

## FIRST DIVISION

[ G.R. No. 136726, September 24, 2003 ]

**PANFILO V. VILLARUEL, JR., PETITIONER, VS. REYNALDO D. FERNANDO, MODESTO ABARCA, JR. AND MARILOU M. CLEOFAS, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This petition for review on certiorari<sup>[1]</sup> seeks to reverse the Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 48233<sup>[3]</sup> dated 30 September 1998 denying due course to the petition for *certiorari*<sup>[4]</sup> filed by Panfilo V. Villaruel, Jr. and the Resolution dated 3 December 1998 denying the motion for reconsideration.

#### The Facts

Petitioner Panfilo V. Villaruel, Jr. ("petitioner") is the former Assistant Secretary of the Air Transportation Office ("ATO"), Department of Transportation and Communication ("DOTC"). Respondents Reynaldo D. Fernando, Modesto E. Abarca, Jr. ("Abarca"), and Marilou M. Cleofas are the Chief, Chief Administrative Assistant, and Administrative Assistant, respectively, of the Civil Aviation Training Center ("CATC"). The CATC is an adjunct agency of the ATO tasked to train air traffic controllers, airway communicators and related civil aviation personnel for the local aviation industry as well as for the Southeast Asian and Pacific region.

Petitioner issued a memorandum dated 27 April 1995 addressed to the respondents, detailing them to the Office of DOTC Undersecretary Primitivo C. Cal effective 2 May 1995.

On 29 April 1995, respondents wrote to DOTC Secretary Jesus B. Garcia and Undersecretary Josefina T. Lichauco through petitioner requesting for reconsideration of the detail order.

On 7 May 1995, in compliance with the detail order, respondents reported to the Office of Undersecretary Cal at DOTC.

Without acting on respondents' request for reconsideration, petitioner issued a memorandum on 19 July 1995 addressed to Abarca placing him under "preventive suspension" for 90 days without pay pending investigation for alleged grave misconduct.

On 10 August 1995, respondents requested Secretary Garcia to lift the detail order and to order their return to their mother unit since more than 90 days had already

lapsed. Respondents also sought the intervention of the Ombudsman in their case. As a result, the Ombudsman inquired from Secretary Garcia the action taken on respondents' request for reconsideration of the detail order.

On 22 November 1995, Secretary Garcia replied to the Ombudsman that he had issued a memorandum dated 9 November 1995 directing petitioner to recall respondents to their mother unit. Secretary Garcia declared that the law does not sanction the continuous detail of respondents.

Despite repeated demands by respondents, petitioner failed and refused to reinstate respondents to their mother unit.

On 24 January 1996, respondents filed a Petition for Mandamus and Damages with Prayer for a Preliminary Mandatory Injunction against petitioner with the Regional Trial Court of Pasay City docketed as Civil Case No. 96-0139. Respondents prayed for the following:

### P R A Y E R

WHEREFORE, premises considered, petitioners herein respectfully pray of this Honorable Court that:

1. Pending the determination of the merits of this petition, a writ of preliminary mandatory injunction be issued *ex-parte* directing respondent Panfilo V. Villaruel, Jr., to recall the petitioners herein within twenty four (24) hours from receipt hereof to their mother unit, the Civil Aviation Training Center, Air Transportation Office, DOTC, and to forthwith allow them to assume, perform and discharge the functions, duties and responsibilities inherent, appurtenant and incident to their respective offices.
2. After hearing on the merits, judgment be rendered confirming the writ of preliminary mandatory injunction earlier issued by this Honorable Court and declaring the same permanent, and ordering the respondent Panfilo Villaruel, Jr., to pay petitioners herein the following damages, to wit:
  - a) to pay petitioner Reynaldo D. Fernando the amount of P50,000 as actual and compensatory damages;
  - b) to pay petitioners herein moral, exemplary and temperate damages, in such amounts as may hereafter be proven in the course of trial, which petitioners herein are leaving to the sound discretion of this Honorable Court to determine and adjudge;
  - c) to pay petitioners herein attorney's fees in the amount of P100,000;
  - d) to pay petitioners herein the costs of suit.

Petitioners herein pray for such other and further relief as may be just and equitable in the premises.<sup>[5]</sup>

On 23 February 1996, the trial court granted respondents' prayer for a preliminary mandatory injunction.

Meanwhile, Judge Aurora Navarette-Reciña of the trial court was appointed Chairman of the Commission on Human Rights. Consequently, the case was re-raffled and assigned to Branch 231 of the Regional Trial Court, Pasay City.<sup>[6]</sup>

On 12 April 1996, the trial court issued an order modifying the 23 February 1996 order of Judge Reciña. The trial court issued a writ of preliminary mandatory injunction ordering petitioner to comply with the 9 November 1995 order of Secretary Garcia directing petitioner to recall respondents to their mother unit until further orders by the trial court.

For petitioner's continued failure to comply with the writ of preliminary injunction, respondents moved to cite petitioner in contempt. Respondents also moved to declare petitioner in default for not filing an answer within the period prescribed in the trial court's order of 26 January 1996.

On 28 May 1996, the trial court granted the motion and declared petitioner guilty of indirect contempt. The trial court issued a bench warrant against petitioner.

Petitioner, through the Office of the Solicitor General ("OSG"), filed a special civil action for certiorari with the Court of Appeals<sup>[7]</sup> assailing the trial court's order finding petitioner guilty of indirect contempt. The case was docketed as CA-G.R. SP No. 41263.

Meanwhile, the trial court declared petitioner in default for his failure to file an answer to the petition for mandamus and damages. Accordingly, respondents adduced their evidence *ex-parte* before the Clerk of Court.

On 11 July 1996, the trial court rendered a Decision the dispositive portion of which reads:

Wherefore, considering the foregoing premises, judgment is hereby rendered in favor of the petitioners and against the respondent declaring mandamus permanent and thereby ordering respondent Panfilo V. Villaruel, Jr., to pay the following:

- (1) One hundred thousand pesos (P100,000.00) each as moral damages;
- (2) Twenty five thousand pesos (P25,000.00) each as exemplary damages;
- (3) Twenty five thousand pesos (P25,000.00) each as temperate damages, and;
- (4) Fifty thousand pesos (P50,000.00) as attorney's fees.

SO ORDERED.<sup>[8]</sup>

Aggrieved, petitioner, represented by the OSG, appealed to the Court of Appeals. The appeal was docketed as CA-G.R. SP No. 42447.<sup>[9]</sup> With the filing of the appeal, the Court of Appeals granted respondents' motion for the dismissal of the petition for certiorari in CA-G.R. SP No. 41263 for being moot and academic.

The Court of Appeals granted the OSG a non-extendible extension until 13 December 1996 within which to file petitioner's memorandum. However, the OSG failed to file the memorandum. Subsequently, Solicitor Restituto Tuando, Jr. who was handling the case was appointed Regional Trial Court judge of Dumaguete City. The case was re-assigned to Assistant Solicitor Luciano Joson, Jr. On 13 March 1997, the Court of Appeals issued a Resolution dismissing petitioner's appeal for failure to file the required memorandum. The OSG, through Assistant Solicitor Luciano Joson, Jr., filed a Motion for Reconsideration, but the Court of Appeals denied the same. The Resolution became final and executory on 14 June 1997.

Consequently, the respondents filed a Motion for Execution with the trial court. Although served a copy of the motion for execution, the OSG did not file any opposition.

Acting on the motion for execution, the trial court issued a Writ of Execution on 22 September 1997. On 3 February 1998, the Sheriff issued a Notice of Sheriff's Sale setting on 23 February 1998 the sale of petitioner's real property covered by Transfer Certificate of Title No. 83030.

On 17 February 1998, petitioner, through his new counsel,<sup>[10]</sup> filed a Motion to Quash the Writ of Execution and to Suspend Sheriff's Sale. In his motion, petitioner alleged that the trial court's decision never became final and executory as the trial court deprived him of his right to due process. Petitioner claimed that the OSG failed to file petitioner's memorandum in CA-G.R. SP No. 42447 resulting in the dismissal of his appeal. Furthermore, petitioner alleged that the OSG failed to inform him of the dismissal of his appeal and of the trial court's order granting respondents' motion for execution. Petitioner further asserted that the Resolution of the Ombudsman in OMB-ADM 0-96-0090<sup>[11]</sup> superseded the decision of the trial court. The Ombudsman's Resolution approved the following recommendation of the reviewing Assistant Ombudsman:

PREMISES CONSIDERED, respondent MODESTO ABARCA, JR., is hereby found GUILTY of violation of Section 7(d) of Republic Act 6713, for which the penalty of Suspension Without Pay for Six (6) Months is hereby recommended pursuant to Section 10(b), Rule III of Administrative Order No. 07, in relation to Section 25(2) of Republic Act No. 6770.

It is also respectfully recommended that the charge against respondents REYNALDO FERNANDO and MARY LOU CLEOFAS be DISMISSED.<sup>[12]</sup>

On 23 February 1998, the trial court issued an Order quashing the Writ of Execution because the Sheriff failed to follow Section 9, Rule 39 of the Rules of Court. The trial court, however, issued an Alias Writ of Execution. Petitioner filed a Motion for Reconsideration but the trial court denied the same on 28 April 1998.

Dissatisfied with the trial court's orders, petitioner filed a special civil action for certiorari with the Court of Appeals docketed as CA-G.R. SP No. 48233 assailing the

execution of the trial court's decision of 11 July 1996. The Court of Appeals denied due course to the petition for certiorari and dismissed the same in the Decision dated 30 September 1998. Petitioner moved for reconsideration but the appellate court denied the motion in a Resolution of 3 December 1998.

Hence, the instant petition.

### **The Ruling of the Court of Appeals**

Petitioner raised before the Court of Appeals the following issues:

1. THE TRIAL COURT'S DECISION DATED JULY 11, 1996 IS VOID FOR LACK OF DUE PROCESS AND COULD NOT HAVE BECOME FINAL AND EXECUTORY.
2. SUPERVENING FACTS AND CIRCUMSTANCES HAVE TRANSPIRED WHICH RENDERED EXECUTION OF THE JUDGMENT UNJUST AND INEQUITABLE.<sup>[13]</sup>

On the first issue, the Court of Appeals ruled that the negligence of the OSG could not relieve petitioner of the effects of such negligence and prevent the decision of the trial court from becoming final and executory. In short, the OSG's negligence binds petitioner.

The Court of Appeals admonished petitioner for his failure to ascertain periodically from the OSG or from the Court of Appeals the status of his appeal. The appellate court cited **Reyes v. Court of Appeals**,<sup>[14]</sup> which held that it is the duty of a party litigant to make inquiries to his counsel on matters concerning his case. A party litigant bears the responsibility of contacting his lawyer periodically to apprise himself of the progress of the case. A lawyer's negligence binds a party litigant who must suffer the consequences of such negligence. The Court of Appeals further held that there was no proof that the OSG failed to inform petitioner of the dismissal of his appeal.

On the second issue, the Court of Appeals concurred with the trial court's ruling that the nature of the case before the Ombudsman is different from the case before the trial court. The former deals with a violation of Republic Act No. 6713 ("RA 6713")<sup>[15]</sup> punished with suspension from office while the latter deals with an *ultra vires* act punished with damages. The appellate court ruled that the findings of the Ombudsman had nothing to do with the findings of the trial court, as the two forums are separate and distinct from each other.

Moreover, the Court of Appeals opined that petitioner failed to prove that the trial court committed grave abuse of discretion to warrant the writ of certiorari. The appellate court ruled that the trial court acted in accord with law and prevailing jurisprudence in issuing the questioned orders.

### **The Issues**

Petitioner presents the following issues for resolution of this Court:<sup>[16]</sup>