

CATHAY PACIFIC AIRWAYS, PETITIONER, VS. SPOUSES ARNULFO AND EVELYN FUENTEBELLA, RESPONDENTS.

G.R. NO. 142541. December 15, 2005

Ponente: SANDOVAL GUTIERREZ, J.

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SANDOVAL GUTIERREZ, J.:

For our resolution is the instant petition for review on certiorari of the Decision[1] and Resolution[2] of the Court of Appeals (Special Sixteenth Division) dated November 5, 1999 and March 6, 2000, respectively, in CA-G.R. SP No. 48731.

The pertinent facts as found by the Court of Appeals are:

Spouses Arnulfo and Evelyn Fuentebella, herein respondents, filed with the Regional Trial Court, Branch 30, San Jose, Camarines Sur, a complaint for damages, docketed as Civil Case No. T-635. Impleaded as defendant was Cathay Pacific Airways, herein petitioner. Inasmuch as the witnesses reside in Metro Manila, more than 100 kilometers away from the trial court, the parties agreed to present their witnesses through deposition by oral examination, pursuant to Section 4 (c) (2), Rule 23 of the 1997 Rules of Civil Procedure, as amended, quoted as follows:

"Sec. 4. Use of depositions. - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

x x x

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose for if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition x x x;"

The deposition of Congressman Alberto Lopez, second rebuttal witness for respondent spouses, was scheduled to be taken on August 19, 1997 at Room 501, 5th Floor, Regina Building, Aguirre corner Graciera Streets, Legaspi Village, Makati City. However, on that date, typhoon "Miling" hit the metropolis, prompting Atty. Salvador Belaro of Siguion Reyna Montecillo & Ongsiako, counsel for petitioner, and Atty. Juanito Velasco, counsel for respondents, to reset the taking of deposition to August 21, 1997.

On August 20, 1997, at around 4:00 p.m., the law firm of Siguion Reyna Montecillo & Ongsiako received a facsimile notice from Atty. Juanito Velasco stating that the deposition is scheduled at 2:00 p.m. of August 21, 1997. However, Atty. Belaro received the notice at 7:00 p.m. of August 21, 1997 or after the deposition of Congressman Lopez had been taken.

On September 30, 1997, respondents filed with the trial court the deposition of Congressman Lopez. Thereafter,

respondents formally offered their rebuttal evidence.

On May 28, 1998, the trial court issued an Order admitting respondents' evidence. In the same Order, Atty. Belaro was given twenty (20) days from notice within which to formally offer petitioner's sur-rebuttal evidence. However, he failed to comply with the Order.

On August 17, 1998, the trial Court issued an Order requiring both parties to submit their respective memoranda within 30 days from notice, after which with or without such memorandum, the case will be deemed submitted for decision.

Petitioner then filed a special civil action for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 48731 alleging that it did not receive, within the contemplation of law, a notice of the taking of deposition scheduled on August 21, 1997. Hence, the trial court committed grave abuse of discretion in considering that petitioner waived its right to cross examine Congressman Alberto Lopez and that the case is deemed submitted for decision.

On November 5, 1999, the Court of Appeals rendered its Decision dismissing the petition.

Petitioner filed a motion for reconsideration but it was denied by the Appellate Court in its Resolution dated March 6, 2000.

Hence, the instant petition for review on certiorari.

Petitioner vigorously contends that the service of notice by fax transmission is not the kind of service contemplated by the Rules. Hence, the Court of Appeals erred in not invoking Section 5, Rule 13 of the 1997 Rules of Civil Procedure, as amended, providing, among others, that service of notices shall be made either personally or by mail.

Respondents countered that petitioner admitted before the trial court that its counsel of record received the fax transmission in the afternoon of August 20, 1997, or one (1) day before the deposition. On the basis of such admission, the validity of such service can no longer be impugned.

The petition is unmeritorious.

In *Enriquez v. Bautista*,^[3] this Court, through Mr. Justice Ricardo Paras, defined notice as "information or announcement." The word stemmed from the Latin words, *notitia* or "a being known or knowledge," *notus* meaning "known" and *noscere* which means "to know." It is thus evident that the purpose of a notice is merely to inform the other party about the intended proceedings. In *Bembo v. Court of Appeals*,^[4] this Court ruled that the sufficiency of a written notice is irrelevant where it is a matter of record that counsel and parties actually knew of the scheduled hearing, as in this case.

It bears emphasis that both counsel agreed to reset the deposition on August 19, 1997 to August 21, 1997. Petitioner also admitted that its counsel of record received the notice at around four o'clock in the afternoon of August 20, 1997.

According to Atty. Belaro, he received a copy of the facsimile transmission only at 7:00 p.m. of August 21, 1997 after the proceedings. It appears that it was his secretary who received the notice one (1) day earlier. That she failed to inform him immediately is not our concern. Following this Court's ruling in *Gutierrez v. Zulueta*,^[5] negligence of a counsel's secretary is tantamount to negligence of counsel.

WHEREFORE, the petition is DENIED. The challenged Decision and Resolution of the Court of Appeals (Special Sixteenth Division) in CA-G.R. SP No. 48731 are AFFIRMED. The trial court is directed to decide Civil

Case No. T-635 with dispatch. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Rollo at 48-55. Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Wenceslao I. Agnir, Jr. and Eriberto U. Rosario, Jr., concurring (all retired).

[2] Rollo at 56.

[3] 79 Phil. 220 (1947).

[4] G.R. No. 116845, November 29, 1995, 250 SCRA 404.

[5] A.M. No. 2200, July 19, 1990, 187 SCRA 607.

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