

SPS. WILLIAM G. FRIEND AND MARIA RENEE FRIEND AND JOHN DOE, PETITIONERS, VS. UNION BANK OF THE PHILIPPINES, RESPONDENT.

G.R. No. 165767. November 29, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review on certiorari seeks to nullify the June 1, 2004 Decision[1] of the Court of Appeals in CA-G.R. CV No. 74499 which affirmed with modification the November 29, 2001 Order[2] of the Regional Trial Court of Pasay City, Branch 115; and the October 21, 2004 Resolution[3] denying the motion for reconsideration:

The facts are as follows:

Spouses William G. Friend and Maria Renee Friend (hereafter appellants) incurred a loan from Union Bank of the Philippines (hereafter appellee) in the original amount of Eight Hundred Eighteen Thousand One Hundred Thirty Six Pesos (P818,136.00). The money was used to purchase a Hyundai Starex Van in January 1999. A Promissory Note was executed by appellants promising to pay to the order of appellee.

In order to secure the obligation, a chattel mortgage, embodied in the same promissory note, was constituted on said Hyundai Starex Van.

Appellants defaulted in the payment of their obligation. Despite repeated demands to pay the obligation or, in the alternative, to turn over the subject vehicle for foreclosure, appellants did not comply. Due to such non-compliance, appellee instituted an action for collection of sum of money with prayer for the issuance of a writ of replevin.

The writ of replevin was issued on September 11, 2000 ordering the sheriff of the RTC, Branch 115 to take custody of the Hyundai Starex Van. Unfortunately, the sheriff was not able to implement said writ because the vehicle could not be found at the residence of appellants. Appellant William G. Friend admitted to the sheriff that he returned the vehicle to the dealer, Drive Motors, Inc.

Appellants failed to file their answer within the reglementary period. On May 18, 2001, appellee filed a motion to declare appellants in default. In its Order dated July 11, 2001, the RTC granted appellee's motion and declared appellants in default. Appellee presented its evidence ex parte.[4]

On November 29, 2001, the Regional Trial Court of Pasay City, Branch 115, issued an Order disposing as follows:

WHEREFORE, judgment is rendered in favor of the plaintiff Union Bank of the Philippines, and against defendants Spouses William G. Friend and Maria Renee Friend who are ordered to:

- Pay Union Bank of the Philippines the sum of PESOS: SIX HUNDRED FORTY THREE THOUSAND FOUR HUNDRED SEVENTY TWO PESOS & 04/100 (P643,472.04);
- Reimburse Union Bank the sum equal to twenty-five percent (25%) of the total amount due from defendants

as attorney's fees;

- The equal sum to twenty-five percent (25%) of the total amount due from defendants as liquidated damages;
- The costs of suit.

SO ORDERED.[5]

Thereafter, Atty. Simon D. Victa representing petitioners filed a notice of appeal with the Court of Appeals. After the appeal was filed, petitioners changed their counsel. Their appeal was anchored on the alleged error of the trial court in declaring them in default and in finding them liable under the loan-mortgage agreement.

On June 1, 2004, the Court of Appeals rendered its decision upholding the findings of the trial court and ruling thus:

WHEREFORE, premises considered, the assailed Order dated November 9, 2001 is hereby AFFIRMED with MODIFICATION as follows:

- (1) The award of attorney's fees is hereby DELETED.
- (2) The award of liquidated damages is hereby REDUCED to P50,000.00.

SO ORDERED.[6]

Petitioners' motion for reconsideration was denied in a resolution dated October 21, 2004. Hence, this petition raising the following issues:

I.

Whether or not the Honorable Court of Appeals gravely erred in ruling that petitioners were not denied due process for being declared as in default and for being denied the opportunity to present evidence. Corollarily, whether or not petitioners are bound by the negligence of their counsel.

II.

Whether or not the Honorable Court of Appeals gravely erred in ruling that petitioners Sps. Friend are liable under the loan-agreement.[7]

Petitioners seek the reversal of the trial court's and Court of Appeals' decision invoking counsel's negligence in failing to file an answer in the trial court. Petitioners insist that their case is an exception to the general rule that the negligence of counsel binds the client. They aver that they were not able to present evidence in their behalf and were thus deprived of their constitutional right to be heard.

The petition lacks merit.

The doctrinal rule is that the negligence of counsel binds the client.[8] Otherwise, there would be no end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.[9]

However, this rule admits certain exceptions, such as: (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.[10] Indeed, there have been instances when this court had accorded relief to the client who suffered by reason of their lawyer's gross or palpable mistake or negligence.[11] The instant case does not fall under any of the exceptions.

The essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence

one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course", there is no denial of procedural due process.[12]

In the case at bar, while petitioners' former counsel failed to file an answer to the complaint filed by Union Bank, however, he seasonably filed a notice of appeal from the decision of the trial court. Under the Rules of Court, in ordinary appealed cases to the Court of Appeals, the appellant may include in his assignment of errors any question of law and fact that has been raised in the court below and which is within the issues framed by the parties.[13] Petitioners were thus afforded the chance to raise their defenses as the case is opened for comprehensive review by the appellate court.

In *Victory Liner, Inc. v. Gammad*,[14] we held that:

... [T]o sustain petitioner's arguments that it was denied due process of law due to negligence of its counsel would set a dangerous precedent. It would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel. The Court will not countenance such a farce which contradicts long-settled doctrines of trial and procedure.[15]

We find no reason to depart from this ruling. Besides, there is no compelling reason to relax the rules in favor of petitioners, who are not entirely blameless. Petitioners should have taken a more active role in the proceedings of the case against them. Litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.[16]

Anent the second issue raised by petitioners, suffice it to say that the factual findings and conclusion of the trial court and the Court of Appeals are entitled to great weight and respect and will not generally be disturbed on appeal in the absence of a clear showing that the trial court overlooked certain facts or circumstances that would warrant a different disposition of the case.[17]

In this case, it is not disputed that petitioners executed a Promissory Note with a Chattel Mortgage in favor of Union Bank. The action sought by the bank in the trial court was the payment of the amount loaned to petitioners. As aptly observed by the Court of Appeals, the trial court's decision did not even mention the vehicle but rather, ordered the payment of petitioners' existing obligation, damages and cost of suit. Thus, it matters not that the subject vehicle was already sold to a third party because the suit was grounded on the promissory note executed by the petitioners.

Petitioners' argument that it was Drive Motors Incorporated (Drive Motors), through its owner and general manager, Aimee Dumaran, which facilitated their monthly payments to Union Bank and that Union Bank was informed about the transfer of the vehicle, deserves no consideration. The obligation to pay the bank rests primarily on petitioners and not on Drive Motors or Dumaran who merely acted as an intermediary. Their unqualified reliance on Dumaran could not exculpate them from their predicament.

By their own admission, in late 1999, petitioners had been informed that the checks issued by Drive Motors in payment for the van bounced.[18] Prudence dictates that petitioners should have talked directly with a representative of Union Bank to check on the status of their car loan. Instead, petitioners chose to take Dumaran's word that she will settle the problem. As signatories to a valid and subsisting promissory note, petitioners are directly liable to Union Bank for the amount of the loan, regardless of their possession or ownership of the subject vehicle.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated June 1, 2004 in CA-G.R. CV No. 74499 and its Resolution dated October 21, 2004, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 22-26. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Romeo A. Brawner and Vicente Q. Roxas.

[2] Id. at 35-36. Penned by Judge Francisco G. Mendiola.

[3] Id. at 27.

[4] Id. at 23.

[5] Id. at 35-36.

[6] Id. at 26.

[7] Id. at 13-14.

[8] Macondray & Co., Inc. v. Provident Insurance Corporation, G.R. No. 154305, December 9, 2004, 445 SCRA 644, 654.

[9] Saint Louis University v. Cordero, G.R. No. 144118, July 21, 2004, 434 SCRA 575, 584.

[10] Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank, 442 Phil. 55, 64 (2002).

[11] APEX Mining, Inc. v. Court of Appeals, 377 Phil. 482, 495-496 (1999).

[12] Air Philippines Corporation v. International Business Aviation Services Phils., Inc., G.R. No. 151963, September 9, 2004, 438 SCRA 51, 66-67.

[13] Section 15, Rule 44 of the Rules of Court.

[14] G.R. No. 159636, November 25, 2004, 444 SCRA 355.

[15] Id. at 364-365.

[16] Macondray & Co., Inc. v. Provident Insurance Corporation, *supra* at 654.

[17] American Home Assurance Company v. Chua, 368 Phil. 555, 565 (1999).

[18] Rollo, p. 12.

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