

## FIRST DIVISION

[ G.R. No. 156296, November 12, 2012 ]

**DENNIS Q. MORTEL, PETITIONER, VS. SALVADOR E. KERR,  
RESPONDENT.**

### D E C I S I O N

**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,<sup>[1]</sup> 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 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. Tumalak (Atty. Tumalak) 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,<sup>[2]</sup> 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 P130,000.00 plus interest of P6,000.00 per month from November 1999 until the whole obligation has been fully paid and the further sum of P20,000.00 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.

On March 22, 2001, Mortel, through Atty. Leopoldo C. Lacambra, Jr. (Atty. Lacambra), filed a motion for new trial.<sup>[3]</sup>

On March 23, 2001, Atty. Mas filed his withdrawal of appearance.<sup>[4]</sup>

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.<sup>[5]</sup>

On May 4, 2001, Mortel, this time through Atty. Tumalak, filed a verified petition for relief from judgment under Rule 38 of the *Rules of Court*.<sup>[6]</sup>

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,<sup>[7]</sup> 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.<sup>[8]</sup>

On November 14, 2001, Mortel moved for the reconsideration of the denial of his petition for relief from judgment.<sup>[9]</sup>

On December 6, 2001, the RTC granted the withdrawal of Atty. Lacambra and Atty. Mas as counsels for Mortel, and finally recognized Atty. Tumalak as the only counsel.<sup>[10]</sup>

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.<sup>[11]</sup>

Mortel filed an urgent motion for reconsideration vis-à-vis the RTC's order of January 16, 2002.<sup>[12]</sup>

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.<sup>[13]</sup>

Subsequently, the RTC issued a writ of execution on June 20, 2002,<sup>[14]</sup> and Kerr was then placed in possession of the property.

On August 26, 2002, Mortel, through Atty. Tumalak, filed in the CA a petition for review on *certiorari* with prayer for the issuance of a restraining order.<sup>[15]</sup>

On September 5, 2002, the CA issued a resolution dismissing Mortel's petition for review for failing to state the specific material dates showing 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*.<sup>[16]</sup>

On October 14, 2002, Mortel sought the reconsideration of the denial of his petition for review.<sup>[17]</sup>

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.<sup>[18]</sup>

Atty. Tumalak received the denial by the CA on December 5, 2002.<sup>[19]</sup>

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.<sup>[20]</sup>

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

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

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.<sup>[23]</sup>

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.<sup>[24]</sup>

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.

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.<sup>[25]</sup>

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.<sup>[26]</sup> 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.<sup>[27]</sup>

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*,<sup>[28]</sup> 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*,<sup>[29]</sup> 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, in *Amil*