

SECOND DIVISION

[G.R. NO. 145213, March 28, 2006]

JIMMY T. GO A.K.A., JAIME T. GAISANO, PETITIONER, VS. HON. ZEUS C. ABROGAR, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT BRANCH 150, MAKATI, AND INTERNATIONAL EXCHANGE BANK, RESPONDENTS

DECISION

AZCUNA, J.:

This is an appeal by petition for review under Rule 45 of the Rules of Court from a decision of the Court of Appeals.

Petitioner Jimmy T. Go raises the issue of whether or not his Notice of Appeal from the decision of the Regional Trial Court (RTC) should be given due course despite having been filed late.

The facts are not in dispute.

On March 31, 1998, respondent International Exchange Bank (Bank) filed a Complaint before the RTC of Makati^[1] for Collection of a Sum of Money against petitioner and Alberto T. Looyuko, docketed as Civil Case No. 98-791. The complaint alleged that the Bank opened a credit line in favor of Looyuko to which petitioner executed a Surety Agreement binding himself solidarily for all debts incurred under the credit line. On various occasions, the defendants availed of the credit line to the total amount of P98,000,000, as evidenced by eight (8) promissory notes co-signed by both defendants. When the debts became due, the Bank demanded that the defendants settle their obligations. The defendants, however, failed to pay, prompting the Bank to institute the case against them.^[2]

Petitioner, at the start of the proceedings and until the case was submitted for decision, was represented by counsel, Atty. Ronald E. Javier. On October 7, 1999, the RTC rendered a decision, finding petitioner and Looyuko jointly and severally liable to the Bank for the amount of P96,000,000, plus interests and costs.^[3] The decision was received by Atty. Javier, as counsel of record for petitioner, on October 20, 1999. Prior to this receipt, however, the relationship had apparently turned sour for counsel and client. On September 30, 1999, Atty. Javier wrote to petitioner, informing the latter that he was withdrawing his services as counsel. Petitioner, however, formally released Atty. Javier only on October 29, 1999 through a Notice of Termination^[4] attached as Annex "A" to the "Entry of Appearance," filed with the RTC on November 5, 1999 by petitioner's new counsel, Atty. Gregorio D. Caneda, Jr.

On November 5, 1999, petitioner, now represented by Atty. Caneda, Jr., filed a Motion for Reconsideration of the October 7, 1999 decision.^[5] When the RTC denied

the motion,^[6] petitioner through his new lawyer filed a Notice of Appeal^[7] on November 5, 1999. On February 8, 2000, the RTC issued an Order^[8] denying the Notice of Appeal on the ground that the reglementary period had already expired on November 4, 1999, or one day before petitioner filed his Notice of Appeal, considering that the Registry Return Card showed that Atty. Ronald Javier received a copy of the decision on October 20, 1999. The decision having become final and executory, upon motion by the Bank, the RTC ordered the issuance of a Writ of Execution against petitioner.^[9]

On March 6, 2000, petitioner filed a Petition for Certiorari, Prohibition and Mandamus under Rule 65 of the Rules of Court with the Court of Appeals to assail the denial of the Motion for Reconsideration and the Notice of Appeal and the granting of the issuance of a Writ of Execution.^[10] Petitioner claims that he should not be bound by the receipt of the decision by Atty. Javier who was no longer his counsel when the latter received the decision.

On May 15, 2000, the Court of Appeals rendered a decision that denied the petition for lack of merit.^[11] The appellate court held that the reglementary period to file the appeal began to run when Atty. Javier, who was still counsel of record as far as the RTC was concerned, received a copy of the decision on October 20, 1999, giving petitioner until November 4, 1999 within which to file his appeal or motion for reconsideration. It ruled that petitioner filed his Motion for Reconsideration a day after the period to file had lapsed, so that he had already lost his right to appeal from the decision.

Petitioner is now before this Court on a Petition for Review by Certiorari under Rule 45 of the Rules of Court to reverse the denial of his Petition for Certiorari by the Court of Appeals. Petitioner argues that he should be given a new trial as his former counsel, Atty. Javier, was grossly negligent in the handling of his case and that he has a meritorious defense.

The Court finds the petition without merit. It should be noted that the assailed decision was decided by the Court of Appeals under Rule 65 of the Rules of Court. To be granted relief under a special civil action, it must be convincingly proven that the court *a quo* committed grave abuse of discretion, or an act constituting a patent and gross evasion of a duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or that the trial court exercised its powers in an arbitrary and despotic manner by reason of passion and personal hostility.^[12] Bearing this standard in mind, the Court finds no error in the denial of the petition by the Court of Appeals as there was no showing that the RTC had gravely abused its discretion or whimsically exercised its judgment. The Court agrees with the RTC and the Court of Appeals that the decision was properly mailed to Atty. Javier as he was still counsel of record. His receipt of the decision on October 20, 1999 is, therefore, the starting point from which to count the 15-day reglementary period. The RTC, therefore, correctly dismissed the Notice of Appeal that was filed late.

Moreover, under Section 26 of Rule 138 of the Rules of Court, an attorney may withdraw his representation by written consent of his client filed in court. Otherwise, notice and hearing on the withdrawal are necessary. Therefore, even if Atty. Javier had already written a letter to petitioner withdrawing his services as counsel, it did not become effective until after the submission by petitioner of the letter officially