

ARLYN PINEDA, PETITIONER, VS. JULIE C. ARCALAS, RESPONDENT.*G.R. No. 170172. November 23, 2007*

Ponente: CHICO-NAZARIO, J.

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This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court, assailing the Resolution[1] dated 25 January 2005, rendered by the Court of Appeals in C.A. G.R. CV No. 82872, dismissing the appeal filed by petitioner Arlyn Pineda (Pineda) for failure to file her appellant's brief. Under the assailed Resolution, the Order[2] promulgated by Branch 27 of the Regional Trial Court of Santa Cruz, Laguna (Laguna RTC), on 2 February 2004, granting the petition of respondent Julie Arcalas (Arcalas) for the cancellation of the Affidavit of Adverse Claim annotated at the back of Transfer Certificate of Title (TCT) No. T-52319 under Entry No. 324094, became final.

The subject property consists of three parcels of land, which are described as Lot No. 3762-D with an area of 42,958 square meters, Lot No. 3762-E with an area of 4,436 square meters, and Lot No. 3762-F with an area of 2,606 square meters, the total area of which consists of 50,000 square meters. These three lots are portions of Lot No. 3762, registered in the name of Spouses Mauro Lateo and Encarnacion Evangelista (spouses Lateo) under TCT No. T-52319, with a total area of 74,708 square meters, located at Barrios Duhat and Labuin, Santa Cruz, Laguna. A certain Victoria Tolentino bought the said property from the Spouses Lateo. Sometime later, Civil Case No. Q-96-27884, for Sum of Money, was instituted by Arcalas against Victoria Tolentino. This case stemmed from an indebtedness evidenced by a promissory note and four post-dated checks later dishonored, which Victoria Tolentino owed Arcalas.[3]

On 9 September 1997, Branch 93 of the Quezon City RTC, rendered judgment in favor of Arcalas and against Victoria Tolentino.[4]

On 15 December 1997, Pineda bought the subject property from Victoria L. Tolentino.[5] Pineda alleged that upon payment of the purchase price, she took possession of the subject property by allowing a tenant, Rodrigo Bautista to cultivate the same. However, Pineda failed to register the subject property under her name.[6]

To execute the judgment, the Quezon City RTC levied upon the subject property and the Notice of Levy on Alias Writ of Execution dated 12 January 1999 was annotated as Entry No. 315074, in relation to Entry No. 319362, at the back of TCT No. T-52319.[7]

Asserting ownership of the subject property, Pineda filed with the Deputy Sheriff of the Quezon City RTC an Affidavit of Title and Third Party Claim. Arcalas filed a motion to set aside Pineda's Affidavit of Title and Third Party Claim, which on 3 November 1999, the Quezon City RTC granted, to wit:

[Arcalas] showed that her levies on the properties were duly registered while the alleged Deed of Absolute Sale between the defendant Victoria L. Tolentino and Analyn G. Pineda was not. The levies being superior to the sale claimed by Ms. Pineda, the court rules to quash and set aside her Affidavit of Title and Third Party Claim.

ACCORDINGLY, the motion is granted. The Affidavit of Title and Third-Party Claim is set aside to allow completion of execution proceedings.[8]

On 2 February 2000, after the finality[9] of the Order of the Quezon City RTC quashing Pineda's third-party claim, Pineda filed with the Office of the Register of Deeds of Laguna another Affidavit of Third Party Claim and caused the inscription of a notice of adverse claim at the back of TCT No. T-52319 under Entry No. 324094. [10]

On 3 February 2000, Arcalas and Leonardo Byron P. Perez, Jr. purchased Lot No. 3762 at an auction sale conducted by the Deputy Sheriff of Quezon City. The sale was evidenced by a Sheriff's Certificate of Sale issued on the same day and registered as Entry No. 324225 at the back of TCT No. T-52319.[11]

Arcalas then filed an action for the cancellation of the entry of Pineda's adverse claim before the Laguna RTC. The Laguna RTC ordered the cancellation of the Notice of Adverse Claim annotated as Entry No. 324094 at the back of TCT No. 52319 on the ground of res judicata:

The court order emanating from Branch 91 of the Regional Trial Court of Quezon City having become final and executory and no relief therefrom having been filed by [Pineda], the said order granting the [Arcalas's] "Motion to Set Aside Affidavit of Title and 3rd Party Claim" should be given due course and the corresponding annotation at the back of TCT No. T-52319 as Entry No. 324094 dated February 2, 2000 should be expunged accordingly.[12]

Pineda appealed the Order of the Laguna RTC before the Court of Appeals under Rule 44 of the Rules of Court. In a Resolution dated 25 January 2005,[13] the appellate court dismissed the appeal and considered it abandoned when Pineda failed to file her appellant's brief.

Pineda filed a Motion for Reconsideration, wherein it was plainly stated that Pineda's counsel overlooked the period within which he should file the appellant's brief.[14] The said motion was denied in a Resolution dated 26 May 2005. Pineda filed a Second Motion for Reconsideration, which was denied on 7 October 2005.[15] No appellant's brief was attached to either motion for reconsideration.

Hence, the present Petition raising the following issues:[16]

I.

WHETHER THE LEVY ON ALIAS WRIT OF EXECUTION ISSUED BY THE REGIONAL TRIAL COURT OF QUEZON CITY IN CIVIL CASE NO. Q-96-27884 MAY EXEMPT THE PORTION BOUGHT BY [PINEDA] FROM VICTORIA TOLENTINO; [and]

II.

WHETHER THE POSSESSION OF [PINEDA] OF THE 5 HECTARES PORTION OF LOT 3762 IS ALREADY EQUIVALENT TO A TITLE DESPITE THE ABSENCE OF REGISTRATION.

This petition must be dismissed.

The Court of Appeals properly dismissed the case for Pineda's failure to file an appellant's brief. This is in accordance with Section 7 of Rule 44 of the Rules of Court, which imposes upon the appellant the duty to file an appellant's brief in ordinary appealed cases before the Court of Appeals, thus:

Section 7. Appellant's brief.—It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

In special cases appealed to the Court of Appeals, such as certiorari, prohibition, mandamus, quo warranto and habeas corpus cases, a memorandum of appeal must be filed in place of an appellant's brief as provided in Section 10 of Rule 44 of the Rules of Court

Section 10. Time of filing memoranda in special cases.—In certiorari, prohibition, mandamus, quo warranto and habeas corpus cases, the parties shall file, in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all the evidence, oral and documentary, is already attached to the record.

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal.

Non-filing of an appellant's brief or a memorandum of appeal is one of the explicitly recognized grounds of dismissal of the appeal in Section 1 of Rule 50 of the Rules of Court:

Section 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

This Court provided the rationale for requiring an appellant's brief in *Enriquez v. Court of Appeals*[17]:

[T]he appellant's brief is mandatory for the assignment of errors is vital to the decision of the appeal on the merits. This is because on appeal only errors specifically assigned and properly argued in the brief or memorandum will be considered, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Otherwise stated, an appellate court has no power to resolve an unassigned error, which does not affect the court's jurisdiction over the subject matter, save for a plain or clerical error.

Thus, in *Casim v. Flordeliza*,[18] this Court affirmed the dismissal of an appeal, even when the filing of an appellant's brief was merely attended by delay and fell short of some of the requirements of the Rules of Court. The Court, in *Gonzales v. Gonzales*,[19] reiterated that it is obligatory on the part of the appellant to submit or file a memorandum of appeal, and that failing such duty, the Rules of Court unmistakably command the dismissal of the appeal.

In this case, Pineda did not even provide a proper justification for her failure to file her appellant's brief. It was merely alleged in her Motion for Reconsideration that her counsel overlooked the period within which to file the appellant's brief. Although Pineda filed no less than two motions for reconsideration, Pineda had not, at any time, made any attempt to file her appellant's brief. Nor did she supply any convincing argument to establish her right to the subject property for which she seeks vindication.

Thus, this Court cannot reverse or fault the appellate court for duly acting in faithful compliance with the rules of procedure and established jurisprudence that it has been mandated to observe, nor turn a blind eye and tolerate the transgressions of these rules and doctrines.[20] An appealing party must strictly comply with the requisites laid down in the Rules of Court since the right to appeal is a purely statutory right.[21]

Even when this Court recognized the importance of deciding cases on the merits to better serve the ends of justice, it has stressed that the liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice.[22] The Court eyes with disfavor the unjustified delay in the termination of cases; once a judgment has become final, the winning party must not be deprived of the fruits of the verdict, through a mere subterfuge. The time spent by the judiciary, more

so of this Court, in taking cognizance and resolving cases is not limitless and cannot be wasted on cases devoid of any right calling for vindication and are merely reprehensible efforts to evade the operation of a decision that is final and executory.[23]

In the present case, there is a clear intent on the part of Pineda to delay the termination of the case, thereby depriving Arcalas of the fruits of a just verdict. The Quezon City RTC already quashed Pineda's third party claim over the subject property, yet she filed another adverse claim before the Office of the Register of Deeds of Laguna based on the same allegations and arguments previously settled by the Quezon City RTC. Arcalas, thus, had to file another case to cause the cancellation of Pineda's notice of adverse claim on TCT No. T-52319 before the Laguna RTC. After the Laguna RTC gave due course to Arcalas's petition, Pineda filed a dilatory appeal before the Court of Appeals, where she merely let the period for the filing of the appellant's brief lapse without exerting any effort to file one. The two motions for reconsideration and even the petition before this Court fail to present new issues. They raised the very same issues which had been consistently resolved by both the Quezon City RTC and the Laguna RTC in favor of Arcalas, upholding the superiority of her lien over that of Pineda's unregistered sale. Considering all these circumstances, there is no basis for the lenient application of procedural rules in this case; otherwise, it would result in a manifest injustice and the abuse of court processes.

As a rule, the negligence or mistake of counsel binds the client.[24] The only exception to this rule is when the counsel's negligence is so gross that a party is deprived of due process and, thus, loses life, honor or property on mere technicalities.[25] The exception cannot apply to the present case, where Pineda is merely repeating arguments that were already heard and decided upon by courts of proper jurisdiction, and the absolute lack of merit of the petition is at once obvious.

Pineda avers that she is not a party to Civil Case No. Q-96-27884, heard before the Quezon City RTC, and that the levy on the alias writ of execution issued in Civil Case No. Q-96-27884 cannot affect her purchase of subject property. Such position runs contrary to law and jurisprudence.

Sections 51 and 52 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, provide that:

Section 51. Conveyance and other dealings by registered owner.—An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or the city where the land lies. (Emphasis provided.)

Section 52. Constructive notice upon registration.—Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering. (Emphasis provided.)

It is clear from these provisions that before a purchaser of land causes the registration of the transfer of the subject property in her favor, third persons, such as Arcalas, cannot be bound thereby. Insofar as third persons are concerned, what validly transfers or conveys a person's interest in real property is the registration of the deed. As the deed of sale was unrecorded, it operates merely as a contract between the parties, namely Victoria Tolentino

as seller and Pineda as buyer, which may be enforceable against Victoria Tolentino through a separate and independent action. On the other hand, Arcalas's lien was registered and annotated at the back of the title of the subject property and accordingly amounted to a constructive notice thereof to all persons, whether or not party to the original case filed before the Quezon City RTC.

The doctrine is well settled that a levy on execution duly registered takes preference over a prior unregistered sale.[26] A registered lien is entitled to preferential consideration.[27] In *Valdevieso v. Damalerio*,[28] the Court held that a registered writ of attachment was a superior lien over that on an unregistered deed of sale and explained the reason therefor:

This is so because an attachment is a proceeding in rem. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.

Thus, in the registry, the attachment in favor of respondent appeared in the nature of a real lien when petitioner had his purchase recorded. The effect of the notation of said lien was to subject and subordinate the right of petitioner, as purchaser, to the lien. Petitioner acquired ownership of the land only from the date of the recording of his title in the register, and the right of ownership which he inscribed was not absolute but a limited right, subject to a prior registered lien of respondent, a right which is preferred and superior to that of petitioner.

Pineda also contends that her possession of the subject property cures the defect caused by her failure to register the subject property in her name. This contention is inaccurate as well as inapplicable.

True, that notwithstanding the preference given to a registered lien, this Court has made an exception in a case where a party has actual knowledge of the claimant's actual, open, and notorious possession of the disputed property at the time the levy or attachment was registered. In such situations, the actual notice and knowledge of a prior unregistered interest, not the mere possession of the disputed property, was held to be equivalent to registration.[29]

Lamentably, in this case, Pineda did not even allege, much less prove, that Arcalas had actual knowledge of her claim of ownership and possession of the property at the time the levy was registered. The records fail to show that Arcalas knew of Pineda's claim of ownership and possession prior to Pineda's filing of her third party claim before the Quezon City RTC. Hence, the mere possession of the subject property by Pineda, absent any proof that Arcalas had knowledge of her possession and adverse claim of ownership of the subject property, cannot be considered as equivalent to registration.

IN VIEW OF THE FOREGOING, the instant Petition is DISMISSED and the assailed Decision of the Court of Appeals in C.A. G.R. CV No. 82872, promulgated on 25 January 2005, is AFFIRMED. The Order of Branch 27 of the Regional Trial Court of Sta. Cruz, Laguna, directing the Register of Deeds of Laguna to cancel the Notice of Adverse Claim inscribed at the back of TCT No. T-52319 as Entry No. 324094 is SUSTAINED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

* Spelled as "Analyn" in some records.

- [1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Salvador J. Valdez, Jr., and Vicente Q. Roxas, concurring. Rollo, p. 9-10.
- [2] Id. at 114-116.
- [3] Records, pp. 100-101.
- [4] Id. at 104-108.
- [5] Rollo, pp. 37-40.
- [6] Records, p.114.
- [7] Rollo, pp. 34-36.
- [8] Records, p. 12.
- [9] Rollo, p. 115. It was stated in the Order of the Laguna RTC, dated 2 February 2004 that the Order of the Quezon City RTC had already attained finality when Pineda's Affidavit of Third Party Claim was filed with the Register of Deeds of Laguna. Such findings have remained uncontroverted by Pineda.
- [10] Rollo, pp. 36 and 115.
- [11] Records, pp. 9-10.
- [12] Rollo, p. 116.
- [13] Id. at 9-10.
- [14] Id. at 22-23.
- [15] Id. at 18-19.
- [16] Id. at 194.
- [17] 444 Phil. 419, 429 (2003).
- [18] 425 Phil. 210 (2002).
- [19] G.R. No. 151376, 22 February 2006, 483 SCRA 57, 68.
- [20] *Casim v. Flordeliza*, supra note 18 at 219.
- [21] *Enriquez v. Court of Appeals*, supra note 17 at 249.
- [22] *El Reyno Homes, Inc. v. Ong*, 445 Phil. 610, 618 (2003).
- [23] *Gonzales v. Gonzales*, supra note 19 at 70-71.
- [24] *Five Star Bus Co., Inc. v. Court of Appeals*, 328 Phil. 426, 434 (1996) and *Dela Cruz v. Sison*, G.R. No. 142464, 26 September 2005, 471 SCRA 35, 42-43.
- [25] *Ramos v. Atty. Dajoyag, Jr.*, 428 Phil. 267, 280 and *Dela Cruz v. Sison*, id.
- [26] *Defensor v. Brillo*, 98 Phil. 427, 429 (1956); *Capistrano v. Philippine National Bank*, 101 Phil. 1117, 1120 (1957); and *Du v. Stronghold Insurance Co., Inc.*, G.R. No. 156580, 14 June 2004, 432 SCRA 43, 48.
- [27] *Philippine National Bank v. Javellana*, 92 Phil. 525, 530 (1953); and *Lavides v. Pre*, 419 Phil. 665, 672 (2001).

[28] G.R. No. 133303, 17 February 2005, 451 SCRA 664, 671.

[29] Fernandez v. Court of Appeals, G.R. No. 83141, 21 September 1990, 189 SCRA 780, 789.

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