ABRAHAM ONG, PETITIONER, VS. CIBA GEIGY (PHILS.), INC., RESPONDENT.

G.R. NO. 149200. July 14, 2006

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari from a decision of the Court of Appeals.[1]

This case began when respondent Ciba Geigy (Phils.), Inc. sued petitioner Abraham Ong for a sum of money before the Regional Trial Court (RTC) of Makati City, Branch 132.[2] On July 17, 1998, the RTC rendered a decision[3] against petitioner, ordering him to pay P564,851.01 plus interest, the cost of collection, the cost of suit and attorney's fees. On August 12, 1998, petitioner, through counsel, filed a motion for reconsideration, which was denied in an order dated December 3, 1998, a copy of which petitioner's counsel received on December 17, 1998.[4]

On December 28, 1998, 10 days after the lapse of the reglementary period, counsel for petitioner filed a notice of appeal. Respondent moved to dismiss the appeal for having been filed out of time. On February 16, 1999, the RTC issued an order denying the notice of appeal.[5]

On April 6, 1999, petitioner, with the assistance of new counsel, filed a petition for relief[6] from judgment before the court a quo, alleging that he only learned of the December 3, 1998 order and the entry of judgment on March 1, 1999 because his counsel failed to inform him about them. On April 30, 1999, the trial court issued an order denying the petition for relief from judgment for lack of merit.[7]

On August 24, 1999, petitioner filed with the Court of Appeals a petition for certiorari, alleging grave abuse of discretion on the part of the court a quo.[8] On February 28, 2001, the Court of Appeals rendered the assailed decision and on July 10, 2001, denied reconsideration.

Hence, the instant petition.

The only issue in this case is whether or not the trial court committed grave abuse of discretion in ruling that petitioner was bound by the negligence of his former counsel, Atty. Patria Generoso-Abella, to whom he attributes the loss of both his case and his chance to appeal.

To prove his allegations of Atty. Abella's "gross and inexcusable" negligence in the defense of his cause, petitioner cited two principal omissions on her part: (1) she failed to file a notice of appeal before the lapse of the reglementary period, thereby preventing petitioner from taking an appeal and (2) her gross negligence during the trial, which allowed incompetent evidence to be adduced in favor of the respondent and which prevented the trial court from appreciating material and relevant evidence in petitioner's favor which could have altered the outcome of the case.

Specific instances of Atty. Abella's negligence during the trial included: (1) her failure to question the competence

of respondent's sole witness who, according to petitioner, was not even an employee of respondent but of a different company altogether; (2) her failure to raise petitioner's counterclaims in his answer; (3) her failure to raise defenses and to present and highlight evidence that would have proven that he had no outstanding obligation to respondent and (4) her gross carelessness in the handling of vital documentary evidence for the petitioner, which resulted in the impairment of the probative value of such evidence.

The general rule is that the client is bound by the actuation of his counsel in the conduct of the case and cannot be heard to complain that the result of the litigation might have been different had his counsel proceeded differently. In criminal cases, as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel does not constitute a ground for new trial.[9] The exception to this rule is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[10]

Having studied the records of this case and comparable jurisprudence, we conclude that Atty. Abella's negligence, while quite regrettable, was not so gross as to warrant a new trial. The fact that she committed most of her mistakes in the course of her presentation of petitioner's evidence instantly destroys the parallelisms which petitioner is attempting to draw between the instant case and the ones he cited.

In De Guzman v. Sandiganbayan,[11] we relieved petitioner of his lawyer's incompetence on the ground that, by filing a demurrer to evidence even after the trial court had denied leave, counsel deprived petitioner of his chance to present evidence that could have exonerated him.

In Tan v. Court of Appeals,[12] the issue was not even whether respondent DPG Development & Management Corporation (DPG) was entitled to relief from its lawyer's incompetence but whether the rules on proper substitution of counsel were followed. In pointing out that all the respondent had done was to secure additional counsel, we explained that DPG was entitled to an additional lawyer due to the negligence of the original one whose failure to file an answer despite two extensions had resulted in DPG being declared in default.

In Ginete v. Court of Appeals,[13] counsel for petitioners therein failed to file their appellant's brief within the period given. Ginete is inapplicable because, in this case, the Court of Appeals never even acquired jurisdiction over the appeal on account of the failure to file a notice of appeal.

Clearly, none of the jurisprudence cited by petitioner supports his position, given the wide disparity of facts by which we justified our decisions in those cases. As grave as Atty. Abella's errors might have been, they still boiled down to incompetence during the proceedings in the trial court which, by itself, did not relieve petitioner from the consequences of her negligence.

Finally, Atty. Abella's failure to file a timely notice of appeal was not tantamount to depriving petitioner of his day in court. In Producers Bank of the Philippines v. Court of Appeals[14] where counsel for petitioner failed to file a timely notice of appeal, we found the lawyers concerned guilty of mere simple negligence as opposed to gross negligence. We said:

> Indeed, by failing to file its appeal within the reglementary period, it could not be successfully argued that petitioner was deprived of its day in court.
>
> Time and again it has been held that the right to appeal is not a natural right or a part of due process, it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the rules. Failing to do so, the right to appeal is lost.

The foregoing considered, we affirm the Court of Appeals' finding that the respondent court did not commit grave

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abuse of discretion in denying petitioner's petition for relief from judgment. In Tañada v. Angara,[15] we defined grave abuse of discretion in the following manner:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. Failure on the part of the petitioner to show grave abuse of discretion will result in the dismissal of the petition.

WHEREFORE, the instant petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*] Judge Herminio I. Benito, presiding judge of the Regional Trial Court of Makati City, Branch 132, was impleaded. However, this was unnecessary under Rule 45, Section 4 of the Rules of Court.

[1] Decision dated February 28, 2001 in CA-G.R. SP No. 54536 penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Remedios Salazar-Fernando and Juan Q. Enriquez of the 17th Division of the Court of Appeals; rollo, pp. 40-46.

[2] Civil Case No. 97-073.

[3] Rollo, pp. 66-70.

[4] Id., p. 71.

[5] Id., p. 72.

[6] Id., pp. 74-92.

[7] Id., pp. 93-95.

[8] Id., pp. 97-124.

[9] People v. Mercado, 445 Phil. 813 (2003); Abrajano v. Court of Appeals, 397 Phil. 76 (2002); People v. Remudo, 416 Phil. 422 (2001); People v. Villanueva, 393 Phil. 898 (2000); U.S. v. Umali, 15 Phil. 33 (1910).

[10] Producers Bank of the Philippines v. Court of Appeals, 430 Phil. 812 (2002); Abrajano v. Court of Appeals, supra; Alarcon v. Court of Appeals, 380 Phil. 678 (2000); Escudero v. Dulay, G.R. No. 60578, 23 February 1988, 158 SCRA 69.

[11] 326 Phil. 182 (1996).

[12] 341 Phil. 570 (1997).

[13] 357 Phil. 36 (1998).

[14] Supra at note 10.

[15] 338 Phil. 546 (1997).

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