



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DENNIS Q. MORTEL,
Petitioner,

G.R. No. 156296

Present:

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

Promulgated:

SALVADOR E. KERR,
Respondent.

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DECISION

BERSAMIN, J.:

When the incompetence, ignorance or inexperience of counsel is so great and the resulting error is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the client deserves another chance to present his case. Hence, the litigation may be reopened for that purpose.

The client seeks the reversal of the resolution dated September 5, 2002,¹ whereby the Court of Appeals (CA) denied his petition for review on *certiorari* from the order of the Regional Trial Court, Branch 72, in Olongapo City (RTC) issued in Civil Case No. 279-0-2000. He pleads that

¹ *Rollo*, pp. 13-14; penned by Associate Justice Sergio L. Pestaño (retired/deceased), and concurred in by Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Josefina Guevarra-Salonga (retired).

the rules of procedure should be liberally construed in his case, and that he should not be bound by the negligence and errors of his previous counsels that deprived him of his property without being afforded his day in court.

Antecedents

On July 19, 2000, respondent Salvador E. Kerr (Kerr) instituted a complaint for foreclosure of mortgage, docketed as Civil Case No. 279-0-2000, against Dennis Q. Mortel (Mortel), who duly filed an answer on August 11, 2000 through Atty. Leonuel N. Mas (Atty. Mas) of the Public Attorney's Office. The pre-trial was re-set four times for various reasons, but on the fifth setting on December 7, 2000, Mortel and Atty. Mas were not around when the case was called. On motion of Kerr's counsel, the RTC declared Mortel as in default and allowed Kerr to present evidence *ex parte*.

On December 28, 2000, Atty. Eugenio S. Tumulak (Atty. Tumulak) filed a notice of appearance in behalf of Mortel, but the RTC did not act on the notice of appearance.

On February 28, 2001, the RTC rendered judgment in favor of Kerr,² disposing as follows:

WHEREFORE, judgment is hereby rendered ordering the defendant Dennis Q. Mortel to pay the plaintiff Salvador E. Kerr within a period of not more than ninety (90) days from receipt of this Decision the sum of ₱130,000.00 plus interest of ₱6,000.00 per month from November 1999 until the whole obligation has been fully paid and the further sum of ₱20,000.00 by way of attorney's fees and the costs.

In default of such payment, let the house and lot described in the Deed of Real Estate Mortgage (Exhibits "A-1" and "A-2") in the plaintiff's complaint be sold at public auction and the proceeds thereof applied to the aforesaid obligation and the costs of this suit.

SO ORDERED.

² Records, pp. 72-A-73.

On March 22, 2001, Mortel, through Atty. Leopoldo C. Lacambra, Jr. (Atty. Lacambra), filed a motion for new trial.³

On March 23, 2001, Atty. Mas filed his withdrawal of appearance.⁴

On April 5, 2001, the RTC denied Mortel's motion for new trial, noting that Atty. Mas' withdrawal as counsel of Mortel had been filed only on March 23, 2001 and approved by the RTC on March 26, 2001. It held that considering that the records of the case showed that Atty. Mas had received the decision on March 1, 2001, the motion for new trial had been filed out of time on March 20, 2001.⁵

On May 4, 2001, Mortel, this time through Atty. Tumulak, filed a verified petition for relief from judgment under Rule 38 of the *Rules of Court*.⁶

On August 20, 2001, the RTC denied the verified petition for relief from judgment on the ground that the petition for relief had been filed beyond the reglementary period of 60 days based on a reckoning of the start of the period from March 1, 2001, the date when Atty. Mas received the notice and copy of the Order,⁷ to wit:

x x x. Now, the petition for relief is again filed by a counsel whose Notice of Appearance has not been acted upon. Defendant's counsel on record received the Decision on March 1, 2001, which is the reckoning point to count the mandatory sixty (60) days in order that a Petition for Relief can be filed. It is elementary that notice to counsel is notice to party (People v. Midtomod, 283 SCRA 395). Hence, from March 1, 2001 up to May 4, 2001 – the filing of the Petition for Relief – is already sixty-four (64) days which is four days beyond the period within which to file the same. The defendant's Counsel now reckoned the period from the time the client received the said Decision.⁸

³ Id. at 78-82.

⁴ Id. at 88.

⁵ Id. at 95.

⁶ Id. at 97-107.

⁷ Id. at 125-126.

⁸ Id. at 125.

On November 14, 2001, Mortel moved for the reconsideration of the denial of his petition for relief from judgment.⁹

On December 6, 2001, the RTC granted the withdrawal of Atty. Lacambra and Atty. Mas as counsels for Mortel, and finally recognized Atty. Tumulak as the only counsel.¹⁰

On January 16, 2002, the RTC treated Mortel's motion for reconsideration as a mere scrap of paper and ordered it stricken from the records for failure of the counsel to serve a notice of hearing with the motion for reconsideration.¹¹

Mortel filed an urgent motion for reconsideration vis-à-vis the RTC's order of January 16, 2002.¹²

On June 17, 2002, the RTC denied the urgent motion for reconsideration for being a second motion for reconsideration and for being moot and academic; and granted Kerr's *ex parte* motion for the issuance of a writ of possession.¹³

Subsequently, the RTC issued a writ of execution on June 20, 2002,¹⁴ and Kerr was then placed in possession of the property.

On August 26, 2002, Mortel, through Atty. Tumulak, filed in the CA a petition for review on *certiorari* with prayer for the issuance of a restraining order.¹⁵

On September 5, 2002, the CA issued a resolution dismissing Mortel's petition for review for failing to state the specific material dates showing

⁹ Id. at 133-134.

¹⁰ Id. at 143.

¹¹ Id. at 159.

¹² Id. at 168-175.

¹³ Id. at 181-182.

¹⁴ Id. at 184-185.

¹⁵ CA *rollo*, pp. 2-15.

that the petition had been filed within the reglementary period, in violation of Section 6(d), Rule 43 of the *Rules of Court*. It observed that Mortel thereby resorted to the wrong remedy considering that he was assailing the propriety of the RTC's order declaring him in default, against which the proper remedy was a petition for *certiorari*.¹⁶

On October 14, 2002, Mortel sought the reconsideration of the denial of his petition for review.¹⁷

On November 18, 2002, the CA denied Mortel's motion for reconsideration for lack of merit because the defects of the petition for review were not corrected, and for availing himself of the remedy of petition for review when he should have filed a petition for *certiorari* instead.¹⁸

Atty. Tumalak received the denial by the CA on December 5, 2002.¹⁹

Instead of appealing *via* petition for review on *certiorari* in the Supreme Court (SC), Mortel, through Atty. Tumalak, filed in the CA on December 20, 2002 an urgent motion for extension of time to appeal to the SC.²⁰

On December 23, 2002, Mortel, by himself, sought an extension of time to file a petition for review on *certiorari*.²¹

On January 27, 2003, the Court granted Mortel's motion for extension with a warning that no further extension would be given.²²

¹⁶ Id. at 95-96.

¹⁷ Id. at 97-101.

¹⁸ Id. at 110.

¹⁹ Id. at 108-109.

²⁰ *Rollo*, pp. 9-11.

²¹ Id. at 3-7.

²² Id. at 34.

On January 22, 2003, Mortel, still by himself, filed his petition for review on *certiorari* assailing the CA's dismissal of his petition for review on *certiorari*.

Issues

Mortel contends that:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION DATED SEPTEMBER 28, 2002 FROM THE RESOLUTION DATED SEPTEMBER 5, 2002 DISMISSING THE PETITION FOR REVIEW FILED BY THE PETITIONER.²³

Mortel prays that the *Rules of Court* be liberally interpreted in his favor to allow his petition for review on *certiorari* despite the various lapses of his counsels resulting in the loss of his opportunity to assail the resolutions of the RTC.

On the other hand, Kerr insists that the CA correctly dismissed the petition because the errors of his former counsels bound Mortel.²⁴

Accordingly, the issues to be resolved are the following:

1. Whether or not the negligence of Mortel's previous counsels should bind him; and
2. Whether or not Mortel was deprived of his property without due process of law.

Ruling

The petition, being meritorious, is granted.

²³ Id. at 41.

²⁴ Id. at 70.

The CA found that despite the opportunity given to him to do so, Mortel's counsel erred in failing to state the specific material dates required by Section 6(d) of Rule 43, *Rules of Court* to show that the petition for review was filed within the reglementary period; and that Mortel resorted to the wrong remedy by filing a petition for review instead of a petition for *certiorari* because he was questioning the propriety of the RTC's order declaring him as in default.²⁵

Mortel's counsel committed another error when he filed his urgent motion for extension of time to file an appeal in the CA, instead of in the SC, resulting in not stopping the running of the period of appeal and in thereby rendering the Resolution of the CA final.

As a rule, a client is bound by his counsel's conduct, negligence and mistake in handling a case.²⁶ To allow a client to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.²⁷

But the rule admits of exceptions. In several rulings, the Court held the client not concluded by the negligence, incompetence or mistake of the counsel. For instance, in *Suarez v. Court of Appeals*,²⁸ the Court set aside the judgment and mandated the trial court to reopen the case for the reception of the evidence for the defense after finding that the negligence of the therein petitioner's counsel had deprived her of the right to present and prove her defense. Also, in *Legarda v. Court of Appeals*,²⁹ the Court ordered restored to the petitioner her property that had been sold at public auction in satisfaction of a default judgment resulting from the failure of her counsel to file an answer and from counsel's lack of vigilance in protecting her interests in subsequent proceedings before the trial court and the CA. Lastly,

²⁵ CA Rollo, pp. 95-96.

²⁶ *Saint Louis University v. Cordero*, G.R. No. 144118, July 21, 2004, 434 SCRA 575, 584.

²⁷ *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 708.

²⁸ G.R. No. 91133, March 22, 1993, 220 SCRA 274.

²⁹ G.R. No. 94457, March 18, 1991, 195 SCRA 418.

in *Amil v. Court of Appeals*,³⁰ the Court declared that an exception to the rule that a client is bound by the mistakes of his counsel is when the negligence of the counsel is so gross that the client was deprived of his day in court, thereby also depriving the client of his property without due process of law.

The relevant question becomes, therefore, whether the negligence of Mortel's counsels was so gross and palpable as to deprive him of his property without due process of law.

We hold that it was.

Mortel did not have his day in court, because he was unable to submit his evidence to controvert the claim of Kerr about his contractual default after the RTC declared Mortel as in default due to his counsel's failure to appear at the fifth setting of the pre-trial. Yet, he explained that he was only late because he arrived in court a few minutes after the case had been called. His explanation appears plausible, considering that he had unfailingly appeared in court in the four previous settings of the pre-trial. In view of the fact that it was his first time not to be present when the case was called at the fifth setting of the pre-trial, the RTC could have allowed a second or a third call instead of immediately granting his adverse party's motion to declare him as in default. In *Leyte v. Cusi*,³¹ the Court has admonished against precipitate orders of default because such orders have the effect of denying a litigant the chance to be heard. Indeed, we have reminded trial courts that although there are instances when a party may be properly defaulted, such instances should be the exception rather than the rule and should be allowed only in clear cases of a litigant's obstinate refusal or inordinate neglect to comply with the orders of the court. Without such a showing, the litigant must be given every reasonable opportunity to present his side and to refute the evidence of the adverse party in deference to due process of law.³²

³⁰ G.R. No. 125272, October 7, 1999, 316 SCRA 317.

³¹ G.R. No. L-31974, July 31, 1987, 152 SCRA 496.

³² Id. at 498-499.

Nevertheless, the negligence that actually warrants the undoing of the RTC's decision was serial on the part of Atty. Mas, the RTC and Atty. Tumulak.

The primary negligence occurred on the part of Atty. Mas. He did not appear at the pre-trial despite being notified of it. What is very disturbing is that he was then an attorney in the Public Attorney's Office in Olongapo City whose place of work was located in the same Hall of Justice of Olongapo City where the RTC was then sitting. Moreover, he did not offer any explanation for his non-appearance at the pre-trial despite notice to him; nor did he take the necessary move to protect the interest of Mortel upon learning that Mortel had been declared as in default by the RTC. His non-appearance despite notice and his subsequent inaction for his client's cause manifested his indifference and lack of professionalism, and is difficult to comprehend considering that he was the primary cause why Mortel was declared as in default by the RTC.

The RTC was equally responsible for Mortel's dire plight. It appears that Mortel engaged Atty. Tumulak to take over as counsel from Atty. Mas. Atty. Tumulak notified the RTC of his appearance for Mortel on December 28, 2000. The RTC could have easily noted and acted on Atty. Tumulak's entry of appearance for Mortel, or, if the RTC still desired to require the submission of Atty. Mas' withdrawal as counsel, to direct such withdrawal to be first submitted, especially after Atty. Mas filed his withdrawal of appearance on March 23, 2001. But the RTC uncharacteristically did not take either of such actions on the notice of appearance but proceeded to render its judgment on the merits, a copy of which it dispatched to Atty. Mas (who received it on March 1, 2001) and to Mortel himself (who received it on March 7, 2001). In effect, the RTC disregarded Atty. Tumulak's notice of his substitution of Atty. Mas as counsel of Mortel. The disregard continued for nearly a year, and the RTC finally recognized Atty. Tumulak as the only counsel of Mortel on December 6, 2001. The reason for the RTC's disregard of and long-delayed action upon a matter as essential to the client and to the

administration of justice in the case as the substitution of counsel is not easy to appreciate, especially because the RTC tendered no good reason for it.

With Atty. Tumalak left out and remaining unaware of the developments in the case because of the RTC's inaction on his notice of appearance, Mortel, upon receipt of the decision and feeling abandoned again by Atty. Tumalak, his new counsel, engaged Atty. Lacambra to collaborate as his counsel. Atty. Lacambra filed on March 20, 2001 a motion for new trial. Counting from the time when Mortel received the copy of the decision on March 7, 2001, Mortel probably thought that he had filed the motion for new trial within the required period. However, the RTC considered March 1, 2001 as the reckoning date, being the date when Atty. Mas received the notice of the decision, and ruled that Mortel's motion for new trial was already filed beyond the prescribed period. That action of the RTC was not prudent and circumspect, considering that the records of the case already contained since December 28, 2000 the entry of appearance of Atty. Tumalak as replacement of Atty. Mas as Mortel's counsel. The RTC should have at least informed either Mortel or Atty. Tumalak or both of them that it was either allowing or disallowing Atty. Tumalak's entry of appearance in order to enable Mortel to seasonably clarify his dire situation and, if necessary, even to rectify it. That prudential and circumspect approach would have been easy for the RTC to take because the RTC became all too aware of the neglect of Atty. Mas in protecting the interest of Mortel following the declaration of Mortel as in default. In addition, the RTC could have reckoned the period for Mortel to bring the motion for new trial from March 7, 2001, the date when Mortel received a copy of the decision the RTC sent to him directly, instead of March 1, 2001, the date when Atty. Mas received the copy of the decision, considering all the indications about Atty. Mas having neglected the interest of Mortel.

Atty. Tumalak shared the blame for the predicament of Mortel through his own series of errors that mirrored an ignorance of the rules of procedure. There is no question that the errors deprived Mortel of the timely

means to successfully undo the adverse decision rendered by the RTC. Atty. Tumulak's first error was in filing a motion for reconsideration vis-à-vis the RTC's denial of the petition for relief from judgment without including a proper notice of hearing. He next filed a motion for reconsideration vis-à-vis the RTC's denial of his first motion for reconsideration, which the RTC then denied on the ground of its being already a prohibited second motion for reconsideration. This was another fatal error. The series of errors did not end there, for Atty. Tumulak opted to file in the CA a petition for review on *certiorari* instead of a petition for *certiorari*, which was the appropriate remedy due to his alleging grave abuse of discretion on the part of the RTC. This was one more error. The ultimate error was not any less serious, because Atty. Tumulak filed in the CA instead of in this Court the motion for extension of time to appeal the CA's November 18, 2002 denial of Mortel's motion for reconsideration. Atty. Tumulak's moves in behalf of Mortel, no matter how well intentioned, were contrary to the pertinent rules of procedure and worked against the client's interest.

The negligence and mistakes committed by his several counsels were so gross and palpable that they denied due process to Mortel and could have cost him his valuable asset. They thereby prevented him from presenting his side, which was potentially highly unfair and unjust to him on account of his defense being plausible and seemingly meritorious. He stated that he had already paid the principal of the loan and the interest, submitting in support of his statement a receipt for ₱200,000.00 that Kerr had allegedly signed. He also stated that he had actually overpaid in view of his arrangement for Kerr to withdraw ₱6,000.00 each month from Mortel's bank account as payment of the interest, a statement that he would confirm in court through the testimony of a bank representative.³³

³³ CA Rollo, pp. 38-39.

We held in *Apex Mining, Inc. v. Court of Appeals*³⁴ that when the incompetence, ignorance or inexperience of counsel is so great and the result is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the client deserves another chance to present his case; hence, the litigation may be reopened for that purpose. Also, when an unsuccessful party has been prevented from fully and fairly presenting his case because of his attorney's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Lastly, where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.³⁵

Court litigation is primarily a search for truth, and a liberal interpretation of the rules that gives to both parties the fullest opportunity to adduce proof is the best way to ferret out such truth.³⁶ Thus, a court may suspend its own rules or except a case from them in order to serve the ends of justice; or, it may altogether disregard the rules in a proper case.³⁷ To cling to the general rule of having the ignorance, negligence and dereliction of duty of the counsel bind the client is only to condone rather than to rectify a serious injustice to a party whose only fault was to repose his faith and entrust his cause to his counsel.³⁸

WHEREFORE, the Court **REVERSES** the resolution promulgated on September 5, 2002; **ANNULS** and **SETS ASIDE** the decision rendered in Civil Case No. 279-0-2000 on February 28, 2001 by the Regional Trial Court, Branch 72, in Olongapo City; and **RE-OPENS** Civil Case No. 279-0-2000 for the reception of evidence for the petitioner as the defendant.

³⁴ G.R. No. 133750, November 29, 1999, 319 SCRA 456.

³⁵ Id. at 468.

³⁶ *Go v. Tan*, G.R. No. 130330, September 26, 2003, 412 SCRA 123, 129-130.

³⁷ *People v. Del Mundo*, G.R. Nos. 119964-69. September 20, 1996, 262 SCRA 266.


³⁸ *Apex Mining, Inc. v. Court of Appeals*, *supra* note 35 at 468.

Costs of suit to be paid by the respondent.


SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

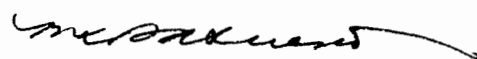

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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