

## **THIRD DIVISION**

**[ G.R. No. 139511, January 23, 2002 ]**

**JESUS A. CASIM, PETITIONER, VS. BRUNO CASIM FLORDELIZA,  
RESPONDENT.**

### **D E C I S I O N**

**VITUG, J.:**

Before the Court is a petition for review of the resolution of the Court of Appeals, dated 30 April 1999, dismissing herein petitioner's appeal, as well as its resolution of 28 July 1999, denying a reconsideration of the order of dismissal. The petition originated from an action filed on 01 September 1991 by Jesus Casim against Bruno Casim Flordeliza (Civil Case No. 91-2566) for the return or reconveyance of certain property located in the cities of Makati and Parañaque.

The case was raffled to Branch 146 of the Regional Trial Court (RTC) of Makati.

In his complaint, petitioner (then plaintiff) claimed that when he moved to Metro Manila from the Bicolandia region with his family to start the "J. Casim Concrete Products and Gravel and Sand" business, he brought along with him respondent Bruno Flordeliza, his nephew, who was orphaned at an early age, jobless, and had several children to support. Petitioner later supported respondent and his family, even allowed him to use his surname Casim, and employed him in the business. Eventually, respondent rose from a minor employee to a co-manager position, with ample power and authority to make bank deposits, as well as to withdraw funds therefrom, in the operation of petitioner's business. Giving full trust and confidence in respondent, petitioner allowed respondent to purchase valuable real property in Makati and other places with petitioner's funds and to place the property thus acquired in the name of respondent. Respondent, after his marriage, opened a business similar to that of petitioner with funds lent by the latter. Respondent, however, in breach of the trust and confidence reposed in him by petitioner, disposed or sold some of the property without the latter's knowledge and consent. Then, sometime in September 1981, respondent even initiated Civil Case No. 2137 against petitioner before the Makati RTC claiming co-ownership of a property in Las Piñas, Metro Manila, bought by petitioner for expansion of the business. By this time, petitioner had already lost all trust and confidence in respondent and started demanding from him the return of the various pieces of property which were bought with petitioner's funds, as well as the recovery of sums taken by respondent, which demands the latter ignored.

Respondent (then defendant) filed an answer, on 04 February 1992, invoking several special and affirmative defenses and alleging, among other things, that (1) petitioner waived or abandoned all claims he had against respondent when petitioner signed two documents, entitled "Release and Quitclaim," dated 26 February 1981, and "Mutual Release and Quitclaim," dated 19 March 1981; (2) while

petitioner claimed that his relationship with respondent was based on an express trust, said trust, however, was not reduced into writing and was, therefore, unenforceable under the Statute of Frauds; and (3) assuming that petitioner's action against him is based on an implied trust, his cause of action had long prescribed.

The respective pre-trial briefs of petitioner and respondent were filed on 24 March 1992.

On 02 June 1992, respondent filed a motion to set the special and affirmative defenses for hearing and to meanwhile suspend the pre-trial. The motion was granted by the trial court in an order, dated 13 January 1993, setting the hearing on the special and affirmative defenses for 20 April 1993. The hearing was reset to 20 May 1993 due to the absence of petitioner's counsel.

Civil Case No. 2137 (referred to in Civil Case No. 91-2566) was initiated by Bruno Casim Flordeliza (herein respondent) on 17 September 1981 against the spouses Jesus Casim (herein petitioner) and Margarita Casim for annulment of a deed of absolute sale executed on 04 June 1979 and the annulment and cancellation of TCT No. 30459 issued by the Registry of Deeds of Metro Manila, District IV, in the name of the spouses. Respondent claimed one-half of the property involved plus P13,000,000.00 in damages, attorney's fees and costs. This case was raffled to Branch 62 of the RTC of Makati presided by Judge Roberto Diokno. The trial in Civil Case No. 2137 was eventually terminated, and Judge Diokno rendered, on 20 June 1996, a decision dismissing the complaint of respondent "for annulment of deed of sale and damages," against petitioner. The court found that respondent, taking advantage of his college degree, had tricked the unlettered petitioner into signing the documents "Release and Quitclaim," dated 26 February 1981, and "Mutual Release and Quitclaim," dated 19 March 1981, which were prepared without giving petitioner an opportunity to understand their contents. From the adverse decision, respondent appealed (Civil Case No. 2137) to the Court of Appeals. The appeal was docketed C.A.-G.R. CV No. 54204.

Respondent, at the same time, filed in Civil Case No. 91-2566 a motion to disqualify Judge Roberto Diokno from further hearing Civil Case No. 91-2566 on the ground that the judge might no longer be able to resolve Civil Case No. 91-2566 with impartiality and fairness. Judge Diokno forthwith inhibited himself from the case. Civil Case No. 91-2566 was then re-raffled to Branch 141 of the Makati RTC presided by Judge Manuel D. Victorio. On 20 May 1996, a hearing on respondent's special and affirmative defenses in Civil Case No. 91-2566 was finally scheduled by Judge Victorio. On said date, respondent did not adduce evidence or proffer oral argument in support of his said defenses but opted to merely file a "Memorandum in Support of Defendant's Special and Affirmative Defenses." Petitioner thereafter filed his reply memorandum.

In an order, dated 17 February 1997, Judge Victorio directed that the resolution of respondent's special and affirmative defenses be held in abeyance until the parties would have presented, respectively, their evidence on the merits. Later, however, upon respondent's motion for reconsideration of the 17<sup>th</sup> February 1997 order, Judge Victorio, promulgated an order, dated 13 August 1997, dismissing the complaint of petitioner against respondent.

Petitioner moved to have the order of dismissal reconsidered by Judge Victorio. The

motion was denied on 29 December 1997. Whereupon, petitioner filed a "Notice of Appeal," dated 28 January 1998, elevating to the Court of Appeals (docketed CA-G.R. CV No. 59522) the propriety of the dismissal of the complaint. In an order, dated 15 September 1998, the Court of Appeals required petitioner to file the appellant's brief within 45 days from receipt of the order. Petitioner sought an extension of time which the Court of Appeals granted, in its order of 01 December 1998, allowing petitioner to file his brief until 04 February 1999.

On 03 February 1999, petitioner filed a motion in CA-G.R. CV No. 59522 to consolidate the appeal with CA-G.R. CV No. 54204 (the appeal of respondent from the decision of Judge Diokno against him in Civil Case No. 2137) pending with the Sixth Division of the Court claiming that the two cases were theretofore consolidated by the Makati RTC; that petitioner won the first case with the dismissal of respondent's complaint (Civil Case No. 2137) in the lower court, following which respondent immediately moved to inhibit the presiding Judge Diokno from further handling the second case (Civil Case No. 91-2566) which was then re-raffled to Branch 141 presided over by Judge Victorio; that one of the issues raised in the first case (Civil Case No. 2137) was the validity of the "Release and Quitclaim" and "Mutual Release and Quitclaim," also relied upon by respondent in the second case (Civil Case No. 91-2566), which documents Judge Diokno (in Civil Case No. 2137) found to be null and void, holding that the signatures of petitioner thereon were obtained by trickery and fraud; that Judge Victorio dismissed the second case (Civil Case No. 91-2566) without even conducting a hearing on the affirmative defenses of respondent; that the issues in the two appeals involving the same parties were intimately inter-related; and that if the two appeals were consolidated, there could be a single and final decision on the inter-related issues raised in the two appeals.

On 24 February 1999, petitioner filed his appellant's brief in CA-G.R. CV No. 59522.

Respondent opposed the motion for consolidation filed by petitioner, claiming that it had no factual and legal basis and **moved to dismiss the appeal of petitioner** because of his failure to file on time his appellant's brief; that only one copy of the brief was served on respondent; and that the brief had no page references to the record. Petitioner excepted and argued that his counsel did not file an appellant's brief in his behalf within the extended period given by the court because he (counsel) was waiting for the action of the appellate court on his motion for consolidation; that petitioner did not know that his counsel had not filed his appellant's brief and found out about it only when his son inquired from the Court of Appeals on the status of the case; that in order to avoid the late filing of his brief, he took the initiative of filing his appellant's brief himself; that the grounds for the dismissal of his appeal invoked by respondent were merely directory, the overwhelming consideration being the merits of the case; that he furnished appellee with one copy of his brief and his failure to furnish the latter with two copies of his brief was not fatal; that the lack of subject index in his brief did not result in any prejudice to appellee because the brief had only 23 pages which were consecutively numbered; that his appeal was not intended for delay; that mere technicalities of procedure should not override the right of a litigant to be given the amplest opportunity for the proper and just determination of his cause; and that the consolidation of his present appeal (CA-G.R. CV No. 59522) with the earlier appeal taken by respondent (CA-G.R. CV No. 54204) was called for considering that the two appeals involved the same parties and inter-related issues. Petitioner thus prayed that his brief, already filed with the appellate court, be admitted. Petitioner