

**ANTONIO P. TAN, PETITIONER, VS. THE COURT OF APPEALS AND
DPG DEVELOPMENT AND MANAGEMENT CORP., RESPONDENTS.***G.R. No. 108634. July 17, 1997*

Ponente: FRANCISCO, J.

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Petitioner Antonio P. Tan was the lessee of a piece of property located at 3658 Ramon Magsaysay Boulevard, Sampaloc, Manila when on April 21, 1986, respondent DPG Development and Management Corporation (DPG for brevity) acquired ownership thereof by purchase from one Manuel J. Gonzales. Subsequently, DPG filed with the Metropolitan Trial Court of Manila on April 13, 1989 an ejectment suit for nonpayment of rentals against Vermont Packaging, Inc. which was managed by petitioner.

During the pendency of said suit, petitioner, on January 24, 1990, filed Civil Case No. 90-51767 against the Register of Deeds of Manila and DPG for cancellation/annulment of TCT No. 169146 issued in the name of DPG. In a nutshell, this complaint challenges the validity of TCT No. 169146 which, according to petitioner, emanated from TCT No. 165501 that covered parcels of land outside of Manila.

DPG received summons and the copy of the complaint on February 6, 1990. More than a month later or on March 22, 1990, DPG's then counsel, Atty. Abundio Bello, filed a motion for extension of time to file its answer to the complaint. The motion was granted. However, instead of filing the answer within the extended period, Atty. Bello filed a second motion for more time to file answer. The court granted the motion but only for fifteen (15) days from April 25, 1990.

As DPG still failed to file its answer, petitioner filed a motion to declare the former in default. On May 22, 1990, the trial court granted the motion and accordingly declared DPG in default. Petitioner thereafter presented evidence.

On October 5, 1990, the trial court rendered a decision in Civil Case No. 90-51767 favoring petitioner, the dispositive portion of which reads:

“WHEREFORE, it is hereby ordered that TCT No. 169146 registered in the name of defendant DPG Development & Management Corporation be cancelled with the consequential effect that the land reverts to the government disposable to qualified applicants. It is further ordered that the Bureau of Lands consider the application of the plaintiff for the purchase of the area occupied by him pursuant to the recommendation of the land investigator on the matter.

Attorney's fees in the amount of P5,000.00.

Cost of suit.” [1]

DPG received a copy of the trial court's decision on October 25, 1990. Nine (9) days later or on November 3, 1990, Atty. Benjamin S. Formoso filed a notice of appearance as new counsel for DPG. On the same day, said counsel filed a motion for new trial and to admit answer with counterclaim.

Petitioner filed a comment thereon with an omnibus motion to strike out DPG's motion for new trial, coupled with a prayer for the issuance of a writ of execution.

On November 23, 1990, the trial court issued an Order denying, in effect, the motion for new trial, the entirety of which reads:

“ORDER

Today is the consideration of the Motion for New Trial and Motion to Admit Answer of DPG Dev. & Mgt. Corp. filed by Atty. Benjamin Formoso. The plaintiff opposed the Motion for New Trial on the following grounds:

- 1) Defendant is represented by counsel of record in the person of Atty. Abundio Bello and that there is no substitution of counsel by the mere filing of Notice of Appearance by Atty. Benjamin Formoso;
- 2) Defendant did not even file the requisite motion to lift order of default to regain its standing or personality before the Court and that the mere filing of motion by the alleged new counsel did not automatically suspend the running of the period; and
- 3) That the decision in the above-entitled case had not become final and executory.

The records will show that Atty. Abundio Bello filed a Withdrawal of Appearance (sic) on November 5, 1990 after the defendant DPG Dev. & Mgt. Corp. had already been furnished with a copy of the decision by this Court, and that the Notice of Appearance of Atty. Benjamin Formoso on November 2, 1990 was actually ahead of the withdrawal of appearance by Atty. Abundio Bello on November 5, 1990. Such being the case, the appearance of new counsel Atty. Benjamin Formoso, granting that he is the authorized counsel for the defendant, did not actually stop the running of the period within which to appeal the adverse decision of the court.

The Decision of the Court dated October 5, 1990 had already become final and executory, and the Motion for New Trial need not be acted upon by the Court.

WHEREFORE, let there be issued a Writ of Execution (sic) in the above-entitled case, the same to be implemented by Branch Sheriff Ramon G. Enriquez of this Court.

SO ORDERED.”

DPG questioned this Order through a petition for certiorari before public respondent Court of Appeals (CA) claiming that the trial court gravely abused its discretion and exceeded its jurisdiction in failing to take action on and/or in denying its motion for new trial and to admit answer, and in granting petitioner's omnibus motion to strike out said motion for new trial and prayer for the issuance of a writ of execution.

In its Decision of October 23, 1992 disposing of DPG's petition for certiorari,[2] the CA ruled for DPG, the dispositive portion of which reads:

“WHEREFORE, the petition is hereby GRANTED. As prayed for, the ORDER of the respondent judge issued on November 23, 1990, is hereby ANNULLED and SET ASIDE.

As a consequence,

- (1) The writ of execution and alias writ of execution that have been issued are likewise declared null and void;
- (2) Petitioner's motion for new trial and for admission of answer that the order of November 23, 1990 has, in effect, denied is considered GRANTED;

(3) Petitioner's Answer to the private respondent's complaint in Civil Case No. 90-51767 is, accordingly, considered ADMITTED; and

(4) The DECISION of respondent judge in said case is hereby VACATED, and respondent judge is hereby ordered to conduct a new trial in said civil case. Conformably to Section 5 of Rule 37 however, the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.

SO ORDERED."

Hence, this petition, with the following principal arguments raised by petitioner in support thereof:

1) the CA should not have entertained DPG's petition for certiorari considering that no motion for reconsideration of the trial court's October 5, 1990 Decision was first filed by DPG and that the proper remedy is an appeal;

2) the filing of the motion for new trial did not interrupt the finality of the trial court's Decision inasmuch as there was no valid substitution between DPG's previous counsel on record Atty. Bello and new counsel Atty. Formoso who filed the said motion for new trial.

The petition must fail.

On the first argument, as a rule, the special civil action of certiorari will not lie unless a motion for reconsideration is first filed before the respondent court to allow it an opportunity to correct its errors.[3] However, this rule admits of certain recognized exceptions such as (a) where the order is a patent nullity,[4] as where the Court a quo had no jurisdiction;[5] (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court,[6] or are the same as those raised and passed upon in the lower court;[7] (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government[8] or of the petitioner[9] or the subject matter of the action is perishable;[10] (d) where, under the circumstances, a motion for reconsideration would be useless;[11] (e) where petitioner was deprived of due process and there is extreme urgency for relief;[12] (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial Court is improbable;[13] (g) where the proceedings in the lower court are a nullity for lack of due process;[14] (h) where the proceedings was ex parte or in which the petitioner had no opportunity to object;[15] and (i) where the issue raised is one purely of law or where public interest is involved.[16] It is exceptive circumstance (b) that justified DPG's non-filing of a motion for reconsideration, inasmuch as DPG's petition for certiorari before the CA involved a similar issue or question passed upon by the trial court in its November 23, 1990 Order, i.e., the propriety of the motion for new trial filed by DPG's new counsel (Atty. Formoso).

It must also be stressed that what is determinative of the propriety of certiorari is the danger of failure of justice without the writ, not the mere absence of all other legal remedies.[17] Thus, even when appeal is available and is the proper remedy, a writ of certiorari has been allowed when the orders of the lower court were issued either in excess of or without jurisdiction.[18] Certiorari may also be availed of where an appeal would be slow, inadequate and insufficient[19] and that to strictly observe the general rule would result in a miscarriage of justice.[20] This is especially true when the petition, such as DPG's certiorari petition before the CA, appears to be meritorious and the trial judge indeed seems to have committed grave abuse of discretion.

This brings us to the second argument which touches on the heart of the matter. There is no question that the remedy against a judgment by default is a motion for new trial under Rule 37 of the Rules of Court which should be filed within the period for perfecting an appeal, and that the timely filing thereof interrupts the 15-day

reglementary period. The CA has thus correctly observed that:

“It is settled in Our jurisprudence that a motion for new trial is the appropriate remedy when the defendant discovers that he has been declared in default and that a judgment has already been rendered, which has not, however, become final and executory as yet. (*Leyte vs. Cusi, Jr.*, 152 SCRA 496; *Tiburcio vs. Castro*, 161 SCRA 583; *Dolos vs. Court of Appeals*, 188 SCRA 413; *Circle Finance Corp vs. Court of Appeals*, 196 SCRA 166). It is not required that the defendant file first a motion to lift the order of default ‘to regain his standing.’

“The filing of a motion for new trial suspends the reglementary period for the attainment by the decision of finality. (Rule 41, Section 3; *PCIBank vs. Ortiz*, 150 SCRA 383) for

‘If a new trial be granted, x x x the judgment shall be vacated, and the action shall stand for trial de novo, x x x.’ (Rule 37, Section 5)”[21]

There is also no dispute that a motion for new trial (and to admit answer with counterclaim) was filed on behalf of DPG within the 15-day appeal period, i.e., on November 3, 1990 or just nine (9) days from DPG’s receipt (on October 25, 1990) of a copy of the trial court’s October 5, 1990 Decision. Petitioner insists on the correctness of the trial court’s finding (contained in its November 23, 1990 Order earlier quoted in this Decision) that the motion for new trial filed by DPG’s new counsel Atty. Formoso did not interrupt the finality of the trial court’s October 5, 1990 Decision since there was no proper substitution of DPG’s original counsel of record Atty. Bello by Atty. Formoso, it appearing that Atty. Formoso’s notice of appearance did not contain Atty. Bello’s written consent to the substitution and that said notice of appearance even preceded Atty. Bello’s notice of withdrawal as DPG’s counsel. And so petitioner argues that the CA erred in reversing the trial court and in allowing a new trial to be conducted.

Petitioner’s and the trial court’s position, indeed, cannot be sustained. Atty. Formoso’s appearance as second attorney, which bears the conformity of DPG, does not authorize the presumption that the authority of the first attorney (Atty. Bello) has been withdrawn, because a party may have two or more lawyers working in collaboration as his counsel in a given litigation.[22] Certainly, DPG cannot be denied the prerogative to employ additional counsel to protect his rights. Even granting that Atty. Formoso’s appearance was really intended to be a substitution and that there was lack of strict observance of the requisites thereof, to wit:

“a) upon written application;

b) with written consent of the client;

c) upon written consent of the attorney to be substituted; and

d) in case the consent of attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution has been served upon him in the manner prescribed by the rules (Section 26, Rule 138, Rules of Court)”.[23]

the attendant circumstances here are compelling enough to validate the substitution.

Note that DPG was declared in default (and was thus denied opportunity to present evidence and participate in the trial) by reason of Atty. Bello’s negligence. Said counsel failed to file an answer despite being given by the trial court two (2) extensions of time to file it. True, the general rule is that the client is bound by the mistakes of counsel. But this is not a hard and fast rule. In “*De Guzman v. Sandiganbayan*”[24] for instance, this Court, ever mindful of the supremacy of substantive rights over technicalities and invoking its power to suspend the rules, relieved petitioner De Guzman from the “costly importunings” of his previous lawyers who filed a demurrer to evidence despite leave for that purpose having been denied by the trial court. We thus said:

“x x x. Under the circumstances, higher interests of justice and equity demand that petitioner be not penalized for the costly importunings of his previous lawyers based on the same principles why this Court had, on many occasions where it granted new trial, excused parties from the negligence or mistakes of counsel. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to petitioners whose only fault was to repose his faith and entrust his innocence to his previous lawyers.

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“Let us not forget that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality.

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“The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, ‘should give way to the realities of the situation.’”[25] (Underscoring ours)

Being similarly situated, DPG should also benefit from the liberal application of the rules specifically pertaining to substitution of counsels.

Of course, it would have been different if the appearance of a new counsel was, for instance, occasioned by the death of the original counsel of record. In which case, all the requirements of a proper substitution must be met, one of which is a verified proof of the death of such attorney. The party seeking substitution, therefore, cannot escape the effects of new counsel’s error in failing to furnish the required proof of death, as such negligence does not result in deprivation of due process to said party.

Finally, and as correctly ruled by the CA, DPG is entitled to a new trial it prays for inasmuch as negligence or incompetency of counsel is a well-recognized ground for new trial.[26] This would rectify the serious error committed by DPG’s former counsel Atty. Bello, give the DPG the opportunity to present its evidence with the assistance of a hopefully more vigilant counsel (Atty. Formoso), and thus level the playing field.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The assailed Decision of the Court of Appeals dated October 23, 1992 is AFFIRMED in toto. Let this case be REMANDED to the court of origin for further proceedings.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Rollo, p. 44.

[2] Rollo, pp. 7-16.

[3] *Lasco v. United Nations Revolving Fund for Natural Resources Exploration*, G.r. Nos. 109095-109107, February 23, 1995, 241 SCRA 681, 684.

[4] *Vigan Electric Light Co., Inc. v. Public Service Commission*, L-19850, Jan. 30, 1964; *Luzon Surety Co. v.*

Marbella, et. al., L-16088, Sept. 30, 1960; Dir. of Lands v. Santamaria, 44 Phil. 594, cited in Regalado, Remedial Law Compendium, Vol. I, 4th Ed., 1986, p. 418.

[5] Malayang Manggagawa sa Esso v. Esso Standard, Inc., L-24224, July 20, 1965, Id.

[6] Fortich-Celdran v. Celdran, L-22677, Feb. 28, 1967, Id.

[7] Pajo, etc., et. al. v. Ago, et. al., 108 Phil. 905; Legaspi Oil Co. v. Geronimo, L-28101, Mar. 31, 1977, Id.

[8] Vivo v. Cloribel, L-23239, Nov. 23, 1966; National Electrification Adm. v. C.A., et. al., L-32490, Dec. 29, 1983, Id.

[9] Bache & Co. [Phil.], Inc. v. Ruiz, L-42409, Feb. 27, 1971; Gonzales, et. al. v. IAC, et. al., L63614, Aug. 28, 1984, Id.

[10] Matute v. Bullecer, L-26085, Jan. 31, 1969, Id.

[11] People v. Palacio, L-13933, Mar. 26, 1960, Id.

[12] Luzon Surety Co. v. Marbella, L-16088, supra, Id.

[13] Matutina v. Buslon, L-14637, Aug. 1960, Id.

[14] Matute v. CA, L-26751, Jan. 31, 1969, Id., p. 419.

[15] Republic v. Maglanoc, L-16848, Feb. 27, 1963, Id.

[16] PALEA v. Phil. Air Lines, Inc., et. al., L-31396, Jan. 30, 1982, Id.

[17] Seven Brothers Shipping Corporation v. Court of Appeals, G.R. No. 109573, July 13, 1995, 246 SCRA 33, 41 citing Lansang, Jr. v. Court of Appeals, G.R. No. 76028, April 6, 1990, 184 SCRA 230.

[18] Secretary of Health v. Court of Appeals, G.R. No. 112243, February 23, 1995, 241 SCRA 688, 693 citing PNB v. Florendo, G.R. No. 62082, February 26, 1992, 206 SCRA 582.

[19] Rodriguez v. Court of Appeals, G.R. No. 85723, June 19, 1995, 245 SCRA 150 citing Presco v. Court of Appeals, G.R. No. 82215, December 10, 1990, 192 SCRA 232 and Saludes v. Pajarillo, 78 Phil. 754 (1974).

[20] De la Paz v. Panis, G.R. No. 57023, June 22, 1995, 245 SCRA 242, 250.

[21] CA Decision, pp. 5-6; Rollo, pp. 67-68.

[22] Ong Ching v. Ramolete, 51 SCRA 13.

[23] Rinconada Telephone Co. v. Buenviaje, 184 SCRA 701.

[24] 256 SCRA 171.

[25] De Guzman v. Sandiganbayan, 256 SCRA 171, pp. 178-180.

[26] De Guzman v. Sandiganbayan, supra, citing U.S. v. Gimenez, 34 Phil. 74.

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