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[G.R. No. 145911, July 07, 2004]

ANDY QUELNAN, PETITIONER, VS. VHF PHILIPPINES, INC. AND VICENTE T. TAN, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

The present Petition for Review on *Certiorari* seeks the reversal of the Decision[1] of the Court of Appeals denying the petition for mandamus of Andy Quelnan (petitioner) to compel the trial court to reinstate and implement its Order of April 10, 1997[2] giving due course to his Notice of Appeal.

Gathered from the records of the case are the following antecedents:

Petitioner claimed to have purchased in 1989 from respondents VHF Philippines, Inc. (VHF) and Vicente Tan, principal stockholder and President of VHF, Unit 15-0 at the Legaspi Tower Condominium, Roxas Boulevard, Manila, for which he made an overpayment of two-hundred seventy thousand (₱270,000.00) pesos. He also claimed that instead of returning the overpayment to him, he and respondents **verbally** agreed that he purchase another unit, Unit 20-G, at the condominium for ₱3,250,000.00 from which the overpaid amount of ₱270,000.00 would be debited, thereby leaving a balance of ₱2,980,000.00 which he would pay "before the end of June, 1991 without any interest thereon"; that he immediately took possession of Unit 20-G, making several payments therefor; and that in May 1991 when he offered to settle his remaining balance, he was informed that Unit 20-G was mortgaged in favor of Philippine Trust Company and that he was being charged by respondents the interest and penalties due on the mortgage obligation.[3]

VHF on the other hand claimed that it merely leased Unit 20-G to petitioner at a monthly rental of ₱25,500.00 plus ₱1,500.00 for a parking space; and that since petitioner failed to pay rentals, they filed an ejectment complaint against him at the Metropolitan Trial Court of Manila (MeTC).

Petitioner failed to file his answer to said ejectment complaint following which, after respondents presented documentary evidence as required by the MeTC, a November 23, 1992 decision was rendered ordering his ejectment.[4] **Petitioner did not appeal this decision** and he was in fact ejected from Unit 20-G.

Close to two years later or on October 7, 1994, petitioner filed before the Makati Regional Trial Court (RTC) a complaint for rescission (of the alleged verbal contract of sale) and damages against respondents.[5]

After respondents filed their Answer[6] on December 20, 1994, the pre-trial of the

case was set on March 10, 1995 by Branch 142 of the Makati RTC to which the case was raffled.

The pre-trial scheduled on March 10, 1995 was cancelled and was repeatedly reset to allow a possible amicable settlement of the case.

On December 5, 1996, on agreement of the parties' counsel, the pre-trial was reset to January 17, 1997.[7] Copy of the order resetting the pre-trial to January 17, 1997 was received by petitioner, and by his counsel on December 27, 1996.[8]

During the scheduled pre-trial on January 17, 1997, petitioner did not show up. Neither did petitioner's counsel in whose favor he executed a Special Power of Attorney to represent him in the pre-trial and trial of the case including entering into an amicable settlement, prompting the presiding judge to dictate in open court, on respondents' motion, an order noting the absence of petitioner and his counsel, declaring petitioner non-suited, and accordingly dismissing the complaint.

Petitioner's counsel having in the meantime learned of the trial court's open court dismissal of the complaint, he, without awaiting the written January 17, 1997 Order, filed on January 24, 1997 a Manifestation and Ex-Parte Motion[9] to set aside the said order, invoking honest mistake or oversight amounting to excusable negligence — that he overlooked to transfer from his 1996 diary the entry regarding the scheduled pre-trial conference on January 17, 1997 to his` 1997 diary. The motion was, however, denied by Order of January 29, 1997.[10]

On February 12, 1997, petitioner received a copy of the trial court's Order of January 17, 1997.[11]

On February 24, 1997, petitioner filed an Omnibus Motion[12] reiterating the grounds he set forth in his Manifestation and Ex-Parte Motion filed on January 24, 1997, which Omnibus Motion was denied by Order of March 12, 1997,[13] copy of which order was received by petitioner's counsel on March 19, 1997.

On March 20, 1997, petitioner filed a Notice of Appeal[14] of the **March 12, 1997 Order** denying his Omnibus Motion.

By Order of April 10, 1997,[15] the trial court directed the elevation of the records of the case to the Court of Appeals for disposition. Respondents opposed this order through a manifestation and motion.[16]

Holding that the Notice of Appeal was filed out of time, the trial court, by Order of April 22, 1997,[17] set aside its Order of April 10, 1997. Petitioner's Motion for Reconsideration[18] of the said Order of April 22, 1997 having been denied by Order of August 15, 1997,[19] copy of which latter order petitioner claims to have received on September 3, 1997, petitioner filed on October 31, 1997 a petition for mandamus[20] at the Court of Appeals praying that the trial court be enjoined from implementing its Orders of August 15, 1997 and April 22, 1997, and that it be commanded to reinstate its Order of April 10, 1997 directing the elevation of the records of the case to the proper court.

While the petition before the Court of Appeals was captioned as one for mandamus, the said court, in line with the ruling of this Court that the allegations of the complaint or petition and the nature of the relief sought determine the nature of the action, treated it as one for certiorari as, in essence, the petition alleged grave abuse of discretion on the part of the trial court in denying due course to petitioner's Notice of Appeal.

By the assailed Decision,[21] the Court of Appeals denied the petition on the ground that the March 12, 1997 Order of the trial court denying petitioner's Omnibus Motion is not appealable, and the January 17, 1997 Order, which should have been, but was not appealed, had thus become final and executory.

Hence, the present petition.

Petitioner maintains that *mandamus* was the proper remedy in the instant case, and that his Notice of Appeal was seasonably filed.

Mandamus will lie to compel the performance of a ministerial duty, not a discretionary duty,[22] and petitioner must show that he has a well defined, clear and certain right to warrant the grant thereof.[23]

The timeliness of the filing of a notice of appeal determines whether the trial court's giving due course to it is ministerial.

If the notice of appeal is filed within the reglementary period, it becomes the ministerial duty of the trial court to give it due course.[24] If not, the trial court cannot be compelled by mandamus to do so.[25]

Petitioner's counsel received the January 17, 1997 Order declaring petitioner non-suited and accordingly dismissing the complaint on February 12, 1997. When petitioner's counsel filed a Manifestation and Ex-Parte Motion on January 24, 1997, prior to his receipt on February 12, 1997 of the January 17, 1997 Order, the 15-day period to appeal did not begin to run, for such period is reckoned **from notice of such judgment or final order** or any subsequent amendment thereof, and it is interrupted by the timely filing of a motion for new trial or reconsideration.[26]

When petitioner's counsel received then on February 12, 1997 a copy of the January 17, 1997 Order declaring petitioner non-suited, and filed on February 24, 1997 an Omnibus Motion to set aside said order, 12 days of the 15-day period had elapsed. The filing of the Omnibus Motion interrupted the period of appeal, and it began to run again when, on March 19, 1997, petitioner's counsel received a copy of the Order of March 12, 1997 denying petitioner's Omnibus Motion.

Since petitioner filed the Notice of Appeal on March 20, 1997 or on the 13th day of the 15-day reglementary period, it was timely filed.

The appellate court noted, however, that since it was the Order of March 12, 1997 denying petitioner's Omnibus Motion-Motion for Reconsideration of the January 17, 1997 Order of dismissal, and not the latter order, which was appealed, said Order of

January 17, 1999 had "long attained finality."

In *Republic v. Court of Appeals*,[27] this Court, in dismissing a petition for review of a resolution of the Court of Appeals dismissing therein petitioner's appeal from an order of a Regional Trial Court dismissing his complaint, gave three reasons therefor, the third of which reads:

> There is another reason why review of the trial court's order cannot be made. Petitioner does not dispute the fact that, as observed by the Court of Appeals, its *notice of appeal referred only to the order of the trial court denying its Motion for Reconsideration and not the order of dismissal of its complaint as well. Such failure is fatal*. Rule 37, §9 of the Rules of Civil Procedure provides that an order denying a motion for reconsideration is not appealable, the remedy being an appeal from the judgment or final order. On the other hand, Rule 41, §1(a) of the same rules also provides that no appeal maybe taken from an order denying a motion for reconsideration. **It is true the present Rules of Civil Procedure took effect only on July 1, 1997 whereas this case involves an appeal taken in February 1995**. *But Rule 37, § 9 and Rule 41, §1(a) simply codified the rulings in several cases to the effect that an order denying a motion for reconsideration is interlocutory in nature and, therefore is not appealable*. ***These rules, therefore, are not really new***.
>
> The outcome of this petition may be a bitter lesson for petitioner, but one mainly of its own doing. Not only did it file its notice of appeal well beyond the reglementary period, it actually failed to appeal from the order dismissing its case against private respondent. *The inevitable consequence of such grave inadvertence is to render the trial court's decision dismissing its case final and executory*. The Court of Appeals thus acted properly in dismissing petitioner's appeal.[28] (Italics, emphasis and underscoring supplied)

As stated in above-quoted portion of the decision in *Republic*, Rule 37, Section 9 of the Rules of Civil Procedure which reads:

> **SEC. 9.** *Remedy against order denying a motion for new trial or reconsideration*. – An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the **judgment or final order**. (Emphasis supplied)

and Rule 41, Section 1(a) of the same Rules which reads:

> **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 order may be taken from:
>
> (a) an order denying a motion for new trial or reconsideration;

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