

SPOUSES LORETO V. UY AND ELPIDIO S. UY, PETITIONERS, VS. HON. WINLOVE M. DUMAYAS AS PRESIDING JUDGE OF RTC, BRANCH 59, MAKATI CITY, AND UNIBANCARD CORPORATION, RESPONDENTS.

Ponente: SANTIAGO-LAGMAN, J.

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SANTIAGO-LAGMAN, J.:

Before Us is a Petition for Certiorari under Rule 65 of the Revised Rules of Civil Procedure with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, seeking to nullify and set aside the Decision[1] dated December 23, 2002 and the Order[2] dated April 30, 2004 of the Regional Trial Court of Makati, Branch 59, in Civil Case No. 99-735, for Sum of Money, entitled “Unibancard Corporation, plaintiff (private respondent herein) -versus- Sps. Loreto V. Uy and Elpidio S. Uy, defendants (petitioners herein)”, ruling in favor of the private respondent and against the petitioners and dismissing the latter's Petition for Relief from Judgment, respectively.

The facts were summarized by the court a quo as follows:

“Plaintiff in its complaint, substantially alleges inter alia, that: plaintiff is engaged in the credit card business by issuing Metrobank Visa and Unicard Credit Cards through which it extends credit accommodation to cardholders by allowing them to make purchases from the plaintiff's accredited member establishments. On November, 1998, defendant Loreto V. Uy applied with the plaintiff for the issuance of a Metrobank Visa Credit membership and credit accommodation. The application was approved and defendant Loreto was issued a Metrobank Visa Peso and Dollar Credit Card No. 4311 7900 0365-3005. On August, 1997, defendant Loreto, likewise, previously, applied for Unicard membership and credit accommodation. The application was also approved and defendant Loreto was issued Unicard No. 8000 4000 0332 4006. Defendant Loreto made use of her Metrobank Visa Peso and Dollar Credit card but defaulted in the payment of the monthly billing statements. As of February 24, 1999 her obligation with the plaintiff corporation amounted to P9,234.43 and \$10,953.02. Likewise, Loreto made use of her Unicard Credit card but also defaulted in the payment of her monthly billings. As of February 24, 1999, her obligation amounted to P58,580.58 inclusive of interest and penalty charges.

Defendant Spouses in their answer, admitted the issuance of the credit cards. By way of special and affirmative defenses they contend that their credit card membership documents are inscribed in tiny letters making them impossible to intelligently read and understand the same. The contract is a contract of adhesion. The credit limits are not set forth in the complaint and their request to be furnished with duly signed credit receipts was not complied with by the plaintiff.

The records show that defendants did not appear during the scheduled pre-trial conference which has been postponed twice by reason of defendants' non-appearance. Hence, upon motion of the plaintiff it was allowed to present evidence ex-parte x – x – x.

During the plaintiff's ex-parte presentation of evidence, Rodolfo I. Gabatino, accountant/supervisor of Unibancard Corporation was presented as the lone witness. Together with his testimony Exhibits “A” to “P” and submarkings were offered in evidence.

From the evidence adduced it was clearly established that: Plaintiff is a corporation organized and existing under Philippine laws. It is engaged in the credit card business issuing Metrobank Visa and Unicard Credit Cards.

On August, 1997 defendants Loreto and Elpidio as co-obligor, applied with the plaintiff for the issuance of a Unicard Credit Card x – x – x. The application was approved and Loreto was issued Unicard Card Account No. 8000 4000 0332 4006 authorizing her to purchase on credit goods and services from plaintiff's accredited establishments.

Loreto made use of her Unicard account by purchasing goods and services from plaintiff's various accredited establishments x – x – x. It has been duly established that as of January 20, 1999 defendant's Unicard obligation amounted to P57,759.51 x – x – x. Plaintiff sent to defendants their monthly statement of account but the latter made only one payment in their Unicard obligation x – x – x. Demands for payment on the running account balance were made upon the defendants but despite such demands, they failed and refused to settle their obligation. In its letter both dated February 17, 1999 for defendants Loreto and Elpidio x – x – x, plaintiff further demanded for defendants to settle their obligation which amounted to P57,759.51 exclusive of penalty charges. Defendant, however, did not pay. As of September 26, 2001 the total obligation of defendant Spouses amounted to P332,722.51 x – x – x.

Likewise, on November, 1998, defendant Loreto with the marital consent of Elpidio, applied with the plaintiff for the issuance of a Metrobank Visa Peso and Dollar Credit card x – x – x. Her application was approved and she was then issued Metrobank Visa Card No. 4311 7900 0365 3005 authorizing her to purchase on credit goods and services from the plaintiff's accredited establishments.

Loreto, also, made use of her Metro Visa Account by purchasing goods and services from the plaintiff's various accredited establishments. x – x – x

It has been established that as of February 15, 1999 Loreto's Metrobank Visa Dollar account obligation amounted to \$10,953.02 x – x – x, while her Metrobank Visa Peso account obligation amounted to P9,234.43 x – x – x. Plaintiff sent monthly billing statements to defendant Loreto and demanded for the payment on the running balances upon her. Despite such demands, she failed and refused to settle her obligation.

In a letter dated February 16, 1999 x – x – x plaintiff further demanded for the settlement of Loreto's Peso and Dollar obligations which amounted to P9,234.43 and \$10,953.02. As of September 26, 2001, defendant Loreto's Metrobank Visa Peso account amounted to P54,073.60, while her Dollar Account obligation amounted to \$40,719.13 inclusive of interest, penalty charges and attorney's fees x – x – x. Defenants (sic) still failed and refused to settle their obligation. Consequently, on March 30, 1999, plaintiff filed the present action before this Court against herein defendants Loreto V. Uy and Elpidio S. Uy.”[3]

After trial, the court a quo issued the assailed Decision dated December 23, 2002 , the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants, as follows:

- Ordering defendants to pay plaintiff jointly and severally the amount of P9,234.43 and US\$10,953.02 under Metrobank Visa Peso and Dollar Account No. 4311 7900 0365 3005 plus interest thereon at the rate of twelve (12%) percent per annum starting February 16, 1999, the date of first demand, until the amount is fully paid.
- Ordering defendants to pay plaintiff jointly and severally the amount of P58,580.58 under Unicard Account No. 8000 4000 0332 4006 plus interest thereon at the rate of twelve (12%) percent per annum starting February 17, 1999, the date of first demand, until the amount is fully paid.
- Ordering defendants jointly and severally to pay plaintiff the amount of P50,000.00 representing reasonable

attorney's fees;

- With costs against the defendants.

SO ORDERED.”

On April 28, 2003, petitioners filed a Petition for Relief from Judgment and Opposition to the Motion for Execution[4] on the ground of mistake, accident or excusable negligence, claiming that due to their former counsel's[5] gross negligence in handling their case before the court a quo, they only learned of the aforesaid Decision on April 23, 2003 and were thus precluded from availing of the remedies provided under the Rules of Court. The trial court however dismissed the said petition in its Order of April 30, 2004, the dispositive portion of which reads:

“Premises considered, the petition is hereby ordered DISMISSED. Without pronouncement as to costs.

Defendants having not filed a motion for new trial or appeal, thereby rendering the decision dated December 23, 2002 final and executory, plaintiff's Motion for Execution is hereby GRANTED. Let a writ of execution be issued.

SO ORDERED.”

Not satisfied with the aforementioned Decision and Order, petitioners via the instant petition elevated the matter to this Court raising the following issues:[6]

“WHETHER OR NOT THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RENDERING THE DECISION, DATED 23 DECEMBER 2002.

WHETHER OR NOT THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE 30 APRIL 2004 ORDER DISMISSING HEREIN PETITIONERS' PETITION FOR RELIEF FROM JUDGMENT.”

The petitioners assert that public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Decision and Order. According to them, the public respondent based his decision solely on the evidence presented by the private respondent without giving them ample opportunity to present countervailing evidence to refute its claim. They likewise maintain that their Petition for Relief from Judgment was filed within the reglementary period provided under Rule 38, Section 3 of the Revised Rules of Civil Procedure, having filed the same on April 28, 2003 or five (5) days from the time they learned of the assailed Decision on April 23, 2003. They further insist that the said petition was meritorious considering the injustice caused to them by reason of the alleged gross and patent negligence of their former counsel to adequately protect their rights, specifically, his failure to attend the three (3) hearings scheduled for the presentation of their evidence-in-chief, despite repeated warnings from the court a quo, resulting to the waiver on their part of the right to present evidence that would have refuted private respondent's claim against them, as well as his failure to inform them, despite his withdrawal as their counsel, of his receipt of the Decision dated December 23, 2002.

We do not agree.

The records show that the petitioners were given ample opportunity to present their evidence but unjustifiably failed to appear during the scheduled presentations of said evidence. As correctly observed by the court a quo, viz:

“x – x - x Plaintiff presented evidence on October 10, 2001 with the defendants' former counsel, Atty. Edilberto R. Balce, collaborating counsel of Atty. Isidoro F. Molina, was present in Court. Atty. Balce requested for the deferment of the cross-examination of the witness to November 29, 2001 x – x - x. On

November 29, 2001, defendants' new counsel, Atty. Bañares, appeared as the new counsel of defendants. Without objection on the part of the plaintiff the cross-examination of the plaintiff's witness was cancelled and reset to January 23, 2002 x – x – x.

During the January 23, 2003 (sic) schedule of hearing, Atty. Bañares informed the Court of the possibility of the parties to settle the case, the cross-examination of the plaintiff's witness was reset anew to February 20, 2002 x – x – x. The February 20, 2002 hearing was reset to April 22, 2002 because the Judge was attending a seminar. On April 22, 2002 the scheduled hearing was reset again to June 24, 2002 for failure of plaintiff to appear x – x – x. On June 24, 2002, defendant (sic), again did not appear in Court. The Court warned that in the event defendants will again fail to conduct the cross-examination of plaintiff's witness, the former shall be considered to have waived their right to cross-examine the said witness, further directing the plaintiffs (sic) to submit its formal offer of exhibits x – x – x. The continuation of hearing was reset anew to July 23, 2002 x – x – x. On July 23, 2002, defendants and their counsel were not present in Court. Upon motion of the plaintiff, defendants were considered to have waived their right to conduct the cross-examination of plaintiff's witness.

Meanwhile, the continuation of trial for the purpose of presenting defendant's evidence was set on September 9, 2002. On September 9, 2002, plaintiff's and defendants' counsels appeared. Upon motion of the latter, presentation evidence (sic) was again reset to September 27, 2002 x – x – x. On October 24, 2002, defendants' counsel was not in Court, the continuation of trial was again reset to November 11, 2002. The Court, for the second time, warned the defendants that in the event they fail to appear the case will be submitted for decision x – x – x. Hence, for failure of the defendants to appear on November 11, 2002, upon motion of the plaintiff, the instant case was deemed submitted for decision x – x – x.”[7]

As to the petitioners' petition for relief from judgment, the same is governed by Rule 38 — "RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS" — of the 1997 Rules of Civil Procedure. Sections 1 and 3 of the aforementioned rule read:

"SECTION 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

SECTION 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of the Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be." (Emphasis supplied)

“Under Section 1, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client. To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel. What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.

x – x – x

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. x – x – x”[8] (Emphasis supplied)

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud,

accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. In order for a petition for relief to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of Rule 38. It is also incumbent upon the petitioner to show that the said petition was filed within the reglementary period specified in Section 3, Rule 38 (within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken). And the rule is that the reglementary period is reckoned from the time the party's counsel receives notice of the decision for notice to counsel of the decision is notice to the party for purposes of Section 3 of Rule 38.[9]

In the present case, a copy of the Decision dated December 23, 2002 was sent to petitioners' counsel of record, Atty. Danilo B. Bañares, on January 13, 2003, and received the same on January 23, 2003.[10] Thus, petitioners are considered to have received notice on January 23, 2003 when their counsel was served notice and not on April 23, 2003 when they actually learned of the adverse decision. Consequently, their petition for relief from judgment, which was filed on April 28, 2003 or over sixty (60) days from notice of their counsel, was filed out of time.

“The failure of a party's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence which is not excusable. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.”[11] (Emphasis supplied)

True, the Supreme Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case “(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.”[12] However, the record shows that the petitioners were not denied due process as they were not denied their day in court. In fact, they were given ample opportunity to present their evidence but unjustifiably failed to appear during the scheduled presentations despite notice from the court a quo.[13] Thus, We see no reason to relax the aforementioned rule.

“It bears stress that we are not concerning ourselves with the lawyer's duty to his client but with the timeliness of the filing of the petition for relief which cannot be given due course on the simple and expedient claim of a party that their lawyer failed to inform them of the decision in the case. Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost though inexcusable negligence.”[14]

From the foregoing, it is clear that no grave abuse of discretion can be attributed to the public respondent for issuing the assailed Decision and Order.

WHEREFORE, premises considered, the instant Petition is DISMISSED for lack of merit and the assailed Decision dated December 23, 2002 and the Order dated April 30, 2004 of the Regional Trial Court of Makati City, Branch 59, are AFFIRMED, en toto.

SO ORDERED.

Guevara-Salonga, (Chairman) and Pizarro, JJ., concur.

[*] Raffled to the Present Ponente on July 27, 2004

[1] Rollo pp. 21-23

- [2] Ibid., pp. 24-27
- [3] Per RTC Decision dated December 23, 2002, Ibid., pp. 21-23
- [4] Ibid., pp.86-96
- [5] Atty. Danilo B. Bañares
- [6] Rollo, p. 8
- [7] RTC Order dated April 30, 2004, Rollo, pp. 24-25
- [8] Que vs. Court of Appeals, G.R. No. 150739, August 18, 2005, 467 SCRA 358, 369
- [9] Mercury Drug Corporation vs. Court of Appeals, G.R. No. 138571, July 13, 2000, 335 SCRA 567, 576-577
- [10] Please see Order dated April 30, 2004, Rollo, p. 25
- [11] Tuason vs. Court of Appeals, G.R. No. 116607, April 10, 1996, 256 SCRA 158, 166, cited in the case of Mercury Drug Corporation vs. Court of Appeals, supra.
- [12] Que vs. Court of Appeals, supra
- [13] Please see Order dated April 30, 2004, Rollo, p. 26
- [14] Mercury Drug Corporation vs. Court of Appeals, supra, at p. 579

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