

MARIANO, ESTRELLA, RAMON, MA. DULCE, CARMEL, and STELLA MARIS, all surnamed NAJARRO, Petitioners, vs. JARSON DEVELOPMENT CORPORATION, JOSE P. MABUGAT and ELISEO C. GALANG, Respo...

G.R. No. 142627. January 28, 2008

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution are two (2) consolidated Petitions for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to nullify the following: (I) in G.R. No. 142627, the Resolutions[1] dated September 10, 1999 and February 22, 2000 of the Court of Appeals in CA-G.R. CV No. 60680; and (II) in G.R. No. 172750, the Resolutions[2] dated March 17, 2006 and May 5, 2006 of the Court of Appeals, Cebu City, in CA-G.R. CV No. 60680.

G.R. No. 142627

Spouses Mariano and Estrella Najarro (spouses Najarro), petitioners, are the registered owners of a residential building constructed on Lot 1394-C of the Banilad Friar Lands located on V. Sotto Street, Cebu City.

The other petitioners, Ramon, Ma. Dulce, Carmel, and Stella Maris, all surnamed Najarro, are the legitimate children of spouses Najarro. They are the registered co-owners of Lot 1394-C. Except Ma. Dulce, all of them together with their respective spouses and children, reside in the residential building of spouses Najarro.

Respondent Jarson Development Corporation (JDC), on the other hand, is a corporation registered and existing under Philippine laws. It is engaged in the business, among others, of acquiring and managing real estate, buildings and other structures.

Among JDC's various projects is the development of Richmond Plaza, a 12-story commercial building located at Lot 1394-B, also of the Banilad Friar Lands, adjacent to Lot 1394-C owned by petitioners.

Jose P. Mabugat and Engineer Eliseo C. Galang, respondents, are the project designer and the project engineer, respectively, of the Richmond Plaza project.

Sometime in November 1993, respondent JDC started excavation and construction works on the Richmond Plaza project. However, during the excavation, slippages or cave-ins of soil occurred on Lot 1394-C causing massive cracks on the wall and floor of petitioners' residential building. It became unsafe for human habitation. Hence, petitioners left the same.

Sometime in February, 1994, a conciliation meeting was held between petitioners and respondent Mabugat. During this meeting, he assured petitioners that JDC will repair their building and restore the foundation of the soil that caved-in and pay damages in case of any defect in the construction of their building.

On March 1, 1994, respondent Mabugat wrote petitioners stating that the "wet and loose condition" of their soil

was the cause of the damage to their properties. JDC refused to pay. Meanwhile, the Office of the Building Official issued a Stop-Work Order to respondents because their on-going excavation works violated the Building Code and greatly affected the safety of the adjacent residents, including petitioners.

Respondents, however, continuously refused to comply with the said Order. On May 26, 1994, petitioners filed with the Regional Trial Court, Branch 58, Cebu City, a petition for injunction with damages against respondents, docketed as Civil Case No. 60680.

Before the start of the hearing on July 1, 1994, the parties agreed to dispense with the issue of injunction in view of respondents' undertaking to reconstruct petitioners' damaged residential building and to completely restore the foundation of the soil that caved-in to its original condition.

On July 11, 1994, the trial court issued an Order reflecting the agreement between the parties, pertinent portions of which read:

xxx

Before the start of the hearing of the urgent motions on July 1, 1994, the Court inquired from the parties why the Memorandum of Agreement, copy of which was attached to their motions, was not pushed through or not signed, and it was during the exchange of words between the parties and counsels that they have finally agreed to dispense with the issue on the injunction, leaving the issue on damages alone to be litigated between the parties in the instant action, because they have arrived at certain agreements, thus: the respondents shall restore the damaged building or residence of the petitioners by preparing the necessary plans, specifications and bills of materials, and to submit the same to the Office of the Building Official of Cebu City for the issuance of a permit and to secure the necessary Certificate of Occupancy, all at the expense of the respondents. A copy of the plans, specifications and bills of materials shall be furnished the petitioners who may make the necessary suggestions thereabout to the Office of the Building Official. That the respondents and/or the contractor of the building hired by the respondents to construct and/or reconstruct the damaged residential building of the petitioners should restore the foundation or the soil which caved-in during the start of the construction and/or excavation of the respondents' building, Richmond Plaza, which is only about six (6) meters from the petitioners' residence, and the soil/foundation should be filled up and restored to its original condition and in accordance with the standard requirements. That respondents bind themselves jointly and severally to pay the petitioners for any damage in case of any defect in the construction of petitioners' residence and or the collapse or any damage thereof as a result and by reason of the foundation or condition of the soil.

By virtue of the foregoing agreements, the issue on the injunction has been dispensed with, correspondingly, the temporary restraining order was deemed lifted.

Compliance with the foregoing agreement is hereby enjoined.

On October 19, 1994, after the pre-trial conference, the trial court issued a pre-trial Order stating that:

During the hearing of the issuance of a writ of preliminary injunction, the parties agreed to dispense with the issue on injunction, hence, the only issue to be resolved in this case is whether or not the plaintiffs are entitled to recover damages in accordance with their complaint and the defendants in accordance with their counterclaim.

On August 28, 1995, petitioners filed a motion for execution of the July 11, 1994 Order. However, it was denied by the trial court in its Order of November 23, 1995 on the ground that the motion should be resolved when the case shall be decided.

The court conducted trial to determine only the issue of damages. Thereafter, it rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants by ordering the defendants to pay jointly and severally the plaintiffs the sum of P500,000.00 as moral damages, the sum of P200,000.00 as exemplary damages, the sum of P50,000.00 as attorney's fees, the sum of P5,000.00 as litigation expenses, and the costs of the suit.

The counterclaim is hereby dismissed.

Further, the defendants are hereby ordered to do and perform all at the expense of defendants, the following:

- i. To complete the restoration of the foundation of the soil which caved-in to its original condition and in accordance with the standard requirements;
- ii. Prepare the plans, specifications and bills of material for the restoration of the damaged residential building of the plaintiffs;
- iii. Submit said plans, specifications and bills of materials to the Office of the Building Official of Cebu City;
- iv. Secure the necessary permit from the Office of the Building Official of Cebu City as well as the necessary Certificate of Occupancy; and
- v. Construct and/or reconstruct the damaged residential building of the plaintiffs in accordance with the approved plans, specifications and bills of materials.

On appeal by respondents, the Court of Appeals,[3] on February 17, 2005, rendered its Decision affirming the trial court's Decision with modification in the sense that the award of moral damages is reduced to P300,000.00 from P500,000.00.

On April 30, 1999, while the appeal was still pending in the Court of Appeals, petitioners filed a motion for execution pending appeal.

On September 10, 1999, the appellate court denied petitioners' motion for execution pending appeal, ratiocinating as follows:

Appellee's pray for the issuance of an execution pending appeal on the grounds that appellants have succeeded in delaying the appeal, that both appellees are of advanced age and suffering from debilitating diseases, and that the appellants have disposed of some of their properties, thus, threatening the judgment on appeal to be ineffectual.

As records would show, the herein contested decision, inter-alia, orders the payment of moral damages together with attorney's fees wherein execution pending appeal are not allowed (*Engineering Construction Inc. v. NPC*, 163 SCRA 9 [1988]; *Valencia v. CA*, 184 SCRA 561[1990]; *Echaz v. CA*, 199 SCRA 381[1991]; *RCPI v. Lantin*, [985]). The said High Court:

xxx The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral damages and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.

Accordingly, the Motion for Execution Pending Appeal dated April 28, 1999 is DENIED.

SO ORDERED.

On February 22, 2000, the Court of Appeals denied petitioners' motion for reconsideration.

Hence, this petition.

We rule that the petition has become moot as shown by the following events:

On December 12, 2005, petitioners filed a Motion for Entry of Finality of Judgment Respondents filed their Opposition thereto alleging that they and their counsel did not receive a copy of the February 17, 2005 Decision of the Court of Appeals. On March 17, 2006, the appellate court rendered a Resolution granting petitioners' Motion for Entry of Finality of Judgment and declaring that its Decision dated February 17, 2005 has become final and executory and ordering that such judgment be entered in the book of entries of judgments.

G.R. No. 172750

In this case, JDC and Jose P. Mabugat, petitioners, assail the

Resolution of the Court of Appeals dated March 17, 2006 declaring that its Decision dated February 17, 2005 has become final and executory. They contend that they did not receive a copy of the Decision, hence, it did not attain finality as against them.

However, the Court of Appeals found that copies of the Notice of Judgment and its Decision were sent through registered mail to petitioners' counsel at M.B. Mahinay Bldg. (3rd Floor), F. Sotto St., Cebu City. Said counsel received the same. The latter admitted that through inadvertence, he did not file with the Court of Appeals a formal notice of his change of address.

The Court of Appeals, in granting respondents' Motion for Entry of Finality of Judgment, held:

Section 3, Rule 7 of the Rules of Court pertinently provides:

Sec. 3. Signature and address. – Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

x x x

Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule or alleges scandalous or indecent matters therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

Clearly, it is the duty of the counsel to promptly inform the court of a change of his address. The contention of defendants-appellants' counsel that his failure to inform the Court of his change of address was due to the fault of his legal secretary in not including the instant case in the inventory of his cases is a lame excuse and deserves no consideration. It has to be stressed that it devolves upon every counsel to take full responsibility in supervising the work in his office with respect to all the cases he handles and he should not delegate this responsibility to his legal secretary.

x x x

Sad to say, the negligence of defendants-appellants' counsel in failing to inform the Court of his change of address which resulted to his non-receipt of Our Decision when the same was served to him in his old address, which is the address of record when the said judgment was promulgated, binds defendants-appellants.

x x x

The service of our Decision to defendants-appellants' counsel at his address of record on March 2, 2005 was valid. It follows that the reglementary period of fifteen days within which the defendants-appellants may file a motion for reconsideration or a petition for review on certiorari to the Supreme Court on Our Decision shall be counted from such date or defendants-appellants had only until March 17, 2005 to file a motion for reconsideration or petition for review on certiorari to the Supreme Court. Apparently, when plaintiffs-appellees filed the motion for entry of finality of judgment on December 12, 2005, Our Decision had already attained finality as no motion for reconsideration or petition for review on certiorari to the Supreme Court was ever filed by defendants-appellants within the reglementary period, or on or before March 17, 2005.

x x x

Suffice it to state at this point that the Court of Appeals did not err in granting petitioners' motion. They and their counsel are deemed to have received a copy of its Decision. Indeed, the latter's failure to file with the Court of Appeals a notice of change of address is fatal to petitioners' case.

WHEREFORE, in G.R. No. 142627, we DENY the petition filed by Mariano Najarro, et al., the same being MOOT.

In G.R. No. 172750, we DENY the petition filed by Jarson Development Corporation and Jose Mabugat and AFFIRM the assailed Resolutions of the Court of Appeals, Cebu City dated March 17, 2006 and May 5, 2006 in CA-G.R. CV No. 60680. Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and Leonardo-De Castro., JJ., concur.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr. (now Presiding Justice) and concurred in by Associate Justice Salome A. Montoya (retired) and Associate Justice Teodoro P. Regino (retired). Rollo, pp. 43-46.

[2] Penned by Executive Justice Arsenio J. Magpale and concurred in by Associate Justice Pampio A. Abarintos and Associate Justice Vicente L. Yap (retired). Id., pp. 51-57.

[3] In Cebu City.

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