

## **INSULAR LIFE SAVINGS AND TRUST COMPANY, PETITIONER, VS. SPOUSES FELIX MATEO RUNES, JR. AND TRINIDAD RUNES, RESPONDENTS.**

*G.R. No. 152530. August 12, 2004*

Ponente: CALLEJO, SR., J.

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### **CALLEJO, SR., J.:**

Before the Court is the petition for review on certiorari under Rule 45 of the Rules of Court filed by Insular Life Savings and Trust Company seeking to reverse and set aside the Decision[1] dated November 21, 2001 of the Court of Appeals in CA-G.R. SP No. 63319 which found no grave abuse of discretion on the part of the Regional Trial Court, Branch 36 of Manila in denying the petition for relief from judgment filed by the petitioner in Civil Case No. 99-94776. Likewise sought to be reversed and set aside is the appellate court's Resolution dated March 8, 2002 denying the petitioner's motion for reconsideration of the said decision.

The undisputed facts that gave rise to the present case are as follows:

On September 3, 1986, the respondents Spouses Felix Mateo Runes, Jr. and Trinidad Runes, applied for and were granted a loan by the Home Savings Bank and Trust Company, the petitioner's predecessor, in the amount of P800,000. Of the said amount, only P500,000 was actually released to the respondents as the amount of P300,000 was withheld as advance interest payment. The loan was secured by a real estate mortgage over a parcel of land with an area of 180 square meters situated in V. Mapa Street, Sta. Mesa, Manila, covered by Transfer Certificate of Title No. 169914 issued by the Register of Deeds in Manila.

When the respondents defaulted in the payment of their loan, the mortgage was foreclosed and the lot was sold in public auction to the Home Savings Bank and Trust Company which was declared as the highest bidder with its bid price of P2,688,000. A Certificate of Sale in favor of the said bank was executed on June 25, 1993 over the property. The deed was registered on July 25, 1993 in the Register of Deeds.

In June 1994, the respondents and Home Savings Bank and Trust Company, now known as Insular Life Savings and Trust Company, the petitioner herein, entered into a contract to sell over the lot. The contract provided that the title to the property would remain in the name of the petitioner until full payment by the respondents of the purchase price of P3,200,000 payable as follows: P500,000 as downpayment and the balance of P2,700,000 payable in 60 months (P65,000 a month) with an interest of 21% per annum for the first six months, the said interest rate reviewable semi-annually by the petitioner.

After their payment of the last (60[th]) installment in May 1999, the respondents made demands on the petitioner to release and deliver their title by reason of full payment of the loan and redemption price of the property. At the time, the respondents had already paid a total amount of P4,446,000. The petitioner, however, refused to release the title claiming that the respondents still had an outstanding balance of P1,685,144.56.

The respondents thus filed an action against the petitioner for declaration of nullity of contract and for sum of

money by way of reimbursement of the amounts paid under the contract and damages with the Regional Trial Court, Branch 36 of Manila. The case was docketed as Civil Case No. 99-94776.

After due proceedings, on July 26, 2000, the RTC rendered judgment in favor of the respondents declaring the contract to sell as null and void. The court ratiocinated that, upon the execution of the contract to sell in June 1994 and during the one-year redemption period, the petitioner already divested the respondents ownership of the mortgaged property and considered itself the owner thereof without awaiting the expiration of the redemption period and consolidation of ownership by the court and thereby acted as the seller/owner and the respondents as buyer on installment basis of the subject property under the contract to sell. By so doing, the petitioner acted contrary to law.

Specifically, in nullifying the contract to sell, the RTC characterized it as a pactum commissorium which is proscribed by Article 2088 of the Civil Code which reads:

Art. 2088. The creditor cannot expropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and void.

The RTC thus: (1) declared the contract to sell as null and void ab initio; (2) ordered the petitioner to reimburse the respondents the sum of P1,758,000 with legal interest of 12% per annum from the date of the filing of the complaint until fully paid; (3) ordered the petitioner to pay the respondents the sum of P80,000 as exemplary damages and P100,000 as attorney's fees and to pay the costs of suit; and (4) ordered the petitioner to surrender the respondents' owner's duplicate of TCT No. 169914 to them.[2]

The petitioner's counsel received a copy of the RTC decision on August 8, 2000 and on August 23, 2000, filed a motion for reconsideration thereof. In its Order dated October 16, 2000, the RTC denied the motion. The petitioner's counsel received a copy of the said order on October 26, 2000. On November 8, 2000, the petitioner's counsel filed a Notice of Appeal but the RTC denied the same in the Order dated November 16, 2000 for being filed out of time and for failure to pay the appellate court docket and other lawful fees. The RTC explained that:

There is no debate that the defendant's [petitioner's] counsel received a copy of the assailed decision on August 8, 2000 and her motion for reconsideration was filed on August 23, 2000 or on the fifteenth day of the reglementary period. The Order dated October 16, 2000 denying her motion for reconsideration was received by her on October 26, 2000. With this in mind, defendant's [petitioner's] counsel should have filed her notice of appeal on October 27, 2000. But defendants' [petitioner's] counsel filed formally her notice of appeal on November 8, 2000 or twelve (12) days beyond the reglementary period. For this alone, the appeal interposed by defendant's [petitioner's] counsel may be denied. However, the record shows that defendant's [petitioner's] counsel failed to pay the full amount of appellant's docket fees and other lawful fees.

The Supreme Court in a recent case held that a notice of appeal must be filed within the fifteen (15) days (sic) reglementary period from receipt of the decision or order appealed from and the docket and other lawful fees must be paid within the same period. Further, Sec. 4, Rule 41 of the 1997 Rules of Civil Procedure explicitly provides that payment of the full amount of the appellant's docket fees and other lawful fees should be made within the period for taking an appeal before the Clerk of Court which rendered the judgment or order appealed from (Chan vs. Court of Appeals, G.R. No. 13758 (sic), July 6, 2000).

In the case at bar, the Court has no other alternative but to deny the appeal interposed by defendant [petitioner] through counsel for the failure of defendant's [petitioner's] counsel to file seasonably a notice of appeal. Furthermore, defendant's [petitioner's] counsel has not paid the docket fees and other lawful fees up to the present.[3]

On December 12, 2000, upon the instance of the respondents, the RTC issued a writ of execution to satisfy the judgment.

The petitioner then filed with the RTC a petition for relief from judgment under Rule 38 of the Rules of Court alleging that the delay in the filing of the notice of appeal and non-payment of the docket and other lawful fees were caused by oversight and excusable negligence. The petitioner explained that the father of Atty. Rosario Rodriguez-Ganitano, the lawyer assigned by its counsel of record to handle the case for the petitioner, died on October 14, 2000 and she had to go home to the province for the burial and attend to several legal matters for the family. Atty. Rodriguez-Ganitano was an associate of Bihis Law Offices, then petitioner's counsel of record. At the time of receipt of the order denying the petitioner's motion for reconsideration on October 26, 2000, Atty. Rodriguez-Ganitano was still saddled with grief and unable to fully focus on her work; hence, failed to seasonably file the notice of appeal. The petitioner maintained that it had a meritorious defense. It prayed that the appeal be given due course and that the enforcement of the writ of execution be enjoined.

In the Order dated January 16, 2001, the RTC denied the petition for relief from judgment stating:

After a serious consideration of the grounds and reasons raised by the parties in their respective pleadings, this Court resolves to deny the Petition for Relief from Judgment for lack of factual and legal basis. The grounds relied by the defendant [petitioner] are not within the contemplation of Rule 38 of the 1997 Rules of Civil Procedure. Moreover, it is settled that petition for relief from judgment or final order issued by the Court is not a substitute nor a proper remedy for a lost appeal.

WHEREFORE, premises considered, the Petition for Relief from Judgment filed by the defendant [petitioner] is denied for lack of merit. Consequently, the writ of execution already issued by this Court be forthwith implemented.[4]

On January 31, 2001, the petitioner filed with the CA a petition for certiorari challenging the Order dated January 16, 2001 of the RTC. The said petition was docketed as CA-G.R. SP No. 62935 and was raffled to the First Division of the CA.

On February 13, 2001, the law firm of CAYETANO SEBASTIAN ATA DADO & CRUZ entered its appearance as co-counsel for the petitioner. On even date, the CA (First Division) dismissed the petition in CA-G.R. SP No. 62935 for being defective in form.

Apparently unaware of the dismissal of the petition, on February 19, 2001, the petitioner, through the law firm of CAYETANO SEBASTIAN ATA DADO & CRUZ, filed with the CA a Manifestation and Motion to Withdraw Petition claiming that "on a review of the petition, together with the records of the case before the respondent judge, undersigned counsel had observed that the petition does not adequately present the position of Insular Life Savings and Trust Company in respect to all the substantive and procedural matters involved in the controversy." [5]

Acting thereon, in the Resolution dated February 29, 2001, the CA (First Division) stated:

In view of the resolution of February 13, 2001, outrightly dismissing the petition, the Manifestation and Motion is just NOTED.[6]

The resolution of the appellate court became final and executory. Entry of judgment was made on March 11, 2001 by the appellate court.

Nonetheless, the petitioner, on February 20, 2001, re-filed with the CA the petition for certiorari, now docketed as CA-G.R. SP No. 63319 and raffled to its Seventeenth Division.

After the parties had filed their respective pleadings in CA-G.R. SP No. 63319, the CA (Seventeenth Division) rendered the assailed Decision dated November 21, 2001 dismissing the petition for certiorari as it found no grave abuse of discretion on the part of the RTC in denying the petition for relief from judgment. The appellate court made the following disquisition:

Petitioner pleads the excusable negligence of their counsel and contends that it should not be binding upon them. We find no merit in this contention. It is well settled that clients are bound by the mistakes and omissions of their counsel (*Manila Electric Co. vs. CA*, 187 SCRA 200). Furthermore, it has been consistently ruled that the failure of counsel to file a notice of appeal within the period provided by law does not constitute excusable negligence and is not a ground for setting aside a judgment valid and regular on its face (*Tuason vs. CA*, 256 SCRA 158).

No other reason was given by the petitioner for its failure to seasonably file a notice of appeal other than the fact that its counsel was grieving the loss of her father. While we understand her grief, this does not constitute excusable negligence as contemplated by law, considering that the petitioner was represented not only by Atty. Rodriguez-Ganitano but by the Bihis Law Offices as well. Petitioner's counsel is the law firm itself and not one of its lawyers only. If the lawyer who was assigned to handle the case became indisposed for one reason or another, then it is the duty and responsibility of the law firm, being the counsel on record, to be vigilant of the developments of its clients' cases (*Lucero vs. NLRC*, 203 SCRA 218).

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases where there is no other available or adequate remedy. The remedy will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to the party's own negligence (*Tuason vs. CA*, *supra*.) or the inexcusable negligence of its counsel.

We find no grave abuse of discretion on the part of the public respondent who acted pursuant to law and jurisprudence.[7]

The petitioner filed a motion for reconsideration but the appellate court denied the same in the assailed Resolution of March 8, 2002. Hence, the recourse to this Court.

The petitioner avers that the appellate court committed reversible error in holding that there was no grave abuse of discretion on the part of the RTC in denying the petition for relief from judgment. It was allegedly grievously wrong for the RTC to deny the said petition on technical grounds and for the CA to affirm the same, likewise, based on technicalities. The petitioner maintains that this stance is inconsistent with the rulings of this Court that technicalities must give way to the higher interest of justice and fairness.

According to the petitioner, it has a meritorious defense as it takes exception to the RTC's characterization of the contract to sell as a *pactum commissorium*. It is the contention of the petitioner that the contract to sell is a valid contract entered into by the parties where they agreed to do away with the one-year legal redemption and, instead, converted it to conventional redemption for a period of five years. Further, the respondent should not be allowed to repudiate the contract after five years from its execution.

The petitioner faults Atty. Rodriguez-Ganitano for its failure to file the notice of appeal within the reglementary period and opines that it should not be bound by its counsel's omission. In any case, such failure to seasonably file the notice of appeal was due to the fact that Atty. Rodriguez-Ganitano was then mourning the death of her father. Under the circumstances, the failure to perfect the appeal was allegedly due to "excusable negligence" and the delay of twelve (12) days in filing the notice of appeal was a "pardonable oversight."

The petition is devoid of merit.

At the outset, it must be stated that the instant petition deserves to be denied outright. The Resolution of the First

Division of the CA in CA-G.R. SP No. 62935 dismissing the original petition for certiorari filed by the petitioner therewith had become final and executory. In fact, Entry of Judgment thereon had been made as early as March 11, 2001.[8] The second petition for certiorari therefore should have been dismissed outright by the Seventeenth Division of the CA.

Even if the Court were to delve into the merits of the instant petition, the same must still be denied as the CA (Seventeenth Division) could not be faulted for finding no grave abuse of discretion on the part of the RTC in dismissing the petition for relief from judgment filed by the petitioner therewith.

Section 2, Rule 38 of the Rules of Court reads:

Sec. 2. Petition for relief from denial of appeal. – When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

This rule is applicable to the denial of an appeal or the failure to appeal on time due to fraud, accident, mistake or excusable negligence.[9] Moreover, a petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy.[10] When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition.[11]

In this case, it is undisputed that the petitioner's notice of appeal was filed out of time and the denial of its petition for relief from judgment by the RTC was upon its finding that the ground relied upon by the petitioner was not within the contemplation of Rule 38 of the 1997 Rules of Court. The petitioner anchored its petition for relief from judgment on Atty. Rodriguez-Ganitano's "excusable negligence." At the time, Atty. Rodriguez-Ganitano was distraught on account of her father's death and had to attend to several family matters resulting in her failure to seasonably appeal and pay the required appellate docket and other legal fees.

Unfortunately for the petitioner, negligence, to be "excusable," must be one which ordinary diligence and prudence could not have guarded against.[12] Atty. Rodriguez-Ganitano's omission could hardly be characterized as excusable, much less unavoidable. As correctly pointed out by the CA, the petitioner's counsel of record at the proceedings in the RTC was the Bihis Law Offices, of which Atty. Rodriguez-Ganitano was an associate. When she was indisposed, any one of the partners or associates of the Bihis Law Offices should have filed the notice of appeal as well as paid the appellate docket and other legal fees on time. The failure of the Bihis Law Offices to do so binds the petitioner.[13] It is settled that clients are bound by the mistakes, negligence and omission of their counsel.[14] While, exceptionally, the client may be excused from the failure of counsel, the circumstances obtaining in the present case, as earlier discussed, do not convince this Court to take exception.

It bears stressing that perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional as well and failure to perfect an appeal has the effect of rendering the judgment or resolution final and executory.[15] Likewise, payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional, and failure of the appellant to conform to the rules on appeal renders the judgment final and executory.[16]

Significantly, the petitioner's failure to seasonably file an appeal from the decision rendering it final and executory is not a denial of due process.[17] It may have lost its right to appeal but it was not denied its day in court. The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[18]

Relief cannot be granted on the flimsy excuse that the failure to appeal was due to the neglect of the petitioner's counsel. Otherwise, "all that a defeated party would have to do to salvage his case," observed by the Court in one case,[19] would be to "claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment," and there would then be "no end to litigation ... as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he (were) also found wanting, (could) ... be disowned by the same client through another counsel, and so on ad infinitum, thereby rendering the court proceedings indefinite ..."[20]

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated November 21, 2001 and Resolution dated March 8, 2002 of the Court of Appeals in CA-G.R. SP No. 63319 are AFFIRMED in toto.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Eriberto U. Rosario, Jr. and Amelita G. Tolentino, concurring.

[2] Rollo, pp. 171-172.

[3] Id. at 194-195.

[4] Id. at 110.

[5] Id. at 230.

[6] CA Rollo, p. 169. (CA-G.R. SP No. 62935).

[7] Rollo, pp. 71-72.

[8] CA Rollo, p. 176. (CA-G.R. SP No. 62935).

[9] FERIA & NOCHE, I CIVIL PROCEDURE ANNOTATED 653 (2001 Ed.).

[10] Mercury Drug Corp. v. Court of Appeals, 335 SCRA 567 (2000).

[11] Id. at 576.

[12] Gold Line Transit, Inc. v. Ramos, 363 SCRA 262 (2001).

[13] Amatorio v. People, 397 SCRA 445 (2003).

[14] Jose v. Court of Appeals, 399 SCRA 83 (2003).

[15] Manipor v. Ricafort, 407 SCRA 298 (2003).

[16] Jose v. Court of Appeals, supra.

[17] Mercury Drug Corp. v. Court of Appeals, supra.

[18] Ibid.

[19] Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corp., 356 SCRA 281 (2001) citing Aguila v. CFI of Batangas, 160 SCRA 352 (1988).

[20] Ibid.

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