

SECOND DIVISION

[G.R. No. 136350, October 25, 2004]

**SPOUSES IKE S. BARZA AND ZENAIDA A. BARZA, PETITIONERS,
VS. SPOUSES RAFAEL S. DINGLASAN, JR., AND MA. ELENA Y.
DINGLASAN, RURAL BANK OF MAAYON (CAPIZ), INC., RURAL
BANK OF CAPIZ (ROXAS CITY), INC., PHILIPPINE DEPOSIT
INSURANCE CORPORATION AND THE PROVINCIAL SHERIFF OF
CAPIZ, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on *certiorari* of the decision of the Court of Appeals in CA-G.R. CV No. 38517^[1] promulgated on October 23, 1998 which affirmed the decision and the resolution of the Regional Trial Court, Branch 17, Roxas City in Civil Case No. V-4941.

The facts are as follows:

On March 22, 1984, the spouses Ike and Zenaida Barza together with Gil Almosa^[2] filed a complaint with the Regional Trial Court of Roxas City against the spouses Rafael and Ma. Elena Dinglasan, the Rural Bank of Maayon (Capiz), Inc., (Maayon Bank) Rural Bank of Capiz (Roxas City), Inc., (Capiz Bank) and the Provincial Sheriff of Capiz, for annulment of contract and damages, with prayer for a temporary restraining order.

Spouses Barza allege that: they are owners of several fishponds with a total area of 145 hectares located in Panay, Capiz; respondent Rafael S. Dinglasan, Jr., meanwhile, is a lawyer-banker-businessman who effectively controls the Maayon Bank and has substantial stockholdings in the Rural Bank of Capiz (Roxas City) where he also acts as chairman of the board of directors; upon the enticement of Dinglasan, they mortgaged their fishponds in favor of Maayon Bank to secure loans from the Central Bank-International Bank for Reconstruction and Development (CB-IBRD) fund, which by law are available only to persons owning or cultivating lands of not more than fifty hectares in area; to qualify for said loans, they agreed to execute three fictitious documents of sale and fifteen simulated leases, with Gil Almosa as one of the dummy buyers; Dinglasan then caused to be filed with the Maayon Bank nineteen loan applications, one each for Ike Barza, the three fictitious owners and the fifteen dummy lessees by asking the applicants to sign promissory notes, real estate mortgages, checks, signature cards and withdrawal slips in blank; the applicants were also asked to open savings deposit accounts with the rural bank which retained the passbooks; Dinglasan, also induced them (spouses Barza) to invest, from the loan proceeds, P1.16 million in the Elmyra Trading, a store owned by the Dinglasans, and about P1.7 million to the Capiz Bank; in the meantime, they were deprived of the loan proceeds totaling P3.7 million; when they realized in 1983

that spouses Dinglasan abused their trust and confidence, they complained with the Central Bank which in turn conducted its investigation; in retaliation, Dinglasan initiated foreclosure proceedings on several parcels of their property which were under the names of the dummy owners and lessees. The Barza spouses claim that since the mortgages on their property are the product of schemes, contrivances and transactions contrary to law, morals, good customs and/or public policy, they are entitled to obtain a declaration of its nullity.^[3]

In their Answer, the Dinglasan spouses argued that: the true nature of the properties mentioned in the complaint is all accurately shown by the public documents submitted by the spouses Barza and the mortgagors with Maayon Bank; if it is true that the spouses Barza merely simulated the sale and leases in favor of dummies, they are now estopped and should be bound by the mortgages in question; and whatever the spouses Barza did with their money, such as deposit it with Capiz Bank or invest it elsewhere, is of their own volition and cannot nullify the transactions they made with Maayon Bank.^[4]

O July 16, 1985, the trial court issued an Order terminating the pre-trial conference and setting the initial trial for the presentation of spouses Barza's evidence. Several postponements were made by their counsel alleging sickness or conflict of schedule.

On March 16, 1988, Zenaida Barza was presented to testify as first witness for the spouses Barza. However she was not able to finish her direct testimony, despite several postponements, because she left for the United States. The Barza spouses then presented Precy Bascos, a private secretary of Zenaida Barza who identified tax declarations of real property in the name of the Barza spouses; and Alfredo Contreras, a supervising bank examiner of the Central Bank who testified how IBRD loans are granted by the rural banks and are administratively supervised by the Central Bank. After the testimony of Contreras, Atty. Jose Alovera, counsel for the Barza spouses, asked for time to formally offer their exhibits which the trial court granted on August 28, 1990. Motions for its extension were also granted twice by the trial court in its Orders dated October 24, 1990 and December 5, 1990.^[5]

Due to the failure of the Barza spouses to make a formal offer of their evidence despite the extensions given them, the trial court issued an Order on January 29, 1991 as follows:

ACCORDINGLY, the plaintiffs are deemed to have waived their rights to offer their documentary exhibits in writing and the presentation of their evidence is hereby declared terminated. On motion by Atty. Arceño, the defendants is (sic) allowed to present their evidence on the counterclaim. Also, as opportunely (sic) reminded by Atty. Arceño, the testimony of plaintiff Zenaida Barza in the direct examination is ordered stricken (sic) out of the records. She failed to return to Court to be cross-examined by the defendants.

SO ORDERED.^[6]

The respondents then manifested that they were foregoing with their counterclaim and were no longer presenting any evidence.^[7]

On April 17, 1991, the trial court issued its Order dismissing plaintiffs' complaint as well as defendants' counterclaim, thus:

An empirical evaluation of the evidence for the plaintiffs indicates that the oral testimony of Zenaida Barza as well as exhibits "A" to "ZZ-2-B" inclusive she testified to, were properly ordered stricken out of the records. She never returned to finish her direct testimony and to be cross-examined by the defendants. That of Precy Bascos was to corroborate the unfinished testimony of Zenaida Barza principally on exhibits "AA" to "BB." Both exhibits were never formally offered. Hence, of no probative value. That of Alfredo Contreras may have been given credence if exhibits Nos. "AAA" to "NNN-1" which he had testified to, were offered in evidence as part of his testimony. But they also were not.

In a nutshell therefore plaintiffs had not presented any evidence to establish and prove their complaint.

Defendants forego with their counterclaim. It was noted that they were also not keen in their claim for attorney's fee.

ACCORDINGLY, the complaint is hereby ordered dismissed. Also, dismissed is defendants' counterclaim. No award of attorney's fee for defendants.

SO ORDERED.^[8]

Atty. Alovera, counsel for the Barza spouses, filed a motion for reconsideration dated May 8, 1991 stating that: he took over the case midstream; his clients are now in the United States; and he had great difficulty gathering all the documents for submission as exhibits. He pleaded that in the greater interest of justice, he be allowed to submit exhibits which if considered would change the tenor of the case.^[9]

This was denied by the trial court in its Order dated September 4, 1991.^[10]

The Barza spouses then went to the Court of Appeals claiming that the dismissal of their complaint was done with grave abuse of discretion amounting to lack or excess of jurisdiction since the court failed to apply the rules with liberality which deprived them of substantial justice.^[11]

On October 23, 1998, the Court of Appeals rendered its decision dismissing the appeal.^[12]

Hence, the present petition where the Barza spouses are raising the following issues:

1. PETITIONERS' PREVIOUS COUNSEL HAD BEEN GROSSLY, RECKLESSLY, AND PALPABLY NEGLIGENT IN HANDLING PETITIONERS' CAUSE. ACCORDINGLY, SUCH GROSS, PALPABLE AND RECKLESS NEGLIGENCE CANNOT AND COULD NOT IN ANY WAY BIND PETITIONERS.

2. THE NEGLIGENCE OF PETITIONERS IN PROSECUTING THEIR CAUSE, IF ANY, WAS MERELY SIMPLE AND EXCUSABLE, NEVER GROSS. IN ANY EVENT, PETITIONERS' NEGLIGENCE IS IMMATERIAL AND INCONSEQUENTIAL ON ACCOUNT OF THE GROSS, PALPABLE AND RECKLESS NEGLIGENCE OF PETITIONERS' PREVIOUS COUNSEL.

3. IN THE GREATER INTEREST OF SUBSTANTIAL JUSTICE, RULES OF PROCEDURE MUST HAVE BEEN (SIC) LENIENTLY APPLIED IN ORDER TO AVOID GRAVE INJUSTICE SINCE PETITIONERS HAVE A GOOD AND MERITORIOUS CASE AGAINST RESPONDENTS.^[13]

Petitioners claim that: the firm Valencia, Lopez-Vito & Arungayan was negligent in handling their case; Atty. Arungayan, the assigned lawyer, asked for several postponements due to sickness, sickness of his spouse, conflict of schedule, lack of preparation to proceed to trial, etc.; even if such excuses were true, the firm could have easily appointed another associate or partner to take over the case, such as Atty. Alovera who appeared several times in behalf of Atty. Arungayan, and the firm to ask the court for postponements; Atty. Alovera, whom Zenaida Barza eventually employed on May 8, 1990 in open court, failed to include in the Offer of Exhibits for Admission filed on June 25, 1991 the documents which were testified on by Alfredo Contreras during the trial; Atty. Alovera also failed to seasonably file any Motion for Reconsideration to set aside the Order of the trial court dated January 29, 1991; the conduct of Attys. Arungayan and Alovera constitute gross, palpable and reckless negligence in handling their case, thus the general rule that the mistake of a counsel binds the client should not apply to petitioners.^[14]

Petitioners also contend that: there were many circumstances that were beyond their control which contributed to the delay of the case; the case passed the hands of six judges and events took place after they filed their complaint which constrained them to file three supplemental complaints; they had to wait for the resolution of the administrative cases they filed against some of the respondents before the Central Bank since these might have a bearing on the civil case; if ever they were negligent in this case, such negligence is only simple and excusable; and the fact that Zenaida Barza had been in the U.S.A. should not be deemed that they lost interest in prosecuting their case.^[15]

Finally, petitioners argue that: they have a good and meritorious case against respondents; Senior State Prosecutor Anastacio I. Lobaton issued a resolution dated September 4, 1989 strongly recommending that respondent Rafael Dinglasan, Jr. and two other persons be criminally charged with the crime of Estafa Thru Falsification of Public and /or Commercial Documents; subsequently, Criminal Case No. C-2999 was filed on September 26, 1989 against Rafael Dinglasan, *et al.*; petitioners stand to lose a 145-hectare fishpond worth several millions, all because of the gross, palpable and reckless negligence of their previous lawyers; thus the greater interest of justice demands that the rules of procedure be relaxed in order to prevent manifest injustice.^[16]

Petitioners then prayed that the following be annulled and set aside:

- a. The Order issued by the Regional Trial Court, Sixth Judicial Region, Branch 17, Roxas City on April 17, 1991, which dismissed the