

TENTH DIVISION

[CA-G.R. CV. NO. 53272, August 18, 2006]

AMELITA L. VENUS, PLAINTIFF-APPELLANT, VS. ELEONOR JAVIER, DEFENDANT-APPELLEE.

DECISION

REYES, JR., A. J.:

This is an appeal from the 22 February 1996 Decision^[1] of the Regional Trial Court of Manila Branch 34 in Civil Case No. 90-54471 dismissing plaintiff's complaint for claim of damages. The dispositive portion of the said decision provides:

"WHEREFORE, finding no merit in the Complaint, judgment is hereby rendered DISMISSING the same.

Further, the counter-claim is likewise dismissed. Those who come to Court seeking redress which turned out to be a mistaken interpretation or assessment of right should not be punished.

With cost against the plaintiff.

SO ORDERED."^[2]

On 15 September 1990, Amelia Venus (hereinafter Amelia) filed an action for damages against Eleonor Javier (hereinafter Eleonor). The former was a regular faculty member of the University of the East College of Arts and Sciences since 1957 until her retirement in May 1990, while the latter was at that time the president of the University of the East Faculty Association, which is a faculty union. Amelia complained of the following acts of the defendant: 1) forcible breaking of her locker and taking away its contents without turning them over to her; 2) causing delay of the payment of her backwages earned under PD 451; 3) malicious refusal to pay her retirement benefits; 4) malicious and unreasonable refusal to give consent to her rehiring as a faculty member of the University of the East.^[3]

In her prayer, Amelia asked for the return of all items and belongings taken from her locker, and that Eleonor pay her moral damages in the amount of P250,000.00, exemplary damages of P50,000.00, attorney's fees in the amount of P20,000.00 and cost of the suit.^[4]

The parties presented their respective evidence during the trial and based thereon, the trial court rendered its decision in favor of Eleonor.

On 6 March 1996, a notice of appeal was filed by Amelia through its counsel,^[5] which was given due course by the RTC for being filed in time.^[6] This Court ordered

her counsel to file the brief in its notice to file brief dated 5 March 1997.^[7] On 4 July 1997, after several extensions, Amelia's brief was filed assigning the following errors committed by the trial court:

I

THE LOWER COURT ERRED IN HOLDING THAT APPELLEE WAS NOT LIABLE TO APPELLANT FOR THE OPENING OF APPELLANT'S LOCKER AND THE REMOVAL OF HER THINGS THEREFROM

II

THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE WAS NOT RESPONSIBLE AND LIABLE FOR THE DELAY IN THE RELEASE OF APPELLANT'S BACKWAGES UNDER THE EDUCATION ACT OF 1982

III

THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE WAS NOT RESPONSIBLE AND LIABLE FOR THE DELAY IN THE GIVING OF TEACHING ASSIGNMENT TO APPELLANT AS A RETIREE

IV

THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE WAS NOT LIABLE FOR THE NON-PAYMENT TO APPELLANT OF HER RSBS RETIREMENT BENEFIT

Eleonor filed her appellee's brief dated 28 November 1997 refuting the allegations of Amelia. She also hinted that Amelia had already passed away and that the said fact was concealed by Amelia's lawyer. Subsequently, Amelia's counsel Venus Arcilla and Venus, through Atty. Ericio M. Arcilla filed a Manifestation and Motion for Substitution dated 31 March 1998 stating therein that Amelia indeed died on 4 December 1995.^[8] A Manifestation and Explanation/ Opposition was also submitted by Atty. Arcilla, stating therein that he only knew of his client's death through the Appellee's Brief and the Manifestation and Motion dated 26 January 1998. Eleonor, in the said manifestation prayed, among other things, to require Atty. Arcilla to comment on his possible concealment of the fact of death of Amelia.^[9]

In his explanation, Atty. Arcilla claimed that there was no intention to conceal the death of Amelia. He insinuated that the same was due to the confusion resulting from the change of counsel of Amelia. The case was originally represented by Trieste Venus Macaraig and Arcilla Law Offices. He was the one assigned to handle the case, and upon the offices' dissolution, the case remained under him who, together with Atty. Rufo Venus and Atty. Grace M. Venus, formed a new partnership. He explained that the said partnership is not an active one since they were engaged in other employment.^[10] According to him, it was due to pure inadvertence and miscommunication that he was not informed of Amelia's death and, thus, his failure to comply with his duty under the Rules to inform the court of the fact of death of the party within 30 days from her death and to move for substitution.^[11]

Allegedly, Atty. Venus informed Atty. Arcilla a few days after Amelia's death of the said fact and asked him what was the appropriate action through a note which was sent through a personnel who worked for Atty. Venus. It was claimed by Atty. Arcilla that he never received the same which may be attributed, as he insinuated, to the negligence of his office secretary who probably misplaced it or forgot to give it to him. As Atty. Arcilla was unaware of the said fact, he filed with the trial court an Entry of Appearance as new counsel, and filed a notice of appeal.^[12]

Although it challenges reason how such degree of negligence would be possible for lawyers who have the utmost obligation to be responsible not only to the client but to the court, We could only accept the explanation in consideration of good faith as We could not make any surmises at present. We are merely interested in the same as to its consequence to the resolution of this case.

First, it should be noted that Amelia died even before the rendering of the decision of the trial court. The pertinent provisions of the 1985 Rules of Court at that time, regarding death of a party, are Secs. 16, and 17 of Rule 3 which state, respectively:

"Duty of attorney upon death, incapacity, or incompetency of party. -- Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative."

*"Death of party. -- After a party dies and the claim is not thereby extinguished, the court shall order upon proper notice, the legal representative of the deceased to appear and be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs."*

These provisions are reproduced in Section 16 of Rule 3 of the 1997 Civil Procedure which reads:

"Death of a party; duty of counsel. - - Whenever a party to a pending action is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply shall be a ground for disciplinary action."

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or