

MANUEL O. SANCHEZ, PLAINTIFF-APPELLANT, VS. MATIAS V. DEFENSOR, PABLO B. ROMAN, JR., VICTOR B. ROMAN, PATRICIO N. ROMAN, ANGEL R. RODRIGUEZ, JR., LIBRADO C. VICENTE, CLARO T. AB...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is an appeal from the Order[1] issued by erstwhile Acting Presiding Judge Ma. Luisa C. Quijano-Padilla of Branch 226 of the Regional Trial Court of the National Capital Judicial Region in Quezon City (“trial court”) on April 27, 2012 in Civil Case No. Q-02-011 which, inter alia, dismissed the complaint for nullification of the annual stockholders' meeting of defendant-appellee Capitol Hills Golf and Country Club, Inc. that was held on May 21, 2002 (“first assailed order”). Likewise assailed in the instant appeal is the subsequent Order[2] that was issued by the trial court on December 21, 2012 which denied the motion for reconsideration of the first assailed April 27, 2012 order that was filed by herein plaintiff-appellant in the said case for lack of merit (“second assailed order”).

The material and relevant facts of the case, as culled from the record, are as follows:

The instant case stemmed from a Petition[3] for the nullification of the annual and special stockholders' meeting of defendant-appellee Capitol Hills Golf and Country Club, Inc. (“defendant-appellee Capitol”) held on May 21, 2002 and April 23, 2002, respectively, that was filed by herein plaintiff-appellant Manuel O. Sanchez (“plaintiff-appellant”) against herein defendants-appellees in the trial court on July 1, 2002. In the said petition, the plaintiff-appellant alleged that the individual defendants-appellees were officers and directors of defendant-appellee Capitol which is a domestic corporation with principal office address at Old Balara, Diliman, Quezon City. The plaintiff-appellant averred that, on April 29, 2002, defendant-appellee Matias V. Defensor (“defendant-appellee Defensor”) mailed to all stockholders of record of defendant-appellee Capitol an undated notice of annual stockholders' meeting to be held on May 21, 2002. Attached in the aforesaid notice was the agenda for the said annual stockholders' meeting, as well as a proxy form should the stockholders wish to designate their representatives during the said annual stockholders' meeting.[4]

Thereafter, the annual stockholders' meeting of defendant-appellee Capitol was conducted on May 21, 2002 where defendant-appellee Defensor certified that a quorum was present for the said annual stockholders' meeting. However, before the same could proceed, Victor Fernandez, a stockholder of defendant-appellee Capitol, questioned the validity of the proxies that were used and inquired on whether or not the stockholders were notified in writing of the date, time and place when the aforesaid proxies would be validated. On this query, defendant-appellee Defensor stated that he sent another written notice to all stockholders informing the latter of the date, time, and place when the proxies would be validated. However, the plaintiff-appellant claimed that defendant-appellee Defensor could not produce a copy of the aforementioned notice. Moreover, the latter pointed out that the said notice was also included in the notice of annual stockholders' meeting that was sent to the stockholders of defendant-appellee Capitol on April 29, 2002. Two (2) stockholders of the defendant-appellee

Capitol then stood up and stated that they received the notice informing them of the date, time and place when the proxies would be validated.

The foregoing antecedents prompted herein plaintiff-appellant to file the instant petition in the trial court insisting that the annual stockholders' meeting of defendant-appellee Capitol was illegally held for lack of quorum. According to the plaintiff-appellant, proxies must be validated at least five (5) days prior to the annual stockholders' meeting of the corporation, pursuant to Section 3 of Article A of Securities and Exchange Commission (SEC) Memorandum Circular No. 5 (Series of 2006). However, as stated in the notice of the annual stockholders' meeting of defendant-appellee Capitol, the last day for the submission of proxies was only three (3) days prior to its annual stockholders' meeting or on May 19, 2002. In addition, the plaintiff-appellant likewise contended that the said three (3)-day period also violated said SEC Memorandum Circular No. 5 which requires that, in the absence of any provision in the by-laws of a corporation, proxies must be submitted to the corporate secretary at least ten (10) days before the annual stockholders' meeting.

Consequently, since there were no legally-validated proxies during the annual stockholders' meeting of the defendant-appellee Capitol on May 21, 2002, the plaintiff-appellant maintained that there could be no quorum thereat. Thus, he averred that every action that was taken during the said annual stockholders' meeting and the resolutions that were passed therein were null and void and without any legal force and effect. The said actions included, among others, the ratification of the board resolution amending a part of the memorandum of agreement which defendant-appellee Capitol entered into with Ayala Land, Inc. The aforesaid amendment had been earlier approved and ratified during the special stockholders' meeting that was held on April 23, 2002 and contained the following amendments, to wit: (1) To have the entire precision golf course in the whole span of the front and back nine of the present golf course and not just to limit it at the back nine as contained in the original memorandum of agreement; (2) Defendant-appellee Capitol would receive forty percent (40%) of developed lots instead of cash override on the forty percent (40%) share; and (3) To accelerate the development of the parcels to avert further accumulation of interest on advances that were made from Ayala Land, Inc.

As to the special stockholders' meeting that was held by the defendant-appellee Capitol on April 23, 2002, the plaintiff-appellant asseverated that the amendments to the memorandum of agreement with Ayala Land, Inc. were earlier proposed to be approved in a special stockholders' meeting that was scheduled on March 22, 2002. The said stockholders' meeting, however, was enjoined by Branch 90 of the Regional Trial Court of Quezon City. Thereafter, another special stockholders' meeting was held on April 23, 2002 where the proposed amendments were again submitted as part of the agenda. Consequently, the plaintiff-appellant questioned the said special stockholders' meeting that was held on April 23, 2002 on the ground that the conduct thereof violated the restraining order that was issued by Branch 90 of the Regional Trial Court of Quezon City which directed as follows:

“WHEREFORE, let this Temporary Restraining Order be issued and the respondents, their representatives, agent/s or any person or persons, in their behalf are ordered to refrain or desist from holding the special stockholders' meeting scheduled on March 22, 2002 at 3:00 p.m. (Annex “C” of the verified petition) or at any time thereafter, until further order from this court.”

The plaintiff-appellant further pointed out that the April 23, 2002 special stockholders' meeting of defendant-appellee Capitol was covered by the aforequoted restraining order in that the matter that was taken up during the April 23, 2002 special stockholders' meeting was the same subject matter that was restrained by Branch 90 of the Regional Trial Court of Quezon City. Moreover, the plaintiff-appellant argued that the stockholders of defendant-appellee Capitol were only notified of the special stockholders meeting on April 23, 2002 through publication as there was no written notice that was sent to them pursuant to Section 50 of the Corporation Code of

the Philippines.

Summonses were thereafter served upon the defendants-appellees by the trial court requiring the latter to file their respective answers to the complaint within ten (10) days from their receipt thereof. In their Answer[5], the defendants-appellees denied the allegations that were hurled against them by the plaintiff-appellant. The defendants-appellees contended that two (2) notices were jointly sent to the stockholders of the defendant-appellee Capitol and that all notices of the annual stockholders' meeting were accompanied by the notice for the validation of proxies.[6] Moreover, as regards the special stockholders' meeting that was held on April 23, 2002, the defendants-appellees asseverated that the conduct of the aforesaid special stockholders' meeting could not have possibly violated the temporary restraining order that was issued by Branch 90 of the Regional Trial Court of Quezon City in that the said TRO sought to be enjoined therein was an intended special stockholders' meeting only on March 22, 2002. The defendants-appellees further pointed out that the TRO was only effective for a period of twenty (20) days which had already expired when the special stockholders' meeting was held on April 23, 2002.

Furthermore, the defendants-appellees countered that, assuming that the SEC Memorandum Circular No. 5 was violated by them, the said fact would not result in the invalidation and nullification of the annual stockholders' meeting of defendant-appellee Capitol, as well as the resolutions that were passed during the said annual stockholders' meeting. Moreover, they stressed that the violation of SEC Memorandum Circular No. 5 merely provides for sanctions against those who were responsible therein and it does not provide for the nullification of the proxies themselves.

In view of the pending incidents that surrounded the case which the trial court had to resolve first before proceeding with the trial on the merits of the case, Civil Case No. Q-02-011 was finally scheduled for pre-trial only on February 16, 2009. However, during the said date, the plaintiff-appellant, as well as his counsel, did not appear, thereby prompting the trial court to declare the plaintiff-appellant to be non-suited. The case was then dismissed by the trial court in an Order[7] that was issued on even date. Consequently, the plaintiff-appellant filed a Motion for Reconsideration of the February 16, 2009 Order of the trial court alleging that the notice of the pre-trial conference in the morning of February 16, 2009 was only received by his counsel in the afternoon of the same date. Finding merit in the contention of the plaintiff-appellant, the trial court, in a subsequent Resolution[8] dated June 10, 2010, granted the said motion for reconsideration and ordered that the case be reinstated. The continuation of the pre-trial conference in the case was thereafter scheduled by the trial court on August 27, 2010.

The case was thereafter referred to judicial dispute resolution (JDR) proceeding. However, all the efforts which were exerted by the parties to have the case settled proved to be unsuccessful. Thus, the case proceeded to pre-trial conference. However, during the pre-trial conference that was set by the trial court on April 27, 2012, the plaintiff-appellant, as well as his counsel, failed to appear again in court, thereby prompting the said trial court to dismiss the case for the second time. The herein first assailed order dated April 27, 2012 thus reads:

“When this case was called for hearing this morning, only Atty. Tolentino appeared for the defendants. As prayed for, considering the failure of the plaintiff and counsel to appear for pre-trial conference today despite notice, let this case be DISMISSED; plaintiff is hereby declared non-suited.”

On July 2, 2012, the plaintiff-appellant filed a Motion for Reconsideration[9] of the first assailed order of the trial court. However, the aforesaid motion for reconsideration was likewise denied by the said court in the herein second assailed order dated December 21, 2012. The pertinent portion of the said order reads as follows:

“There being no extra-ordinary circumstance shown to justify the liberal application of the rules, plaintiff's motion for reconsideration is DENIED.

“The challenged order of dismissal dated April 27, 2012 stays.

“SO ORDERED.”

Undaunted by the foregoing disquisition of the trial court, the plaintiff-appellant filed the instant appeal raising the following errors which were purportedly committed by the trial court, to wit:

I.

THE REGIONAL TRIAL COURT ERRED IN DISMISSING THE CASE WITH PREJUDICE FOR FAILURE OF THE PLAINTIFF-APPELLANT AND HIS COUNSEL, AT THE FIRST INSTANCE, TO APPEAR IN THE PRE-TRIAL CONFERENCE OF THE CASE.

II.

THE REGIONAL TRIAL COURT ERRED IN STRICTLY APPLYING THE RULES OF PROCEDURE DESPITE THE EXISTENCE OF SUFFICIENT JUSTIFICATION WARRANTING ITS LIBERAL APPLICATION TO SERVE THE BEST INTEREST OF JUSTICE.

In sum, the sole issue brought before this Court for resolution is whether or not the trial court erred when it dismissed the petition docketed as Civil Case No. Q-02-011 that was filed by the plaintiff-appellant in the trial court upon the failure of the latter and/or his counsel to appear during the scheduled pre-trial conference of the case. After a careful and thorough review of the facts, law and issues of this case, we find the instant appeal to be bereft of merit.

In his appeal that was filed in this Court, the plaintiff-appellant contended that he and his counsel had been religiously attending the hearings in Civil Case No. Q-02-011 and they, in fact, wanted its early disposition as could be seen from the record of the instant case. On the other hand, the plaintiff-appellant pointed out that it was the defendants-appellees themselves who had caused undue delay in the resolution of the case and had repeatedly asked for the suspension of the proceedings in the trial court.

Moreover, according to the plaintiff-appellant, he failed to appear during the scheduled pre-trial conference in Civil Case No. Q-02-011 on April 27, 2012 because the notice for him to appear in the trial court on the said date was not sent at his residence and postal address. At any rate, he insisted that he need not attend the said hearing since he had already executed a special power of attorney in favor of his counsel for the latter to appear on his behalf during the said scheduled pre-trial conference in the case.

For their part, defendants-appellees De La Torre countered that the trial court correctly dismissed the instant case with prejudice for failure of the plaintiff-appellant or his counsel to appear, despite due notice, during the pre-trial conference of the case on April 27, 2012. According to the defendants-appellees, the dismissal of the case was not the first time in that the instant case had already been similarly dismissed on February 16, 2009 likewise for the failure of the plaintiff-appellant or his counsel to appear during the said scheduled pre-trial conference in the case.

Further, the defendants-appellees asseverated that there was no legal justification to relax the application of the rules since the plaintiff-appellant and his counsel only had themselves to blame for their disregard of the rules of procedure.

We agree with the contentions of the defendants-appellees. While the appellant's brief that was submitted to this Court by the plaintiff-appellant was silent on the matter, a perusal of the record of the case reveals that plaintiff-appellant and his counsel failed to appear during the pre-trial conference of the case as a result of “mere oversight on the part of the undersigned (counsel) and an excusable mistake”. In his motion for reconsideration of

the April 27, 2012 order that was filed in the trial court, the plaintiff-appellant made the following submissions:

“2. At the outset, undersigned would like to apologize to the Honorable Court for the said failure to attend the hearing. The said failure is a result of mere oversight on the part of the undersigned and an excusable mistake;

“3. With all due respect, undersigned counsel mistakenly listed the hearing of the present case in his calendar on April 20, 2012 or one (1) week before the scheduled hearing. It is humbly remembered that on April 20, 2012, undersigned called up the court or went to it to inquire about the hearing days before April 20, 2012;

“4. Upon learning that there will be no hearing of the present case scheduled on April 20, 2012, undersigned assumed that a new hearing schedule will be held and will be set by the Honorable Court via Order;

“5. Instead undersigned was surprised that the hearing was set on April 27, 2012 and that the case was dismissed;

“6. With all due respect, undersigned humbly would like to reiterate the said excusable mistake. Counsel would like to make it clear that he had no intention not to attend the hearing but was unable to do so through mere error; xxx”

Corollary thereto, Sections 4 and 5 of Rule 18 of the Rules of Court provide:

“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.

“Section 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.”

In the case at bench, no valid cause was shown or even offered by the plaintiff-appellant why neither he or his counsel was present during the scheduled pre-trial conference in the case on April 27, 2012. That the counsel of the plaintiff-appellant erroneously assumed that he would be notified through mail of the new schedule for the pre-trial conference could not be regarded by this Court as a valid cause that would warrant the relaxation of the rules of procedure. Thus, as the trial court correctly ruled in the second assailed order, to wit:

“Plaintiff's counsel claims that he inquired from the Court about the April 20, 2012 hearing thinking that this case is set to be heard on that day. After learning that this case was not included in the court's April 20, 2012 calendar, he just assumed that another hearing date will be scheduled by the Court and decided to just wait for the written order.

“If plaintiff's counsel really did inquire about this case and learned that it was not included in the April 20, 2012 calendar, the more prudent action to take is to verify the actual date of hearing, instead of just assuming that the case will be reset. Had he done so, he would have known that the date of hearing is on April 27, 2012 and not April 20, 2012 as listed in his personal calendar.

“Also, contrary to the allegations in the motion, this is not the first time that plaintiff and his counsel failed to appear for a scheduled hearing. In fact, this was earlier dismissed in February 16, 2009 for the same reason – the non-appearance of plaintiff and his counsel, Atty. Villanueva, despite due notice.

xxx

“There being no extra-ordinary circumstance shown to justify the liberal application of the rules, plaintiff's

motion for reconsideration is DENIED.”

In the similar case of *Quelan v. VHF Philippines, Inc.*,^[10] the Supreme Court emphasized the discretion that is given to the trial court in declaring a party to a case to be non-suited. Thus:

“The alleged failure of petitioner’s counsel to record the scheduled pre-trial in his 1997 diary to justify his absence at the pre-trial cannot amount to excusable negligence. To constitute excusable negligence, the absence must be due to petitioner’s counsel’s failure to take the proper steps at the proper time, not in consequence of his carelessness, inattention or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident.

“Petitioner’s counsel’s failure to record the date of pre-trial in his 1997 diary reflects his carelessness, his failure to heed his responsibility of not neglecting a legal matter entrusted to him, especially given the fact that he was given a Special Power of Attorney to represent petitioner in the pre-trial and trial of the case and that the repeated resettings of the pre-trial for a period of 1 year and more than 10 months had unduly prolonged the disposition of petitioner’s complaint which was filed in 1994 yet.

“Petitioner’s counsel must know that pre-trial is mandatory. Being mandatory, the trial court has discretion to declare a party non-suited. Absent a showing of grave abuse in the trial court’s exercise thereof, as in the case at bar, appellate courts will not interfere.”

On a final note, it is worthy to stress that the brief that was filed by the plaintiff-appellant was also belatedly filed in this Court. Record discloses that the notice to file the appellant’s brief was received by the counsel for the plaintiff-appellant on June 10, 2013, giving the latter forty five (45) days from the said date within which to file the appellant’s brief. However, the appellant’s brief was only filed in this Court on September 6, 2013 or more than one (1) month after the last day of the reglementary period within which to file the said appellant’s brief. The counsel for the plaintiff-appellant explained that the said delay was caused by the firm’s transfer to a new office and that “unfortunately, because of said transfer, plaintiff’s counsel incurred delay in the filing of court pleadings with deadlines to beat, worse, inadvertently forgot others such as this one as the preparation of pleadings were then done on whichever comes first base, or the case files/folders that have been pulled out first from the boxes”. Needless to state, the plaintiff-appellant could not, at this point, harp on the policy of liberal construction of the rules of procedure, absent any showing on his part that the case deserves or warrants a relaxation thereof.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the instant appeal for lack of merit. The Orders issued by Branch 226 of the Regional Trial Court of the National Capital Judicial Region in Quezon City on April 27, 2012 and December 21, 2012 in Civil Case No. Q-02-011 are hereby AFFIRMED.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Elibinias and Paredes, JJ., concur.

[1]Record, Volume II, page 210.

[2]Ibid, pages 246-247.

[3]Ibid, pages 1-13.

[4]Ibid, Annexes “A”, “A-1” and “A-2”, pages 14-25.

[5]Ibid, pages 29-37.

[6]Ibid, Annex “1”, page 48.

[7]Rollo, Volume II, page 154.

[8]Ibid, pages 180-181.

[9]Ibid, pages 212-216.

[10]G.R. No. 145911, July 7, 2004.

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