

# FIRST DIVISION

[ G.R. No. 196765, September 19, 2018 ]

**FRANCIS M. ZOSA, NORA M. ZOSA AND MANUEL M. ZOSA, JR.,  
PETITIONERS, VS. CONSILIUM, INC., RESPONDENT.**

## DECISION

**LEONARDO-DE CASTRO, CJ.:**

This is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, as amended, assailing the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated November 30, 2010 and April 8, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03538 entitled, "*Consilium Inc. represented by Arturo T. Guillen v. The Honorable Presiding Judge Geraldine Faith Econg of the Regional Trial Court, Branch 9 of Cebu City, Francis M Zosa, Nora M Zosa, and Manuel M Zosa, Jr.,*" which reversed and set aside the Orders dated January 15, 2008<sup>[3]</sup> and April 2, 2008<sup>[4]</sup> of the Regional Trial Court (RTC) Branch 9, Cebu City in Civil Case No. CEB-26038 entitled, "*Francis M Zosa, Nora M Zosa and Manuel M Zosa, Jr. v. Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa.*"

### ***The Facts***

On January 17, 2001, a complaint<sup>[5]</sup> for "Declaration of Nullity of Deed of Sale and TCT No. T-113390, and Quieting of Title" was filed before the RTC by herein petitioners Francis M. Zosa, Nora M. Zosa and Manuel M. Zosa, Jr. (hereinafter collectively referred to as the "Zosas"), against Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa (hereinafter collectively referred to as the "Paypas").

During the pendency of the aforementioned case, on January 29, 2003, respondent Consilium, Inc. (Consilium) was allowed to intervene therein on the ground that on November 23, 2000, it had purchased the subject property in good faith from the Paypas for P1,585,100.00.<sup>[6]</sup>

In a Decision<sup>[7]</sup> dated September 27, 2007, the RTC ruled in favor of the Zosas, to wit:

WHEREFORE, by reason of preponderance of evidence, the court hereby renders judgment in favor of the plaintiffs and against defendants. The court hereby:

1. Declares the Deed of Absolute Sale as void; and
2. Orders the cancellation of TCT No. T-113390 which was issued in the name of defendants Sps. Paypa.

All other claims, as well as the counterclaims are hereby considered DISMISSED.<sup>[8]</sup>

On October 17, 2007, Consilium filed a Notice of Appeal,<sup>[9]</sup> alleging to have received the Decision of the RTC on October 10, 2007. Note, however, that the corresponding appeal fee was paid only on October 31, 2007, or six days from October 25, 2007, the last day to perfect an appeal.

The Zosas opposed the Notice of Appeal on the ground that the appeal was *"filed out of time x x x while the Notice of Appeal was filed on October 17, 2007, the docket/appeal fee was paid only on October 31, 2007 which was beyond the period x x x to file the Notice of Appeal."*<sup>[10]</sup>

In Consilium's Comment to the Zosas' Opposition (to the Notice of Appeal), it explained that such omission, however, was sheer inadvertence, *i.e. , "[t]hat after the Notice of Appeal was prepared by undersigned counsel, [he] left for Basilan to attend to some pressing engagements with the Basilan Electric Cooperative of which he is the designated Project Supervisor, in charge for its rehabilitation x x x instruction[s] were given to his clerk Jonathan Cabañez to file the Notice of Appeal as well as to pay the docket fee x x x [t]hat, while the Notice of Appeal was filed, the aforementioned clerk forgot to pay the docket fee as required x x x upon the return of the undersigned counsel on October 31, 2007, he found out that the docket fee was not paid, thus, he immediately caused the payment of the same."* It insisted that such "inadvertence" was a case of excusable negligence.<sup>[11]</sup>

Acting on the Notice of Appeal, the RTC resolved to deny due course thereto in an Order dated January 15, 2007, *viz.:*

WHEREFORE, in view of the foregoing, the Notice of Appeal filed by the Intervenor Consilium, Inc. is hereby denied due course.<sup>[12]</sup>

On February 7, 2008, Consilium moved for the reconsideration of the above-mentioned Order, and prayed for the relaxation of the rules of procedure. The motion was set for hearing on February 22, 2008 per the Notice of Hearing stated in the said motion.

The Zosas, however, sought the outright denial of Consilium's motion for reconsideration on the ground that it was set for hearing beyond the 10-day period prescribed in Section 5, Rule 15 of the Rules of Court, as amended.

The RTC, for its part, set the hearing of Consilium's motion for reconsideration on March 3, 2008.<sup>[13]</sup>

And in an Order dated March 3, 2008, the RTC treated the motion as a mere scrap of paper, *viz.:*

The Court, however, regrets that it cannot rule on the motion for reconsideration filed by [the] intervenor thru counsel, on the ground that the same was received by this Court on February 7, 2008 and yet, the Motion was set for hearing beyond the 10-day period set forth by the rules, pursuant to Section 5, Rule 15 of the 1997 Rules on Civil Procedure.<sup>[14]</sup>

Upon receipt of the above-quoted Order, Consilium sought clarification as to its import, arguing –

2. That with the foregoing pronouncement of the Honorable Court, intervenor-movant is now in a quandary on what to do and where to go, considering that the action of the Court, with due respect, left practically everything in a suspended animation or uncertainty;

x x x x

4. That the court's refusal to rule on the Motion for Reconsideration after having taken cognizance of it, may simply mean a deferment of its action on the motion, which is not countenance [d] by Section 3, second paragraph of Rule 16, which states that "the court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable" x x x;

5. That, whether or not, the motion was filed contrary to the provision of Section 5, Rule 15, the Court should render a resolution thereon, in as much as the grounds relied upon by intervenor-movant in its motion are not only worthy of consideration, and did not appear indubitable, but also worth giving the aggrieved party the chance to avail of the remedies provided for under the Rules in the interest of justice and fair play x x x;

x x x x

8. That, having taken cognizance of the Motion for Reconsideration by the Court's admission of the filing thereof, and the subsequent resetting of the date of hearing and its actual hearing of the arguments of intervenor-movant, the latter is of the view and for which it submits, that the alleged procedural defect mentioned above was cured. Moreover, the alleged defect herein mentioned is entirely procedural and within the discretion of the court to set aside if only to uphold justice, equity and fair play, and discourage the disposition of cases by technicality. In this connection, it is pertinent to consider that, "the rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding(,)" Rule I, Section 6(,) Rules of Court.<sup>[15]</sup>

In response to the foregoing motion for clarification, the RTC issued an Order<sup>[16]</sup>

dated April 2, 2008, to wit:

Under established jurisprudence, any motion that does not comply with Sec. 5 of Rule 16 of the 1997 Rules of Civil Procedure is a mere scrap of paper. In this case, the scheduled hearing of the said motion for reconsideration was beyond the period specified by the rules which must not be later than ten (10) days after the filing of the motion. Furthermore, a motion that fails to comply with the mandatory provision of Rule 15, Section 5 is pro forma which do not merit the attention of the court. The subsequent action of the court did not cure the procedural defect for a motion with a notice fatally defective is a "useless piece of paper." And finally, the motion for reconsideration aside from being a mere scrap of paper is also pro forma as the motion reiterates issues already passed upon by the court.

Thereafter, Consilium elevated the matter to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Rules of Court, as amended.<sup>[17]</sup>

In a Decision dated November 30, 2010, the Court of Appeals granted the petition, the dispositive part of which reads:

WHEREFORE, premises considered, the PETITION is GRANTED. The assailed Orders dated 15 January 2008 and 02 April 2008, are hereby REVERSED and SET ASIDE. The Regional Trial Court, Branch 9, Cebu City, is DIRECTED to GIVE DUE COURSE to the Notice of Appeal filed by the petitioner on 17 October 2007 in Civil Case No. CEB-26038.<sup>[18]</sup>

The appellate court held that the "liberal application of the Rules is warranted since the rights of the parties were not affected even if the hearing of said motion [for reconsideration] was originally set by petitioner beyond the 10-day period required by the Rules [of Court, as amended]. Private respondents [the Zosas] received a copy of the motion for reconsideration in question. They were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same."<sup>[19]</sup> Further, it gave great weight to the fact that, notwithstanding the non compliance to the 10-day rule on notice of hearing, the RTC reset the hearing of said motion to a later date – a fact that points to the original intention of the trial court, which is to take cognizance of the motion.

With respect to the matter of the late payment of appeal fee, the Court of Appeals opined that "jurisprudence is replete [with] cases which gave due course to an appeal even if the appellate docket fees were filed out of time"; hence, "it is x x x incumbent upon the public respondent to give due course to the Notice of Appeal."<sup>[20]</sup>

The subsequent motion for reconsideration was denied in a Resolution dated April 8, 2011.

Hence, the present petition raising the following assignment of errors:

### ***The Issue***

I – The Court of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Acting On Respondent's Motion For Reconsideration For Being Filed In Violation Of Section 5 Of Rule 15;

II – The Court Of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Giving Due Course To Respondent's Notice Of Appeal On The Ground That The Docket Fee For The Appeal Was Paid Only 6 Days After The Expiration Of The Reglementary Period To File The Appeal;

III – The Court Of Appeals Erred In Holding That The Forgetfulness Of The Clerk Of Respondent's Counsel To Pay The Docket Fee For The Appeal On Time Is A Good Reason To Liberally Apply The Rule On Perfection Of Appeal; and

IV - The Court Of Appeals Erred In Not Dismissing Respondent's Petition On The Ground That It Does Not Have A Meritorious Case.<sup>[21]</sup>

The Zosas maintain that the Court of Appeals erred when it held that the lack of notice of hearing is cured when the trial court "promptly resets a hearing with a notice to the parties."<sup>[22]</sup> They argue that the defect is not about the lack of notice of hearing but the fact that the motion was set for hearing beyond the 10-day period required under Section 5 of the Rules of Court, as amended.

The Zosas assert that "[t]he payment of the docket fee within the reglementary period is a mandatory requisite for the perfection of the appeal."<sup>[23]</sup> The reason extended by Consilium's counsel, *i.e.*, that the latter's clerk forgot to pay the appeal fee within the period to file the notice of appeal, is not enough to justify a liberal application of such mandatory requirement.<sup>[24]</sup>

For its part, Consilium counters that "[t]he rules were formulated for a just and speedy disposition of cases x x x it must [be] construed liberally in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding."<sup>[25]</sup>

Consilium's counsel, Atty. Gaviola, particularly clarifies that he set the notice of hearing of the motion for reconsideration on February 22, 2008, or 15 days from the time he filed said motion on February 7, 2008 because he would be unavailable to attend the hearing on any day earlier than February 22, 2008 – "*[i]t may be considered disrespect upon the Honorable Court for respondent Consilium's counsel to set the date within the tenth day, but be absent therefrom because he would not be unavailable.*"<sup>[26]</sup>