saying in the March 28, 1998 issue of the newspaper *Today* that petitioner had been

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[16] *Carandang v. Cabatuando*, 53 SCRA 383, 390, October 26, 1973; *Philippine Rabbit v. Galauran*, 118 SCRA 664, 667, November 25, 1982; and *De Vera v. Pineda*, 213 SCRA 434, 442, September 2, 1992.

[17] Order August 14, 1998 in Civil Case No. 98-811, p. 4; *rollo*, p. 67.

Supreme Court E-Library

ordered closed by the respondent for illegal advertisement, fraud and misrepresentation of itself as a university. Such acts, according to the RTC undermined the public's confidence in petitioner as an educational institution.[18] This was a clear statement of a sufficient cause of action.

When a motion to dismiss is grounded on the failure to state a cause of action, a ruling thereon should be based only on the facts alleged in the complaint.[19] The court must pass upon this issue based solely on such allegations, assuming them to be true. For it to do otherwise would be a procedural error and a denial of plaintiff's right to due process.[20]

WHEREFORE, the Petition is hereby *GRANTED IN PART*, and the assailed Decision *MODIFIED*. The trial court is *DIRECTED* to *SET ASIDE* the Order of default of December 9, 1998; to *ADMIT* the Answer dated November 5, 1998; to *LIFT* the preliminary injunction; and to *CONTINUE*, with all deliberate speed, the proceedings in Civil Case No. 98-811.

SO ORDERED.

Melo (Chairman), Vitug, Gonzaga-Reyes, and *Sandoval-Gutierrez, JJ.,* concur.

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[18] *Ibid.*, p. 6; *Id*, p. 69.

[19] *Mindanao Realty Corp. v. Kintanar*, 6 SCRA 814, 818-819, November 30, 1962.

[20] *Ventura v. Bernabe*, 38 SCRA 587, 598-599, April 30, 1971; and *Galeon v. Galeon*, 49 SCRA 516, 520-521, February 28, 1973.