

SPOUSES RAMON AND JULIE ONG, PETITIONERS, VS. EQUITABLE PCI BANK (NOW BDO UNIVERSAL), REGIONAL TRIAL COURT, BRANCH 40, MANILA, RESPONDENTS.

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This petition for annulment of judgment^[1] assails the following issuances of the Regional Trial Court (RTC), Branch 40, Manila in Civil Case No. 02-105434, entitled Julie Pua-Ong and Ramon Ong v. Equitable PCI Bank et al., for annulment of foreclosure sale:

1. Order dated April 28, 2011,^[2] granting respondent bank's demurrer to evidence and dismissing petitioners' complaint.
2. Order dated February 25, 2013,^[3] denying petitioner's motion to declare entire proceedings void.

In their Complaint dated December 27, 2002,^[4] petitioners Julia and Ramon Ong, through a certain Atty. Norberto Buena, sought to annul the foreclosure sale of their 8 real properties,^[5] mortgaged with respondent Equitable PCI bank (now BDO Universal).

The case was docketed as Civil Case No. 02-105434 and was raffled to RTC, Branch 40, Manila.

Respondent bank, thereafter, filed a Demurrer to Evidence with Comment.

In its first assailed Order dated April 28, 2011,^[6] the trial court granted respondent bank's demurrer to evidence and dismissed petitioners' complaint and respondent bank's counterclaim. By Order dated August 13, 2011, the trial court also denied petitioners' motion for reconsideration for lack of the required notice of hearing, in violation of Sections 4 and 5, Rule 15 of the Revised Rules of Court.^[7]

On December 8, 2011, the trial court issued a Certificate of Finality.^[8]

Over a year later, petitioners, this time, through a certain Atty. Benjamin B. Vargas, filed a motion to declare the entire proceedings void, claiming that they were not properly represented in the case, considering that their previous counsel, Atty. Buena, turned out to be a non-lawyer.

The trial court, in its Order dated February 25, 2013,^[9] denied the motion, again, for lack of the required notice of hearing and also for non-payment of filing fees, failure to indicate counsel's Professional Tax Receipt (PTR) and Integrated Bar of the Philippines (IBP) official receipt number.

Another year later, petitioners engaged another lawyer, Atty. Clarissa A. Castro, to find out what happened to the case. Upon learning that their motion to annul the entire proceedings had been denied with finality, they now, institute this present action, invoking denial of due process and extrinsic fraud allegedly brought about by their first counsel's lack of license to practice law and their second counsel's negligence.

We deny due course to the petition.

First. Petitioners themselves demonstrated their utter lack of due diligence, not once, but twice, in choosing persons to represent them in the case below. Petitioners followed a vicious pattern of engaging a “lawyer”, who later, turned out to be a non-lawyer, and another lawyer, who was grossly negligent. Clearly, petitioners knew what they were doing and this Court will not relieve them of the adverse effects of their poor and reckless judgment in hiring these lawyers, whose sense of responsibility leaves much to be desired. It is settled that the law will not relieve petitioner from the effects of an unwise, foolish or disastrous contract if he had full awareness of what he was doing.[10]

Two. Petitioners were seriously remiss in monitoring the status of their case.[11] It is the client’s duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case.[12] Truly, no prudent party leaves the fate of his case entirely in the hands of his lawyer and merely rely on the bare reassurances of his lawyer.[13] In *Pablo T. Tolentino and Tempus Place Realty Management Corporation v. Hon. Oscar Leviste et al.*, the Supreme Court held:

xxx Litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case. To agree with petitioner’s stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging negligence on the part of his counsel. The Court will not countenance such ill-founded argument which contradicts long-settled doctrines of trial and procedure.[14]

Three. Due process, in essence, is simply an opportunity to be heard and this opportunity was amply given to the petitioners from the filing of the complaint to annul the foreclosure sale and motion to declare to entire proceedings void. The fact that they happened to have chosen a non-lawyer, and later a grossly negligent lawyer to represent them below, does not equate to denial of due process. It was simply a matter of poor judgment and the consequences of which are non-actionable in court.

Four. A petition for annulment of judgment is an equitable remedy granted only in exceptional cases such as lack of jurisdiction or extrinsic fraud. It can be availed of where the ordinary remedies of new trial, appeal, petition for relief from judgment or other appropriate remedies are no longer available through no fault of petitioners.[15] In *Tan v. Court of Appeals*,[16] the Supreme Court explained:

x x x

Moreover, annulment of judgment may either be based on the ground that the judgment is void for want of jurisdiction or that the judgment was obtained by extrinsic fraud. By no stretch of the imagination can we equate the negligence of the petitioner and his former counsel to extrinsic fraud as contemplated in the cited rules. Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party’s own doing, nor must it contribute to it. The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit. This Court notes that no such fraud or deceit was properly proved against the private respondent. Indeed, the petitioner has no reason to protest his own negligence.[17]

x x x

To repeat, petitioners share the same guilt for gross negligence in monitoring their case and twice engaging two wrong people to represent them. Petitioners’ participatory negligence resulted in their complaint being dismissed with finality. Surely, this not extrinsic fraud. Besides, petitioners did not even explain why they did not previously avail of the remedies of appeal, new trial, and petition for relief from judgment, as required by the rules.[18] In *Lazaro v. Rural Bank of Francisco Balagtas*,[19] the Supreme Court elucidated:

x x x

Let it be stressed at the outset that before a party can avail of the reliefs provided for by Rule 47, i.e., annulment of judgments, final orders, and resolutions, it is a condition sine qua non that one must have failed to move for new trial in, or appeal from, or file a petition for relief against said issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence.

x x x

ACCORDINGLY, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Castillo, (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Under Rule 47 of the Revised Rules of Court.

[2] Rollo, pp. 124-128.

[3] Rollo, pp. 33-34.

[4] Id., 99-108.

[5] The 8 subject properties were covered by TCT Nos. 186761, 186763, 186764, 186766, 186767, 202861, 220742, and 215828.

[6] Rollo, pp. 124-128

[7] Id., pp. 129-130.

[8] Id., p.128.

[9] Rollo, pp. 33-34.

[10] Toledo v. Hyden, G.R. No. 172139, December 8, 2010.

[11] Mercado v. Security Bank Corporation, G.R. No. 160445, February 16, 2006.

[12] Id..

[13] Peter Bejarasco, Jr., v. People of the Philippines, G.R. No.159781, February 2, 2011.

[14] Id., citing Villaruel, Jr. v. Fernando, G.R. No. 136726, September 24, 2003.

[15] Dela Cruz v. Court of Appeals, G.R. No. 156878, July 31, 2007.

[16] Tan v. Court of Appeals, G.R. No. 157194, June 20, 2006.

[17] Tan v. Court of Appeals, G.R. No. 157194, June 20, 2006.

[18] Section 1, Rule 47 of the Revised Rules of Court provides:

Section 1. Coverage. This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the

petitioner.

[19] G.R. No. 139895, August 15, 2003.

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