

PETER D. GARRUCHO, PETITIONER, VS. COURT OF APPEALS, HON. OSCAR B. PIMENTEL (IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 148, MAKATI CITY), SHERIFF RE...

G.R. NO. 143791. January 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

In a Letter dated July 18 and 26, 1990, then Secretary of the Department of Tourism and Chairman of the Board of Directors of the Philippine Tourism Authority (PTA) petitioner Peter D. Garrucho requested then Commissioner of Immigration and Deportation Andrea Domingo to issue Hold Departure Orders against Ramon Binamira and Faustino Roberto. This was in connection with the investigation being conducted by the Department of Justice involving anomalous transactions in government securities affecting the PTA which entailed the loss of some P161,000,000.00. Commissioner Domingo granted the request and issued Hold Departure Order Nos. 333 and 334 against Binamira and Roberto on the said date. Roberto requested the lifting of the order, and Secretary Garrucho opposed the same in a Letter dated August 22, 1990.

Roberto then filed a complaint for prohibition and damages against petitioner Garrucho and Commissioner Domingo in the Regional Trial Court (RTC) of Makati City. Binamira, for his part, filed a complaint-in-intervention in the case. Petitioner Garrucho was represented by private practitioners Remollo & Associates, whose offices were located at Suite No. 23, Legaspi Suites, 178 Salcedo Street, Legaspi Village, Makati City.

On April 16, 1997, the trial court rendered judgment in favor of respondent Binamira. The fallo of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against the defendants, and the latter are hereby ordered to, jointly and severally, pay the following:

- The amount of P100,000.00 as actual and compensatory damages;
- The amount of P1 million as moral damages;
- The amount of P500,000.00 as exemplary damages;
- The amount of P20,000.00 as attorney's fees;
- Plus cost of suit.

Further, Hold Departure Order No. 333 having been found to be void ab initio, unconstitutional and illegal, the preliminary injunction is hereby declared permanent.

SO ORDERED.[1]

The petitioner and Commissioner Domingo appealed the decision to the Court of Appeals (CA). On March 9, 1999, the CA sent a notice by registered mail to the petitioner's counsel directing the latter to file his brief as appellant. However, the notice was returned to the court. The envelope containing the said notice was stamped, thus: "Return To Sender, Moved Out." [2] The CA resent the notice dated March 5, 1999 to the petitioner at his office at the Department of Tourism building, Agripino Circle, Manila. The notice was returned to the CA on May 5, 1999, again, having been "unclaimed." The CA issued a minute resolution [3] on June 23, 1999, declaring that the service of notice on the petitioner was complete as of May 5, 1999. A copy of the said resolution was sent by registered mail to the petitioner in the Department of Tourism.

On November 26, 1999, the appellate court issued a Resolution [4] dismissing the appeal of the petitioner for his failure to file his brief. A copy of the resolution was sent by registered mail to the petitioner's counsel, but the said resolution was returned to the court with a notation stamped on the envelope "Return To Sender, Moved Out." [5] The CA then had a separate copy of the notice served by registered mail on the petitioner at his office address, but the same was returned to the CA with the notation "Unclaimed."

The appellate court issued an entry of judgment. [6] A copy of the said entry of judgment was sent to the petitioner by registered mail at the Department of Tourism. Thus, the appeal of Commissioner Domingo was considered submitted for decision after filing her brief and the filing by the plaintiff-appellee of his brief.

Binamira's motion for a writ of execution against the petitioner was granted by the trial court on June 22, 2000. The trial court issued a writ of execution on June 28, 2000. The sheriff served a copy of the said writ on the petitioner on July 12 and 17, 2000, at his office at the Benpress Building, Pasig City.

The petitioner filed a petition for certiorari under Rule 65 of the Rules of Court against the CA, the RTC, Sheriff Flora and Binamira, for the nullification of the CA resolutions dated June 23, 1999 and November 26, 1999, the June 22, 2000 Order of the RTC, as well as the June 28, 2000 writ of execution issued by the latter court.

The petitioner alleged, inter alia, that the CA and RTC erred in issuing the assailed resolutions and order because he never received copies of the assailed CA resolutions which were sent to him at his former office at the Department of Tourism. He averred that he had resigned as Secretary of the Department of Tourism and Chairman of the PTA as early as January 9, 1991 [7] and was no longer holding office thereat. [8] Since then, he had gone back to the private sector and held office at 417 Benpress Building, Meralco Avenue corner Echague Road, Ortigas Center, Pasig City. His counsel failed to receive his copy of the CA resolution because he transferred his office at Suite No. 23, Legaspi Suites, 178 Salcedo Street, Legaspi Village, Makati City, and his residence to Dumaguete City, Negros Occidental. He further alleged that the CA and the RTC were obliged to take judicial notice of his resignation as Tourism Secretary and the appointment of his successor, his appointment as Executive Secretary by President Fidel E. Ramos in July 1992, and his resignation from the said position in August/September 1992.

The petitioner argues that he was deprived of his right to due process when the CA and the RTC failed to serve the copies of the assailed resolutions and order. He points out that his present office was not difficult to locate, considering his stature in business and politics in the country. He avers that there was no reason why the copies of the assailed resolutions and order could not be sent to him at the same office since the sheriff was able to locate his office on July 12 and 17, 2000.

In his comment on the petition, the private respondent alleged that the petitioner was mandated to inform his counsel of his present address after he (the petitioner) resigned as Secretary of the Department of Tourism. It was also the duty of the petitioner's counsel to inform the trial court of his new office address. The private respondent asserts that the petitioner must suffer the dire consequences of his and his counsel's inexcusable negligence.

The respondent further contends that while the CA and the RTC were mandated to take judicial notice of the petitioner's resignation and the appointment of his successor, they were not mandated to take judicial notice of the petitioner's office address after he resigned from the government, or of the address of his counsel in Dumaguete City, Negros Occidental. The respondent asserts that such failure of the petitioner to inform the said courts of his address and that of his counsel constitutes inexcusable neglect. Thus, if the petitioner's appeal was dismissed on account of his failure to file his brief, he has nobody but himself to blame.

The petition has no merit.

The contention of the petitioner that he was deprived of his right to due process when the CA dismissed his appeal because of his failure to file his brief as appellant therein has no factual and legal basis.

The records show that the counsel of the petitioner in the trial court was the law firm of Remollo & Associates with offices at Suite No. 23, Legaspi Suites, 178 Salcedo Street, Legaspi Village, Makati City. Under Section 2, Rule 44 of the 1997 Rules of Civil Procedure, the counsel of the parties in the court of origin shall be considered as their counsel in the CA.[9]

Section 2, Rule 13 of the Rules of Civil Procedure provides that if any party has appeared by counsel, service upon him shall be made upon his counsel unless served upon the party himself is ordered by the trial court.[10] Notice or service made upon a party who is represented by counsel is a nullity.[11] Notice to the client and not to his counsel of record is not notice in law.[12] The rule admits of exceptions, as when the court or tribunal orders service upon a party or when the tribunal defendant is waived.[13]

In the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel on record.[14] It is the duty of the party and his counsel to device a system for the receipt of mail intended for them, just as it is the duty of the counsel to inform the court officially of a change in his address. It is also the responsibility of a party to inform the court of the change of his address so that in the event the court orders that an order or resolution be served on the said party to enable him to receive the said resolution or order.[15]

In the present case, the law firm of Remollo & Associates, the petitioner's counsel of record, moved out from their office at the Legaspi Suites to Dumaguete City without informing the court of such fact. Based on its records, the CA believed that the law office of the petitioner's counsel was still at the Legaspi Suites and sent copies of its resolutions to the counsel of the petitioner at the said address.

Neither did the petitioner inform the court of his home or office address after his resignation as Secretary of the Department of Tourism where copies of the said order or resolution could be sent. Notwithstanding his stature in the business community, the CA cannot take judicial notice of the petitioner's home address or his office address after his departure as Secretary of the Department of Tourism or as Executive Secretary of the President.

Indeed, the petitioner has nobody but himself to blame. It was his responsibility to check the status of his appeal in the CA from time to time, from his counsel or from the CA. He failed to do so. As we held in *Bernardo v. Court of Appeals*:[16]

Litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case.

In his concurring opinion in *Republic vs. Sandiganbayan*, Mr. Justice Teodoro R. Padilla emphasized the value and significance of the party's presence and diligence in the advancement of his cause, thus:

xxx An almost lifetime of experience in litigation is the best witness to the indispensability of party's presence (aside from his lawyer, in case he has the assistance of counsel) in order to litigate with any reasonable opportunity of success. xxx especially during the cross-examination of adverse party's witnesses – where the truth must be determined – every counsel worth his salt must have the assistance and presence of his client on the spot, for the client invariably knows the facts far better than his counsel. In short, even in civil cases, the presence of party (as distinguished from his lawyer alone) is essential to due process.

True enough, the party-litigant should not rely totally on his counsel to litigate his case even if the latter expressly assures that the former's presence in court will no longer be needed. No prudent party will leave the fate of his case entirely to his lawyer. Absence in one or two hearings may be negligible but want of inquiry or update on the status of his case for several months (four, in this case) is inexcusable. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case. Petitioner simply claims that he was busy with his gravel and sand and trading businesses which involved frequent traveling from Manila to outlying provinces. But this was not a justifiable excuse for him to fail to ask about the developments in his case or to ask somebody to make the query for him. Petitioner failed to act with prudence and diligence; hence, his plea that he was not accorded the right to due process cannot elicit this Court's approval or even sympathy.[17]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Rollo, p. 29.

[2] Id. at 63.

[3] Id. at 23.

[4] Id. at 24.

[5] Id. at 25.

[6] Id. at 26.

[7] Id. at 66.

[8] Id. at 67.

[9] Sec. 2. Counsel and guardians. – The counsel and guardians ad litem of the parties in the court of origin shall be respectively considered as their counsel and guardians ad litem in the Court of Appeals. When others appear or are appointed, notice thereof shall be served immediately on the adverse party and filed with the court.

[10] 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.

[11] *Tak v. Makasiar*, 350 SCRA 475 (2001).

[12] De Leon v. Court of Appeals, 383 SCRA 216 (2002).

[13] Philippine National Bank v. Court of Appeals, 246 SCRA 304 (1995).

[14] Thermochem Incorporated v. Naval, 344 SCRA 76 (2000).

[15] Rivera v. Litam & Company, Inc., 4 SCRA 1072 (1962).

[16] 275 SCRA 413 (1997).

[17] Id. at 429-430.

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