

## THIRD DIVISION

[ G.R. No. 143783, December 09, 2002 ]

**DANTE SARRAGA, SR. AND MARIA TERESA SARRAGA,  
PETITIONERS, VS. BANCO FILIPINO SAVINGS AND MORTGAGE  
BANK, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Spouses Dante Sarraga, Sr. and Maria Teresa Sarraga, petitioners, were the absolute owners of three (3) parcels of land, one of which is Lot 416-B, situated in Poblacion, Cagayan de Oro City, and the other two, Lots 1053-A and 1053-B, in Lapasan, same city.

Sometime in the early 1980's, petitioners mortgaged their lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino), respondent, as security for a loan in the amount of P3,618,714.59.

Petitioners defaulted in the payment of their loan. Consequently, Banco Filipino foreclosed the mortgage.

On June 29, 1984, Banco Filipino was placed in conservatorship by the Central Bank of the Philippines. On January 25, 1985, it was ordered closed and placed under receivership and liquidation.

On April 9, 1985, or before the expiration of the period for the redemption of the lots, petitioner Dante P. Sarraga sent a letter to Banco Filipino's receiver-liquidator offering to redeem the same.

On July 2, 1985, Deputy Receiver Arnulfo B. Aurellano wrote petitioners that "at this stage of the liquidation of the bank, we are not yet selling the aforesaid properties."

Since petitioners were not allowed to redeem their lots within the period prescribed by law, titles thereto were consolidated in the name of Banco Filipino.

On October 10, 1986, petitioners received a letter from Banco Filipino recognizing their intention to redeem their lots. Later, Banco Filipino, through its liquidators, started negotiating with petitioners on the terms of redemption.

Finally, on October 30, 1990, Mr. Renan Santos, then Banco Filipino's liquidator, wrote petitioners allowing them to repurchase the lots for P8,506,597.73, with 12% interest per annum, under the terms stipulated therein.<sup>[1]</sup> The terms include, among others, that petitioners may pay by installments and that upon full payment of the repurchase price, Banco Filipino shall execute the **corresponding deed of sale for the three (3) lots** in their favor.<sup>[2]</sup> They were likewise granted the power to manage and administer the building located in Lot 416-B. The terms were later embodied in a Memorandum of Agreement<sup>[3]</sup> (MOA) signed by the parties.

On May 16, 1991, Banco Filipino formally conveyed to petitioners the **two (2) lots (Lots 1053-A and 1053-B)** located in Lapasan, Cagayan de Oro City.

On October 30, 1992, petitioners **paid in full** the total repurchase price for the **three (3) lots**. However, Banco Filipino refused to execute the corresponding deed of sale and turn over Lot 416-B to petitioners.

Instead, Banco Filipino, on April 5, 1993, filed with the Regional Trial Court, Branch 38, Cagayan de Oro City, a complaint<sup>[4]</sup> against petitioners for quieting of title, recovery of ownership and possession, accounting and damages, docketed as Civil Case No. 93-186.

On April 27, 1993, petitioners filed their answer with counterclaim.<sup>[5]</sup> They were represented by Atty. Florentino G. Dumlao, Jr. who formally entered his appearance as their counsel of record.

However, prior to the pre-trial, Atty. Dumlao suffered a mild stroke, incapacitating him from participating actively in the proceedings, prompting petitioners to hire the services of another counsel, Atty. Rogelio Bagabuyo. While the latter appeared for the petitioners during the hearing and signed pleadings for them, Atty. Dumlao remained petitioners' counsel of record. As such, the trial court continued to serve pleadings, motions, processes, and other documents upon Atty. Dumlao.

On June 1, 1998, the trial court rendered a decision,<sup>[6]</sup> the dispositive portion of which states:

"Wherefore, judgment is hereby rendered, as follows:

1. Declaring the sale and conveyance of the two (2) parcels of land (denominated as Lots 1035-A and 1053-B) situated in Barangay Lapasan, Cagayan de Oro, as valid and title thereto shall pertain to defendant spouses Sarraga;
2. Declaring plaintiff Banco Filipino to be the true and lawful owners of Lot 416-B and the building therein (formerly known as the Lucar Building but now as Executive Centrum) situated along J.R. Borja Street, Cagayan de Oro City;
3. Ordering defendant spouses Sarraga to immediately relinquish and surrender possession of Lot No. 416-B and the building thereon to plaintiff Bank; and
4. All other claims of plaintiff Bank as well as counterclaims by the defendants are dismissed.

"No pronouncement as to costs.

"SO ORDERED."<sup>[7]</sup>

On July 1, 1998, petitioners filed a motion for reconsideration,<sup>[8]</sup> signed by both Attys. Dumlao and Bagabuyo.

On September 3, 1998, the trial court issued an order<sup>[9]</sup> denying petitioners' motion. On September 10, 1998, the order was received by Ms. Llerna Guligado, a newly-hired clerk at the office of Atty. Bagabuyo. Owing to her lack of work

experience in a law office, she merely left the court order on her desk and eventually it was misplaced. She failed to bring the matter to the attention of Atty. Bagabuyo when she resigned on September 15, 1998. The day before, or on September 14, 1998, Atty. Bagabuyo was appointed Senior State Prosecutor in the Department of Justice. Due to his excitement and relocation to Manila, he failed to apprise Atty. Dumlao on the status of the case.

Concerned that no action had been taken on their motion for reconsideration of the Decision, petitioners, on December 7, 1998, verified its status. In the trial court, they found that the records of the case were already transmitted to the Court of Appeals due to a partial appeal interposed by Banco Filipino.

This prompted petitioners to file with the trial court a notice of appeal which was denied for being late.

Eventually, they filed a petition for relief from judgment.<sup>[10]</sup> During the hearing, they came to know that the order dated September 3, 1998 denying their motion for reconsideration was served upon Atty. Bagabuyo only.

On February 12, 1999, the trial court issued an order<sup>[11]</sup> dismissing the petition for relief on the ground that it was filed out of time. Petitioners filed a motion for reconsideration but was denied.<sup>[12]</sup>

They then filed a petition for certiorari with the Court of Appeals, docketed as CA GR-SP No. 53765, ascribing to the trial court grave abuse of discretion **for dismissing their petition for relief from judgment.**

On June 20, 2000, the Appellate Court rendered a Decision<sup>[13]</sup> dismissing the petition, thus:

“WHEREFORE, foregoing premises considered, we hold that public respondent did not err much less act with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the disputed orders, for which reason, the herein petition has to be, as it is hereby DISMISSED.

“SO ORDERED.”<sup>[14]</sup>

Hence this petition for review on certiorari.

The fundamental issues for our resolution are: 1) whether there was a valid service of the trial court’s order denying petitioners’ motion for reconsideration upon Atty. Bagabuyo; 2) whether Atty. Bagabuyo was negligent which prevented petitioners from filing a timely notice of appeal; and 3) if so, whether such negligence is binding upon petitioners.

Petitioners maintain that Atty. Bagabuyo is not their counsel of record since he did not file with the trial court a formal appearance. Consequently, the service upon him of the trial court’s order denying their motion for reconsideration is not valid.

Such posture is untenable. It is undisputed that petitioners were represented by two (2) lawyers, Attys. Dumlao and Bagabuyo. Pursuant to Section 2, Rule 13 of the 1997 Rules of Civil Procedure, as amended,<sup>[15]</sup> service of the trial court’s order

denying petitioners' motion for reconsideration may be made upon either counsel.  
[16]

The Court of Appeals correctly found that indeed petitioners' counsel was Atty. Bagabuyo, thus:

"We find no merit in the first ground invoked by petitioners. As explained by the court a quo in its May 24, 1999 order-

"The records of this case show that Atty. Rogelio Zosa B. Bagabuyo did not 'merely enter his appearance orally at every hearing which he attended.' He filed several pleadings in this case as 'counsel for the defendants' in which he indicated his address. The first pleading that he filed x x x was a MOTION TO HEAR SPECIAL AND AFFIRMATIVE DEFENSES AS IF A MOTION TO DISMISS HAD BEEN FILED, dated November 28, 1994, which he signed alone as 'counsel for Defendants' and in which he indicated his address as 'Suite 201, Travellers Life Building, corners Tiano & J.R. Borja Streets, City of Cagayan de Oro.' Atty. Bagabuyo, since he started appearing in this case, acted alone, signed pleadings alone, made decisions alone, without in any way indicating to the court and the adverse party that he had to defer to the judgment of Atty. Dumlao on any matter pertaining to the instant case. He presented the defendant Dante Sarraga and the latter's witness, Mr. Gaudencio Beduya, at the trial of this case and terminated the presentation of the defendant's evidence without consulting, or intimating to the court and the adverse party that he had to consult Atty. Dumlao on the matter. The MEMORANDUM FOR THE DEFENDANTS dated April 8, 1996 was signed by him alone as counsel for the defendants. Atty. Rogelio Zosa Bagabuyo signed as lead counsel the defendants' Motion for Reconsideration dated 26 June 1998 and the Urgent Rejoinder to Plaintiff's Opposition To Our Motion for Reconsideration dated 03 August 1998, in which he indicated his address as 14th-10th Streets, Macasandig, City of Cagayan de Oro.' He signed alone as counsel for the defendants an URGENT MOTION TO CANCEL SCHEDULED HEARING ON 31 July 1998 dated 28 July 1998 in which he indicated his address as '72 corners 14th-10th Streets, Macasandig, City of Cagayan de Oro.' (Annex "F," Petition, pp. 196-197, rollo).

"Given the foregoing circumstances and the court a quo's further observation that Atty. Bagabuyo 'had been the one actively handling the case for the defendants since the pre-trial stage,' x x x it is simply absurd for petitioners to even suggest that service upon Atty. Bagabuyo of a copy of the Order dated September 3, 1998 which denied their Motion for Reconsideration of the judgment was ineffective or did not bind them. To be sure, Section 2, Rule 13 of the 1997 Rules of Civil Procedure explicitly provides that '(i)f any party has appeared by counsel, service upon him shall be made upon his counsel or one of them x x x.' The obvious meaning of said rule is that if a party is represented by more than one