MARCELINO TAN, PETITIONER, VS. COURT OF APPEALS AND JOHN GIBERSON, RESPONDENTS.

G.R. NO. 138526. August 16, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via petition for certiorari under Rule 65 of the Rules of Court is the Court of Appeals Resolution of August 14, 1998 in CA-G.R. CV UDK No. 4347 declaring petitioner Marcelino Tan's appeal abandoned for failure to pay docket and other legal fees within the reglementary period and accordingly dismissing it.

In a complaint for collection of rentals, replevin, and damages filed with the Cebu Regional Trial Court (RTC) by herein private respondent John Giberson (Giberson) against the spouses Marcelino and Dorothy Tan and the spouses James and Teresita Tan, Branch 22 of said court rendered judgment in favor of Giberson by Decision of March 25, 1997, the fallo of which reads:

> WHEREFORE, the Court finds for the plaintiff [Giberson]. Judgment is hereby rendered as follows:
>
> - Ordering the defendants to jointly pay the plaintiff the amount of THREE HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED THIRTY TWO PESOS (P361,532.00) plus an interest of 6%per annum from the filing of this complaint until fully paid;
>
> - Ordering the defendants to jointly pay the plaintiff THIRTY THOUSAND PESOS (P30,000.00) in the concept of attorney's fees;
>
> - Further ordering the defendants to return the wrecker in a good working condition otherwise, they shall be jointly liable to the plaintiff for the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00) as the value thereof;
>
> - All counterclaims are dismissed for wanting [sic] of merit.[1]

The defendants spouses Marcelino and Dorothy Tan filed on April 21, 1997 a Notice of Appeal[2] before the trial court through their counsel Atty. Leandro Hilongo (Atty. Hilongo).

Subsequently, or on May 8, 1997, Atty. Hilongo filed with the trial court a Notice of Withdrawal of Appearance[3] as counsel for the spouses Marcelino Tan. On even date, the law firm Gica Del Socorro & Espinoza filed its Notice of Appearance[4] also with the trial court as the couple's new counsel.

The RTC records of the case were, by October 8, 1997 letter of the Branch Clerk of Court, forwarded to the appellate court which received them on November 24, 1997.[5]

About five months later or on April 23, 1998, the Court of Appeals sent notice to Atty. Hilongo, instead of to the law firm-new counsel of the spouses Tan, to pay within fifteen (15) days from receipt the docketing and other fees, failing which the appeal would be "deemed abandoned and dismissed."[6]

The notice addressed to Atty. Hilongo was received on May 20, 1998[7] by one which appears to read "Ging LX M."

No docket and other legal fees having been paid by the Tan spouses, the appellate court, by Resolution of August 14, 1998, considered their appeal abandoned and accordingly dismissed it pursuant to Sec. 1(c), Rule 50 of the 1997 Rules of Civil Procedure.[8]

On September 3, 1998, Atty. Paulino Del Socorro of the law firm-counsel of the Tan spouses received the appellate court's August 14, 1998 Resolution. The Tan spouses, through said counsel, filed a Motion for Reconsideration of the Resolution alleging, inter alia, that:

> - Further, appellants humbly seek the kind indulgence of the Honorable Court of Appeals not to deny them justice and fairness giving due regards to the following:
>
> - The undersigned counsel filed its Notice of Appearance as early as May 8, 1997, copy of which is hereto attached and made integral part hereof as Annex "B." On the same date, Atty. Leandro Hilongo also filed his notice of withdrawal as counsel as shown in the Notice of Withdrawal hereto attached as Annex "C." Yet, until now, neither the undersigned counsel or Atty. Leandro Hilongo has ever received an order from the trial court giving due course to the appeal. Hence, defendants are totally lost as to whether the trial court has granted the notice of appeal or not;
>
> - Under Sec. 10 of Rule 41, the Clerk of Court should notify the parties or furnish the parties copies of his letter of transmittal of the records to the appellate court. No such copy of the transmittal has ever been furnished to defendants;
>
> - Every now and then, defendants would make follow ups with the trial court as to whether there is already an order granting or giving due course to the Notice of Appeal. Until now, they have not received such order. It would therefore be a grave injustice if defendants would be denied their appeal given the foregoing circumstance.[9]

x x x x (Emphasis and underscoring supplied)

By Resolution of November 27, 1998, the appellate court denied petitioner's motion. It noted that as gathered from the original records of the case, the Tan spouses filed on "April 23, 1998" [sic] the Notice of Appeal through their counsel Atty. Hilongo and that two days after or on April 25, 1998 "they were already notified [by the appellate court] that the original records of the case were being processed and that as of that date they were already required" to pay the amounts covering docket and other legal fees.[10]

And the appellate court cited the following ruling in Guevarra v. CA, 157 SCRA 32 [1988], to wit:

> The crucial issue in this case is whether or not the delay in paving the docket and legal research fees tolled the petitioners' right to appeal. We hold that it did.
>
> It is the "duty of the appellant" in the Court of Appeals "within fifteen (15) days from the notice referred to in the preceding section, to pay to the clerk of the Court of Appeals the fee for the docketing of the appeal." The appellants did not comply seasonably with this duty. Concededly, they paid forty one (41) days late. For such tardiness, they must suffer the sanction imposed by the Rules of Court - dismissal of their appeal which provides:
> Section 1. Grounds for dismissal of appeal. - An appeal dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
>
> xxx xxx xxx

(d) Failure of the appellant to pay the docketing fee as provided in section 5 of Rule 46;

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xxx xxx xxx

And that is what precisely the respondent Court of Appeals did -dismissed their appeal. It is thus clear that, in doing so, the respondent court did not err and did not commit any grave abuse of discretion. Be that as it may, the counsel of the petitioners tries to exculpate himself from the adverse effect of his admitted delay of forty-one (41) days in paying the required docket and legal research fees within fifteen (15) days "was misplaced in my office due to accident, mistake, inadvertence and excusable negligence." He added that he had "been very busy attending to various cases in different courts in Metro Manila and in the provinces, and because I have only one secretary in the office, when the notice was found missing, it took me several days to locate the same among the files."

The explanation is very flimsy. It does not impress us at all. It is an "old hat," a hackneyed pretext, resorted to by negligent or lazy lawyers, which has never been given the badge of "excusability" by the Court.

xxxx[11] (Emphasis and underscoring supplied)

The spouses Tan filed a motion for leave to file second motion for reconsideration on January 28, 1999 but it was likewise denied by Resolution[12] of February 23, 1999.

Hence, the present petition for certiorari under Rule 65, filed on May 24,1999[13] by Marcelino Tan (hereafter petitioner).

By Resolution[14] of June 28, 1999, this Court's First Division resolved to dismiss the petition for (a) failure to give an explanation why service was not done personally; (b) late filing, as the petition was filed beyond the reglementary period of sixty (60) days fixed in Sec. 4, Rule 65; and (c) failure to pay on time the docket and other fees and the deposit for costs.

On September 8, 1999, this Court's First Division reinstated the petition upon motion for reconsideration.[15]

The petition raises as sole issue whether:

> PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION FOR DISMISSING AND DECLARING THE APPEAL AS ABANDONED FOR FAILURE OF PETITIONER TO PAY ON TIME THE DOCKETING FEE AND OTHER LEGAL FEES DENYING PETITIONER OF HIS CONSITUTIONAL RIGHT TO DUE PROCESS OF LAW.[16] (Underscoring supplied)

Petitioner argues that he was deprived of due process when the notice to pay the docket and other legal fees was sent (on April 23, 1998) to Atty. Hilongo who was no longer his counsel of record at the time (he having withdraw as such on May 8, 1997), instead of to his new counsel-the law firm Gica Del Socorro and Espinoza. He thus posits that the rule that errors of counsel bind the client should not be applied.[17]

At any rate, petitioner proffers that on receipt of the appellate court's Resolution dismissing his appeal, he immediately sent to the Clerk of Court the required fees.[18]

At all events, petitioner asserts that dismissal of an appeal on purely technical grounds is frowned upon, since the policy of courts is to encourage consideration of appeals on their merits.[19]

From the appellate court's Resolution of November 27, 1998 denying petitioner's Motion for Reconsideration, it is readily noted that the appellate court erred in stating that the Notice of Appeal was filed on April 21, 1998 (as it was on April 21, 1997 that it was filed) and consequently erred in concluding that "two days after [petitioner] filed [the] Notice of Appeal" or on April 23, 1998, he was already notified that the records of the case were being processed by the appellate court and that he was required to pay docket fees.

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And it is likewise noted that the appellate court failed to address petitioner's plaint that the Notice to pay docket and other fees was sent to his former counsel Atty. Hilongo, instead of to his new counsel-law firm.

Be that as it may, the petition fails.

In Arambulo v. Court of Appeals,[20] the therein petitioners argued that since the notice to pay the docket and other fees was served not on their new counsel, but on one who had already withdrawn as their counsel when the case was still with the trial court, the service of such notice on the latter was void and did not bind them, hence, the dismissal of their appeal deprived them of due process. This Court explained.

> x x x x
>
> Under the circumstances of this case, we do not hesitate to rule that the public respondent committed grave abuse of discretion in dismissing the appeal of the Arambulos solely on the basis of the alleged failure of the petitioners to pay the docket and other fees. As earlier adverted to, the notice with respect thereto was not furnished to or received by their counsel of record, Atty. Romeo Pineda.
>
> x x x x
>
> Both the Withdrawal of Appearance of Atty. Jimenez and the Appearance of Atty. Pineda are undeniably found in the original record of Civil Case No. 5301 and are explicitly referred to in the Summary Index in the record of CA-G.R. CV No. 32348. And since the withdrawal of Atty. Jimenez had taken effect upon its filing before the trial court on 12 February 1991, the notice to pay the docket and other fees sent to him by the Judicial Records Division of the Court of Appeals on 4 March 1991 was thus void or otherwise ineffective. Receipt thereof by him did not operate as notice to the Arambulos. It is a fact on record that no notice to pay the docket fee was sent to and received by Atty. Pineda, therefore, the 15-day period to pay the required docket fee did not even commence to run.
>
> Accordingly, the public respondent Court of Appeals should not have declared the appeal abandoned and ordered its dismissal solely on the basis of the failure of the petitioners to comply with the 19 June 1991 notice to pay the docketing and other fees, which was erroneously sent to Atty. Jimenez.[21] (Emphasis and underscoring supplied)

On another ground, however, this Court just the same dismissed the-petition in Arambulo:

> Nevertheless, the appeal can be dismissed, not on the basis of the respondent Court of Appeals' error but on a different ground for which Atty. Pineda must answer. As the new counsel for the petitioners, it was incumbent upon him, consistent with his duty to serve his client with competence and diligence, to inquire either from the trial court or the appellate court about the status of the appeal since he had not received any notice to pay the docketing and other fees despite the lapse of several months from the time he entered his appearance. While he had every reason to expect that the office of the Clerk of Court of the Court of Appeals would faithfully comply with Sections 2(3) and 3; Rule 4 of the Revised Internal Rules of the Court of Appeals on the issuance of notice to the parties to pay the docketing and other fees, his failure to receive the notice for so long a time should have alarmed him to the possibility that something must have gone awry somewhere . . .
>
> In the fairly recent case of Mateo vs. Court of Appeals, this Court, speaking through Mme. Justice Carolina C. Griño-Aquino, made this apt observation:
> "Indeed, if the appellant does nothing to press his appeal, it may safely be concluded that he believes the judgment of the trial court to be correct and his appeal aims to accomplish nothing more than mere delay in the execution of the adverse judgment, certainly unfair to the appellee who is denied the enjoyment of the fruits of his victory in the case as long as the appeal is not resolved."

This statement certainly holds true here. Not only did the petitioners and their counsel sleep on their right, they

put nothing in their Motion for Reconsideration, Reinstatement of Appeal, and Acceptance of Docket Fee that gives a semblance of merit to their appeal other than their general statement that they "have a meritorious case, and they are confident that they are favored by the evidence, the law, and jurisprudence," which they merely reiterated in the instant petition. As we see it then, the failure of Atty. Pineda and the petitioners to exercise due diligence with respect to the appeal was either done deliberately to delay the execution of judgment, which we cannot tolerate, or caused by negligence, in which case the settled rule that the negligence of counsel binds the client should be applied.[22] (Emphasis and underscoring supplied)

In the present case, the index of the RTC records attached to the records of CA-G.R. CV UDK No. 4347[23] shows that the Notice of Withdrawal of Appearance of Atty. Hilongo was indeed filed on May 8, 1997, with the trial court as was on even date and also with the trial court the Notice of Appearance of petitioner's new counsel.

Petitioner's new counsel's awareness of the filing of the Notice of Appeal on April 21, 1997 notwithstanding, it did not verify the status of the appeal, despite the lapse of a considerable length of time.

While petitioner's new counsel asserts that it in fact followed up with the trial court the status of the appeal, it offered no proof thereof. At any rate, if it indeed made an earnest follow up, it would have learned that five months from the time it entered its appearance on May 8, 1997 or on October 8, 1997, the RTC forwarded the records of the case to the appellate court.

At all events, the present petition was belatedly filed. Petitioner received on December 28, 1998[24] the Court of Appeals Resolution of November 27, 1998 denying his Motion for Reconsideration of said court's Resolution dismissing his appeal. He, therefore, had 60 days or up to February 22, 1998 to file the present petition for certiorari. He filed it only on May 3, 1999, however, or more than two months late.

Petitioner's second Motion for Reconsideration of the Court of Appeals November 27, 1998 Resolution is not allowed under the Rules as Rule 52, Section 2 explicitly provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." Ergo, the motion for leave to file a second motion for reconsideration filed on January 28, 1999 was at best a pro forma motion -filed merely for delay and as a matter of form to interrupt the period of appeal.[25] It did not thus suspend the running of the period to file the present petition.[26]

WHEREFORE, the petition is DISMISSED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 49.

[2] CA rollo, p. 22.

[3] Rollo, pp. 54-55.

[4] Id. at 56-57.

[5] CA rollo, p. 3.

[6] Id. at 9.

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[7] Id. at 9-A.

[8] Id. at 11.

[9] Id. at 18.

[10] Rollo, p. 65.

[11] CA rollo, pp. 74-75.

[12] Rollo, p. 69.

[13] Id. at 3.

[14] Id. at 72.

[15] Id. at 81.

[16] Id. at 6.

[17] Id. at 7.

[18] Ibid.

[19] Ibid.

[20] G.R. No. 105818, September 17, 1993, 226 SCRA 589.

[21] Supra at 596-599.

[22] Supra at 599-601.

[23] CA rollo, p. 6.

[24] Rollo, p. 1.

[25] Moreno, PHILIPPINE LAW DICTIONARY, 3[rd]edition, p. 743.

[26] Vide: Vda. de Espina v. Abaya, G.R. No. 45142, April 26, 1991, 196 SCRA 312, 320; University of Immaculate Conception v. Secretary of Labor and Employment, G.R. No. 143557, June 25, 2004, 432 SCRA 601, 608.

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