

FOX SQUARE MANAGEMENT, INC., PETITIONER, VS. HON. LEONCIO M. JANOLO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, SAN JUAN, BRANCH 264, HEALTH PHILIPPINES CORP., RESPRESENTED BY ...

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is a petition for certiorari[1] filed under Rule 65 of the 1997 Rules of Civil Procedure by Fox Square Management, Inc., seeking to annul and set aside the following orders issued by the Regional Trial Court (RTC) of San Juan, Branch 264 in Civil Case No. 73399, to wit: (1) Order[2] dated August 22, 2013, which granted private respondents' manifestation with motion, thus, striking off the record of the case the testimony of William C. Tan upon cross-examination conducted on October 4, 2012 by Tolosa Romulo Agabin Flores & Enriquez Law Offices (TRAFF Law Offices) and forfeiting petitioner's right to cross-examine private respondent Tan; and (2) Order[3] dated November 5, 2013, which denied petitioner's motion for reconsideration thereof.

Petitioner Fox Square Management, Inc., is a corporation existing under the Philippine laws, represented by its president Ignacio G. Nocom.[4]

Records show that petitioner filed a civil complaint against private respondents for specific performance and damages. During the hearing conducted on October 4, 2012 public respondent RTC admitted the Judicial Affidavit of William C. Tan as his direct testimony. In the same hearing, a lawyer from TRAFF Law Offices, who entered his appearance as counsel for petitioner, conducted the cross-examination of private respondent Tan.[5]

The continuation of the preliminary hearing was scheduled on October 17, 2012. On the said date, private respondent through counsel, verbally moved to have the cross-examination of private respondent Tan conducted by the counsel from TRAFF Law Offices be stricken off the records, since, the latter had already withdrawn its appearance on October 2, 2012. Subsequently, private respondents filed a manifestation with motion, reiterating their claim and prayer to have the cross-examination be stricken off the record.[6]

On August 22, 2013, public respondent RTC issued the assailed Order[7], granting the manifestation with motion and ordered that the cross-examination conducted by the counsel from TRAFF Law Offices be stricken-off the record. The RTC declared that the moment petitioner signed the conformity on the withdrawal, is considered the moment the counsel was notified of the severance of the attorney-client relationship, which in this case was on October 2, 2012. It is not the date of filing that controls the termination of service. Thus, TRAFF Law Offices could not have appeared in court on October 4, 2012 as representative of petitioner.

Petitioner filed a motion for reconsideration, but public respondent RTC in the Order[8] dated November 5, 2013, denied the motion for lack of merit.

Aggrieved, petitioner filed this petition for certiorari, raising the following issues, to wit:[9]

I

PUBLIC RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION WHICH AMOUNTS TO LACK AND/OR EXCESS IN THE EXERCISE OF ITS JURISDICTION WHEN IT GRANTED PRIVATE RESPONDENTS' MANIFESTATION WITH MOTION TO STRIKE OFF THE RECORD THE CROSS-EXAMINATION [OF] WILLIAM C. TAN FOR ALLEGED LACK OF AUTHORITY OF PETITIONER'S COUNSEL TO REPRESENT HIM DURING THE OCTOBER 4, 2012 HEARING AND WHICH ARE CONTRARY TO THE FACTS AND LAW:

A. THE PUBLIC RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT ARBITRARILY AND DELIBERATELY DISREGARDED FACTS AND JURISPRUDENCE THAT ESTABLISHES THE EFFECTIVE DATE OF THE WITHDRAWAL OF PETITIONER'S COUNSEL WAS ON THE DATE THE PARTIES ACTUALLY AFFIXED SIGNATURE THERETO AND THE SAME FILED IN COURT; [and]

II

PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED PETITIONER DUE PROCESS WHEN IT NOT ONLY ORDERED THAT THE CROSS-EXAMINATION OF MR. TAN BE STRIKEN OFF THE RECORDS BUT ALSO BY HOLDING THE FORFEITURE OF PETITIONER'S RIGHT TO CROSS-EXAMINE MR. TAN AND ALLOWING TO REMAIN (sic) IN THE RECORDS, ONLY THE TESTIMONY OF MR. TAN WITHOUT THE CROSS-EXAMINATION BY PETITIONER IN OBVIOUS BIAS AND FAVOR TO PRIVATE RESPONDENTS. (Emphasis ours)

In sum, the issue to be resolved in this case is whether public respondent RTC gravely abused its discretion when it ordered the cross-examination of private respondent Tan be stricken off the record and forfeited petitioner's right to cross-examine him.

Petitioner claims that TRAFE Law Offices prepared the withdrawal of appearance on October 2, 2012, but the said withdrawal of appearance was actually signed by petitioner's representative Ignacio G. Nocom only on October 8, 2012, which is the same date when such withdrawal of appearance was filed with public respondent court, and copy thereof was furnished to private respondents. Thus, the authority of TRAFE Law Offices to represent petitioner during the hearing conducted on October 4, 2012 is not only presumed but remained to be bestowed upon the said law office.[10]

The petition is meritorious.

The Rule regarding change of counsel is provided in Section 26 of Rule 138, which expressly states, as follows:

SEC. 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. (Emphasis ours)

It is clear from the afore-quoted provision that the retirement of an attorney is completed once the withdrawal is filed in court[11]. The written withdrawal of the counsel with the consent of the client should be filed in court, otherwise, the court would continue to recognize the representation of the counsel on record. Indeed, the Supreme Court in the case of *Five Star Bus Co., Inc. vs. Court of Appeals*[12] made the following pronouncements, to wit:

In the instant case, the notice of pre-trial was sent to the counsels of both parties with the express instruction that they notify their respective clients of the conference. Atty. Naidas received the notice on September 28, 1992, i.e., seventeen (17) days before the scheduled conference and two (2) days before his resignation as house counsel of petitioner Five Star. He had ample time to notify petitioners of the pre-trial conference.

Atty. Naidas may have already resigned on the day of the pre-trial, but as far as the trial court was concerned, he continued to be petitioner's counsel of record since no withdrawal of appearance had been filed by him. (Emphasis ours)

Further, it should be noted that in the case of Villena vs. Rupisan,[13] with reference to date, the withdrawal of appearance came ahead before the notice of appeal. However, with respect to the filing, the notice of appeal was filed ahead of the withdrawal of appearance. Thus, in resolving the question regarding the effect of the withdrawal of appearance of respondents' counsel of record on the notice of appeal, the Supreme Court ruled, as follows:

x x x Be that as it may, we are inclined to allow the Notice of Appeal for both cases inspite of the obvious procedural lapse. When non-compliance with the Rules of Court is not intended for delay or does not prejudice the adverse party, the dismissal of an appeal on a mere technicality may be stayed and the court may, in its sound discretion, exercise its equity jurisdiction. This lack of intention to delay is shown by the fact that the Notice of Appeal was filed on 5 October 2002, or only a difference of one day from the filing by Atty. Guillermo of his Notice of Withdrawal. The emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. (Emphasis ours)

In the case at bar, although the date appearing in the withdrawal of appearance of TRAFE Law Offices is October 2, 2012, the same was submitted and filed with the court a quo only on October 8, 2012. Thus, applying the afore-cited rule and jurisprudence, the withdrawal of appearance of TRAFE Law Offices became effective only on October 8, 2012. Prior to such date, as far as the court as well as the adverse party is concerned, TRAFE Law Offices continues to be the counsel of record of petitioner. Consequently, when the lawyer from TRAFE LAW Offices entered his appearance for petitioner during the hearing held on October 4, 2012, he was imbued with the authority to represent petitioner's interest and to conduct the cross-examination.

Further, it must be remembered that unless properly relieved, the counsel is responsible for the conduct of the case; he is obligated by his client and the court to do what the interest of his client requires until the end of litigation or his representation is terminated formally and there is a termination of record[14].

WHEREFORE, the petition for certiorari is GRANTED. The assailed Orders dated August 22, 2013 and November 5, 2013 are ANNULLED and SET ASIDE. Public respondent RTC is ordered to reinstate and admit the cross-examination of private respondent Tan taken during the hearing on October 4, 2012 as part of the records of Civil Case No. 73399.

SO ORDERED.

Baltazar-Padilla, P. J., and Inting, S. B., JJ., concur.

[1] Rollo, pp. 3-17.

[2] Id. at 18-20.

[3] Id. at 21-22.

[4] Id. at 5.

[5] Id. at 5-6.

[6] Id. at 6.

[7] See Note 2.

[8] See Note 3.

[9] Id. at 7-8.

[10] Id. at 10.

[11] See Arambulo vs. Court of Appeals, 226 SCRA 589, 597 (1993).

[12] 259 SCRA 120, 126-127. (1996), (citation omitted).

[13] 520 SCRA 346, 361 (2007), citing Parañaque Kings Enterprises, Inc. vs. Court of Appeals, 268 SCRA 727, 738 and other related case.

[14] Torres vs. Rodellas, 598 SCRA 390, 412 (2009), citing Heirs of F. Nuguid Vda. De Haberer vs. Court of Appeals, 104 SCRA 534 and other related case.

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