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FIRST DIVISION

[G.R. No. 118349, May 23, 1997]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, PETITIONER, VS. COURT OF APPEALS AND STRONGHOLD INSURANCE CO., INC., RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (formerly Construction Development Corporation of the Philippines) filed on 18 March 1985 an action for a sum of money with damages against Ronaldo L. Calupitan and Stronghold Insurance Co., Inc., before the Regional Trial Court of Pasig.

On 4 January 1991 judgment was rendered ordering Calupitan and his surety, respondent Stronghold, to pay petitioner jointly and severally (a) P317,500.00 representing the downpayment pursuant to the Subcontract Agreement of 23 December 1982; (b) P500,000.00 as liquidated damages; and, (c) P50,000.00 as attorney's fees and expenses of litigation, all the foregoing amounts to earn interest at twelve percent (12%) per annum from the filing of the case until fully paid. As to the cross claim, Calupitan was ordered to pay Stronghold any and all amounts paid by the latter to petitioner by reason of the judgment as well as P50,000.00 for attorney's fees and litigation expenses, said amounts likewise to earn twelve percent (12%) interest per annum from the date of payment by Stronghold to petitioner until fully paid.[1]

On 4 February 1991 Stronghold filed a notice of appeal, approved by the trial court the following day, 5 February 1991, with an order to elevate the records to the Court of Appeals.

On 17 June 1994 petitioner moved for the dismissal of the appeal on the ground that despite the lapse of more than three (3) years respondent Stronghold had not taken steps to prosecute its appeal. Petitioner relied heavily on our rulings in Estella v. Court of Appeals[2] that gross inaction for more than one (1) year amounts to failure to prosecute, and in Fagtanac v. Court of Appeals[3] that it is the duty of the appellant to prosecute his appeal with reasonable diligence.

Stronghold opposed the motion contending that it had not yet received notices from respondent court to pay the docket fee and other charges and thereafter to file its brief. It claimed good faith in waiting for said notices.

On 15 August 1994 respondent court denied the motion on the rationalization that -

> x x x x the so-called failure to prosecute is not due to the fault of appellant considering that the omission to transmit the records of the case to this Court is not the responsibility of appellant. Rather, it is the duty of the Branch Clerk of Court (Sec. 1, Rule 4 of the Internal Rules of this Court) to elevate the entire record from approval of the notice of appeal.

Thus, respondent court directed the Branch Clerk of Court to transmit the entire records of the case within five (5) days from receipt of its resolution.[4] On 4 November 1994 it denied reconsideration.[5]

Petitioner now challenges the Resolutions of 15 August 1994 and 4 November 1994 contending that they were issued without or in excess of jurisdiction and/or with grave abuse of discretion. It stresses that the appeal should have been dismissed by respondent court based on the same cases it previously invoked.

The arguments of petitioner are well taken. It strains credulity that respondent court should still look the other way. In relying solely on Sec. 1, Rule 4, of its Internal Rules, respondent court ignored settled jurisprudence timely brought to its attention. Our rulings take precedence over the Internal Rules of respondent appellate court.

In Arcega v. Court of Appeals[6] the petitioners disputed the dismissal of their appeal based practically on the same grounds invoked in the present case. Therein they asserted that they had not yet been notified that the records of the case were already with the appellate court and that they had to pay the required docket and other fees. Furthermore, they claimed that the elevation of the records of the case was beyond their means and control.

But we were not impressed -

> x x x x while it is the duty of the clerk of the lower court to transmit the records of an appealed case to the appellate court, it is also the duty of the appellant to make the clerk of court act, and the failure of the clerk to perform his legal duty is no justification for the appellant's failure to perform his, and he cannot justify his failure by saying that the fault was that of the clerk of the lower court (underscoring supplied).[7]

We also quoted therein the disquisition in the earlier case of Fagtanac -

> x x x x A rule long familiar to practitioners in this jurisdiction is that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of Court of First Instance under the provisions of Section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is appellant's duty to make the Clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur on the slothful (underscoring supplied).[8]