

ROBERTO P. DIRAY, PETITIONER, VS. SPS. LEONILO AND CONSOLACION MARCOS, SPS. ANTONIO AND ELVIRA TABJAN, AND SOCIAL SECURITY SYSTEM, RESPONDENTS.*CA-G.R. SP NO. 91653, June 08, 2010*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d4957795ed44/>**Court of Appeals**

Before the Court is a Petition for Review from the Order dated May 24, 2005 and Resolution dated September 16, 2005 of the Office of the President in O.P Case No. 05-A-004 which dismissed petitioner's appeal and denied his motion for reconsideration, respectively.

These are the antecedents:

Roberto P. Diray ("petitioner") and his wife Bella were the registered owners of a 156 square meter lot in Console Village, San Vicente, San Pedro Laguna covered by TCT No. T-111006. After acquiring the lot, the Dirays contracted Sps. Leonilo and Consolacion Marcos, owners/developers of the village, to construct a residential house for P219,000.00, payable in installments. Petitioner was able to pay the Marcoses P66,500.00 before leaving for Angola, where he worked from 1983 to 1984. On March 18, 1984, while petitioner was abroad, his wife, allegedly with the help of the Sps. Marcos, applied for and was granted a housing loan worth P100,000.00 by the Social Security System ("SSS"). A mortgage was thereafter constituted on the lot. The Marcoses then forced petitioner's children and sister to vacate the house, and later sold the property to Sps. Antonio and Elvira Tabjan. Upon return to the country, petitioner sought to nullify the loan with SSS and tried to locate his wife, to no avail. He claimed that he never executed the Special Power of Attorney ("SPA") and Deed of Appointment as Special Administrator ("DASA") which were used in processing the loan and mortgage. The check, in the name of petitioner, also came into hands and was encashed by the Marcoses without any endorsement from petitioner. (Rollo, pp. 18-21).

Petitioner then filed a complaint before the Housing and Land Use Regulatory Board ("HLURB") against the Marcoses, the Tabjans and the SSS for the declaration of nullity of the SPA, DASA and Loan Mortgage Contract, as well as to have the sale between the Marcoses and the Tabjans nullified. (Rollo, p. 18).

On May 5, 2003, Housing and Land Use Arbiter Atty. Ma. Perpetua Y. Aquino, rendered her Decision in favor of petitioner as follows:

"1. Declaring the Loan Mortgage Contract entered into by the [petitioner's] wife with SSS as unenforceable and of no force and effect. Consequently, respondent SSS is hereby ordered to release TCT No. T-111006 to complainant, free from liens and encumbrances. Respondent spouses Marcos, on the other hand are ordered to return to respondent SSS the amount they received as the proceeds for the loan applied for by the wife of the complainant without the latter's authority, minus the amount already paid by spouses Tabjan to respondent SSS.

2. Ordering respondent spouses Tabjan to vacate the subject property and peacefully turn over possession thereto to the complainant.

3. Ordering respondent spouses Marcos to refund to respondent spouses Tabjan the total payments they have made plus the amount paid by spouses Tabjan to respondent SSS as partial payment of the assumed loan. Further, respondent spouses Marcos are hereby ordered to pay complainant the amount of P10,000.00 as moral damages; the amount of P10,000.00 as exemplary damages; and the amount of P5,000.00 as attorney's fees.

4. Ordering complainant to pay respondent spouses Marcos the balance of the contract price for the construction of his residential house in the amount of P152,500.00 (P219,000.00 – P65,500.00), with interest at the rate of P12% per annum reckoned from the time of last payment until fully paid.

All other claims and counterclaims are hereby dismissed.

SO ORDERED.” (Rollo, pp. 28-29).

Petitioner, through counsel Atty. Arturo M. de Castro of De Castro and Cagampang Law Offices filed a Motion for (Partial) Reconsideration dated June 10, 2003, arguing that the Tabjans should be required to pay petitioner rent from 1985 and that petitioner should not be held liable to pay 12% on the balance of P152,500.00 due on the house constructed by the Marcoses. (Rollo, pp. 30-39).

On June 8, 2004, the HLURB Board of Commissioners rendered its Decision modifying that of the Arbitrator's as follows:

“Wherefore the decision of the office below is hereby modified with respect to the interest rate on the unpaid obligation of the complainant [Diray] to respondent Spouses Marcos which is modified from 12% per annum to legal rate of interest per annum reckoned from the date of last payment.

In all other respect the decision of the office below is affirmed.

So ordered.” (Rollo, p. 86)

On July 1, 2004, petitioner terminated the services of Atty. de Castro on the ground that the Motion for (Partial) Reconsideration was not granted. (Rollo, p. 60). Then he filed another Motion for (Partial) Reconsideration on July 2, 2004 asserting the same arguments, but under another counsel. (Rollo, pp. 41-50).

On November 25, 2004, the HLURB Board of Commissioners rendered a Resolution denying the motion for reconsideration. It held that the arguments raised have already been passed upon. The Tabjan spouses have already made payments to petitioner's account with the SSS which offsets any claim for rentals, and it is not disputed that petitioner has an unpaid obligation with respect to the construction of the house which has remained unpaid since 1984, which must be paid with legal interest. (Rollo, pp. 90-91).

Petitioner then filed a Petition for Review with the Office of the President dated December 28, 2004 assailing the June 8, 2004 Decision and November 25, 2004 Resolution of the HLURB. The appeal was dismissed, through an Order dated May 24, 2005, for non-payment of appeal fee and for having been filed beyond the reglementary period to appeal. (Rollo, p. 99). The OP explained:

“Without having paid the appeal fee, this Office has not acquired appellant jurisdiction over the subject matter, and the appealed judgment became final and executory as if no appeal was filed at all....

Moreover, further evaluation of the records shows that the appeal was filed out of time, as follows:

1. On 18 June 2004, petitioner-appellant received a copy of the Decision dated 8 June 2004 of the HLURB Board of Commissioners. This is admitted in his Motion for (Partial) Reconsideration dated 2 July 2004 on file with the official records transmitted by the HLURB to this Office.

2. After fourteen (14) days, on 2 July 2004, petitioner-appellant filed his Motion for (Partial) Reconsideration

with the HLURB Board of Commissioners.

3. On 23 December 2004 petitioner-appellant received a copy of the Resolution dated 25 November 2004 of the HLURB Board of Commissioners denying his Motion for (Partial) Reconsideration. This is admitted in his Petition for Review dated 28 December 2004.

4 After six (6) days, on 29 December 2004 as evidenced by the postage date stamped on the envelope, and contrary to his allegation of 28 December 2004 as date of filing, complainantappellant filed his Petition for Review dated 28 December 2004 with this Office.

In sum, it took petitioner-appellant a total of twenty (20) days to file the instant appeal. The reglementary period to appeal from a decision of HLURB Board of Commissioners to the Office of the President is fifteen (15) days only as provided in Section 2, Rule XVIII of the 1996 Revised Rules of Procedure of the HLURB....

Section 1 of Administrative Order No. 18, Series of 1987, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines, provides that 'the time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal.' “ (Rollo, pp. 97-99).

Petitioner moved for reconsideration but it was denied with finality by the OP in its Resolution dated September 16, 2005. (Rollo, p. 17). It reads:

“...For the first time, petitioner-appellant attached to the instant Motion for Reconsideration a photocopy of Official Receipt (O.R.) No. 4197590 A dated January 24, 2005 evidencing payment of appeal fee. However, he did not bother to explain such belated submission of proof.

While there is proof of payment of appeal fee, the fact remains that Diray's appeal with this Office was filed out of time and the consequent finality of the assailed Resolution of the HLURB Board of Commissioners.

Diray does not refute nor deny such fact of late filing of his appeal. However, he imputes professional delinquency or infidelity to his former counsel, Cagampang and De Castro Law Offices, amounting to gross or palpable negligence....

The record is bereft of any showing that Diray's failure to appeal with this Office within the remaining two-day period was due to the gross or palpable negligence of his former counsel, Cagampang and De Castro Law Office. What is clear is that said law firm was no longer Diray's counsel at the time said Motion for (Partial) Reconsideration was filed with the HLURB Board of Commissioners up to the time the case was elevated to this Office.

In a futile attempt to convince this Office, Diray cites several Supreme Court's decisions enunciating liberal construction of procedural rules as to promote, not defeat, substantial justice. Reliance on cited cases... is misplaced. The common factual foundation of these cases is that counsel's negligence resulted in the loss of appeal. Clearly, this circumstance is not present in the instant case.

Having resolved the threshold issue as hereinabove discussed, we do not find any good reason which would warrant some measure of liberality or leniency as to depart from the wellsettled rule on finality of decision upon expiration of period to appeal....[T]he timely perfection of an appeal is a mandatory requirement, which cannot be trifled with as a 'mere technicality' to suit the interest of a party. The rules on periods for filing appeals are to be observed religiously, and parties who seek to avail themselves of the privilege must comply with the rules.

Moreover, a reading of Diray's instant motion yields flaw that militates against its favorable consideration. Said motion does not contain proof of service of notice to the office a quo and other parties-litigants. Any motion that does not contain proof of service of notice to the other party is not entitled to judicial cognizance.

For such motion is nothing but a scrap of paper... “ (Rollo, pp. 14-17).

Hence the present action where petitioner is claiming that technicality should not stand in the way of resolving his rights, particularly to be paid rent plus damages, considering that his former lawyer, Atty. De Castro, did not file the Motion for (Partial) Reconsideration before the 15 day period expired. He argues that the courts should excuse the minor delay in the filing of his petition, instead of dismissing it outright, especially since petitioner would be deprived of his right to vindicate his interest through the gross and palpable mistake and negligence of his former counsel. Also, the Marcoses no longer have legal personality in the present case since they did not file any motion for reconsideration or appeal from the Decision of Arbiter Aquino, or any responsive pleading to those filed by petitioner. (Rollo, pp. 2-12).

Petitioner also moved for the execution of the judgment pending appeal, which the Court denied for lack of merit. (Rollo, pp. 128-131, 159-160).

Petitioner filed a Memorandum reiterating his claims (Rollo, pp. 168-186). The SSS meanwhile in its Memorandum stated that it relied on the duly notarized SPA presented to it by petitioner's wife in granting the latter the loan and mortgage application. SSS further argues that petitioner should go after his wife, in whom he reposed his confidence and who was also a registered owner of the property. The Tabjans should also not profit at the expense of petitioner and the SSS. (Rollo, pp. 194-197).

Petitioner, in Reply to the SSS's Memorandum reiterated his denial that he ever signed the subject SPA. (Rollo, pp. 200-201).

No memoranda were filed by the Sps. Marcos and the Sps. Tabjan, despite the order for them to do so. (Rollo, p. 209).

The Court finds no merit in the petition.

The general rule is that the negligence of counsel binds the client. This is based on the principle that an act performed by counsel within the scope of general or implied authority is regarded as an act of the client. Thus, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. (*Air Philippines Corp. v. International Business Aviation Services Phils.*, 438 SCRA 51, 61 [2004]).

Such rule however is relaxed in exceptional circumstances such as when there is reckless or gross negligence on the part of the counsel which deprives the client due process of law, or when the application of the rule will result in outright deprivation of the client's liberty or property or where the interests of justice so require. In such instances, relief is accorded the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. (*Salazar v. Court of Appeals*, 376 SCRA 459, 468-469 [2002]).

Where however none of the exceptional circumstances are present, such as in this case, the Court cannot step in and accord relief to petitioner, even if it the results may not be to his liking. Here, it is clear that petitioner was never deprived due process. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings is accorded, and the party can present his side or defend his interest in due course, there is no denial of procedural due process. (*Air Philippines Corp. v. International Business Aviation Services Phils.*, supra, pp. 66-67).

Petitioner filed a complaint before the HLURB and in fact received a favorable ruling from Arbiter Aquino. He was also able to file a Motion for (Partial) Reconsideration, through its former counsel Atty. De Castro, which sought to have rents and higher amounts of damages awarded to him, and which pleading was considered and passed upon by the HLURB Board of Commissioners. The Board however while reducing the rate of interest

which petitioner should pay the Marcoses for the balance of the house, did not grant petitioner's motion for rent and other damages. Petitioner was also able to file another Motion for (Partial) Reconsideration under another counsel, which however was denied by the Board for lack of merit. Then petitioner filed a petition with the Office of the President from the rulings of the Board, which this time, was already filed out of time.

From the foregoing it cannot be said that petitioner's former counsel, Atty. De Castro of the De Castro and Cagampang Law Offices committed 'reckless, gross and palpable mistake or negligence' or that petitioner was deprived due process of law, that would warrant a relaxation of the rules of procedure.

As correctly pointed out by the Office of the President, the period to appeal the Decision of the HLURB Board of Commissioners to said office is 15 days from receipt thereof pursuant to Section 15 of PD No. 957 and Section 2 of PD No. 1344 which are special laws that provide an exception to Section 1 of Administrative Order No. 18. Also, the filing of a motion for reconsideration merely suspends the running of the 15-day appeal period as provided for under Section 1 of Administrative Order No. 18. (*United Overseas Bank Philippines v. Ching*, 486 SCRA 655, 658-659 [2006]).

Thus, as adequately explained by the Office of the President, petitioner's appeal to said office was already late and already took a total of twenty (20) days, since petitioner filed his Motion for (Partial) Reconsideration dated July 2, 2004 on the 14-day of period to appeal.

As correctly pointed out by the Office of the President, the right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. A party, who seeks to avail of the same must comply with the requirements of the rules, failing in which the right to appeal is lost. (*Eastland Construction and Development Corp. v. Mortel*, 485 SCRA 203, 218 [2006]).

Petitioner also failed to explain, even before this Court, the Office of the President's observation that his motion before said office did not contain proof of service to the HLURB and the other parties, which rendered the motion to be but a scrap of paper.

As petitioner failed to comply with the rules on appeal and there being no ground that would warrant relaxation of the rules of procedure, the Court finds the instant petition bereft of merit.

WHEREFORE, the petition is DENIED for lack of merit. The Order dated May 24, 2005 and Resolution dated September 16, 2005 of the Office of the President in O.P Case No. 05-A-004 are hereby AFFIRMED.

SO ORDERED.

Villamor, and Macalino[*], JJ.concur.

[*] Acting Junior Member per Office Order No. 115-10-ABR dated May 18, 2010.

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