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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 16 2016

Republic of the Philippines
Supreme Court
Manila

FEB 17 2016

THIRD DIVISION

ANECITA GREGORIO, Petitioner,	**G.R. No. 180559**
-versus-	Present:
MARIA CRISOLOGO VDA. DE CULIG, THRU HER ATTORNEY-IN-FACT ALFREDO CULIG, JR., Respondent.	VELASCO, JR., *J.*, *Chairperson* PERALTA, PEREZ,* REYES, and JARDELEZA, *JJ.*
	Promulgated: January 20, 2016

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DECISION

JARDELEZA, *J.*:

The issues in this petition are neither novel nor complicated. Petitioner questions the ruling of the Court of Appeals that tender of payment is not a requisite for the valid exercise of redemption, and that the failure of counsel to file a motion for reconsideration does not amount to gross negligence.

Respondent Maria Crisologo Vda. De Culig (respondent) is the widow of Alfredo Culig, Sr. (Alfredo). During his lifetime, Alfredo was granted a homestead patent under the Public Land Act (C.A. 141) over a 54,730-square meter parcel of land (the property) in Nuangan, Kidapawan, North Cotabato.[1] Alfredo died sometime in 1971, and on October 9, 1974, his heirs, including respondent, executed an extra-judicial settlement of estate with simultaneous sale of the property in favor of spouses Andres Seguritan and Anecita Gregorio (petitioner). The property was sold for ₱25,0000.00, and title to the property was issued in the name of the spouses.[2]

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* Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14, 2016.

1 Designated as Lot No. 5119 (Portion of Lot No. 24, Blk-25, Kidapawan, Pls-59) covered by Original Certificate of Title No. V-5628, RTC records, pp. 5-7.

2 *Rollo*, pp. 6-7.

On September 26, 1979, respondent filed a complaint demanding the repurchase of the property under the provisions of the Public Land Act. She alleged that she first approached the spouses personally and offered to pay back the purchase price of ₱25,000.00 but the latter refused. Subsequently, respondent and her son, Alfredo Culig, Jr. (petitioner's attorney-in-fact) wrote letters reiterating their desire to repurchase the property but the spouses did not answer.[3]

For their part, the spouses Seguritan countered that the respondent had no right to repurchase the property since the latter only wanted to redeem the property to sell it for a greater profit.[4] Meanwhile, Andres Seguritan died on May 15, 1981, and was substituted by petitioner.[5]

Before trial could commence, the parties made the following stipulations:

> 1. That the property subject of the complaint was acquired as homestead during the existence of the marriage between plaintiff and her deceased husband, and, therefore, it is admittedly a conjugal property;
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> 2. That the plaintiff and six of her eight children executed an extra-judicial settlement and simultaneous sale in favor of the defendants and title was transferred to them;
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> 3. That the complaint was filed within the [reglementary] period of five (5) years;
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> 4. That the amount of ₱25,000.00 was fully paid at the time of the extra-judicial settlement and sale;
>
> 5. That there was no consignment with the Court of the repurchase price of ₱25,000.00.[6]

On January 5, 1998, the Regional Trial Court (RTC), Branch 17, Kidapawan, North Cotabato (the trial court) rendered its decision dismissing the complaint.[7] The trial court, relying on the case of *Lee Chuy Realty Corporation v. Court of Appeals*[8] ruled that a formal offer alone, or the filing of a case alone, within the prescribed period of five (5) years is not sufficient to effect a valid offer to redeem—either must or should be coupled with consignation of the repurchase price if *bona fide* tender of payment has been refused.[9] The dispositive portion of the decision reads:

> WHEREFORE, prescinding from all of the foregoing considerations, the Court finds and so holds that plaintiffs

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3 Complaint, RTC records, pp. 1-4.
4 Answer with Counterclaim, *id*. at 15-19.
5 *Rollo*, p. 28.
6 Order, RTC records, pp. 46-47.
7 RTC Decision, *id*. at 398-411.
8 G.R. No. 104114, December 4, 1995, 250 SCRA 596.
9 RTC records, p. 409.

> failed to validly exercise their right of legal redemption or repurchase within the reglementary period of five (5) years from the execution of their sale and consequently DISMISSES this case, with costs of suit against plaintiffs. In the absence of any evidence, the court likewise dismiss defendants' counterclaim.
>
> **SO ORDERED**.[10] (Emphasis in the original.)

Aggrieved, respondent appealed to the Court of Appeals (CA).

In its decision[11] dated July 11, 2006, the CA granted the appeal. It ruled that the *Lee Chuy* case is not applicable because: 1.) it does not involve the exercise of the right of redemption of homestead or free patent lots, but instead the right of legal pre-emption or redemption in relation to the rights of co-owners under the Civil Code;[12] 2.) the Civil Code provisions on conventional and legal redemption do not apply, even suppletorily, to the legal redemption of homestead or free patent lands under the Public Land Act;[13] and 3.) the conclusions of the trial court is contrary to the doctrine in *Hulganza v. Court of Appeals,*[14] which is the case cited in *Lee Chuy.*[15]

According to the CA, consignation should not be considered a requisite element for the repurchase of homestead or free patent lots, citing *Adelfa Properties, Inc. v. Court of Appeals,*[16] wherein this Court held that consignation is not necessary in a sale with right of repurchase because it involves "an exercise of a right or privilege … rather than the discharge of an obligation, hence tender of payment would be sufficient to preserve [a] right or [a] privilege."[17]

The CA thus held:

> IN FINE, We hold that appellants have validly exercised the right of redemption. The decision of the trial [court] will be reversed. Upon returning the purchase price of P25,000.00 and, in addition, the expenses enumerated under Article 1616 of the Civil Code, the appellant may avail of the right of repurchase.
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> ACCORDINGLY, the assailed decision is hereby REVERSED. Appellants are hereby declared to have exercised their right to repurchase the subject property within the period established by law for them to do so. The case is hereby REMANDED to the court of origin for further proceedings to determine the amounts appellant is to return to appellees, namely, the price appellees paid for the property and, in addition, the expenses of the contract

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10 *Id.* at 411.

11 Penned by Associate Justice Romulo V. Borja, with Associate Justices Ramon R. Garcia and Antonio L. Villamor, concurring, *rollo*, pp. 25-39.

12 *Rollo*, p. 31.

13 *Id.*

14 G.R. No. L-56196, January 7, 1986, 147 SCRA 77.

15 *Rollo*, p. 32.

16 G.R. No. 111238, January 25, 1995, 240 SCRA 565.

17 *Rollo*, p. 35.

> and any other legitimate payments made by reason of the sale, and the necessary and useful expenses made on the property. Upon the return of the said amount, appellees are hereby ORDERED to reconvey the property to appellant.[18]

Petitioner[19] filed her motion for reconsideration[20] on March 19, 2007, way beyond the fifteen (15) day reglementary period. She alleged that she and the other heirs learned of the July 11, 2006 decision only on March 5, 2007 when they personally verified with the records of the CA.[21] She also assailed the decision of the CA for being contrary to law, jurisprudence and facts of the case.[22]

On September 27, 2007, the CA denied the motion, holding that "notice to counsel is notice to client". The CA noted that then counsel of record of the petitioner received the decision on July 31, 2006, thus the 15-day period for filing a motion for reconsideration should be reckoned from this date. Her counsel allowed the period to lapse and the motion for reconsideration filed by petitioner's new counsel is seven months late.[23]

Before us, petitioner submits that the CA resolved the case in a manner contrary to law and settled rulings of this court, particularly: a.) its decision holding that respondent validly exercised the right of redemption; b.) its act of remanding the case to the court of origin for further proceedings and subsequent reconveyance of the property to the respondent; and c.) its outright dismissal of the motion for reconsideration for being filed out of time.[24]

Petitioner insists that there was no valid redemption since there was no valid tender of payment nor consignation of the amount of repurchase made by the respondent.[25] Citing *Lee v. Court of Appeals,*[26] which in turn cites Article 1616 of the Civil Code,[27] petitioner maintains that tender of payment of the repurchase price is necessary to exercise the right of redemption. Thus, when respondent filed to tender payment of the repurchase price, and admitted her failure to consign the amount in court, she lost her right to repurchase the property.[28] Petitioner also states that respondent is not entitled to the right of repurchase because the latter's aim in redeeming the land is purely for speculation and profit.[29] She points out that respondent and her siblings are professionals and most are living in

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18 *Id.* at 38.

19 Although the pleadings state "petitioners," only Aniceta survived as petitioner, Andres having died in 1981, *rollo*, pp. 7-8.

20 *Rollo,* pp. 45-49.

21 Petition for Review on *Certiorari*, *id.* at 17.

22 *Id*. at 42.

23 *Id.* at 42-43.

24 *Id*. at 8-9.

25 *Id.* at 12.

26 G. R. No. L-28126, November 28, 1975, 68 SCRA 196.

27 Art. 1616. The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale, xxx; *rollo*, p. 12.

28 *Rollo*, p. 12.

29 *Id.* at 16.

Canada, and cannot possibly comply with the express provision of the law that the land must be cultivated personally by the holder of the homestead.[30]

Section 119 of the Public Land Act provides:

> Sec.119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

It is undisputed, in fact, the parties already stipulated, that the complaint for repurchase was filed within the reglementary period of five years. The parties also agreed that there was no consignment of the repurchase price.[31] However, petitioner argues that consignment is necessary to validly exercise the right of redemption.

The argument fails.

In *Hulganza v. Court of Appeals,*[32] we held that the *bona fide* tender of the redemption price or its equivalent—consignation of said price in court is not essential or necessary where the filing of the action itself is equivalent to a formal offer to redeem.[33] As explained in the said case,

> "The formal offer to redeem, accompanied by a *bona fide* tender of the redemption price, within the period of redemption prescribed by law, is only essential to preserve the right of redemption for future enforcement beyond such period of redemption and within the period prescribed for the action by the statute of limitations. Where, as in the instant case, the right to redeem is exercised thru the filing of judicial action within the period of redemption prescribed by the law, the formal offer to redeem, accompanied by a *bona fide* tender of the redemption price, might be proper, but is not essential. The filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem. xxx"[34]

The case of *Vda. de Panaligan v. Court of Appeals*[35] further clarified that tender of payment of the repurchase price is not among the requisites, and thus unnecessary for redemption under the Public Land Act. Citing *Philippine National Bank v. De los Reyes*,[36] we ruled that it is not even necessary for the preservation of the right of redemption to make an offer to redeem or tender of payment of purchase price within five years. The filing of an action to redeem within that period is equivalent to a formal offer to redeem, and that there is even no need for consignation of the redemption

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30 *Id.*
31 RTC records, pp. 46-47.
32 G.R. No. L-56196, January 7, 1986, 147 SCRA 77.
33 *Id.* at 81.
34 *Id*., citations omitted.
35 G.R. No. 112611, July 31, 1996, 260 SCRA 127.
36 G.R. Nos. 46898-99, November 28, 1989, 179 SCRA 619.

price.[37] Thus, even in the case before us, it is immaterial that the repurchase price was not deposited with the Clerk of Court.

We also do not agree with petitioner's insistence that Article 1616 of the Civil Code applies in this case. As found by the CA, the provision only speaks of the amount to be tendered when exercising the right to repurchase, but it does not state the procedure to be followed in exercising the right. In fact, in *Peralta v. Alipio*,[38] we rejected the argument that the provisions on conventional redemption apply as supplementary law to the Public Land Act, and clarified that:

> xxx. The Public Land Law does not fix the form and manner in which reconveyance may be enforced, nor prescribe the method and manner in which demand therefor should be made; any act which should amount to a demand for reconveyance should, therefore, be sufficient.[39] (Underscoring supplied.)

In *Lee v. Court of Appeals*,[40] the case cited by petitioner, we held that the mere sending of letters expressing the desire to repurchase is not sufficient to exercise the right of redemption. In the said case, the original owners of a homestead lot sought to compel the buyers to resell the property to them by writing demand letters within the five-year period. The latter refused, but the former filed a case for redemption after the lapse of the five-year period. We ruled that the letters did not preserve the former owners' right to redeem. The case finds no application in this case because while respondent also sent letters to the petitioner, she also filed a complaint for repurchase within the five-year period. As ruled in *Hulganza*, the filing of the complaint is the formal offer to redeem recognized by law.

Petitioner claims that even if the redemption is timely made, respondent is not entitled to the right of repurchase because respondent intends to resell the property again for profit, and that her "aim in redeeming the land is purely for speculation and profit." To support her claim, petitioner states that respondent and her heirs are professionals and her siblings are residing in Canada.

Indeed, the main purpose in the grant of a free patent or homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society.[41] We have ruled in several instances, that the right to repurchase of a patentee should fail if the purpose was only speculative and for profit,[42] or "to

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37 *Supra* note 35 at 132.

38 G.R. No. L-8273, 97 Phil. 719 (1955).

39 *Id.* at 723.

40 *Supra* note 26.

41 *Metropolitan Bank and Trust Company v. Viray*, G.R. No. 162218, February 25, 2010, 613 SCRA 581, 590.

42 *Vargas v. Court of Appeals*, G.R. No. L-35666, June 29, 1979, 91 SCRA 195, 200 citing *Simeon v. Peña*, G.R. No. L-29049, December 29, 1970, 36 SCRA 610, 618.

dispose of it again for greater profit"[43] or "to recover the land only to dispose of it again to amass a hefty profit to themselves."[44] In all these instances, we found basis for ruling that there was intent to sell the property for a higher profit. We find no such purpose in this case.

The lower courts did not make any definitive finding that the intent to repurchase was for profit. In its decision, the RTC merely glossed over the issue of intent, anchoring its dismissal on the respondent's failure to consign the purchase price. Even the CA observed that the RTC found that the claim of speculative repurchase is insufficient to warrant the denial of the redemption, as the latter's denial of the redemption was based on the lack of a formal offer of redemption and consignation.[45]

The burden of proof of such speculative intent is on the petitioner. Petitioner's bare allegations as to respondent's "manifestation of the affluence,"[46] "bulging coffers,"[47] their being "professionals"[48] and "most of them are residing in Canada"[49] are not enough to show that petitioner intended to resell the property for profit.

We also do not find merit in petitioner's claim that the CA should not have dismissed her motion for reconsideration.

Petitioner claims that her previous counsel failed to file the motion for reconsideration due to gross neglect of duties. Her counsel, Atty. Jeorge D. Zerrudo did not inform her of the appeal filed by the respondent and the subsequent proceedings which took place after the RTC decision issued in 1998, all the while thinking that the RTC decision became final and binding. In 2007, she was informed by Atty. Zerrudo that they have lost the case and should just enter into a compromise with the respondent, as "nothing can be done."[50] It was only upon personal verification with the CA that petitioner learned of the CA decision against her. Thus, petitioner maintains that she should not be made responsible for the gross negligence of her counsel.

While Atty. Zerrudo's failure to file a motion for reconsideration may be considered as negligence, we see no reason to modify the CA's resolution. Petitioner is still bound by her counsel's acts.

A client is bound by the negligence of his counsel. A counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or

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43 *Santana v. Mariñas*, G.R. No. L-35537, December 27, 1979, 94 SCRA 853, 862.

44 *Heirs of Venancio Bajenting v. Bañez,* G.R. No. 166190, September 20, 2006, 502 SCRA 531, 553.

45 *Rollo*, p. 38.

46 *Id.* at 13.

47 *Id*.

48 *Rollo,* p. 16.

49 *Id.*

50 *Rollo*, pp. 17-18.

gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.[51]

In *Pasiona, Jr. v. Court of Appeals*,[52] we declared that the failure to file a motion for reconsideration is only simple negligence, since it did not necessarily deny due process to his client party who had the opportunity to be heard at some point of the proceedings. In *Victory Liner, Inc. v. Gammad*,[53] we held that the question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. Verily, as petitioner retained the services of counsel of its choice, it should, as far as this suit is concerned, bear the consequences of its choice of a faulty option.[54]

Moreover, petitioner is also guilty of negligence. By her own admission, she had no knowledge about the subsequent proceedings after the trial court rendered its decision in 1998, and she just assumed that the decision was final and binding. A litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer.[55] Petitioner should have maintained contact with her counsel from time to time, and informed herself of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business."[56] It took nine years before petitioner showed interest in her own case. Had she vigilantly monitored the case, she would have sooner discovered the adverse decision and avoided her plight.[57]

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 62401 dated July 11, 2006 and September 27, 2007, respectively are **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

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51 *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331.
52 G.R. No. 165471, July 21, 2008, 559 SCRA 137, 149.
53 G.R. No. 159636, November 25, 2004, 444 SCRA 355, 363.
54 *Id.*
55 *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 31.
56 *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 461.
57 *Sofio v. Valenzuela*, G.R. No. 157810, February 15, 2012, 666 SCRA 55, 70.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
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