

Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 26 2017



Republic of the Philippines
Supreme Court
Baguio City

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
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THIRD DIVISION

BACLARAN CORPORATION,

MARKETING

G.R. No. 189804

Petitioner,

Present:

-versus-

**FERNANDO C. NIEVA and
MAMERTO SIBULO, JR.,**

Respondents.

VELASCO, JR., *J.*, Chairperson,
BERSAMIN,
LEONEN,*
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

April 19, 2017

X ----- *Wilfredo V. Lapitan* ----- X

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*¹ of the August 26, 2009² and October 9, 2009³ Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 108033. The CA denied due course and dismissed Baclaran Marketing Corporation's (BMC) Petition for Annulment of Judgment on the ground that it is not a remedy available to BMC.

Petitioner BMC is a domestic corporation engaged in the business of distribution, marketing and delivery of cement.⁴ It is one of the defendants in Civil Case No. 1218-A, entitled "*Mamerto Sibulo, Jr. v. Ricardo Mendoza and Baclaran Marketing, Inc.*" pending with the Regional Trial Court of Antipolo, Branch 74 (Antipolo Court).⁵ The case is one for damages arising from a vehicular collision in Taytay, Rizal between a 10-wheeler truck owned by BMC and driven by its employee Ricardo Mendoza (Mendoza), and a car owned and driven by Mamerto Sibulo, Jr. (Sibulo). The Antipolo

* Designated as Additional Member in lieu of Associate Justice Bienvenido L. Reyes per Raffle dated March 27, 2017.

¹ *Rollo*, pp. 3-37; With Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

² *Id.* at 42-50. Penned by Associate Justice Portia Alino-Hormachuelos with Associate Justices Fernanda Lampas-Peralta and Ramon R. Garcia, concurring.

³ *Id.* at 52-53.

⁴ *Id.* at 5.

⁵ *Id.*

Court, in its Decision⁶ dated November 21, 1990 (1990 Decision), ruled in favor of BMC and Mendoza and dismissed Sibulo's complaint.⁷ It found that the damages suffered by Sibulo were the result of his own reckless and imprudent driving.⁸

On appeal, the CA, in its Decision⁹ dated May 9, 2005 reversed the Antipolo Court and held that Mendoza's negligence caused the collision. It awarded Sibulo damages in the total amount of ₱765,159.55.¹⁰ In the absence of a motion for reconsideration, the Decision became final and executory on June 12, 2005.¹¹ The Antipolo Court subsequently issued a Writ of Execution¹² on January 16, 2006. Then, in an Order¹³ dated February 23, 2006, it directed the Deputy Sheriff, upon motion of Sibulo, to implement the Writ of Execution against the real properties owned by BMC, as it appears that BMC has no personal properties. The sheriff of the Antipolo Court levied upon BMC's real property in Parañaque City covered by Transfer Certificate of Title (TCT) No. 34587 (property). He sold the property and its improvements through public auction on April 17, 2006. Respondent Fernando C. Nieva (Nieva) emerged as the highest bidder paying the total price of ₱800,000.00.¹⁴

For BMC's failure to redeem the property within one year from the sale, Nieva consolidated ownership over it. He filed a Petition for Cancellation of Transfer Certificate Title No. 34587 and Issuance of New [Title] in the Regional Trial Court of Parañaque City, Branch 257 (Parañaque Court) pursuant to Section 107 of Presidential Decree No. 1529.¹⁵ The case was docketed as LRC Case No. 07-0119.¹⁶ The Parañaque Court granted the petition in its Decision¹⁷ dated March 26, 2008 and ordered BMC to surrender to Nieva, within 15 days from receipt of the Decision, its owner's duplicate certificate of title over the property. Failing such, the Parañaque Court ordered the Register of Deeds to annul TCT No. 34587 and issue a new title in Nieva's name. The Decision of the Parañaque Court became final on May 8, 2008.¹⁸

Consequently, Nieva filed a Petition for Issuance of a Writ of Possession over the property in the Parañaque Court. The case was docketed as LRC Case No. 08-0077. The Parañaque Court granted the petition in its

⁶ *Rollo*, pp. 54-56, penned by Judge Daniel P. Alfonso.

⁷ *Id.* at 56.

⁸ *Id.*

⁹ *Rollo*, pp. 58-73. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring.

¹⁰ *Id.* at 72.

¹¹ *Id.* at 192.

¹² *Id.* at 74-75.

¹³ *Id.* at 76-77.

¹⁴ *Id.* at 8.

¹⁵ Property Registration Decree.

¹⁶ *Rollo*, p. 19.

¹⁷ *Id.* at 89-91.

¹⁸ *Id.* at 92-93.

Decision¹⁹ dated January 26, 2009 and issued a Writ of Possession and Notice to Vacate against BMC dated March 12, 2009 and March 22, 2009, respectively.²⁰

In view of the Writ of Possession and Notice to Vacate issued against it, BMC filed a Petition for Annulment of Judgment²¹ before the CA. BMC prayed for the annulment of the following orders and decisions:

- (a) Writ of Execution dated January 16, 2006 issued by the Antipolo Court in Civil Case No. 1218-A;
- (b) Order dated February 23, 2006 of the Antipolo Court in Civil Case No. 1218-A ordering the implementation of the writ of execution over the real properties of BMC;
- (c) Auction Sale dated April 17, 2006;
- (d) Decision dated March 26, 2008 of the Parañaque Court in LRC Case No. 07-0119 canceling TCT No. 34587; and
- (e) Decision dated January 26, 2009 of the Parañaque Court in LRC Case No. 08-0077, ordering the issuance of a Writ of Possession.²²

BMC alleged that its counsel, Atty. Isagani B. Rizon (Atty. Rizon), committed acts of gross and inexcusable negligence constituting “extrinsic fraud,” which deprived it of due process and an opportunity to present its side.²³ It discovered the fraud only in December 2008 when its representatives tried to pay the real estate tax on the property, only to learn that the title to it had already been transferred to Nieva.²⁴ BMC averred that it did not know that Sibulo appealed the 1990 Decision of the Antipolo Court to the CA. It claimed that Atty. Rizon assured BMC that the 1990 Decision ended the controversy.²⁵ Had BMC known of the appeal, it could have opposed the proceedings or engaged the services of new counsel.

BMC claimed that it immediately called Atty. Rizon in his office upon discovering that the property was levied upon and sold at public auction. However, BMC was informed that Atty. Rizon died on January 30, 2009. It also learned that Atty. Rizon ran for public office and won as Mayor of Baroy, Lanao Del Norte in the 1995, 2001, 2004 and 2007 elections.²⁶ BMC alleged that based on court records, notices relative to the case against BMC were sent to Atty. Rizon but, for some reason unknown to BMC, Atty. Rizon never informed it of the court documents/processes.²⁷

¹⁹ *Id.* at 94-96.

²⁰ *Id.* at 11.

²¹ *Id.* at 131-158; With Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

²² *Id.* at 133.

²³ *Id.* at 134.

²⁴ *Id.*

²⁵ *Rollo*, p. 137.

²⁶ *Id.*

²⁷ *Id.*

BMC emphasized that the Antipolo Court ruled in its favor in Civil Case No. 1218-A and that it was only when BMC failed to participate in the appeal that an adverse decision was rendered against it.²⁸ It maintains that if the orders of the Antipolo and Parañaque Courts were allowed to stand, BMC will be deprived of its substantial property rights over the property: when the property was sold to Nieva at the public auction for a bid price of ₱800,000.00, its market value²⁹ was already ₱19,890,000.00.³⁰

The CA, in its Resolution dated August 26, 2009, denied BMC's petition. It ruled that the remedy of annulment of judgment is not available to BMC because:

- (a) Extrinsic fraud refers to a fraud perpetrated by the prevailing party, not by the unsuccessful party's own counsel.³¹
- (b) BMC is bound by the negligence of Atty. Rizon because it was negligent for not checking on the status of the case. It did not also inform the Antipolo Court of its change of address. Thus, BMC cannot claim that it was denied due process.³²
- (c) A writ of execution or auction sale are not in the nature of a final judgment, order, or resolution, hence, they cannot be the subject of an action to annul judgment.³³

BMC moved for reconsideration; this, however, was denied. Hence, this petition,³⁴ which raises the sole issue of whether the CA erred in dismissing BMC's petition for annulment of judgment.

We deny the petition.

I

Rule 47 of the Rules of Court governs actions for the annulment of final judgments, orders, or resolutions of regional trial courts in civil actions. It is a recourse equitable in character, allowed only in exceptional cases where there is no available or other adequate remedy.³⁵ Its objective is to set aside a final and executory judgment, which is not void upon its face, but is entirely regular in form, and whose alleged defect is not apparent upon its

²⁸ *Rollo*, p. 139.

²⁹ Pegged at the time Nieva paid the capital gains tax.

³⁰ *Rollo*, p. 135.

³¹ *Id.* at 46.

³² *Id.* at 48.

³³ *Id.* at 49-50.

³⁴ *Id.* at 32. BMC also prays for the issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the implementation of the writ of possession issued by the Parañaque Court. BMC maintains that if not enjoined by this Court, BMC will be ejected from the property and Nieva will undoubtedly transfer it to a third person.

³⁵ *Antonino v. Register of Deeds of Makati City*, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236 citing *Ramos v. Judge Combong, Jr.*, G.R. No. 144273, October 20, 2005, 473 SCRA 499.

face or from the recitals contained in the judgment.³⁶ Since it disregards the time-honored rule of immutability and unalterability of final judgments, the Rules of Court impose stringent requirements before a litigant may avail of it. In *Pinausukan Seafood House v. Far East Bank & Trust Company*,³⁷ we held that “[g]iven the extraordinary nature and the objective of the remedy of annulment of judgment or final order,”³⁸ a petitioner must comply with the statutory requirements as set forth under Rule 47. These are:

- (1) The remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner;
- (2) The grounds for the action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction;
- (3) The action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel; and
- (4) The petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner’s good and substantial cause of action or defense, as the case may be.³⁹

BMC’s petition for annulment of judgment fails to meet the first and second requisites.

II

Rule 47, Section 1 limits the applicability of the remedy of annulment of judgment to *final* judgments, orders or resolutions.⁴⁰ A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto. This may be an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right, or a judgment or order that dismisses an action on the ground of *res judicata* or prescription.⁴¹ In contrast, an interlocutory order does not dispose of a case completely but leaves something to be done upon its merits.⁴²

³⁶ *Arcelona v. Court of Appeals*, G.R. No. 102900, October 2, 1997, 280 SCRA 20, 32-33, citing *Macabingkil v. People’s Homesite and Housing Corporation*, G.R. No. L-29080, August 17, 1976, 72 SCRA 326.

³⁷ G.R. No. 159926, January 20, 2014, 714 SCRA 226.

³⁸ *Id.* at 241.

³⁹ *Id.* at 242-247.

⁴⁰ Sec. 1. *Coverage*. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

⁴¹ *Ybiernas v. Tanco-Gabaldon*, G.R. No. 178925, June 1, 2011, 650 SCRA 154, 166, citing *Intramuros Tennis Club, Inc. v. Philippine Tourism Authority*, G.R. No. 135630, September 26, 2000, 341 SCRA 90.

⁴² *Fenequito v. Vergara, Jr.*, G.R. No. 172829, July 18, 2012, 677 SCRA 113, 119.

We find that the CA correctly denied BMC's petition.

In *Guiang v. Co*,⁴³ we declared that an auction sale and a writ of execution are not final orders. Thus, they cannot be nullified through an action for annulment of judgment, to wit:

It bears stressing that Rule 47 of the Rules of Civil Procedure applies only to a petition to annul a judgment or final order and resolution in civil actions, on the ground of extrinsic fraud or lack of jurisdiction or due process. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. **The rule does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the certificate of sale executed by the deputy sheriff over said properties. Neither does it apply to an action to nullify a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.**⁴⁴ (Citations omitted, emphasis supplied.)

Corollarily, an order *implementing* a writ of execution issued over certain real properties is also not a final order as it merely enforces a judicial process over an identified object. It does not involve an adjudication on the merits or determination of the rights of the parties.

Closely related to a writ of execution is a writ of possession. In *LZK Holdings and Development Corp. v. Planters Development Bank*,⁴⁵ we explained that a writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.⁴⁶ Thus, similar to a writ of execution, a writ of possession is not a final order which may be annulled under Rule 47. It is merely a judicial process to enforce a final order against the losing party. For this reason the Decision of the Antipolo Court ordering the issuance of writ of possession is also not amenable to an action for annulment of judgment.

In fine, only the Decision of the Parañaque Court ordering the cancellation of BMC's title over the property qualifies as a final judgment. It is a judgment on the merits declaring who between Nieva and BMC has the right over the title to the property. Therefore, it may be the subject of an

⁴³ G.R. No. 146996, July 30, 2004, 435 SCRA 556.

⁴⁴ *Id.* at 562. See also *Land Bank of the Philippines v. Planta*, G.R. No. 152324, April 29, 2005, 457 SCRA 664.

⁴⁵ G.R. No. 167998, April 27, 2007, 522 SCRA 731.

⁴⁶ *Id.* at 738, citing *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 195.

action for annulment of judgment. Be that as it may, BMC failed to prove that any of the grounds for annulment are present in this case.

III

Rule 47, Section 2 provides extrinsic fraud and lack of jurisdiction as the exclusive grounds for the remedy of annulment of judgment.⁴⁷ Case law, however, recognizes a third ground—denial of due process of law. *Arcelona v. Court of Appeals*⁴⁸ teaches that a decision which is patently void may be set aside on grounds of want of jurisdiction or “non-compliance with due process of law.”⁴⁹

Here, BMC invokes extrinsic fraud and lack of due process as grounds for its petition for annulment of judgment. It claims that Atty. Rizon’s gross negligence in handling the case constitutes extrinsic fraud and deprived it of due process of law.

We are not persuaded. Extrinsic fraud refers to a fraud committed to the unsuccessful party by his opponent preventing him from fully exhibiting his case by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or when an attorney fraudulently or without authority connives at his defeat.⁵⁰

In *Pinausukan*,⁵¹ we held that a lawyer’s neglect in keeping track of the case and his failure to apprise his client of the developments of the case do not constitute extrinsic fraud. Fraud is not extrinsic if the alleged fraudulent act was committed by petitioner’s own counsel. The fraud must emanate from the act of the adverse party and must be of such nature as to deprive petitioner of its day in court.⁵² Thus, in many cases, we have held that a lawyer’s mistake or gross negligence does not amount to extrinsic fraud that would grant a petition for annulment of judgment.⁵³

In this case, the CA correctly found that BMC neither alleged nor proved that the gross negligence of its former counsel was done in connivance with Nieva or Sibulo.⁵⁴ Therefore, it is not the extrinsic fraud contemplated under Rule 47, Section 2.

⁴⁷ Sec. 2. *Grounds for Annulment.* – The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

⁴⁸ *Supra* note 36.

⁴⁹ See also *Benatiro v. Heirs of Evaristo Cuyos*, G.R. No. 161220, July 30, 2008, 560 SCRA 478, 494-495, citing *Intestate Estate of the Late Nimfa Sian v. Philippine National Bank*, G.R. No. 168882, January 31, 2007, 513 SCRA 662.

⁵⁰ *Cosmic Lumber Corporation v. Court of Appeals*, G.R. No. 114311, November 29, 1996, 265 SCRA 168, 180.

⁵¹ *Supra* note 37.

⁵² *Id.* at 232.

⁵³ *Lasala v. National Food Authority*, G.R. No. 171582, August 19, 2015, 767 SCRA 430, 448.

⁵⁴ *Rollo*, p. 46.

IV

BMC maintains that it was denied due process of law because it was not able to participate in the proceedings subsequent to the 1990 Decision of the Antipolo Court. It alleges that Atty. Rizon did not inform it of Sibulo's appeal and of the orders and processes issued by the courts.⁵⁵ BMC pleads that Atty. Rizon's gross negligence in handling the case is tantamount to abandonment of the same.⁵⁶ Thus, it should not be bound by the negligence of its counsel.

Nieva and Sibulo, on the other hand, assert that BMC was not deprived of due process. They aver that the records of the CA show that BMC was furnished with a copy of the decision of the CA and a copy of the entry of judgment.⁵⁷

BMC's contentions have no leg to stand on. It is well-settled that the negligence of the counsel binds the client, except in cases where the gross negligence of the lawyer deprived his client of due process of law. However, mere allegation of gross negligence does not suffice. In the recent case of *Ong Lay Hin v. Court of Appeals*,⁵⁸ we held that for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests. The error of his counsel must have been both palpable and maliciously exercised that it could viably be the basis for a disciplinary action.⁵⁹ Pertinently, malice is never presumed but must be proved as a fact. The record is bereft of showing that BMC alleged and proved that Atty. Rizon was motivated by malice in failing to inform it of Sibulo's appeal.

Moreover, the gross negligence of the counsel must not be accompanied by the client's own negligence. In *Bejarasco, Jr. v. People*,⁶⁰ we ruled that for his failure to keep himself up-to-date on the status of his case, the client should suffer whatever adverse judgment is rendered against him. A litigant bears the responsibility of monitoring the developments of his case for no prudent party leaves the fate of his case entirely in the hands of his lawyer.⁶¹

In this light, BMC cannot pass all the blame to Atty. Rizon. It admitted in its petition before us that after obtaining a favorable decision from the Antipolo Court, it did not bother to check the status of the case.⁶² While it might be true that Atty. Rizon assured it that the case has already

⁵⁵ *Id.* at 15.

⁵⁶ *Id.* at 16.

⁵⁷ *Id.* at 197.

⁵⁸ G.R. No. 191972, January 26, 2015, 748 SCRA 198.

⁵⁹ *Id.* at 208.

⁶⁰ G.R. No. 159781, February 2, 2011, 641 SCRA 328.

⁶¹ *Id.* at 331, citing *Delos Santos v. Elizalde*, G.R. No. 141810, February 2, 2007, 514 SCRA 14, 30-31, further citing *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 113.

⁶² *Rollo*, p. 17.

ended with the 1990 Decision, the prudent thing would have been for BMC to ask for evidence or proof that the decision was already final. This, BMC failed to do.

Since Sibulo's claim for damages involves a considerable amount of money, BMC is expected to protect its own interest and not merely to rely on its counsel. It is the duty of BMC to be in touch with its counsel regarding the progress of the case. It cannot just sit back, relax, and wait for the outcome of the case.⁶³ Since the alleged negligent act of its counsel was accompanied by BMC's own negligence, the latter shall be bound by the former's negligence.

We commiserate with the plight of BMC, assuming that it was indeed unaware of the proceedings subsequent to the 1990 Decision. Nevertheless, we cannot simply disregard the statutory requirements of an action for annulment of judgment, lest we open the gates for possible abuse of litigants who seek to delay the enforcement of final and executory judgments of the courts.

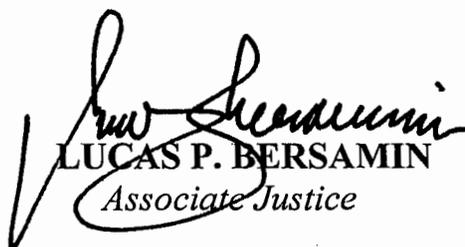
WHEREFORE, the petition is **DENIED** for lack of merit. The August 26, 2009 and October 9, 2009 Resolutions of the Court of Appeals in CA-G.R. SP No. 108033 are hereby **AFFIRMED**.

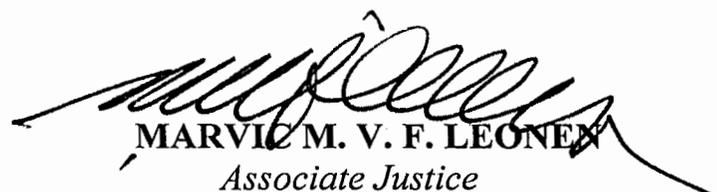
SO ORDERED.


FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice

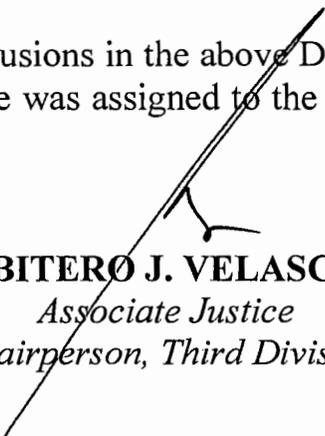

MARVIC M. V. F. LEONEN
Associate Justice

⁶³ *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 148, citing *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 563-564.


NOEL C. TIJAM
Associate Justice

ATTESTATION

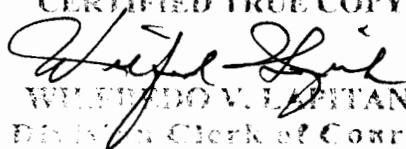
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

MAY 26 2017