

ANGELITA GARCIA-VIBORA, PLAINTIFF-APPELLANT, VS. EDDIE RIVERO, DEFENDANT-APPELLEE.

Ponente: TIJAM, J.

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TIJAM, J.:

Assailed in the present appeal are the following Orders of the Regional Trial Court of Parañaque City, Branch 195:

- (1) The Order[1] dated May 14, 2010, which denied plaintiff-appellant's Motion to Litigate as Indigent Litigant[2]; and
- (2) The Order[3] given in open court on December 9, 2010, which dismissed the case for failure to pay the proper docket fees.

This case traces its roots from a complaint[4] filed by plaintiff-appellant Angelita Garcia-Vibora against defendant-appellee Eddie Rivero for Annulment of Contract and Cancellation of Title with Prayer for Temporary Restraining Order before the RTC of Parañaque City, Branch 195. Said complaint was eventually dismissed by the trial court on the ground of plaintiff-appellant's failure to pay the deficiency docket fee based on the P4.5 million selling price of the subject property. Plaintiff-appellant appealed to the Court of Appeals, which granted the appeal and remanded the case to the trial court for further proceedings.[5] Aggrieved by the Court of Appeals' Decision, Defendant-appellee filed with the Supreme Court a petition for review but it was dismissed. In like manner, the motion for reconsideration subsequently filed thereto was denied.

The Factual Antecedents:[6]

"During the lifetime of Leonora Garcia, the deceased mother of appellant (Angelita), she had several real properties, one of which was a parcel of land then covered by Transfer Certificate of Title (TCT) No. 935312 with an area of 193 square meters, situated at No. 16012 and 1361-D Airport Road, Baclaran, Parañaque City, Metro Manila. During her lifetime, she entered into a contract of sale of said parcel of land with appellee (Rivero) for an agreed sale price of Four Million Five Hundred Thousand Pesos (P4,500,000.00) as evidenced by a deed of sale dated 4 February 1988.

Angelita agreed to the contract of sale and transferred the title to Rivero after he paid in consideration of the contract Three Million Pesos (3M) and a promise that he will later pay the balance of P1,500,000.00. After repeated and strong assurance from Rivero that he will pay the balance immediately after the execution of the deed of sale, Leonora Garcia agreed and signed the deed of sale. Rivero however never made any other payments to Leonora Garcia, in clear violation of the agreement.

Thus, on 7 July 2003, Angelita filed a complaint for Annulment of Contract and Cancellation of Title with Prayer for Temporary Restraining Order (TRO) against Rivero before the RTC of Parañaque City. She alleged that as the only surviving heir of the deceased Leonora Garcia, she is seeking the annulment of the said contract of sale as Eddie Rivero has now been exercising acts of ownership over the said property, to her surprise and disbelief. The subject real property had been surreptitiously, covertly, and illicitly transferred and registered by Rivero and his wife Henrietta Uy in their names through the deed of sale, after defrauding and

through clever machinations, stealth and deceitful means to make it appear that the vendor Leonora Garcia signed the questioned deed of sale. She alleged that Rivero took advantage of the vendor's mental weakness and physical faculties, old age, extremely poor vision and innocence. Despite Rivero's and his wife's full knowledge of the defects of the said deed of sale, both of them, connived, conspired and confederated with each other and caused the transfer of the said parcel of land and the issuance of a new title in their names which is TCT No. 133973. Angelita thus prayed that the questioned deed of sale be declared null and void and the title issued in the name of Rivero and his wife be cancelled. She also prayed for a temporary restraining order to protect her right against any execution, sale, transfer and any encumbrance on the subject property covered by a new title, as well as the award of attorney's fees and litigation expenses.

After service of summons and a copy of the complaint, Rivero filed a Motion to Dismiss on the following grounds: 1) the trial court has no jurisdiction over the subject matter of the claim because Angelita failed to allege in the complaint the assessed value of the real property involved in the complaint and thus failed to pay the correct amount of docket fees; 2) the complaint states no cause of action; and 3) the cause of action is barred by the Statute of Limitation. Angelita filed her Comment/Opposition to the Motion to Dismiss.

On 14 July 2003, Rivero through counsel moved that the prayer for the issuance of a TRO be deleted from the caption of the case and from the prayer in the petition.

In the Order dated 25 September 2003, the trial court denied the motion to dismiss. It ruled that it has jurisdiction over the subject matter of the claim since the selling price of P4.5 million was alleged in the complaint and Angelita even asserted in her Opposition to the motion to dismiss that the said selling price can be considered the assessed value of the subject property which is 4.5 million.

Thereafter, Rivero moved for an extension of time to file answer or appropriate pleading, calling the attention of the court to the deficiency docket fees that had yet to be paid by Angelita. The trial court granted the same on 27 October 2003. Meanwhile, he filed a Manifestation and Motion stating that Angelita failed to pay the deficiency docket fee within the period granted by the trial court. Thus, he sought again the dismissal of the complaint for non-payment of the said deficiency.

On 28 October 2003, Angelita filed a timely motion for reconsideration of the Order requiring payment of the deficiency docket fee based on the assessed value of P4.5 million of the subject property. She alleged that the assessed value of the property in question is only P603,690.00 based on the attached Assessment of Real Property.

Rivero filed an Opposition thereto on the grounds of estoppel and judicial admission. He also filed a Motion to Defer Filing of Answer until Angelita's motion for reconsideration and his Manifestation and Motion have been resolved.

In the Order dated 5 December 2003, the trial court denied both motions of the parties. It stated that Angelita's assertion that the selling price of 4.5 million is 'in a very plain language, the estimate or the assessed value of the real property' was the trial court's basis in denying Rivero's motion to dismiss. It adopted Rivero's argument that Angelita was estopped from making any representation or assertion different from that which she had previously made and which was already admitted and considered by the trial court in so resolving to deny Rivero's motion to dismiss. The trial court however gave Angelita another chance to comply with the questioned order requiring payment of the deficiency docket fees based on the assessed value which is the selling price of P4.5 million.

Rivero filed a Motion for Reconsideration of the above order asserting that Angelita not only failed to comply with the Order of the trial court to pay the deficiency docket fees but such non-compliance was even attended by scheme, fraud, and misrepresentations to the trial court. Angelita filed an Opposition thereto.

Before the trial court can resolve the said motion for reconsideration, Angelita filed a Manifestation that she is

not in a financial condition to pay the docket fee in the amount of P46,000.00 based on the P4.5 million selling price.

On 23 January 2004, the trial court rendered the assailed Order dismissing the complaint for Angelita's failure to pay the required docket fee, thus it did not acquire jurisdiction over the instant case. Hence this recourse."

As indicated, the case was remanded to the trial court, which, in turn, referred the same for mediation.[7] Since no amicable settlement was reached by the parties, an Order setting the case for pre-trial conference on August 18, 2009 was issued.

During the pre-trial conference, only defendant-appellee and his counsel appeared. A lawyer-partner representing the plaintiff-appellant moved to reset the pre-trial which was granted. On September 10, 2009, the pre-trial conference was conducted and concluded. A Pre-Trial Order dated September 15, 2009 thus issued providing, among others, the trial dates as follows: October 29, 2009; November 26, 2009; January 28, 2010; March 18, 2010; and, April 22, 2010.

The hearing on October 29, 2009 was cancelled as the Presiding Judge went on leave of absence. The hearing on November 26, 2009 was also cancelled because the correct docket fees have yet to be paid by the plaintiff-appellant. On January 28, 2010 hearing, only the parties' respective counsels appeared. Upon motion by the plaintiff-appellant's counsel, the hearing was postponed for the last time on March 18, 2010 with a warning that the case will be dismissed should plaintiff-appellant fail to present evidence on said hearing date.

On March 15, 2010 or 3 days before the hearing date, plaintiff-appellant's counsel, through a motion, sought for the cancellation of the hearing set on March 18, 2010. Said motion was granted in the trial court's Order dated March 18, 2010.

During the hearing on April 22, 2010, only defendant-appellee's counsel was present. Plaintiff-appellant and counsel failed to appear. Thus, an Order dated April 23, 2010 was issued stating as follows:

"When this case was called at 8:45 in the morning for the second time, only Atty. Santos, counsel for defendant was in court. Atty. Leopoldo dela Rosa, counsel for plaintiff, despite due notice, failed to appear. In the order of this court dated January 28, 2010, this court already warned the plaintiff in the presence of Atty. Dela Rosa that should she fail to present evidence on February 18, which upon the request of Atty. Dela Rosa was cancelled and reset today, this case will be dismissed. Consequently, pursuant to the January 28, 2010 order of this court, for failure of the plaintiff and/or her counsel to appear and present evidence today, the instant complaint as prayed for by Atty. Santos, is hereby ordered DISMISSED, for failure to prosecute."

On May 6, 2010, plaintiff-appellant filed a Motion[8] to be allowed to litigate as an indigent. The motion states, among others, that a re-assessment of the filing fees was made pursuant to the Court of Appeals' decision; and, based thereon, plaintiff-appellant could not pay the re-assessed amount of P26,616.05.[9] Said motion was denied in an Order dated May 14, 2010.[10]

On May 13, 2010 plaintiff-appellant filed a motion for reconsideration of the trial court's April 23, 2010 Order dismissing the complaint for failure to prosecute. Said motion was granted whereby plaintiff-appellant was given the chance to present evidence on September 2, 2010. On said date, however, plaintiff-appellant and counsel failed to appear. Nonetheless, the hearing was reset to October 26, 2010.

On October 26, 2010, plaintiff-appellant still failed to appear. Her counsel manifested that the proper docket fees have yet to be paid. The hearing was set for the last time on December 9, 2010 where both counsels were given time to articulate and argue their respective stances. Thereafter, the trial court, in an open Order, dismissed the case on the ground of plaintiff-appellant's failure to pay the proper and correct docket fees.[11]

Appellant now raises before this Court the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT A QUO, REGIONAL TRIAL COURT OF PARANAQUE CITY, BRANCH 195 GRAVELY ERRED IN DISMISSING THE INSTANT CASE FOR FAILURE TO PAY THE PROPER DOCKET FEE.

II.

WHETHER OR NOT THE HONORABLE COURT A QUO, REGIONAL TRIAL COURT OF PARANAQUE CITY, BRANCH 195 GRAVELY ERRED IN DENYING PLAINTIFF-APPELLANT'S MOTION TO LITIGATE AS INDIGENT LITIGANT.

Plaintiff-appellant contends that the trial court erroneously dismissed the case for failure to pay the correct docket fees. She argues that, if, indeed, there was deficiency in the payment of the docket fees, such will not warrant the dismissal of the case. Instead, the balance between the appropriate docket fees and the amount actually paid by her will be considered a lien on any award she may obtain in her favor.[12]

Defendant-Appellee argues differently. She claims that the dismissal of the present case is not just about unpaid docket fees but the plaintiff-appellant's failure to prosecute. Defendant-appellee points out the several hearing dates set by the trial court giving plaintiff-appellant the chance to present her evidence but which she failed to do. In particular, defendant-appellee cites in her Brief the argument posed by her counsel which was greatly considered by the trial court in dismissing the case, thus:

"Atty. Santos:

We will respectfully object, Your Honor. This is not just a case of unpaid docket fees as manifested by Atty. Dela Rosa, this is also about failure to prosecute, Your Honor. Last year, Your Honor, this honorable court gave the parties many trial dates; October 29, November 26, January 28, 2010, February 18, 2010, March 18, 2010 and April 22, 2010. In all of those dates, Your Honor, there were no proceeding that continue[d] because on January 28 there was a motion to postpone filed by the plaintiff; on February 18, the hearing was cancelled; on March 18, an urgent motion to postpone again was filed by the plaintiff and on April 22, because of their failure to appear, this honorable court dismis[s]ed this case for failure to prosecute. Then they filed a Motion for Reconsideration, Your Honor, which did not even have a notice of hearing for which the representation objected on the ground that the Motion for Reconsideration was a mere scrap of paper, yet in the interest of justice, this honorable court granted that motion for reconsideration setting this case for hearing on September 2, 2010, Your Honor. Again, on September 2, 2010, Atty. Dela Rosa was absent and the case was not dismiss[ed] because the registry return card has no indication as to whether Atty. Dela Rosa receive[d] a notice or not. And during the last hearing, this representation presented to this Honorable Court . . . this court to order on October 26, that for the last time, Atty. Dela Rosa is given the chance to comply with the order of this honorable court and to manifest, Your Honor, their prosecution of this case is in good faith and they are not going to waive their right to present their evidence. And this October 26 order is very explicit, Your Honor, that this is going to be for the last time. In view of which, Your Honor, we respectfully pray that this case be finally, be dismissed.[13] (Underscoring Ours)

This Court's Ruling:

The appeal is not impressed with merit.

Between the arguments of the plaintiff-appellant and the defendant-appellee, this Court is inclined to rule in favor of the latter.

Undeniably, plaintiff-appellant was given ample time to pay the proper and correct docket fees but she failed to do so. Her reliance on the Decision of the Court of Appeals in CA-G.R. CV. No. 82118 finding that there was

payment of the docket fees more than the required docket fee[14] does not hold water in view of the fact that there was a re-assessment of the filing fees when the case was remanded to the trial court. Based on the re-assessment by the Clerk of Court, the correct docket fee was pegged at P26,616.05,[15] which she never paid. What plaintiff-appellant did was to file a motion to allow her to litigate as an indigent but said motion was denied. Nevertheless, the denial of the motion is in order because the approval of the plaintiff-appellant's request to litigate as indigent is a matter best left to the sound discretion of the trial court. As shown in the trial court's Order, plaintiff-appellant did not get the approval of the Executive Judge pursuant to the guidelines laid down by the applicable rules.[16]

The case of *Heirs of the Late Ruben Reinoso, Sr. v. Court of Appeals, et al.*[17] finds application in this case. The doctrine laid down in that case is instructive, in that —

"The rule is that payment in full of the docket fees within the prescribed period is mandatory. In *Manchester v. Court of Appeals*, it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion*, wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required. Thus, in the more recent case of *United Overseas Bank v. Ros*, the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. (Emphasis Ours)

Considering the foregoing, plaintiff-appellant's case fails by reason of her non-payment of the correct docket fee. To re-state the rule aforementioned, the payment in full of the docket fees within the prescribed period is mandatory. The desired leniency cannot be accorded in view of plaintiff-appellant's unwillingness to abide by the rules. Suffice it to say that, this Court, after a judicious review of the records, sees no compelling reason to merit the relaxation of the rules in favor of plaintiff-appellant.

Even assuming, for the sake of argument, that the dismissal of the case based on failure to pay the correct docket fee is erroneous - as insisted by plaintiff-appellant, still, this Court will dismiss the case by reason of plaintiff-appellant's failure to prosecute.

Pertinently, Section 3, Rule 17 of the Rules of Court provides:

"SEC. 3. Dismissal due to fault of plaintiff. -- If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court." (Emphasis Ours)

The aforementioned provision simply enumerates the instances when a complaint may be dismissed due to the plaintiff's fault: (1) if he fails to appear on the date for the presentation of his evidence in chief of the complaint; (2) if he fails to prosecute his action for an unreasonable length of time; or (3) if he fails to comply with the Rules or any order of the court. The dismissal of a case for failure to prosecute has the effect of adjudication on the merits, and is necessarily understood to be with prejudice to the filing of another action, unless otherwise

provided in the order of dismissal.

Certainly, under the factual antecedents, the plaintiff-appellant's case is dismissible under Section 3, Rule 17 of the Rules of Court. To emphasize, plaintiff-appellant had all the time to prove her claim and present evidence in support thereof. Apparently, she missed all the opportunities afforded to her.

Going over the records once more, the blame should be put on plaintiff-appellant's counsel, who, did not try harder to protect his client's cause. Said counsel has been remiss in his duties to his client. It is an elementary rule that, a lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. In failing to attend the scheduled hearings, counsel for the plaintiff-appellant had fallen short of his duties as counsel.

Thus, this Court finds no fault on the part of the trial court. It is the duty of the plaintiff to appear on the date of the presentation of his evidence in chief on the complaint, prosecute his action within a reasonable length of time, and comply with the Rules and court orders. Failure to do so would justify the dismissal of the case. The true test for the exercise of the power to dismiss a case on the ground of failure to prosecute is whether, under the prevailing circumstances, the plaintiff is culpable for want of due diligence in failing to proceed with reasonable promptitude.[18]

Considering that there had been no payment of correct docket fees, not to mention the countless postponements and resetting of trial dates upon motion of plaintiff-appellant's counsel - this constitutes failure to comply with procedures laid down by the Rules of Court that justifies the dismissal of this case.

WHEREFORE, premises considered, the appeal is hereby DISMISSED. The assailed Orders of the Regional Trial Court of Parañaque City, Branch 195 are AFFIRMED.

SO ORDERED.

Baltazar-Padilla, and Reyes-Carpio, JJ., concur.

[1] Record, p. 700.

[2] Record, pp. 692-694.

[3] Record, p. 733.

[4] Record, pp. 2-5.

[5] Record, p. 546-555.

[6] As culled from the Decision of the Court of Appeals in CA-GR. CV. No. 82118; Record, pp. 546-554.

[7] Order dated May 21, 2009; Record, pp. 581-582.

[8] See note at 2.

[9] Paragraphs 1&2 of the Motion; Record, p. 692.

[10] Supra.

[11] Supra.

[12] Brief for Plaintiff-Appellant, p. 15; Rollo, p. 31.

[13] Appellee's Brief, pp. 14-15; Rollo, pp. 64-65.

[14] CA Decision, p. 8; Rollo, p. 43.

[15] See Motion to Allow Plaintiff to Litigate as Indigent; Rollo, p.692.

[16] Pursuant to E.1.1.1.2.a, Chapter VI, 2002 Revised Manual for Clerks of Court in relation to AM No. 04-2-04 SC; See Order, dated May 14, 2010; Record, p. 700.

[17] G.R. No. 116121, July 18, 2011.

[18] Suarez v. Villarama, et al., G.R. No. 124512, June 27, 2006.

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