

## FIRST DIVISION

[ A.C. No. 7129, July 16, 2008 ]

**FIL-GARCIA, INC., REPRESENTED BY ITS PRESIDENT, FILOMENO GARCIA, COMPLAINANT, VS. ATTY. FERNANDO CRESENTE C. HERNANDEZ, RESPONDENT.**

### D E C I S I O N

**PUNO, CJ.:**

Before the Court is an administrative complaint filed by complainant Fil-Garcia, Inc., represented by its President and General Manager, Filomeno T. Garcia, against respondent Atty. Fernando Cresente C. Hernandez charging the latter of malpractice, gross misconduct and for violation of his oath as a lawyer.

The facts are of record.

Sometime in 1990, complainant entered into an agreement with Magdalena T. Villasi (Villasi) for the completion of the construction of a condominium building owned by the latter located in Quezon City. During the progress of the construction, controversy arose between complainant and Villasi regarding the billing and payments. On March 11, 1991, complainant filed an action for recovery of sum of money with damages against Villasi before the Regional Trial Court (RTC) of Quezon City, Branch 77. At that stage, complainant was represented by Atty. Bernardo F. Ligsay (Atty. Ligsay). On June 26, 1996, the RTC rendered judgment in favor of complainant and against Villasi. The dispositive portion of the Decision<sup>[1]</sup> states:

WHEREFORE, judgment is hereby rendered:

1. ordering the defendant to pay plaintiff the sum of P2,865,000.00 as actual damages and unpaid accomplishment billings;
2. ordering the defendant to pay plaintiff the amount of P500,000.00 representing the value of unused building materials;
3. ordering the defendant to pay plaintiff the amount of P100,000.00 as moral damages and P100,000 as attorney's fees.

SO ORDERED.<sup>[2]</sup>

Aggrieved by the RTC's decision, Villasi filed an appeal to the Court of Appeals (CA). On November 20, 2000, the CA granted Villasi's appeal and reversed the decision of the RTC. The dispositive portion of the Decision<sup>[3]</sup> states:

WHEREFORE, premises considered, the present appeal is hereby GRANTED and the appealed decision in Civil Case No. Q-91-8187 is hereby REVERSED and SET ASIDE and judgment is hereby rendered

ordering the plaintiff-appellee to return to defendant-appellant the sum of P 1,244,543.33 as overpayment under their contract, and the further sum of P 425,004.00 representing unpaid construction materials obtained by it from defendant-appellant. Plaintiff-appellee is likewise hereby declared liable for the payment of liquidated damages in the sum equivalent to 1/10 of 1% of the contract price for each day of delay computed from March 6, 1991.

No pronouncement as to costs.

SO ORDERED.<sup>[4]</sup>

On December 14, 2000, complainant filed a Motion for Reconsideration.<sup>[5]</sup> This time, complainant engaged the legal services of a new counsel in the person of respondent.

In its April 27, 2001 Resolution,<sup>[6]</sup> the CA denied complainant's motion for reconsideration and noted the appearance of respondent as counsel for complainant in substitution of Atty. Ligsay. Respondent received a copy of the resolution on May 8, 2001. Thus, he had until May 23, 2001 within which to file an appeal in accordance with Rule 45 in relation to Rule 56 of the Rules of Court.

However, instead of filing an appeal within the reglementary period, respondent filed three (3) successive motions for extension of time with the Court.

On May 22, 2001, respondent filed a Motion for Extension of Time to File Appeal by Certiorari.<sup>[7]</sup> In his motion, he alleged that he was engaged as counsel by a mayoralty candidate and a senatorial candidate which required his presence in the canvassing of votes. Due to the "enormous time pressure from these commitments,"<sup>[8]</sup> respondent prayed for an extension of thirty (30) days or until June 21, 2001 to file complainant's appeal.

On June 21, 2001, respondent filed a Second Motion for Extension of Time to File Appeal by Certiorari.<sup>[9]</sup> He alleged that "[he] fell ill"<sup>[10]</sup> and that "[h]e sought medical consultation, which revealed that he needs extended bed rest."<sup>[11]</sup> He prayed for an extension of twenty (20) days or until July 11, 2001 to file the appeal.

On July 11, 2001, respondent filed a Third Motion for Extension of Time to File Appeal by Certiorari,<sup>[12]</sup> alleging that "[he] severely underestimated the time needed to complete the petition because he had to work on other equally urgent legal matters, which were unattended to during his illness."<sup>[13]</sup> He prayed for an extension of ten (10) days or until July 21, 2001 to file the appeal.

Thereafter, respondent filed complainant's Petition for Review on Certiorari dated July 21, 2001.<sup>[14]</sup>

On August 6, 2001, respondent received a copy of the Court's Resolution<sup>[15]</sup> dated July 2, 2001 denying his first motion for extension of time, viz:

**G.R. No. 147960 (*Fil-Garcia Construction, Inc., represented by its President-General Manager Filomeno Garcia vs. Magdalena T. Villasi*).**- Petitioner's motion for extension of thirty (30) days from 22 May 2001 within which to file petition for review on certiorari is DENIED for petitioner's failure to show that it has not lost the fifteen (15)-day reglementary period within which to appeal pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of the lack of statement of material dates of receipt of the assailed judgment of the Court of Appeals and of filing of the motion for reconsideration of said judgment.<sup>[16]</sup>

Hence, on August 17, 2001, respondent filed a Motion for Reconsideration<sup>[17]</sup> of the above resolution.

On August 20, 2001, the Court issued a Resolution<sup>[18]</sup> denying respondent's second and third motions for extension of time considering that the first motion for extension had already been denied in the resolution dated July 2, 2001. On September 28, 2001, respondent filed a Motion for Reconsideration<sup>[19]</sup> of the resolution.

On October 1, 2001, the Court issued a Resolution<sup>[20]</sup> denying respondent's motion for reconsideration of the resolution dated July 2, 2001 and complainant's petition for review on certiorari, viz:

**G.R. No. 147960 (*Fil-Garcia Construction, Inc., represented by its President-General Manager, Filomeno Garcia v. Magdalena T. Villasi*)** - Acting on petitioner's motion for reconsideration of the resolution of 02 July 2001 which denied its motion for extension of time to file petition for review on certiorari for lack of showing that it has not lost the 15-day period to appeal due to lack of statement of the dates of receipt of assailed judgment of the Court of Appeals and of filing of motion for reconsideration of said judgment, the Court Resolves to DENY the motion with FINALITY, no compelling reason having been adduced to warrant the reconsideration sought. Respondent's comment and opposition to said motion is NOTED.

In accordance with Rule 45 in relation to Rule 56 and other pertinent provisions of the 1997 Rules of Civil Procedure, as amended, governing appeals by certiorari to the Supreme Court, only petitions which are accompanied by or comply strictly with the requirements specified therein shall be entertained. On the basis thereof, the Court further Resolves to DENY the petition for review on certiorari for petitioner's failure to:

a) take the appeal within the reglementary period of fifteen (15) days in accordance with Section 2, Rule 45 in relation to Section 5(a), Rule 56, in view of the denial of the first, second and third motions for extension of time to file said petition in the resolution of 02 July 2001 and 20 August 2001; and

b) state the material date of filing of the motion for reconsideration of the

assailed Court of Appeals decision pursuant to Sections 4 (b) and 5, Rule 45 in relation to Section 5 (d), Rule 56.<sup>[21]</sup>

On November 21, 2001, the Court issued a Resolution<sup>[22]</sup> denying with finality respondent's motion for reconsideration of the resolution dated August 20, 2001.

On November 27, 2001, the Court issued an Entry of Judgment<sup>[23]</sup> rendering the decision of the CA final and executory.

As admitted by respondent, he received a copy of the Court's resolution dated October 1, 2001 denying complainant's appeal on **November 15, 2001**.<sup>[24]</sup> However, respondent forwarded a copy of the same to complainant's office only on **June 16, 2002**.<sup>[25]</sup>

Feeling aggrieved by the fate of its appeal, complainant filed a Complaint<sup>[26]</sup> for disbarment before the Integrated Bar of the Philippines (IBP) on April 21, 2004. Complainant alleged that respondent's act of filing three (3) motions for extension of time within which to file the appeal and his wrong choice in the mode of appeal in the petition that he belatedly filed exemplify gross incompetence and caused serious prejudice to complainant. Complainant also alleged that the lapse of seven (7) months from the time the resolution dated October 1, 2001 was received by respondent before he informed complainant of the same constitutes inexcusable negligence.

On June 16, 2004, respondent filed his Answer.<sup>[27]</sup>

In his answer, respondent alleged that the filing of a motion for extension of time to file petition for review is allowed under Section 2, Rule 45 of the Rules of Court provided that the same is filed and the docket and other lawful fees and deposit of cost are paid within the reglementary period. Hence, respondent contends that he exercised due prudence when he filed his first motion for extension of time. Moreover, he was in the honest belief that the allegation of the date of receipt of the resolution denying the motion for reconsideration would suffice considering that the pertinent rules do not require that a motion for extension of time must contain a statement of material dates. Respondent claims that the filing of several motions and within the reglementary period to do so clearly speaks of due diligence of the legal matter entrusted to him. He argues that the filing of his motions for extension of time was based on meritorious grounds and the denial of the same was based solely on the ground that his first motion was wanting of material dates.

As to complainant's allegation on his erroneous mode of appeal, respondent claims that it is speculative at this point since the determination of the same is better left to the Court.

Lastly, respondent admits that he failed to immediately inform complainant of the development of the case. However, the said omission was not deliberate nor prompted by malice or intent to injure the complainant but was brought about by "the sudden unexpected technicalities that besieged the appeal of the case to the Supreme Court"<sup>[28]</sup> which caused him dismay and made it "hard"<sup>[29]</sup> for him to inform complainant of the same.