Cebu City

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 04124, July 03, 2014]

ELMER SUNBANUN, JR., GEORGIE S. TAN, RICHARD SUNBANUN AND DORIS SUNBANUN, PLAINTIFFS-APPELLEES, VS. AURORA B. GO, YIU WAI SANG AND YIU-GO EMPLOYMENT AGENCY, INC., DEFENDANTS, AURORA B. GO, DEFENDANT-APPELLANT.

DECISION

HERNANDO, J:

Before this Court is an appeal filed by defendant-appellant Aurora B. Go seeking review of the Decision[1] dated January 26, 2004 of the Regional Trial Court (RTC), Branch 58, of Cebu City in Civil Case No. CEB-25778, an action for Damages.

The Antecedents:

On July 7, 1995, Doris Sunbanun and Aurora B. Go entered into a Contract of Lease[2] for the rental of the ground floor portion of a two-storey residential house located in 68-F Junquera Street, Cebu City. The parties agreed, among others, that the premises would be used only as a private dwelling or lodging house. However, it was discovered that Aurora and her husband, Yiu Wai Sang, were using the premises as the business office of Yiu-Go Employment Agency.

Thus, in November 2000, Elmer Sunbanun, Jr., Georgie S. Tan, Richard Sunbanun and Doris Sunbanun[3] filed a Complaint for Damages against Aurora, Yiu Wai Sang and Yiu-Go Employment Agency[4] before the court *a quo*, which was docketed as Civil Case No. CEB-25778. Appellees alleged that the use of the premises for business purposes allegedly increased the risk of loss by fire. They claimed that it caused a breach of warranty in the fire insurance policies that they made which described the property as purely residential type.

In their defense, defendants averred that they already left the premises and that during the entirety of their stay, they used the leased floor as a private residence, which at the same time also catered to lodgers. They asserted that Yiu-Go Employment Agency never held office there but at No. 127, Colon Street, Cebu City. Moreover, defendants stressed that the risk of fire is the same whether the house is used as a business office or as a lodging house.

After appellees presented their evidence, Aurora moved that her testimony be taken by deposition upon written interrogatories. She averred that she was uncertain when she could come home to the Philippines. Moreover, she already arranged with the Philippine consulate in Hong Kong to take her deposition. On November 21, 2002, the RTC granted[5] Aurora's motion.

A year passed without Aurora's deposition having been submitted. Thus, the RTC, in its December 1, 2003 Order,[6] deemed the defendants to have waived their right to

present their evidence and considered the case submitted for decision. On January 26, 2004, the RTC rendered its assailed Decision finding only Aurora liable and ordering her to pay moral damages, attorney's fees, litigation expenses and costs.

On March 16, 2004, Aurora's former counsel of record, Atty. Jude Henritz R. Ycong, received a Motion to Direct Issuance of Entry of Judgment and Writ of Execution.[7] Shocked, Atty. Ycong filed an Opposition[8] asserting that he was not aware of the adverse judgment against his client. He explained that the January 26, 2004 Decision was mistakenly sent to his former office address despite his previous notice to the court of his new office address. Nevertheless, on March 30, 2004, the trial court found appellees' motion premature as the judgment against Aurora has not yet attained finality as the 15-day period to appeal, counted from March 16, 2004, has not yet lapsed.

On March 31, 2004, Aurora filed a Motion for Reconsideration[9] but this was denied by the trial court in its April 27, 2004 Order.[10] On May 6, 2004, well after the expiry of the period for appeal, Atty. Ycong sought for the relaxation of the procedural rules and asked for an extension to file a notice of appeal. He expressed that Aurora has been busy campaigning for the local elections and that they have yet to discuss the consequences of appealing the instant case. Thereafter, on May 11, 2004, Atty. Ycong filed a Notice of Appeal.

On May 12, 2004, the RTC denied the notice of appeal on the ground that the reason espoused by Atty. Ycong was inexcusable. It did not fall under those exceptional instances when appeals are allowed to be perfected despite being filed out of time. Aurora sought for reconsideration but it was denied by the RTC on June 10, 2004.

Aggrieved, Aurora filed a Petition for Certiorari[11] with this Court on August 13, 2004, which was docketed as CA-G.R. SP No. 85897. However, on December 8, 2004,[12] We dismissed the petition for being procedurally flawed. Invoking the liberal construction of procedural rules, Aurora asked for reconsideration but it was, nonetheless, denied in this Court's April 8, 2005 Resolution.[13]

Not satisfied, Aurora elevated the case to the Supreme Court *via* a Petition for Review on Certiorari, which was docketed as G.R. No. 168240. On February 9, 2011, the Supreme Court granted her petition, the dispositive portion reads:[14]

> **WHEREFORE**, the petition is **GRANTED**. The challenged Resolutions of the Court of Appeals in CA-G.R. SP No. 85897 dated December 8, 2004 and April 8, 2005 are **REVERSED** and **SET ASIDE**; the Orders of the Regional Trial Court of Cebu, Branch 58, dated May 12 and June 10, 2004 that denied Aurora Go's notice of appeal are likewise **REVERSED** and **SET ASIDE**. The Regional Trial Court of Cebu, Branch 58 is hereby **DIRECTED** to give due course to petitioner's Notice of Appeal dated May 11, 2004.
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> **SO ORDERED.**

The Supreme Court retroactively applied the recent ruling in *Neypes v. CA*[15] to the instant case. It ratiocinated that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no

vested rights in the rules of procedure. Consequently, under the fresh period rule, Aurora still had until May 21, 2004 to file her notice of appeal since the denial of her Motion for Reconsideration of the trial court's January 26, 2004 Decision was received by her former counsel on May 6, 2004. Thus, Aurora had timely filed her notice of appeal on May 11, 2004.

Subsequently, on June 4, 2014, Aurora and Doris Sunbanun entered into a Compromise Agreement[16] wherein the parties agreed to drop all claims against each other in Civil Case No. R-36953, Civil Case No. CEB-18706, Civil Case No. CEB-25778, Civil Case No. CN-62 and Civil Case No. R-53354. Moreover, the parties agreed to a release, remise, quitclaim and discharge as to any liability which may have arisen out of the said cases. Since there is no showing that the compromise agreement was entered into through fraud, misrepresentation or coercion, the same is to be recognized as valid and binding. Accordingly, the claims of Doris Sunbanun against Aurora Go in the instant case should be dismissed. As to the remaining appellees, Elmer Sunbanun, Jr., Georgie S. Tan and Richard Sunbanun, who were not parties to the Compromise Agreement, their claims against Aurora remains.

Hence, We proceed with the current appeal before Us as regards appellees Elmer Sunbanun, Jr., Georgie S. Tan and Richard Sunbanun.

The Issue:

The sole issue here is whether or not the trial court erred in deciding the instant case without waiting for the transcript of the deposition of defendant-appellant Aurora Go, thereby depriving her day in court.

The Court's Ruling

The appeal is bereft of merit.

The instant case presents the two facets of due process which must be carefully weighed and evaluated. Like a double-edged sword, on one side is Aurora's right not to be deprived of her property without being afforded her day in court,[17] and on the other side, is appellees' right to the speedy disposition of their case.[18]

In *Lopez, Jr. v. Office of the Ombudsman*,[19] the Supreme Court was emphatic that:

> The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings." Hence, under the Constitution, any party to a case may demand expeditious action on all officials who are tasked with the administration of justice.

Here, it is clear that an unreasonable delay in the taking of Aurora's deposition had unduly violated appellees' right to the speedy disposition of their case. A long period of time was allowed to elapse without the appellees' case having been tried. Indubitably, the Philippine consulate in Hong Kong is not solely to blame for the lethargic execution of Aurora's deposition. A perusal of the records would reveal that as early as November 21, 2002, the trial court had already granted Aurora's motion for the conduct of a deposition upon written interrogatories. Concededly, nothing was done to ensure the prompt execution of the deposition. It was only on