

## SECOND DIVISION

[ G.R. NO. 154019, August 10, 2006 ]

**JULIAN ELBIÑA, PETITIONER, VS. FELISA, CELESTINO,  
CRISTITUTA, SALUD AND EXALTACION, ALL SURNAMED CENIZA,  
\* RESPONDENTS.**

### DECISION

#### CORONA, J.:

This petition for review on certiorari<sup>[1]</sup> originated from a complaint for "Quieting of Title, Declaration of Nullity of All Documents Affecting Lots 948 and 1469 and All Tax Declaration issued by Virtue Thereof" filed by respondents Felisa, Celestino, Cristituta, Salud and Exaltacion Ceniza against petitioner Julian Elbiña, Margarita Ceniza Pepito, Nick Seno and Presentacion Jayme.<sup>[2]</sup> It was docketed as Civil Case No. MAN 2406 in Branch 55, Regional Trial Court of Mandaue City, Cebu.

After all the pleadings were filed, trial ensued. On February 26, 1997, the trial court decided in respondents' favor.<sup>[3]</sup> The dispositive portion of the decision read:

WHEREFORE, judgment is hereby rendered: (1) declaring [respondents] as the rightful co-owners of Lots 948 and 1469 described under Original Certificate of Title No. 767 of the Register of Deeds of Mandaue City; (2) declaring as void from the beginning the Extra-Judicial Settlement of Estate of Pedro Ceniza and Deed of Conveyance, dated July 17, 1973 xxx and the Extra-Judicial Settlement of Estate of Pedro Ceniza and Confirmation of Ownership, dated May 12, 1981 xxx; (3) declaring void all subsequent documents of transfer in favor of the defendants [including petitioner] and their successor-in-interest affecting Lots 948 and 1469; (4) directing the Office of the City Assessor of Mandaue City to cancel all tax declarations issued to the defendants [including petitioner] and to reinstate the tax declarations of Lots 948 and 1469 in the name of Pedro Ceniza in accordance with Original Certificate of Title No. 767; and (5) ordering defendants [including petitioner] jointly and severally to pay attorney's fees of P20,000.00 and litigation expenses of P10,000.00.

Petitioner's counsel of record, Atty. Ervin Estandarte, filed a motion for reconsideration on May 2, 1997.

In the meantime, a certain Atty. Mario Cugas filed a "Formal Notice of Appearance as Collaborating Counsel for Defendants with Motion for Additional Period to File Written Arguments in Support of the Motion for Reconsideration."<sup>[4]</sup> On June 6, 1997, the trial court granted Atty. Cugas' motion.<sup>[5]</sup> When he failed to "file (his) arguments," the trial court granted an additional period of ten days in an order dated June 19, 1997.<sup>[6]</sup> He finally submitted a memorandum on June 30, 1997.

The trial court thereafter denied the motion for reconsideration on July 15, 1997.<sup>[7]</sup> A copy of the order was received by Atty. Estandarte on July 23, 1997. Atty. Cugtas received his copy on August 7, 1997. On the same day, Atty. Cugtas filed a notice of appeal<sup>[8]</sup> but the appeal was dismissed by the trial court for having been filed late.<sup>[9]</sup>

On October 10, 1997, petitioner filed a "Petition for Relief from Denial of Appeal."<sup>[10]</sup> He claimed that the order denying the motion for reconsideration was received by the Bernaldez and Estandarte Law Office on July 23, 1997. Atty. Estandarte, however, did not act on the order anymore since his legal services had already been terminated. The new counsel, Atty. Cugtas, received a copy of the order only on August 7, 1997 and he filed a notice of appeal on the same day.

On December 22, 1997, the trial court dismissed the petition for relief.<sup>[11]</sup> Petitioner filed a motion for reconsideration<sup>[12]</sup> but the same was denied on February 2, 1998.<sup>[13]</sup>

Petitioner then sought to set aside the trial court's orders via a special civil action for certiorari<sup>[14]</sup> in the Court of Appeals which, however, dismissed it<sup>[15]</sup> and also denied the subsequent motion for reconsideration.<sup>[16]</sup>

Hence, this petition for review under Rule 45 of the Rules of Court.<sup>[17]</sup>

Petitioner questions the trial court's reckoning of the timeliness of the appeal from the receipt on July 23, 1997 by Atty. Estandarte of the copy of the denial of the motion for reconsideration. The fact that Atty. Estandarte no longer appeared in the subsequent hearings of the case was allegedly an indication that his legal services had already been terminated. Atty. Estandarte consequently did not act on the trial court's order since a new counsel, Atty. Cugtas, had by then already entered his appearance. And considering that Atty. Cugtas received his copy of the order only on August 7, 1997, the notice of appeal filed on the same day was allegedly within the 15-day reglementary period to appeal.

The records do not show that a substitution of counsel ever took place. Petitioner failed to present any evidence that he retained Atty. Cugtas as his new and only counsel before the order of denial was sent to counsel. Atty. Cugtas' pleading denominated as "Formal Notice of Appearance as Collaborating Counsel for Defendants with Motion for Additional Period to File Written Arguments in Support of the Motion for Reconsideration" showed that he entered his appearance merely as *collaborating counsel*.

In accordance with our ruling in *Landbank v. Pamintuan Development Corporation*,<sup>[18]</sup> there is no question that a party may have two or more lawyers working in collaboration in a given litigation. However, a substitution should not be presumed from the mere filing of a notice of appearance of a new lawyer. The fact that a second attorney enters his appearance for the same party does not necessarily raise the presumption that the authority of the first attorney has been withdrawn.<sup>[19]</sup>

In this case, even if, from some point onwards, only Atty. Cugtas appeared in the