SECOND DIVISION

[G.R. No. 128686, May 28, 2004]

HONORATO ESPINOSA, PETITIONER, VS. COURT OF APPEALS, HON. PRESIDING JUDGE, BRANCH 23, RTC ILOILO CITY AND SPS. RODOLFO AND VIOLETA ALCANTARA, RESPONDENTS.

D E C I S I O N

TINGA, J,:

This is a petition for review of the *Decision*[1] dated October 11, 1996 of the Court of Appeals in CA-G.R. SP No. 39206, dismissing the petition for the annulment of the Decision[2] dated May 15, 1990 of the Regional Trial Court of Iloilo City (RTC) in Civil Case No. 18622.

The antecedents are recited below.

After finding through a relocation survey that a portion of their Lot 933-A-1-A, covered by Transfer Certificate of Title No. T-69242 (Iloilo), was occupied by the petitioner Honorato Espinosa's ("Espinosa") restaurant, known as "Tatoy's Manokan and Seafoods Restaurant", the private respondents Rodolfo and Violeta Alcantara ("Alcantaras") filed an action for ejectment against Espinosa before the Municipal Trial Court in Cities, Iloilo City (MTC), on November 4, 1985.[3]

Espinosa denied the encroachment. Also through his counsel then, Atty. Rex Castillon, Espinosa succeeded in having the case tried as in a regular case, instead of a hearing under the Rules on Summary Procedure.[4]

After trial, the MTC rendered judgment on February 6, 1989 in favor of Espinosa, dismissing the complaint and ordering the Alcantara spouses to pay moral damages, exemplary damages, attorney's fees, litigation expenses, and costs of suit. It found that Espinosa did not encroach on the lot of the Alcantaras as his restaurant was situated on Lot 933-A-18 which he owns.[5]

The Alcantaras appealed the decision to the RTC.[6] Its Presiding Judge, Hon. Tito G. Gustilo, noted that the lot of the Alcantaras and the adjoining lots, including those of Espinosa and the city street, are all titled properties. On that basis and with the concurrence of the parties and their respective lawyers, the Judge issued an Order on October 2, 1989, commissioning the Bureau of Lands to conduct a relocation survey for the purpose of determining whether Espinosa's restaurant has indeed encroached on the Alcantaras' lot.[7]

Judge Gustilo presided over the ocular inspection and relocation survey on October 2, 1989. Present were the parties and their lawyers.[8]

In due time, the Bureau of Lands through its authorized representative submitted to the RTC the result of the relocation survey with the corresponding sketch plan.[9] The sketch plan indicates that Espinosa's restaurant encroaches on eighty-nine (89) square meters of the Alcantaras' Lot 933-A-1-A and also on a portion of the city street known as Melo Boulevard and designated as Lot 933-A-1-B.[10] Said street lot used to be a part of the bigger property owned by the Alcantaras' predecessor-in-interest from whom the City of Iloilo purchased the street lot.[11]

During the relocation survey, Judge Gustilo proposed a compromise settlement to the parties and their lawyers whereby should the relocation survey attest to the encroachment on the Alcantaras' lot Espinosa would buy the encroached area at P250.00 per square meter from the Alcantaras. Espinosa agreed to the proposal at the time. However, when the Judge invited the parties and their counsels to his chambers to explore or pursue the proposed compromise agreement on three (3) occasions, namely: on December 27, 1989, April 2, 1990 and April 5, 1990, Espinosa rejected the proffered settlement.[12]

On May 15, 1990, the RTC rendered its decision in favor of the Alcantaras, reversing the MTC decision and ordering Espinosa to vacate the lot in question and to pay the Alcantaras moral damages, attorney's fees, litigation expenses and costs of suit.[13]

Espinosa elevated the RTC decision to the Court of Appeals through a *Petition For Review* which was docketed as CA-G.R. SP No. 22398.[14]

On September 6, 1993, the Court of Appeals promulgated its Decision in the case, denying Espinosa's *Petition For Review.*[15]

Unfazed, Espinosa elevated the CA *Decision* to this Court and his *Petition* was docketed as G.R. No. 111752. This Court denied the *Petition* in a *Resolution* dated February 27, 1995 for which the corresponding *Entry of Judgment* was made on August 18, 1995.[16]

Less than three (3) months later, on December 6, 1995, Espinosa, this time through his present counsel, Atty. Honorio S. Laguilles, Jr., filed a petition for annulment of judgment with the Court of Appeals. He alleged that the promulgation of the RTC decision was attended with extrinsic fraud and denial of due process.[17] In his verification and certification of non-forum shopping, however, Espinosa was silent on the petitions he earlier filed with the Court of Appeals (CA-G.R. SP No. 22398) and this Court (G.R. No. 111752) and the decision or resolution on the petitions.[18]

In the challenged *Decision,* the Court of Appeals dismissed the petition for annulment of judgment.[19] It also declared Espinosa and his present counsel in contempt of court and fined each of them One Thousand Pesos (P1,000.00) for forum-shopping.

Consequently, the issues before this Court are (a) whether the RTC *Decision* may be annulled on the ground of extrinsic fraud and denial of due process, and (b) whether Espinosa and his present counsel are guilty of forum-shopping.

Annulment of judgment is a recourse equitable in character, allowed only in

exceptional cases as where there is no available or other adequate remedy.[20] Extrinsic fraud, the ground upon which Espinosa relies upon, is one of the recognized grounds for annulment of judgment.[21] However, the mere allegation of extrinsic fraud does not instantly warrant the annulment of a final judgment, as the same has to be definitively established by the claimant. Espinosa has failed to prove extrinsic fraud.

Extrinsic fraud exists when there is a fraudulent act of prevailing party committed outside of the trial of the case, whereby the defeated party was prevented from exhibiting fully his side of the case by fraud or deception practiced on him by the prevailing party.[22] The extrinsic fraud complained off by Espinosa refers to the act of conducting the relocation survey while the case was on appeal to the RTC. Espinosa suggests that it was highly questionable on the part of the RTC to have ordered such a survey since the case was being heard on appeal, and given the nature of an ejectment action, only the submission of memoranda by the parties are required.[23]

Clearly, the conduct of the relocation survey was not occasioned at the instigation of the prevailing party (the Alcantaras), but upon lawful order by the RTC. Moreover, the procedure was consented to by all of the parties and their lawyers. The relocation survey was ordered for the purpose of conclusively ascertaining a factual issue, i.e., the exact location of the structure belonging to Espinosa in relation to the lot of the Alcantaras. This is a proper question for the RTC to have inquired into, and well within its competence as it is a trier of facts. Every court has the inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.[24]

Even assuming that the order for the relocation survey is irregular on the premise that RTC may decide the appealed case based only on the records and pleadings before it, such lapse is procedural in character only. The findings would not be *ipso facto* binding on the parties who consented to the survey, but would only form part of the proofs on which the trial court would base its decision upon. Despite such relocation survey, Espinosa was not prevented from challenging the findings before the RTC. Nor was Espinosa prevented from arguing against the adoption of such findings before the Court of Appeals and the Supreme Court, considering that he had availed of the proper appellate processes before these higher courts.

Indeed, Espinosa raised the same issue concerning the alleged impropriety of the relocation survey ordered by the RTC before the CA in CA G.R. SP No. 22398. It was rejected by the appellate court in its decision in the said case. The same issue was raised again in G.R. No. 111752 before this Court, albeit unsuccessfully. A claim of extrinsic fraud would presuppose that the claimant was prevented exhibiting fully his side of the case. On the contrary, Espinosa has had multiple opportunities to raise the same issue on the impropriety of the relocation survey before the courts. His claim has acquired the veneer of a scratchy vinyl record that repeats its hoary *tune ad nauseum* to the general effect of irritation.

Espinosa claims that he was deprived of due process and blames his former counsel, Atty. Castillon, for having consented to the relocation survey, implicitly suggesting that the lawyer too had an active hand in denying him due process. Indubitably, Espinosa and his former counsel agreed to the relocation survey, were present

during the survey and are thus estopped from questioning its very conduct in the first place. When a party retains the services of a lawyer, he is bound by his counsel's decisions regarding the conduct of the case. The general rule is that the client is bound by the mistakes of his counsel, save when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court. [25]

Citing the cases of *Legarda v. Court of Appeals*[26] and *Alabanzas v. IAC*[27], Espinosa invokes the exception to the general rule that a client need not be bound by the actions of counsel who is grossly and palpably negligent. These very cases cited demonstrate why Atty. Castillon's acts hardly constitute gross or palpable negligence. *Legarda* provides a textbook example of gross negligence on the part of the counsel. The Court therein noted the following negligent acts of lawyer Antonio Coronel:

> Petitioner's counsel is a well-known practicing lawyer and dean of a law school. It is to be expected that he would extend the highest quality of service as a lawyer to the petitioner. Unfortunately, counsel appears to have abandoned the cause of petitioner. After agreeing to defend the petitioner in the civil case filed against her by private respondent, said counsel did nothing more than enter his appearance and seek for an extension of time to file the answer. Nevertheless, he failed to file the answer. Hence, petitioner was declared in default on motion of private respondent's counsel. After the evidence of private respondent was received ex-parte, a judgment, was rendered by the trial court.
>
> Said counsel for petitioner received a copy of the judgment but took no steps to have the same set aside or to appeal therefrom. Thus, the judgment became final and executory.[28]

Gross negligence on the part of the counsel in *Legarda* is clearly established, characterized by a series of negligent omissions that led to a final executory judgment against the client, who never once got her side aired before the court of law before finality of judgment set in. The actions of Atty. Castillon hardly measure up to this standard of gross negligence exhibited in the *Legarda* case.

On the other hand, in *Alabanzas* counsel failed to file an appellant's brief, thereby causing the dismissal of the appeal before the Court of Appeals.[29] Despite such inexcusable and fatal lapse, the Court ruled that it was not sufficient to establish such gross or palpable negligence that justified a deviation from the rule that clients should be bound by the acts and mistakes of their counsel.[30] It strikes as odd that Espinosa should cite *Alabanzas* in the first place, considering that the lapse of the counsel therein was far worse than that imputed to Atty. Castillon, yet the Court anyway still refused to apply the exception to the general rule.

Besides, there is nothing in the record that would tend to establish that Atty. Castillon performed less than ably in representing Espinosa. On the contrary, as noted by the Alcantaras in their *Comment,* Atty. Castillon is a law professor on Property and a distinguished practitioner in the City of Iloilo.[31] Moreover, Atty. Castillon served as Espinosa's counsel for more than ten years.[32] Espinosa's defeat