



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

O. VENTANILLA ENTERPRISES
CORPORATION,

Petitioner,

- versus -

ADELINA S. TAN and SHERIFF
REYNANTE G. VELASQUEZ,
Presiding Judge,*

Respondents.

G.R. No. 180325

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

Promulgated:

February 20, 2013

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DECISION

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution¹ of the Court of Appeals (CA), dated May 24, 2007, refusing to recall its entry of judgment, and its Resolution² dated October 19, 2007, denying petitioner's Motion for Reconsideration, be reversed and set aside.

The records of the case bear out the following antecedent facts.

Petitioner leased out two of its properties in Cabanatuan City to Alfredo S. Tan and herein private respondent Adelina S. Tan (*the Tans*).

* The Regional Trial Court and Court of Appeals are deemed dropped as respondents in accordance with Sec. 4, Rule 45 of the Rules of Court, which states that the petition shall not implead the lower courts or judges thereof as petitioners or respondents.

¹ Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Portia Aliño-Hormachuelos and Bienvenido L. Reyes (now a member of this Court), concurring; *rollo*, pp. 148-151.

² *Id.* at 162-164.

Due to the failure of the Tans to comply with the terms of the lease, petitioner filed a complaint against the Tans for cancellation and termination of contract of lease with the Regional Trial Court of Cabanatuan City (RTC). On December 10, 1996, the RTC rendered a Decision,³ the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Oscar Ventanilla Enterprises Corporation and against the defendants Alfredo S. Tan, Sr. and Adelina S. Tan, ordering the latter to:

- (1) surrender possession and complete control of the premises, Avelune and Capital Theaters, as well as the properties enumerated in the addendum to the lease contract dated 22 June 1992, to the plaintiff;
- (2) pay the plaintiff the sum of ₱4,297,004.84 plus interest thereon that may become due at the rate stipulated in the lease contract entered into by the parties on June 22, 1992;
- (3) pay the plaintiff the sum of ₱250,000.00 as exemplary damages to serve as deterrent for others who in the future may follow the bad example set by the herein defendants;
- (4) pay the plaintiff by way of liquidated damages as agreed upon in paragraph 23 of the lease contract the sum equivalent to 50% of the unpaid rentals;
- (5) declaring the deposit initially made as forfeited in favor of the plaintiff; [and]
- (6) pay the sum equivalent to 15% of the unpaid rentals by way of Attorney's fees, and to pay the costs of the suit.

SO ORDERED.⁴

Both Alfredo S. Tan and private respondent Adelina S. Tan appealed from said Decision. However, herein petitioner filed a motion for execution pending appeal and the same was granted by the trial court. Several properties and bank accounts of private respondent and Alfredo S. Tan were levied upon. The Tans decided to pay the amounts as ordered in the RTC Decision, and on September 24, 1997, the trial court issued Orders⁵ lifting and cancelling the Notice of Levy on private respondent Adelina Tan's properties and also on several bank accounts in the name of the Tans. Both orders stated that after the court allowed the writ of execution pending appeal, defendant tendered payment in the amount of ₱9,073,694.76 in favor of herein petitioner, who through Mr. Moises C. Ventanilla, acknowledged

³ *Rollo*, pp. 53-56.

⁴ *Id.* at 55-56.

⁵ *Id.* at 62-63.

receipt of said amount as complete and full satisfaction of the adjudged obligations of the Tans to petitioner in this case.⁶

The appeal filed by Alfredo S. Tan was dismissed by the CA, but the appeal filed by herein private respondent Adelina S. Tan (docketed as CA-G.R. CV No. 58817), proceeded in due course. On October 21, 2002, the CA promulgated its Decision,⁷ the dispositive portion of which is reproduced hereunder:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. For lack of legal and factual justification, the awards of exemplary damages and attorney's fees shall be **DELETED**. Likewise, the award of liquidated damages under paragraph 23 of the lease contract is further **REDUCED** to 25% of the unpaid rentals. All the other aspects of the decision are **AFFIRMED**.

SO ORDERED.⁸

None of the parties filed any motion for reconsideration or appeal from the CA Decision, thus, the same became final and executory on November 21, 2002, per the Entry of Judgment⁹ issued by the CA.

Private respondent Adelina Tan then filed with the trial court a Motion for Execution¹⁰ dated March 27, 2003, praying that the excess of the amounts she previously paid as exemplary damages, attorney's fees and liquidated damages be refunded to her, in accordance with the judgment of the CA. To counter such move, on June 19, 2003, petitioner filed with the CA in CA-G.R. CV No. 58817, an Omnibus Motion (with entry of appearance), praying that the entry of judgment be recalled, lifted and set aside; that the CA Decision dated October 21, 2002 in CA-G.R. CV No. 58817 be recalled, reconsidered, and/or vacated and, thereafter, the appeal of Adelina Tan be dismissed or the appeal be reopened to allow petitioner to file an appeal brief. Petitioner argued that its counsel, Atty. Liberato Bauto died on March 29, 2001, hence, any notice sent to him must be deemed ineffective; that the parties have arrived at a settlement of the case, as shown by the fact that private respondent already paid ₱9,073,694.76 as complete and full satisfaction of the adjudged obligations of the defendants to petitioner, and thus, the appeal should have been deemed mooted.

Meanwhile, the RTC granted the motion for execution, and in an Order¹¹ dated January 23, 2004, ordered as follows:

⁶ *Id.* at 62, 63.

⁷ *Id.* at 66-70.

⁸ *Id.* at 69. (Emphasis in the original)

⁹ *Id.* at 82.

¹⁰ *Id.* at 71-74.

¹¹ *Id.* at 83-85.

Thus, based on the amount computed by defendant Adelina Tan in her motion for execution and following the reduction of the award to the plaintiffs made by the Court of Appeals in its decision, the defendants are entitled to the following amounts:

Php 250,000.00	- amount of the deleted exemplary damages
Php 644,550.606	- amount of the deleted attorney's fees
Php 1,074,251.01	- amount of the reduced liquidated damages (25% of the unpaid rentals)
Php1,968,801.616	- total amount to be refunded

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby **GRANTED** and the Order dated December 2, 2003 is hereby **RECONSIDERED** and **SET ASIDE**.

Let an Alias Writ of Execution issue stating the amount to be refunded to defendants which is Php1,968,801.616, the same to be enforced against the herein plaintiff.

SO ORDERED.¹²

On March 8, 2004, petitioner filed with the RTC a Very Urgent Motion (for recall and reconsideration of order and quashal of alias writ of execution, levy, and notice of sheriff's sale, etc.),¹³ but this motion was denied in an Order¹⁴ dated March 10, 2004. Petitioner then filed a petition for *certiorari* with the CA (docketed as CA-G.R. SP No. 82608) to assail the trial court's denial of the Very Urgent Motion, but as admitted by petitioner in the present petition,¹⁵ said action for *certiorari* was denied due course and dismissed by the CA on March 12, 2004.

As to petitioner's Omnibus Motion (with entry of appearance) filed with the CA in CA-G.R. CV No. 58817, the appellate court issued a Resolution¹⁶ dated March 19, 2004, merely noting petitioner's motion because its Decision dated October 21, 2002 has long become final and executory. Undaunted, petitioner again filed on October 2, 2006, a Manifestation and Motion in CA-G.R. CV No. 58817, praying that its Omnibus Motion and Supplemental Motion be resolved on the merits instead of merely being noted as the CA did in its Resolution dated March 19, 2004; that the petition for *certiorari* be resolved and granted; and that the proceedings in the trial court with regard to the execution of the CA Decision in CA-G.R. CV No. 58817, be annulled and set aside.

On May 24, 2007, the CA promulgated the Resolution denying the above-mentioned Manifestation and Motion filed by petitioner on October 2,

¹² *Id.* at 85. (Emphasis in the original)

¹³ *Id.* at 95-98.

¹⁴ *Id.* at 99-101.

¹⁵ *Id.* at 19.

¹⁶ *Id.* at 125-126.

2006. The CA pointed out that the separate petition for *certiorari* which petitioner sought to be resolved had already been dismissed on March 12, 2004. The CA also ruled that petitioner's prayer for the recall of the entry of judgment cannot be granted, as petitioner's bare assertion, that its former counsel had not received notices of orders, resolutions or decisions of the court because said counsel died while the appeal was pending, does not qualify as one of those cases where the court allowed such recall. Petitioner moved for reconsideration of said Resolution, but on October 19, 2007, the CA issued a Resolution denying the same. The CA reiterated that it could not find any reason to recall the entry of judgment.

Hence, the present petition.

Although the petition is an appeal from the Resolution of the CA issued on May 24, 2007, refusing to recall its entry of judgment, and its Resolution dated October 19, 2007, denying reconsideration of the earlier resolution, petitioner is actually making a vain attempt to reopen a case that has long been final and executory. The Court frowns upon such conduct of litigants and their lawyers.

The Court strikes down the argument that the CA Decision in CA-G.R. CV No. 58817 did not attain finality because petitioner's counsel, who died while the case was pending before the CA, was unable to receive a copy thereof. The CA was correct in ruling that there is no extraordinary circumstance in this case that would merit a recall of the entry of judgment to reopen the case. The reason given by petitioner, that its former counsel had died before the CA Decision was promulgated, hence, it was not properly notified of the judgment, is too tenuous to be given serious consideration. In *Mojar, et al. v. Agro Commercial Security Service Agency, Inc.*,¹⁷ the Court explained that it is the party's duty to inform the court of its counsel's demise, and failure to apprise the court of such fact shall be considered negligence on the part of said party. Expounding further, the Court stated:

x x x It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm.

x x x They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel.

x x x x

¹⁷ G.R. No. 187188, June 27, 2012; See also *Amatorio v. People*, G.R. No. 150453, February 14, 2003, 397 SCRA 445, 454; 445 Phil. 481, 491 (2003).

In *Ampo v. Court of Appeals*, this Court explained the vigilance that must be exercised by a party:

X X X X

Litigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their cases. Relief 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 his own negligence. The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

Thus, for failure of petitioner to notify the CA of the death of its counsel of record and have said counsel substituted, then service of the CA Decision at the place or law office designated by its counsel of record as his address, is sufficient notice. The case then became final and executory when no motion for reconsideration or appeal was filed within the reglementary period therefor.

Petitioner's next allegation, that the trial court erred in ordering the issuance of a writ of execution against petitioner, ordering it to refund the amount of ₱1,968,801.616 to herein private respondent, is also unfounded.

Petitioner insists that the fact that private respondent had previously paid petitioner the amount of ₱9,073,694.76 when the trial court granted petitioner's motion for execution pending appeal, means that the parties have arrived at a compromise settlement which should have terminated the case between them. The argument holds no water.

First of all, as held in *Legaspi v. Ong*,¹⁸ “[e]xecution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court precisely provides for restitution according to equity in case the executed judgment is reversed on appeal.”¹⁹

Secondly, contrary to petitioner's claim, private respondent merely paid the amount of ₱9,073,694.76 in compliance with the writ of execution pending appeal, and not by reason of a compromise agreement. No such agreement or contract appears on record. Furthermore, petitioner's claim is

¹⁸ G.R. No. 141311, May 26, 2005, 459 SCRA 122; 498 Phil. 167 (2005).

¹⁹ *Id.* at 145; at 188-189.

belied by the fact that private respondent actively pursued the appeal of the case, which resulted in the CA Decision decreasing the amounts awarded by the RTC.

Petitioner then contends that there is a substantial variance between the writ of execution and the CA Decision, as the latter did not make mention of petitioner having to make a refund. However, note Section 5, Rule 39 of the Rules of Court, which provides that:

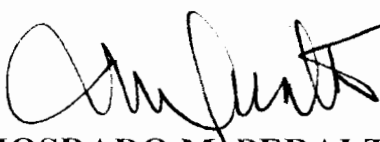
Sec. 5. *Effect of reversal of executed judgment.* - Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, **the trial court may, on motion, issue such orders of restitution or reparation of damages** as equity and justice may warrant under the circumstances. (Emphasis supplied)

Evidently, the action of the RTC in ordering the issuance of the writ of execution against herein petitioner for it to return the excess amount private respondent has paid in compliance with the execution pending appeal, is in accordance with the Rules.

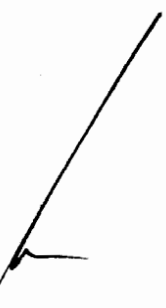
In sum, there is nothing amiss in ordering petitioner to refund the amount of ₱1,968,801.616 to herein private respondent, as the appellate court has ruled with finality that petitioner is not entitled to such amount.


WHEREFORE, the petition is **DENIED** for utter lack of merit.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

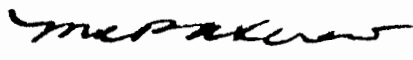
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice