

**DANTE SARRAGA, SR. AND MARIA TERESA SARRAGA, PETITIONERS,
VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, RESPONDENT.**

G.R. No. 143783. December 09, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Spouses Dante Sarraga, Sr. and Maria Teresa Sarraga, petitioners, were the absolute owners of three (3) parcels of land, one of which is Lot 416-B, situated in Poblacion, Cagayan de Oro City, and the other two, Lots 1053-A and 1053-B, in Lapasan, same city.

Sometime in the early 1980's, petitioners mortgaged their lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino), respondent, as security for a loan in the amount of P3,618,714.59.

Petitioners defaulted in the payment of their loan. Consequently, Banco Filipino foreclosed the mortgage.

On June 29, 1984, Banco Filipino was placed in conservatorship by the Central Bank of the Philippines. On January 25, 1985, it was ordered closed and placed under receivership and liquidation.

On April 9, 1985, or before the expiration of the period for the redemption of the lots, petitioner Dante P. Sarraga sent a letter to Banco Filipino's receiver-liquidator offering to redeem the same.

On July 2, 1985, Deputy Receiver Arnulfo B. Aurellano wrote petitioners that "at this stage of the liquidation of the bank, we are not yet selling the aforesaid properties."

Since petitioners were not allowed to redeem their lots within the period prescribed by law, titles thereto were consolidated in the name of Banco Filipino.

On October 10, 1986, petitioners received a letter from Banco Filipino recognizing their intention to redeem their lots. Later, Banco Filipino, through its liquidators, started negotiating with petitioners on the terms of redemption.

Finally, on October 30, 1990, Mr. Renan Santos, then Banco Filipino's liquidator, wrote petitioners allowing them to repurchase the lots for P8,506,597.73, with 12% interest per annum, under the terms stipulated therein.[1] The terms include, among others, that petitioners may pay by installments and that upon full payment of the repurchase price, Banco Filipino shall execute the corresponding deed of sale for the three (3) lots in their favor.[2] They were likewise granted the power to manage and administer the building located in Lot 416-B. The terms were later embodied in a Memorandum of Agreement[3] (MOA) signed by the parties.

On May 16, 1991, Banco Filipino formally conveyed to petitioners the two (2) lots (Lots 1053-A and 1053-B) located in Lapasan, Cagayan de Oro City.

On October 30, 1992, petitioners paid in full the total repurchase price for the three (3) lots. However, Banco Filipino refused to execute the corresponding deed of sale and turn over Lot 416-B to petitioners.

Instead, Banco Filipino, on April 5, 1993, filed with the Regional Trial Court, Branch 38, Cagayan de Oro City, a

complaint[4] against petitioners for quieting of title, recovery of ownership and possession, accounting and damages, docketed as Civil Case No. 93-186.

On April 27, 1993, petitioners filed their answer with counterclaim.[5] They were represented by Atty. Florentino G. Dumlao, Jr. who formally entered his appearance as their counsel of record.

However, prior to the pre-trial, Atty. Dumlao suffered a mild stroke, incapacitating him from participating actively in the proceedings, prompting petitioners to hire the services of another counsel, Atty. Rogelio Bagabuyo. While the latter appeared for the petitioners during the hearing and signed pleadings for them, Atty. Dumlao remained petitioners' counsel of record. As such, the trial court continued to serve pleadings, motions, processes, and other documents upon Atty. Dumlao.

On June 1, 1998, the trial court rendered a decision,[6] the dispositive portion of which states:

“Wherefore, judgment is hereby rendered, as follows:

1. Declaring the sale and conveyance of the two (2) parcels of land (denominated as Lots 1035-A and 1053-B) situated in Barangay Lapasan, Cagayan de Oro, as valid and title thereto shall pertain to defendant spouses Sarraga;
2. Declaring plaintiff Banco Filipino to be the true and lawful owners of Lot 416-B and the building therein (formerly known as the Lucar Building but now as Executive Centrum) situated along J.R. Borja Street, Cagayan de Oro City;
3. Ordering defendant spouses Sarraga to immediately relinquish and surrender possession of Lot No. 416-B and the building thereon to plaintiff Bank; and
4. All other claims of plaintiff Bank as well as counterclaims by the defendants are dismissed.

“No pronouncement as to costs.

“SO ORDERED.”[7]

On July 1, 1998, petitioners filed a motion for reconsideration,[8] signed by both Attys. Dumlao and Bagabuyo.

On September 3, 1998, the trial court issued an order[9] denying petitioners' motion. On September 10, 1998, the order was received by Ms. Llerna Guligado, a newly-hired clerk at the office of Atty. Bagabuyo. Owing to her lack of work experience in a law office, she merely left the court order on her desk and eventually it was misplaced. She failed to bring the matter to the attention of Atty. Bagabuyo when she resigned on September 15, 1998. The day before, or on September 14, 1998, Atty. Bagabuyo was appointed Senior State Prosecutor in the Department of Justice. Due to his excitement and relocation to Manila, he failed to apprise Atty. Dumlao on the status of the case.

Concerned that no action had been taken on their motion for reconsideration of the Decision, petitioners, on December 7, 1998, verified its status. In the trial court, they found that the records of the case were already transmitted to the Court of Appeals due to a partial appeal interposed by Banco Filipino.

This prompted petitioners to file with the trial court a notice of appeal which was denied for being late.

Eventually, they filed a petition for relief from judgment.[10] During the hearing, they came to know that the order dated September 3, 1998 denying their motion for reconsideration was served upon Atty. Bagabuyo only.

On February 12, 1999, the trial court issued an order[11] dismissing the petition for relief on the ground that it was filed out of time. Petitioners filed a motion for reconsideration but was denied.[12]

They then filed a petition for certiorari with the Court of Appeals, docketed as CA GR-SP No. 53765, ascribing to the trial court grave abuse of discretion for dismissing their petition for relief from judgment.

On June 20, 2000, the Appellate Court rendered a Decision^[13] dismissing the petition, thus:

“WHEREFORE, foregoing premises considered, we hold that public respondent did not err much less act with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the disputed orders, for which reason, the herein petition has to be, as it is hereby DISMISSED.

“SO ORDERED.”^[14]

Hence this petition for review on certiorari.

The fundamental issues for our resolution are: 1) whether there was a valid service of the trial court’s order denying petitioners’ motion for reconsideration upon Atty. Bagabuyo; 2) whether Atty. Bagabuyo was negligent which prevented petitioners from filing a timely notice of appeal; and 3) if so, whether such negligence is binding upon petitioners.

Petitioners maintain that Atty. Bagabuyo is not their counsel of record since he did not file with the trial court a formal appearance. Consequently, the service upon him of the trial court’s order denying their motion for reconsideration is not valid.

Such posture is untenable. It is undisputed that petitioners were represented by two (2) lawyers, Attys. Dumlao and Bagabuyo. Pursuant to Section 2, Rule 13 of the 1997 Rules of Civil Procedure, as amended,^[15] service of the trial court’s order denying petitioners’ motion for reconsideration may be made upon either counsel.^[16]

The Court of Appeals correctly found that indeed petitioners’ counsel was Atty. Bagabuyo, thus:

“We find no merit in the first ground invoked by petitioners. As explained by the court a quo in its May 24, 1999 order-

“The records of this case show that Atty. Rogelio Zosa B. Bagabuyo did not ‘merely enter his appearance orally at every hearing which he attended.’ He filed several pleadings in this case as ‘counsel for the defendants’ in which he indicated his address. The first pleading that he filed x x x was a MOTION TO HEAR SPECIAL AND AFFIRMATIVE DEFENSES AS IF A MOTION TO DISMISS HAD BEEN FILED, dated November 28, 1994, which he signed alone as ‘counsel for Defendants’ and in which he indicated his address as ‘Suite 201, Travellers Life Building, corners Tiano & J.R. Borja Streets, City of Cagayan de Oro.’ Atty. Bagabuyo, since he started appearing in this case, acted alone, signed pleadings alone, made decisions alone, without in any way indicating to the court and the adverse party that he had to defer to the judgment of Atty. Dumlao on any matter pertaining to the instant case. He presented the defendant Dante Sarraga and the latter’s witness, Mr. Gaudencio Beduya, at the trial of this case and terminated the presentation of the defendant’s evidence without consulting, or intimating to the court and the adverse party that he had to consult Atty. Dumlao on the matter. The MEMORANDUM FOR THE DEFENDANTS dated April 8, 1996 was signed by him alone as counsel for the defendants. Atty. Rogelio Zosa Bagabuyo signed as lead counsel the defendants’ Motion for Reconsideration dated 26 June 1998 and the Urgent Rejoinder to Plaintiff’s Opposition To Our Motion for Reconsideration dated 03 August 1998, in which he indicated his address as 14[th]-10[th] Streets, Macasandig, City of Cagayan de Oro.’ He signed alone as counsel for the defendants an URGENT MOTION TO CANCEL SCHEDULED HEARING ON 31 July 1998 dated 28 July 1998 in which he indicated his address as ‘72 corners 14[th]-10[th] Streets, Macasandig, City of Cagayan de Oro.’ (Annex “F,” Petition, pp. 196-197, rollo).

“Given the foregoing circumstances and the court a quo’s further observation that Atty. Bagabuyo ‘had been the one actively handling the case for the defendants since the pre-trial stage,’ x x x it is simply absurd for petitioners

to even suggest that service upon Atty. Bagabuyo of a copy of the Order dated September 3, 1998 which denied their Motion for Reconsideration of the judgment was ineffective or did not bind them. To be sure, Section 2, Rule 13 of the 1997 Rules of Civil Procedure explicitly provides that '(i)f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them x x x.' The obvious meaning of said rule is that if a party is represented by more than one lawyer, service of pleadings, judgments and other papers may be made on any one of them.

Obviously, Atty. Bagabuyo was negligent which prevented petitioners from filing a timely notice of appeal. Atty. Bagabuyo knew that his clerk has no work experience in a law firm. He should have supervised her office performance very closely considering the importance of his legal calling. Time and again this Court has admonished law offices to adopt a system of distributing and receiving pleadings and notices, so that the lawyers will be promptly informed of the status of their cases. Thus, the negligence of clerks which adversely affect the cases handled by lawyers is binding upon the latter.[17]

Nothing is more settled than the rule that the negligence of counsel binds the client. However, the application of the general rule to a given case should be looked into and adopted according to the surrounding circumstances.[18] Thus, exceptions to the said rule have been recognized by this Court: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.[19] In such cases, courts must step in and accord relief to a client who suffered thereby.

Here, we find that the negligence of Atty. Bagabuyo falls under the said exceptions. Indeed, he committed gross negligence. Petitioners were deprived of their right to appeal when he failed to inform them immediately of the denial of their motion for reconsideration of the trial court's decision. Ultimately, this will result in the deprivation of their property, specifically Lot 416-B.

In *Apex Mining, Inc. vs. Court of Appeals*,[20] this Court ruled:

"If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.

"In view of the foregoing circumstances, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made suffer for the lawyer's mistakes and should be afforded another opportunity, at least, to introduce evidence on their behalf. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to a party whose only fault was to repose his faith and entrust his innocence to his previous lawyers."

Petitioners cannot be faulted for failing to verify the status of their case with the trial court since a client has the right to expect that his lawyer will protect his interest during the hearing of his case.

"A client may reasonably expect that his counsel will make good his representations and has the right to expect that his lawyer will protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a case or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution and management of the suit, and in a defendant's attorney, the power to take such steps as he deems necessary to defend the suit and

protect the interests of the defendant.”[21]

Undoubtedly, the trial court gravely abused its discretion when it denied the petition for relief. Considering the circumstances obtaining here, petitioners should not be made to suffer the consequences of their counsel’s negligence. Hence, the period within which to file their petition for relief should be reckoned from their actual receipt of the order denying their motion for reconsideration, which is December 7, 1998. Accordingly, the petition for relief filed on December 16, 1998 was well within the sixty-day period prescribed in Section 3, Rule 38, of the 1997 Rules of Civil Procedure, as amended.

Both lower courts actually sacrificed justice for technicality. This Court has consistently ruled that it is a far better and more prudent course of action for a court to excuse a technical lapse and afford the parties a review of the case on the merits to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[22] Hence, it would be more in accord with justice and equity to allow the appeal by petitioners to enable the Court of Appeals to review the trial court’s decision.

The fundamental purpose of procedural rules is to afford each litigant every opportunity to present evidence in their behalf in order that substantial justice is achieved. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.[23]

Hence, in cases where a party was denied this right, we have relaxed the stringent application of procedural rules in order to allow a party the chance to be heard. This policy applies with equal force in case of appeals. It has been consistently held that the dismissal of appeal on purely technical grounds is frowned upon.[24]

“x x x, dismissal of appeals purely on technical grounds is frowned upon and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims. Verily, this Court, in the exercise of its equity jurisdiction, may even stay the dismissal of appeals grounded merely on technicalities, especially in this case where petitioners’ appeal appears prima facie worthy of the CA’s full consideration on the merits.”[25]

WHEREFORE, the petition is GRANTED. The challenged Decision of the Court of Appeals dated June 20, 2000 in CA-GR SP No. 53765 is SET ASIDE. The Regional Trial Court, Branch 38, Cagayan de Oro City is DIRECTED to grant the petition for relief filed by petitioners and to GIVE DUE COURSE to their notice of appeal in Civil Case No. 93-186.

SO ORDERED.

Puno (Chairman), Corona, and Carpio Morales, JJ., concur.
Panganiban, J., no part. Former counsel of a party.

[1] Annex “A,” Petition; Rollo, at 47-48.

[2] Id.

[3] Annex “B,” id., at 49.

[4] Annex “C,” id., at 53.

[5] Annex “D,” id., at 64.

[6] Annex “F,” *id.*, at 79.

[7] *Id.*, at 90.

[8] Annex “G,” *id.*, at 91.

[9] Annex “H,” *id.*, at 112.

[10] Annex “J,” *id.*, at 116.

[11] Annex “M,” *id.*, at 139.

[12] Annex “P,” *id.*, at 164.

[13] Annex “T,” *id.*, at 428.

[14] *Id.*, at 437.

[15] “Sec. 2. Filing and service defined. – Filing is the act of presenting the pleading or other paper to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.” (*italics added*)

[16] *Sublay vs. NLRC*, 324 SCRA 188, 194 (2000).

[17] *Negros Stevedoring, Inc. vs. Court of Appeals*, 162 SCRA 371, 375 (1988).

[18] *Apex Mining, Inc. vs. Court of Appeals*, 319 SCRA 456, 465-466 (1999).

[19] *Id.*, at 466; *Gacutana-Fraile vs. Domingo*, 348 SCRA 414, 422 (2000); *Salazar, et al. vs. Court of Appeals*, G.R. 142920, February 6, 2002, citing *Legarda vs. Court of Appeals*, 195 SCRA 418 (1991) and *Aguilar vs. Court of Appeals*, 250 SCRA 371 (1995); *Del Mar vs. Court of Appeals*, G.R. No. 139008, March 13, 2002.

[20] *Id.*, at 468.

[21] *Id.*, at 467.

[22] *Insular Bank of Asia and America vs. Court of Appeals*, 228 SCRA 420 (1993); *Coco-Chemical Philippines, Inc. vs. Court of Appeals*, 264 SCRA 345, 349 (1996), citing *People’s Security, Inc. vs. NLRC*, 226 SCRA 146 (1993); *Aguam vs. Court of Appeals*, 332 SCRA 784 (2000).

[23] *Salazar, et al. vs. Court of Appeals*, *supra*, citing *Abrajano vs. Court of Appeals*, 343 SCRA 68, 86 (2000).

[24] *Id.*

[25] *Piglas-Kamau (Sari-Sari Chapter), et al. vs. NLRC*, 357 SCRA 640 (2001), citing *Pacific Life Assurance Corp. vs. Sison*, 299 SCRA 16, 22 (1998).

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