

FIRST DIVISION

[G.R. NO. 167245, September 27, 2006]

ELPIDIO S. UY, PETITIONER, VS. FIRST METRO INTEGRATED STEEL CORP. AND HON. ANTONIO I. DE CASTRO, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 3, MANILA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 81046 dated August 27, 2004 dismissing petitioner Elpidio S. Uy's petition for certiorari and its Resolution^[2] dated February 22, 2005 denying the motion for reconsideration.

The facts show that on July 5, 1999, private respondent First Metro Integrated Steel Corporation (FMISC) filed a complaint for sum of money with prayer for writ of preliminary attachment against Robert Juan Uy (Robert), Midland Integrated Construction Company (MICC) and herein petitioner Elpidio Uy, with the Regional Trial Court of Manila, which was docketed as Civil Case No. 99-94408 and raffled to Branch 3.^[3]

It is alleged that on June 3, 5 and 6, 1998, FMISC delivered to MICC, Robert and petitioner deformed steel bars valued at P695,811.00. On June 9, 1998, Robert allegedly delivered to FMISC Metrobank Check No. 042892 in the amount of P695,811.00 issued by petitioner as payment. However, the check was dishonored upon presentment and despite demands, MICC, Robert and petitioner refused to pay, hence the complaint.

In their Answer with Counterclaim and Crossclaim, Robert and MICC alleged that they are strangers to the contract between FMISC and petitioner; that Robert merely referred petitioner to FMISC; that petitioner left his check in Robert's office which was picked up by FMISC's collector; and that the deformed steel bars were delivered to and received by petitioner's representatives as certified to by Paul Eldrich V. Uy, petitioner's son.^[4]

Petitioner filed his Answer with Counterclaim^[5] claiming that he had no business transaction with FMISC; that he issued the check in favor of FMISC in the amount of P695,811.00 but since it was not intended as payment to FMISC, he stopped the payment thereof.

Hearings were thereafter conducted for the reception of evidence of FMISC, Robert and MICC. The initial reception of petitioner's evidence was set on February 28,

2001^[6] but it was cancelled because petitioner had influenza. The hearing was reset to April 26, 2001 and May 10, 2001^[7] but was again cancelled and moved to October 25, 2001 and December 13, 2001.

During the October 25, 2001 hearing, petitioner was represented by Atty. Lucas C. Carpio, Jr. who appeared as Atty. Molina's collaborating counsel.^[8] The hearing was cancelled and rescheduled to December 13, 2001. However, on December 10, 2001, Atty. Molina withdrew his appearance as petitioner's counsel with the latter's consent.^[9] On December 13, 2001, Atty. Danilo Bañares entered his appearance and requested for a resetting on February 14 and 28, 2002^[10] which was granted by the trial court. On February 14, 2002, Atty. Bañares appeared but instead of presenting evidence for the petitioner, he requested for a postponement and resetting of the hearing.^[11]

During the scheduled hearing on February 28, 2002, Atty. Bañares arrived late. Upon motion of FMISC, the trial court ordered that petitioner's right to present evidence is deemed waived and the parties were directed to file their respective memorandum.^[12] The case was deemed submitted for decision on November 18, 2002.^[13]

Atty. Bañares withdrew his appearance on January 8, 2003 with petitioner's conformity.^[14]

On March 7, 2003, the trial court rendered judgment, ^[15] the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff ordering defendant Elpidio Uy to pay the former:

- a) the sum of P690,000 with interest thereon at 12% per annum from July 1998 until fully paid;
- b) the sum of P110,000.00 as attorney's fees which is 16% of the principal amount; and
- c) the costs of suit.

Defendant Robert Uy's cross-claim is denied as it is now academic. The counterclaims of both defendants herein against plaintiff and against each other are denied for lack of merit.

SO ORDERED.^[16]

On April 4, 2003, petitioner received a copy of the Decision.

On April 21, 2003, petitioner through Atty. Lucas C. Carpio, Jr. filed a Motion for New Trial^[17] on the ground of gross negligence of petitioner's counsel in failing to attend the hearing for the reception of evidence, thus impairing his rights to due process.

The trial court denied the motion for new trial in an Order^[18] dated October 1, 2003.

Dissatisfied, petitioner filed with the Court of Appeals a petition for certiorari which dismissed the petition in its assailed Decision dated August 27, 2004. It held that the trial court correctly denied the motion for new trial because it was filed out of time and that a petition for certiorari is not the proper remedy for the denial of a motion for new trial.

Petitioner's motion for reconsideration was denied, hence, this recourse on the grounds that -

1. The Seventeenth (17th) Division of the Court of Appeals gravely erred in denying due course to the Petition for Certiorari on technical grounds, that is, for the purported failure of the Petitioner to file with the Court *a Quo* his Motion for New Trial within the reglementary period to appeal and that the only remedy for the denial of the latter motion is by appealing from the Judgment or Final order and not through a Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Civil Procedure.^[19]
2. The former Seventeenth (17th) Division of the Court of Appeals gravely erred in not finding that the Public Respondent Judge committed grave abuse of discretion tantamount to lack or excess of jurisdiction when he issued the assailed Order dated October 1, 2003 denying Petitioner's Motion for New Trial.^[20]

A scrutiny of the records discloses that while the Motion for New Trial was received by the trial court on April 28, 2003, the date on the Registry Receipt attached to the Affidavit of Service^[21] as well as that stamped on the envelope^[22] which contained the copy of the motion, reveals that it was filed and served by registered mail on April 21, 2003, a Monday, because April 19, 2003, the last day for filing the same was a Saturday. Section 1, Rule 22 of the Rules of Court states in no uncertain terms that if the last day of the period thus computed falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. Thus, the motion was actually filed *on time* it having been filed on April 21, 2003, the *next working day, following the last day for filing which fell on a Saturday*.

Section 9, Rule 37 of the Rules of Court which provides that the remedy to an order denying a motion for new trial is to appeal the judgment or final order, must be read in conjunction with Section 1, Rule 41 which provides that:

SEC. 1. *Subject of appeal.* - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

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