

## THIRD DIVISION

[ G.R. No. 135287, April 04, 2001 ]

**PHILHOUSE DEVELOPMENT CORPORATION AND/OR SPS.  
JOVENAL AND CELIA TORING, PETITIONERS, VS.  
CONSOLIDATED ORIX LEASING AND FINANCE CORPORATION,  
RESPONDENT.**

### D E C I S I O N

**VITUG, J.:**

Is the negligent act of counsel in failing to file the appellants' brief, resulting in the dismissal of an appeal, a matter that binds the client? This question is the chief issue raised in this appeal by *certiorari* assailing two resolutions<sup>[1]</sup> of the Court of Appeals, dated 29 May 1998 and 27 August 1998, in CA-G.R. CV No. 55712.

The instant petition stemmed from a complaint for a sum of money and damages filed on 9 June 1992 by respondent Consolidated Orix Leasing and Finance Corporation against petitioners Philhouse Development Corporation and spouses Jovenal and Celia Toring before the Makati Regional Trial Court (Branch 132).<sup>[2]</sup>

Petitioners were declared in default when they and their counsel, Atty. Rodolfo L. Vega, failed to appear at the pretrial hearing on 22 April 1993. The order of default was subsequently lifted. On 16 August 1994, petitioners were again declared in default for having been absent in the pretrial hearing scheduled on that day. Respondent presented its evidence *ex-parte*. On 24 November 1994, the default order was once more lifted but the evidence presented was retained in the records subject to cross-examination by petitioners. In the next pretrial hearing, on 16 May 1995, petitioners and counsel still failed to show up. For the third time, they were declared in default. This time, the trial court considered the case submitted for decision.

The trial court ruled in favor of respondent in a decision, dated 13 July 1995, a copy of which was received, on 28 July 1995, by counsel for petitioners. Petitioners filed a "Motion for Reconsideration and/or Set Aside Judgment by Default" on 10 August 1995. The motion was denied by the trial court in a resolution received by petitioners' counsel on 27 October 1995. A Notice of appeal was filed on 07 November 1995 which was rejected for being out of time, having been filed nine days late.

On 15 April 1996, petitioners filed a "Petition for Relief from Judgment." Petitioners claimed that they were deprived of their right to present their evidence. Their non-appearance in the pretrial hearing on 16 May 1995, according to them, was due to their counsel's "honest mistake and excusable negligence" of entering in his calendar the date of the pretrial to be "May 23" when it should have been "May 16".

The trial court dismissed the petition for relief for lack of merit. The court said that the mistake of counsel cannot be countenanced and could not in any manner be attributed to fraud or deception committed by the prevailing party that could call for the setting aside of the judgment.

Still undaunted, petitioners filed a notice of appeal to the order denying the petition for relief, which notice was approved by the court *a quo* on 09 October 1996.

On 29 September 1997, the court of Appeals sent a letter-notice to petitioners' counsel, Atty. Rodolfo L. Vega, requiring him to file the appellants' brief within 45 days from notice. Meanwhile, on 08 September 1997, counsel filed with the Court of Appeals a "Motion for Leave to Admit Late Payment with Notice of Change of Address," prompting the appellate court to send anew a letter-notice to counsel. On 14 November 1997, Atty. Vega filed a "Motion for Extension to file Brief" alleging that he received the first notice on 04 October 1997 and praying for an additional 90 days, or until 12 February 1998, within which to file the required pleading. The motion for extension was granted by the Court of Appeals. Noting that counsel had, in fact, received the first letter-notice, the appellate court withdrew the second notice.

Despite the extension, Atty. Vega still failed to file the appellants' brief. The Court of Appeals in its resolution, dated 29 May 1998, thus considered the appeal by petitioners to have been abandoned and accordingly dismissed the case pursuant to Rule 50, Section 1(e), of the 1997 Rules of Civil Procedure. A copy of the resolution was received by Atty. Vega on 09 June 1998. It was, however, only on 07 July 1998, or 28 days after the receipt of the notice of dismissal, that counsel filed a "Very Urgent Motion for Reconsideration." Consequently, the appellate court dismissed the motion for having been filed out of time.

Petitioners, with a new counsel, now come before this Court in this petition for review on *certiorari* seeking the remand of the case to the appellate court and another chance to file the appellants' brief.

Petitioners anchor the instant petition on the ground that the failure of their former counsel to file the required brief constitutes gross mistake or negligence which should not bind them as to do so would deprive them of due process and will cause them serious injustice. Had their counsel not been remiss in his work, petitioners claimed, it could have been shown that partial payments were made to respondent and that petitioner spouses, being merely officers of petitioner corporation, should not be made liable for the debts of the corporation. Petitioners explained that their former counsel was already gravely ill during the time he was supposed to file appellants' brief. Petitioners said that their counsel had failed to inform them about this omission and the subsequent dismissal of their appeal.

On 15 October 1998, petitioners manifested that Atty. Rodolfo L. Vega had died of the illness that inflicted him.

Regrettably the Court finds itself unable to hold that the appellate court has committed a reversible error.

Rule 50, Section 1(e), of the 1997 Rules of Civil Procedure<sup>[3]</sup> provides that an appeal may be dismissed by the Court of Appeals on its own accord or on motion of