



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GOTESCO PROPERTIES, INC.,
Petitioner,

G.R. No. 176834

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
ABAD,⁺
PEREZ, and
PERLAS-BERNABE, JJ.

**SPOUSES EDNA and ALBERTO
MORAL,**

Promulgated:

Respondents.

NOV 21 2012

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RESOLUTION

CARPIO, J.:

The Case

This petition for review on certiorari¹ seeks to reverse the Court of Appeals' (CA) Decision² dated 14 March 2006 and its Resolution³ dated 18 January 2007 in CA-G.R. CV No. 79570. The CA affirmed the Order⁴ dated 21 November 2002 of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584 dismissing the case for failure to prosecute.

¹ Designated additional member per Raffle dated 19 November 2012.

² Under Rule 45 of the 1997 Rules of Civil Procedure, raffled to *ponente* on 6 August 2012.

³ *Rollo*, pp. 37-44. Penned by Associate Justice Vicente Q. Roxas with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring.

⁴ *Id.* at 54.

⁵ *Id.* at 75. Penned by Judge Edmundo T. Acuña.

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The Facts

The facts, as culled from the records, are as follows:

Petitioner Gotesco Properties, Inc. (Gotesco), a private domestic corporation, owns the Evergreen Executive Village located in Barrio Bagumbong, Kalookan City. On 17 June 1993, respondent spouses Edna and Alberto Moral (Spouses Moral) executed a Reservation-Application Contract with Gotesco to buy a subdivision house and lot located in Phase I, Block 38, Lot 15 of Evergreen Executive Village for ₱481,450.00. On the same day, Spouses Moral paid the stipulated down payment of ₱56,450.00. Spouses Moral and Gotesco agreed that the balance would be paid through a Unified Housing Lending Program Scheme by Rural Bank of Parañaque. The Rural Bank of Parañaque approved the loan. In the meantime, Spouses Moral entered the subject property and introduced improvements on it.

On 27 November 1997, Gotesco demanded payment of the unpaid balance from Spouses Moral. Subsequently, Gotesco sent several demand letters, dated 20 February 1998, 12 March 1998, 18 September 1998, and 7 April 1999. On 19 February 2001, Gotesco, through its counsel Atty. Agerico M. Ungson (Atty. Ungson), filed a Complaint for Sum of Money⁵ against Spouses Moral before the RTC of Kalookan City, Branch 122, docketed as Civil Case No. C-19584. On 28 May 2001, summons was served upon Spouses Moral.

On 7 August 2001, Gotesco moved to declare Spouses Moral in default for failure to file their answer within the reglementary period. However, on 11 September 2001, Spouses Moral filed an Answer. On 24 September 2001, the RTC declared Spouses Moral in default. On 13 November 2001, Spouses Moral filed a Motion for Reconsideration to the

⁵ Id. at 60-62.

Order of Default and to Admit Defendants' Answer. In an Order dated 29 April 2002, the RTC denied the motion on the ground that there was unreasonable delay in Spouses Moral's filing of an answer.

On 13 June 2002, Gotesco moved to set its presentation of evidence *ex parte*. The RTC granted Gotesco's motion and set the reception of evidence on 5 September 2002. On the said date, Atty. Ungson moved to reset the reception of evidence to 21 November 2002.

On 21 November 2002, Atty. Ungson failed to appear despite notice. On the same day, the RTC issued an Order dismissing the case for failure of Gotesco to prosecute, to wit:

When this case was called for hearing, Atty. Ungson failed to appear despite notice.

It appearing from the record that the defendants had already been declared in default, as per [O]rder dated September 24, 2001 but up to the present, Atty. Ungson never presented his evidence ex[*]*parte.

For failure to prosecute, let this case be, as it is hereby DISMISSED.

x x x x⁶

On 22 January 2003, Gotesco filed a Motion for Reconsideration explaining that Atty. Ungson suffered from acute diarrhea and that he requested his wife to call the RTC but its telephone line was unavailable. On the other hand, Spouses Moral submitted a Manifestation seeking to affirm the Order of dismissal of the case. In its Order dated 22 May 2003, the RTC affirmed its 21 November 2002 Order. The RTC ruled that Gotesco has not adequately explained its failure to prosecute and it did not show any compelling reason to disregard strict compliance with the rules. Thereafter, Gotesco filed an appeal to the CA.

⁶ Id. at 78.

The Ruling of the Court of Appeals

In a Resolution⁷ dated 4 March 2004, the CA dismissed Gotesco's appeal due to the late filing of its Appellant's Brief for 25 days. On 22 March 2004, Atty. Ungson filed a Motion for Reconsideration. In its Resolution⁸ dated 14 October 2004, the CA granted the motion. The CA found that the Notice to file an Appellant's Brief was received by an unauthorized person and Atty. Ungson exerted extra efforts in verifying the existence of the said notice. Nevertheless, in its Decision dated 14 March 2006, the CA dismissed the appeal and affirmed the Order of the RTC. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, appeal is hereby **DISMISSED** and the November 21, 2002 Order of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584, is hereby **AFFIRMED**.

SO ORDERED.⁹ (Emphasis in the original)

In ruling in favor of Spouses Moral, the CA held in part:

In the present case, Gotesco was given several opportunities to present evidence but it failed to do so and in effect failed to present its star witness, who was to testify on its evidence. In fact, on the September 5, 2002 hearing, the postponement of the presentation of Gotesco's evidence was on motion of plaintiff-appellant Gotesco's counsel.

The RTC was being consistent in avoiding delay as prayed for by plaintiff-appellant Gotesco which moved for presentation of evidence ex parte when defendant-appellees were absent, and so to be fair, when it was plaintiff-appellant Gotesco and counsel absent, the trial court dismissed the case.¹⁰

On 5 July 2006, Gotesco, through its new counsel Pacheco Law Office, filed a Motion for Reconsideration on the ground that Atty. Ungson was grossly negligent in representing Gotesco. In its Resolution dated 18 January 2007, the CA denied the motion. Hence, this appeal.

⁷ Id. at 102.

⁸ Id. at 132-135.

⁹ Id. at 44.

¹⁰ Id. at 42-43.

The Issue

Gotesco seeks a reversal based on the sole issue it raised for the first time in its Motion for Reconsideration before the CA, to wit:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT RULED IN FAVOR OF THE RESPONDENTS, WHEN IT BOUND THE PETITIONER HEREIN TO THE NEGLIGENCE OF IT[S] FORMER COUNSEL THEREBY DEPRIVING HEREIN PETITIONER [OF] SUBSTANTIAL JUSTICE BY NOT GIVING PETITIONER ITS DAY IN COURT.¹¹

The Ruling of the Court

The petition has no merit.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.¹² The basis is the tenet that an act performed by counsel within the scope of a “general or implied authority” is regarded as an act of the client.¹³ While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: “(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client’s liberty or property; or (3) where the interests of justice so require.”¹⁴

The present case does not fall under the said exceptions. In *Amil v. Court of Appeals*,¹⁵ the Court held that “to fall within the exceptional circumstance relied upon x x x, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court. Thus,

¹¹ Id. at 29.

¹² *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002).

¹³ *Air Phils. Corp. v. Int’l. Business Aviation Services Phils., Inc.*, 481 Phil. 366 (2004).

¹⁴ Id., citing *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, 442 Phil. 55 (2002).

¹⁵ *Amil v. Court of Appeals*, 374 Phil. 659 (1999).

[]where a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process.” To properly claim gross negligence on the part of the counsel, the petitioner must show that the counsel was guilty of nothing short of a clear abandonment of the client’s cause.¹⁶

In the present case, Gotesco, through Atty. Ungson, moved to declare Spouses Moral in default upon the latter’s failure to file an answer. After RTC granted the motion, Gotesco moved to set the presentation of evidence *ex parte* on 5 September 2002 although it moved to reset to 21 November 2002. Because Atty. Ungson failed to appear and present evidence on the said date, the RTC dismissed the case for failure to prosecute. Gotesco, thereafter, filed a Motion for Reconsideration explaining Atty. Ungson’s failure to appear. When the motion was denied, Gotesco, still through Atty. Ungson, filed an appeal with the CA. The CA initially dismissed the appeal for Atty. Ungson’s belated filing of Appellant’s Brief. But upon Motion for Reconsideration, the CA admitted Gotesco’s Appellant’s Brief considering that the Notice to file an Appellant’s Brief was received by an unauthorized person and Atty. Ungson exerted “extra effort” in verifying the said Notice, to quote:

x x x the extra effort exerted by herein plaintiff-appellant’s counsel [Atty. Ungson] in verifying as to the existence of the said notice to file brief through his clerk as well as the fact that he immediately submitted the requisite brief upon learning about the said notice would clearly negate the impression that the former really intended to violate, much less disregard, the existing appellate procedural rules.

x x x x ¹⁷

As may be gleaned from the facts, it cannot be said that Atty. Ungson’s negligence was so gross as to deprive Gotesco of due

¹⁶ *Sofio v. Valenzuela*, G.R. No. 157810, 15 February 2012, 666 SCRA 55.

¹⁷ *Rollo*, p. 135.

process of law. Atty. Ungson filed the required pleadings, exhausted the available remedies and presented the necessary evidence while the case was pending before the RTC and the CA. Both the RTC and the CA gave due course to the pleadings filed by Gotesco, through Atty. Ungson. The CA even accepted the late filing of its Appellant's Brief. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.¹⁸

In *Air Philippines Corp. v. International Business Aviation Services Philippines, Inc.*,¹⁹ the Court found petitioner's counsel guilty of simple, not gross, negligence when the counsel: (1) filed at least three motions to extend the filing of petitioner's Answer; (2) did not appear during the scheduled pre-trials; and (3) failed to file petitioner's pre-trial Brief, even after the filing of several motions to extend the date for filing. In not finding gross negligence, the Court reasoned out that there was neither "total abandonment or disregard of petitioner's case nor a showing of conscious indifference to or utter disregard of consequences."²⁰

In *Producers Bank of the Philippines v. Court of Appeals*,²¹ the Court found that the counsel was guilty of simple negligence due to his: (1) late arrival in the hearing resulting to the dismissal of the case for lack of interest to prosecute; and (2) failure to file a timely notice of appeal.

In this case, Atty. Ungson's negligence was his postponement and failure to appear at the presentation of evidence *ex parte* without justifiable cause. Adopting similar principles laid down by jurisprudence, we find that Atty. Ungson merely committed simple negligence.

¹⁸ Supra note 12, citing *Salonga v. Court of Appeals*, 336 Phil. 514 (1997).

¹⁹ Supra note 13.

²⁰ Id., citing *Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission*, 99 Phil. 480 (1956).

²¹ Supra note 12.

Since this is not a case where the negligence of counsel is one that is so gross, palpable, pervasive and reckless which is the type of negligence that deprives a party of his or her day in court, the Court need no longer concern itself with the merits of petitioner's causes of action nor consider the propriety of the dismissal of the case by the trial court for lack of interest to prosecute.²²

Moreover, Gotesco was not without fault. Gotesco never complained against the manner in which its counsel had handled the case, until late in the day. Gotesco still hired Atty. Ungson before the CA after his supposed blunders before the RTC. One is bound by the decisions of one's counsel regarding the conduct of the case, especially where the former does not complain against the manner in which the latter handled the case.²³ To give due course to Gotesco's stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging gross negligence on the part of its counsel.²⁴

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 14 March 2006 and Resolution dated 18 January 2007 of the Court of Appeals in CA-G.R. CV No. 79570.

SO ORDERED.


ANTONIO T. CARPIO
Associate Justice


²² Supra note 12.

²³ *Del Mar v. Court of Appeals*, 429 Phil. 19 (2002), citing *Tenebro v. Court of Appeals*, 341 Phil. 83 (1997).


²⁴ Supra note 12.

WE CONCUR:


ARTURO D. BRION
Associate Justice

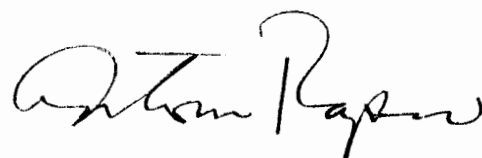

ROBERTO A. ABAD
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERALAS-BERNABE
Associate Justice

ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution 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