

ELPIDIO S. UY, PETITIONER, VS. FIRST METRO INTEGRATED STEEL CORP. AND HON. ANTONIO I. DE CASTRO, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDIC...

G.R. NO. 167245. September 27, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 81046 dated August 27, 2004 dismissing petitioner Elpidio S. Uy's petition for certiorari and its Resolution[2] dated February 22, 2005 denying the motion for reconsideration.

The facts show that on July 5, 1999, private respondent First Metro Integrated Steel Corporation (FMISC) filed a complaint for sum of money with prayer for writ of preliminary attachment against Robert Juan Uy (Robert), Midland Integrated Construction Company (MICC) and herein petitioner Elpidio Uy, with the Regional Trial Court of Manila, which was docketed as Civil Case No. 99-94408 and raffled to Branch 3.[3]

It is alleged that on June 3, 5 and 6, 1998, FMISC delivered to MICC, Robert and petitioner deformed steel bars valued at P695,811.00. On June 9, 1998, Robert allegedly delivered to FMISC Metrobank Check No. 042892 in the amount of P695,811.00 issued by petitioner as payment. However, the check was dishonored upon presentment and despite demands, MICC, Robert and petitioner refused to pay, hence the complaint.

In their Answer with Counterclaim and Crossclaim, Robert and MICC alleged that they are strangers to the contract between FMISC and petitioner; that Robert merely referred petitioner to FMISC; that petitioner left his check in Robert's office which was picked up by FMISC's collector; and that the deformed steel bars were delivered to and received by petitioner's representatives as certified to by Paul Eldrich V. Uy, petitioner's son.[4]

Petitioner filed his Answer with Counterclaim[5] claiming that he had no business transaction with FMISC; that he issued the check in favor of FMISC in the amount of P695,811.00 but since it was not intended as payment to FMISC, he stopped the payment thereof.

Hearings were thereafter conducted for the reception of evidence of FMISC, Robert and MICC. The initial reception of petitioner's evidence was set on February 28, 2001[6] but it was cancelled because petitioner had influenza. The hearing was reset to April 26, 2001 and May 10, 2001[7] but was again cancelled and moved to October 25, 2001 and December 13, 2001.

During the October 25, 2001 hearing, petitioner was represented by Atty. Lucas C. Carpio, Jr. who appeared as Atty. Molina's collaborating counsel.[8] The hearing was cancelled and rescheduled to December 13, 2001. However, on December 10, 2001, Atty. Molina withdrew his appearance as petitioner's counsel with the latter's consent.[9] On December 13, 2001, Atty. Danilo Bañares entered his appearance and requested for a resetting on February 14 and 28, 2002[10] which was granted by the trial court. On February 14, 2002, Atty. Bañares appeared

but instead of presenting evidence for the petitioner, he requested for a postponement and resetting of the hearing.[11]

During the scheduled hearing on February 28, 2002, Atty. Bañares arrived late. Upon motion of FMISC, the trial court ordered that petitioner's right to present evidence is deemed waived and the parties were directed to file their respective memorandum.[12] The case was deemed submitted for decision on November 18, 2002.[13]

Atty. Bañares withdrew his appearance on January 8, 2003 with petitioner's conformity.[14]

On March 7, 2003, the trial court rendered judgment,[15] the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff ordering defendant Elpidio Uy to pay the former:

a)

the sum of P690,000 with interest thereon at 12% per annum from July 1998 until fully paid;

b)

the sum of P110,000.00 as attorney's fees which is 16% of the principal amount; and

c)

the costs of suit.

Defendant Robert Uy's cross-claim is denied as it is now academic. The counterclaims of both defendants herein against plaintiff and against each other are denied for lack of merit.

SO ORDERED.[16]

On April 4, 2003, petitioner received a copy of the Decision.

On April 21, 2003, petitioner through Atty. Lucas C. Carpio, Jr. filed a Motion for New Trial[17] on the ground of gross negligence of petitioner's counsel in failing to attend the hearing for the reception of evidence, thus impairing his rights to due process.

The trial court denied the motion for new trial in an Order[18] dated October 1, 2003.

Dissatisfied, petitioner filed with the Court of Appeals a petition for certiorari which dismissed the petition in its assailed Decision dated August 27, 2004. It held that the trial court correctly denied the motion for new trial because it was filed out of time and that a petition for certiorari is not the proper remedy for the denial of a motion for new trial.

Petitioner's motion for reconsideration was denied, hence, this recourse on the grounds that -

- The Seventeenth (17[th]) Division of the Court of Appeals gravely erred in denying due course to the Petition for Certiorari on technical grounds, that is, for the purported failure of the Petitioner to file with the Court a Quo his Motion for New Trial within the reglementary period to appeal and that the only remedy for the denial of the latter motion is by appealing from the Judgment or Final order and not through a Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Civil Procedure.[19]

- The former Seventeenth (17[th]) Division of the Court of Appeals gravely erred in not finding that the Public

Respondent Judge committed grave abuse of discretion tantamount to lack or excess of jurisdiction when he issued the assailed Order dated October 1, 2003 denying Petitioner's Motion for New Trial.[20]

A scrutiny of the records discloses that while the Motion for New Trial was received by the trial court on April 28, 2003, the date on the Registry Receipt attached to the Affidavit of Service[21] as well as that stamped on the envelope[22] which contained the copy of the motion, reveals that it was filed and served by registered mail on April 21, 2003, a Monday, because April 19, 2003, the last day for filing the same was a Saturday. Section 1, Rule 22 of the Rules of Court states in no uncertain terms that if the last day of the period thus computed falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. Thus, the motion was actually filed on time it having been filed on April 21, 2003, the next working day, following the last day for filing which fell on a Saturday.

Section 9, Rule 37 of the Rules of Court which provides that the remedy to an order denying a motion for new trial is to appeal the judgment or final order, must be read in conjunction with Section 1, Rule 41 which provides that:

SEC. 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis supplied)

Thus, the filing by the petitioner of a petition for certiorari with the Court of Appeals from the denial of the motion for new trial by the trial court is proper.

Notwithstanding the foregoing, we find that the trial court correctly denied petitioner's motion for new trial.

Section 1, Rule 37 provides that a motion for new trial may be filed within the period for taking an appeal based on the following grounds:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

x x x x

Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against.[23]

In the instant case, we find the negligence of petitioner's counsel in failing to attend the hearings for the reception of evidence inexcusable. The trial court scheduled the hearing for the reception of petitioner's evidence seven times. The initial hearing set on February 28, 2001 was cancelled because petitioner allegedly had influenza. The hearings scheduled on April 26, 2001 and May 10, 2001 were cancelled and moved to October 25, 2001 and December 13, 2001. Petitioner was represented by Atty. Carpio, Jr. as collaborating counsel during the hearing on October 25, 2001 but no evidence was presented. Instead, the hearing was cancelled. On December 13, 2001, Atty. Bañares, petitioner's new counsel, appeared but he requested for a resetting. On February 14, 2002, Atty. Bañares moved to postpone the hearing to February 28, 2002 as previously scheduled. On February 28, 2002, Atty. Bañares arrived late.

Scrutiny of the records disclose that the hearings were postponed or cancelled without any justification. However, the trial court accommodated the requests for postponement or resetting in order to accord petitioner due process. Under the circumstances, we find petitioner's counsel's failure to attend the seven scheduled hearings without justifiable reason tantamount to inexcusable neglect. As such, it cannot be a ground for new trial.

In addition, the Rule requires that motions for new trial founded on fraud, accident, mistake or excusable negligence must be accompanied by affidavits of merits, i.e., affidavits showing the facts (not mere conclusions or opinions) constituting the valid cause of action or defense which the movant may prove in case a new trial is granted, because a new trial would serve no purpose and would just waste the time of the court as well as the parties if the complaint is after all groundless or the defense is nil or ineffective.[24]

Under the Rules, the moving party must show that he has a meritorious defense. The facts constituting the movant's good and substantial defense, which he may prove if the petition were granted, must be shown in the affidavit which should accompany the motion for a new trial.[25] We examined petitioner's Affidavit of Merit and find that it did not contain clear statements of the facts constituting a good and valid defense which he might prove if given the chance to introduce evidence. The allegations that he has a "meritorious defense"[26] and a "good cause"[27] are mere conclusions which did not provide the court with any basis for determining the nature and merit of the case. An affidavit of merit should state facts, and not mere opinion or conclusions of law.[28] Petitioner's motion for new trial and affidavit of merit did not mention the evidence which he was prevented from introducing, nor did it allege that such evidence would change the outcome of the case.

Petitioner's argument that his counsel's negligence was so gross that he was deprived of due process fails to impress. Gross negligence is not one of the grounds for a motion for a new trial. We cannot declare his counsel's negligence as gross as to liberate him from the effects of his failure to present countervailing evidence.[29] In *Air Philippines Corporation v. International Business Aviation Services, Phils., Inc.*,[30] we did not consider as gross negligence the counsel's resort to dilatory schemes, such as (1) the filing of at least three motions to extend the filing of petitioner's Answer; (2) his nonappearance during the scheduled pretrials; and (3) the failure to file petitioner's pretrial Brief, even after the filing of several Motions to extend the date for filing.

Besides, we find that petitioner's and his counsel's negligence are concurrent. During the initial hearing for the reception of his evidence, petitioner was absent allegedly due to influenza. During the succeeding scheduled hearings, petitioner was absent but his lawyer, Atty. Molina, was present but did not present any evidence. Instead, motions for postponement or resetting were made. In one occasion, Atty. Molina was absent but Atty. Carpio, Jr. appeared as collaborating counsel. Still, no evidence was presented but a resetting was again requested.

On December 13, 2001, petitioner hired Atty. Bañares as his new counsel, and the hearings were set on February 14 and 28, 2002. For petitioner, thus, to feign and insist upon a lack of awareness of the progress of the case is to unmask a penchant for the ludicrous.[31] When he hired the services of Atty. Bañares, it is highly improbable that he was unaware of the stage of the proceedings. In keeping with the normal cause of events, he should have made the proper inquiries from his former counsel as to the status of the case.

Incidentally, we find it interesting that Atty. Lucas C. Carpio, Jr. who assisted petitioner in the preparation of the motion for new trial, wherein he claimed that his former counsel was grossly negligent in defending his case, was petitioner's collaborating counsel and who appeared in his behalf during the October 25, 2001 hearing but likewise presented no evidence for the petitioner.

Finally, petitioner's counsel's inexcusable neglect did not amount to petitioner's deprivation of due process of law. The right to due process safeguards the opportunity to be heard and to submit any evidence one may have in support of his claim or defense. In the instant case, petitioner was given several opportunities to be heard and to

submit evidence but he squandered them. Indeed, from lethargy is misfortune born.[32]

Blunders and mistakes in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel do not qualify as a ground for new trial. If such were to be admitted as valid reasons for re-opening cases, there would never be an end to litigation so long as a new counsel could be employed to allege and show that the prior counsel had not been sufficiently diligent, experienced or learned. This will put a premium on the willful and intentional commission of errors by counsel, with a view to securing new trials in the event of conviction,[33] or an adverse decision, as in the instant case.

WHEREFORE, the instant petition is DENIED for lack of merit.

SO ORDERED.

Panganiban, C. J. (Chairperson)., Austria-Martinez, Callejo, Sr., and Chico-Nazario concur.

[1] Rollo, pp. 29-33. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo- Zenarosa.

[2] Id. at 34.

[3] Records, pp. 1-7.

[4] Id. at 45-56.

[5] Id. at 69-77.

[6] Id. at 229.

[7] Id. at 232.

[8] Id. at back of 261, 263.

[9] Id. at 265.

[10] Id. at 267.

[11] Id. at 269.

[12] Id. at 271.

[13] Id. at 286.

[14] Id. at 288-289.

[15] Id. at 290-292.

[16] Id. at 292.

[17] Id. at 295.

[18] Id. at 323.

[19] Rollo, p. 18.

[20] Id. at 21.

[21] Records, p. 303.

[22] Id. at 294.

[23] *Azucena v. Foreign Manpower Services*, G.R. No. 147955, October 25, 2004, 441 SCRA 346, 355; *First International Paper Corporation v. Pelaez*, G.R. No. 164871, August 22, 2006.

[24] *Ferrer v. Yang Sepeng*, 158 Phil. 368, 371 (1974).

[25] *Malipol v. Tan*, 55 Phil. 202, 213 (1974).

[26] *Rollo*, p. 99.

[27] Id. at 102.

[28] *Malipol v. Tan*, *supra* note 25.

[29] *Banting v. Maglapuz*, G.R. No. 158867, August 22, 2006.

[30] G.R. No. 151963, September 9, 2004, 438 SCRA 51, 62-63.

[31] Id. at 65.

[32] Id.

[33] *Rivera v. Court of Appeals*, 452 Phil. 1014, 1024-1025 (2003).

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