SPOUSES FRANCISCO AND GLORIA SALCEDO, PETITIONERS, VS. AMELIA MARINO, JOINED BY HER HUSBAND CECILIO MARINO, RESPONDENTS.

G.R. NO. 170102. July 27, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals (Special Seventeenth Division) dated August 22, 2005 in CA-G.R. SP No. 87932.

On October 3, 1990, spouses Francisco and Gloria Salcedo, petitioners, obtained a loan of P98,000.00 from spouses Amelia and Cecilio Marino, respondents. To secure this loan, petitioners executed a real estate mortgage over their residential property located at No. 36-B, East Bajac-Bajac, Olongapo City. The term of the loan was one (1) year.

Petitioners failed to pay their indebtedness within the period stipulated. Hence, on December 13, 1993, the parties executed before the barangay captain of East Bajac-bajac, Olongapo City, an agreement extending the period for payment to another year; and providing that should petitioners fail to pay their obligation within the extended period, they will surrender their mortgaged property voluntarily to respondents.

Petitioners again failed to pay their loan, prompting respondents to file with the Municipal Trial Court in Cities (MTCC), Branch 3, Olongapo City a motion for the issuance of a writ of execution, docketed as MTCC Case No. 34-94.

On August 9, 1996, the MTCC granted respondents' motion and issued an Order directing the issuance of a writ of execution pursuant to Section 417 of Republic Act 7160 (Revised Local Government Code)[2] and ordering petitioners to surrender voluntarily their mortgaged property to respondents.

On August 23, 1996, the writ of execution was implemented and respondents were placed in possession of the property. Eventually, petitioners filed a motion to recall the writ and to be allowed to deposit P98,000.00. The MTCC denied the motion, holding that it had become moot and that the issues raised therein can be heard in a separate civil action.

On June 6, 1997, petitioners filed with the same MTCC a complaint for recovery of possession, docketed as Civil Case No. 3568. But for lack of barangay conciliation, the MTCC, in its Decision dated September 2, 1997, denied the petition.

On appeal, the Regional Trial Court (RTC) of Olongapo City issued an Order dated April 27, 1998 affirming the MTCC Decision.

Petitioners elevated the matter to the Court of Appeals via a petition for review, docketed as CA-G.R. SP No. 48088.

On October 28, 1998, the Court of Appeals rendered its Decision reversing the RTC Order of April 27, 1998 and declaring that petitioners are entitled to recover possession of the mortgaged property on the ground that the agreement to extend the term of the loan contained a pactum commissarium.

Respondents then filed with this Court a petition for review on certiorari. In its Decision dated November 15, 2000, this Court ordered that the case be remanded to the MTCC for further proceedings to determine whether petitioners "are entitled to possession of the mortgaged property."

After trial on the merits, the MTCC promulgated its Decision dated March 29, 2004 dismissing petitioners' complaint for lack of cause of action since the mortgaged property had already been sold at public auction in favor of respondents and that the sheriff, on December 16, 1991, issued the corresponding Certificate of Sale.

Petitioners appealed to the RTC, Branch 72, Olongapo City, docketed as Civil Case No. 244-0-04.

On June 14, 2004, the RTC ordered petitioners to file their memorandum within fifteen (15) days from notice. Instead of complying with the Order, they filed a motion for extension of 15 days within which to file their memorandum which was granted by the RTC. Again, they failed to file the required memorandum. Subsequently, they filed anew a motion asking for another extension of fifteen (15) days. Once more, the RTC granted the motion.

However, despite the two (2) extensions, petitioners still failed to file their memorandum. Consequently, the RTC, in an Order dated November 24, 2004, dismissed their appeal.

Petitioners filed a motion for reconsideration. Attached thereto was their memorandum. They alleged that their counsel had a heavy workload and that he had difficulty getting in touch with them because they transferred their residence to Manila.

In its Order of December 1, 2004, the RTC denied petitioners' motion, stating that it had given them enough time to file their memorandum. Moreover, although they transferred to Manila, they could still communicate with their counsel regarding the case.

Petitioners then filed with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 87932. However, it was denied by the appellate court in its Decision dated August 22, 2005, thus:

> IN LIGHT OF ALL THE FOREGOING, the petition is DENIED and the assailed Orders of the Regional Trial Court of Olongapo City, Branch 72 dated November 24, 2004 and December 1, 2004 are hereby AFFIRMED. No costs.
>
> SO ORDERED.

Petitioners timely filed a motion for reconsideration, but in a Resolution dated October 17, 2005, the Court of Appeals denied the same.

Thus, the instant petition anchored on the sole issue of whether the Court of Appeals erred in affirming the RTC Orders dismissing petitioners' appeal for their failure to submit their memorandum on time.

Section 7, Rule 40 of the 1997 Rules of Civil Procedure, as amended, provides:

> SEC. 7. Procedure in the Regional Trial Court. —
>
> (a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.
>
> (b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum

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> which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.
>
> (c) Upon the filing of the memorandum of the appellee or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

It is clear from the above provisions that petitioners' failure to file their memorandum seasonably is a ground for the dismissal of their appeal.

Petitioners' excuse that their counsel was burdened by "heavy workload" lacks merit. We cautioned lawyers to handle only as many cases as they can efficiently handle.[3] The zeal and fidelity demanded of a lawyer to his client's cause require that not only should he be qualified to handle a legal matter, he must also prepare adequately and give appropriate attention to his legal work. Since a client is, as a rule, bound by the acts of his counsel,[4] a lawyer, once he agrees to take a case, should undertake the task with dedication and care.[5] Failure of a lawyer to file a pleading constitutes inexcusable negligence on his part.[6]

Nor will the bare fact that the petitioners now live in Manila, while their counsel has office in Olongapo, justifies their failure to file their memorandum on time. In Balgami v. Court of Appeals,[7] where a party resided 135 kilometers away from his counsel in Iloilo City, we held that such fact alone will not excuse the party from failing to get in touch with his counsel. Moreover, we agree with the RTC that petitioners' presence was not indispensable in the preparation of their memorandum. Also, there is no showing that they were earnestly following up their case with their counsel. It is a dogma that litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.[8] A party to a case is mandated to inquire from his counsel from time to time about its status and progress. Petitioners were unmindful of this mandate.

This Court frowns upon a lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation or manifestation for his failure.[9]

WHEREFORE, we DENY the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 87932 is AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Rollo, pp. 109-115. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan-Castillo.

[2] Section 417. Execution. — The amicable settlement or arbitration award may be enforced by execution by the lupon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court.

[3] Miwa v. Medina, A.C. No. 5854, September 30, 2002, 412 SCRA 275, 281, citing Legarda v. Court of Appeals, 195 SCRA 418 (1991).

[4] Boaz International Trading Corp. v. Woodward Japan, Inc., G.R. No. 147793, December 11, 2003, 418 SCRA

287, 295.

[5] Legarda v. Court of Appeals, G.R. No. 94457, March 18, 1991, 195 SCRA 418, 428.

[6] See Perea v. Almadro, A.C. No. 5246, March 20, 2003, 399 SCRA 322.

[7] G.R. No. 131287, December 9, 2004, 445 SCRA 591.

[8] Balgami v. Court of Appeals, id.

[9] Borbon v. Court of Appeals, G.R. No. 138495, December 9, 2004, 445 SCRA 617, 622, citing Edrial v. Quilat-Quilat, 339 SCRA 760 (2000).

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