

JAIME T. TORRES, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.

G.R. No. 165408. January 15, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari[1] seeking to reverse, vacate and set aside the Court of Appeals' Decision dated March 23, 2001 in CA-G.R. CV No. 46261, its Entry of Judgment issued on November 30, 2001, and its Resolution dated September 10, 2004, denying petitioner's Motion to Set Aside Entry of Judgment and to Resolve Appellant's Motion for Reconsideration.

The facts, as culled from the decision of the trial court[2] and the records, are as follows:

On August 27, 1986, petitioner Jaime T. Torres, as owner of St. James School, and respondent China Banking Corporation executed a mortgage agreement[3] over parcels of land covered by Transfer Certificate of Title Nos. 58823 and 58822 to secure petitioner's loan in the amount of P4,600,000.00. The loan was evidenced by a Promissory Note[4] dated August 22, 1986, which stated that the "loan was repayable within a period of five years with interest, payable monthly in arrears at 20 percent per annum commencing on September 22, 1986 until fully paid." The principal was payable in 16 equal quarterly amortizations of P287,500.00 each, commencing on November 23, 1987 until fully paid. The transaction was actually an assumption of the mortgage loan secured by the previous owners of the subject properties.

Thereafter, petitioner requested the restructuring of the loan. Petitioner first paid the amount of P200,000.00 and, later, the amount of P654,465.75 to complete compliance with the requirements to restructure the loan.

On November 29, 1988 and February 20, 1989, respondent sent petitioner demand letters to settle his overdue account of P4,600,000.00, exclusive of interest and penalties, rendering the obligation due and demandable; otherwise, respondent would extrajudicially foreclose the real estate mortgage.

In a letter[5] dated February 20, 1989, respondent's Senior Vice-President informed petitioner that his partial payments of P200,000.00 and P654,465.75 made on October 6, 1988 and October 28, 1988, respectively, were applied to the interest on the loan. Respondent wrote:

x x x As stated in our letter dated January 18, 1989, your request for a restructuring of the subject loan after all interest are updated was not approved by the bank. All past due interest and quarterly installments on principal should be updated before we discuss any restructuring of the loan. For this reason, kindly update your quarterly installments and monthly interest payments within seven (7) days from receipt hereof, failing which, we shall extrajudicially foreclose pursuant to law the real estate mortgage executed by you in our favor to secure the said account and/or to take such other legal steps against you to effect collection.[6]

On May 25, 1989, petitioner tendered another payment in the amount of P2,000,000.00, together with a letter stating that the amount was to update payment of petitioner's restructured account, and the excess amount to be

applied to the principal balance, under Official Receipt No. 59845.[7] Another payment was made on June 1, 1989 for P1,000,000.00 under Official Receipt No. 60084.[8]

On June 6, 1989, respondent formally notified petitioner that since the latter refused to submit to the former the request for postponement of the auction sale of the property, scheduled on June 7, 1989, respondent would proceed with the auction sale.

On June 7, 1989, respondent caused the extrajudicial foreclosure and auction sale of the mortgaged properties. The Clerk of Court and Ex Officio Sheriff of Pasig, Metro Manila sold the properties at public auction for the sum of P2,466,217.38 to respondent as the highest bidder.[9]

On November 23, 1989, petitioner filed an action for annulment of extrajudicial foreclosure sale and damages against respondent for the alleged illegal foreclosure of mortgage over the parcels of land covered by Transfer Certificate of Title Nos. (54986) 58823 and (54965) 58822, and the subsequent sale of the properties.

In its Answer,[10] respondent stated that petitioner had no valid cause of action against it, since petitioner failed to pay his obligation in accordance with the terms of the promissory note, which rendered the entire principal of the promissory note due and demandable.

Moreover, respondent cited provisions in the promissory note and other loan documents, and informed the court that petitioner failed to pay monthly interest amortizations and quarterly principal amortizations. Instead of paying the same, petitioner formally requested respondent to restructure the subject loan. Respondent required petitioner to pay all past due interests and quarterly installments before loan restructuring could be discussed. However, respondent accepted the check payment of P2,000,000.00, which was applied to petitioner's loan interest up to January 14, 1988. Respondent stated that in the letter dated February 20, 1989, it formally informed petitioner that it never agreed to the restructuring of the loan for P4,600,000.00. Respondent also claimed that in its last letter dated February 28, 1989, it reiterated its position that the promissory note was due and demandable, and extrajudicial foreclosure would push through if full payment was not made within seven days. Respondent asserted that the foreclosure proceedings were conducted in accordance with the requirements of Act 3115, as amended.

On May 30, 1990, petitioner tendered payment in the amount of P2,756,487.77 as redemption price of the foreclosed property.[11] Respondent protested the tender of payment, maintaining that Section 78 of the General Banking Act applied in this case, not Section 30, Rule 39 of the Rules of Court; hence, the redemption price due as of May 30, 1990 should be P2,993,219.41, resulting in a deficient payment by petitioner in the sum of P236,731.64.

On September 29, 1993, the trial court rendered a Decision in favor of petitioner. It held that respondent acted in bad faith and deceit in foreclosing the subject properties after the offer for restructuring by petitioner, together with substantial payments made. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, in the light of the above facts, law and jurisprudence, judgment is hereby rendered in favor of plaintiff and against defendant, granting the following:

- Declaring the extrajudicial foreclosure sale and the certificate of sale as null and void; and ordering defendant to return subject transfer certificate of title to plaintiff after complete payment of the loan account;
- Declaring the penalty charges of 1/10 of 1% per day as void for being excessive and unconscionable; and considering the circumstances of this case, that in the computation of the remaining obligation of plaintiff with defendant Bank, the plaintiff is hereby ordered to pay only 12% interest per annum on the loan effective May 11, 1989 until complete payment;

- Ordering defendant to pay plaintiff the amount of P500,000.00 as damages, as allowed under the Title XVIII on Damages in the New Civil Code; and

4. Ordering defendant to pay plaintiff the amount of P25,000.00 as attorney's fees.[12]

Respondent appealed the trial court's decision to the Court of Appeals, raising the following assignments of error:

1. The lower court erred in holding that there was both novation in the legal sense and restructuring in the business sense of the subject loan account;

2. The lower court erred in declaring that the extrajudicial foreclosure sale and the certificate of sale were null and void;

3. The lower court erred in declaring that the penalty charges of 1/10 of 1% per day is both excessive and unconscionable and in ordering plaintiff to pay only 12% interest per annum on the loan effective May 11, 1989;

4. The lower court erred in applying Rule 3[9], Rules of Court when the law applicable was Sec. 78 of Republic Act No. 337;

5. The lower court erred in ordering China Banking Corporation to pay plaintiff P500,000.00 as damages and P25,000.00 as attorney's fees.[13]

In a Decision dated March 23, 2001, the Court of Appeals disposed of the appeal, thus:

WHEREFORE, the decision appealed from is MODIFIED in that plaintiff is ORDERED to pay to defendant bank the balance of the redemption price of P2,993,219.41 with legal interest thereon at the rate of six (6) percent per annum effective May 30, 1990 until fully paid. The awards for damages and attorney's fees are DELETED.[14]

The Court of Appeals found respondent's appeal to be partly meritorious. It disagreed with the trial court's finding that the foreclosure sale was null and void, because the trial court's conclusion that the foreclosure was premature and attended by bad faith was not supported by the facts of the case and the law on the matter.

According to the Court of Appeals, the records showed that petitioner had defaulted in paying his obligation, and petitioner's request for restructuring of the loan was denied;[15] hence, respondent had the right to foreclose the mortgage. Since petitioner had already tendered the sum of P2,756,487.77 as redemption price for the foreclosed properties, the main issue tackled by the appellate court was the proper amount of the redemption price.

The Court of Appeals agreed with respondent that the redemption price should be P2,993,219.41, which was petitioner's outstanding balance as of May 30, 1990 after deducting his total payments amounting to P3,854,465.75. It also agreed with respondent that the applicable law was Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, and not Rule 39 of the Rules of Court.

In support of its decision, the Court of Appeals cited *Sy v. Court of Appeals*[16] which held that the General Banking Act partakes of the nature of an amendment to Act No. 3135 insofar as the redemption price is concerned, when the mortgagee is a bank or a banking or credit institution. *Sy v. Court of Appeals* stated that Section 78 of the General Banking Act,[17] as amended, provides that the amount at which the subject property is redeemable is the amount due under the mortgage deed or the outstanding obligation of the obligor, plus interest and expenses.[18]

The Court of Appeals also held that the award of damages was without factual and legal basis, since petitioner was at fault for not complying with the terms and conditions of the loan and his obligation was overdue; hence, his mortgage was foreclosed.

The appellate court further held that the award of attorney's fees was improper since the trial court failed to justify the grant of the award in its decision.

On April 20, 2001, petitioner, through his counsel of record, Atty. Salvador B. Britanico, filed a Motion for Reconsideration[19] of the Decision dated March 23, 2001. On August 27, 2001, respondent filed a Comment[20] on the motion for reconsideration. On November 5, 2001, the Court of Appeals issued a Resolution,[21] which denied the motion for reconsideration for lack of merit. The Resolution became final and executory and an Entry of Judgment [22] was issued on November 30, 2001.

On July 10, 2002, almost eight months after the Entry of Judgment, Atty. Bonifacio A. Alentajan entered his appearance as counsel for petitioner.[23] However, as stated by the Court of Appeals, the records of the case did not show that petitioner's counsel of record, Atty. Britanico of the S.B. Britanico Lisaca Lisaca Apelado Law Offices, had withdrawn from the case.[24]

On March 19, 2003, petitioner, through Atty. Bonifacio A. Alentajan, filed a Motion to Set Aside Entry of Judgment and to Resolve Appellant's Motion for Reconsideration,[25] alleging that the motion for reconsideration had yet to be resolved.

In a Resolution[26] dated September 10, 2004, the Court of Appeals denied the motion for lack of merit. The appellate court held:

To reiterate, plaintiff-appellant's (petitioner's) motion for reconsideration filed by counsel of record Atty. Britanico had been resolved by this Court as early as November 5, 2001. A copy of this resolution was served upon Atty. Britanico at his office at No. R-502A Trinity Bldg., T.M. Kalaw St., Ermita on November 7, 2001 as evidenced by Registry Receipt No. 172-B, and was duly received by Ma. Leah Fanosa on November 14, 2001 as attested by Mr. Teodorico Uson Jr. of the Manila Central Post Office. Hence, the entry of judgment stands.

Well-settled is the rule that when a party is represented by counsel, notice should be made upon the counsel of record at his given address. Although Atty. Alentajan entered his appearance on behalf of plaintiff Torres, before a counsel of record (in this case, Atty. Britanico) may be considered relieved of his responsibility, he is required to file a formal petition manifesting his withdrawal from the case; without it, the notice of judgment served on the counsel of record is deemed notice to the client, the date of receipt of which is considered the starting point from which the period of appeal prescribed by law shall begin to run. Not having withdrawn formally as counsel in the case, Atty. Salvador Britanico continued to be the counsel for record and was, for all legal purposes, plaintiff-appellant's attorney upon whom the court's processes may be served, as they were in fact duly served.[27]

Petitioner Torres filed this petition, raising these issues:

I

THE RULING OF THE HONORABLE COURT OF APPEALS THAT PETITIONER'S MOTION FOR RECONSIDERATION HAD ALREADY BEEN RESOLVED IS CLEARLY INCONSISTENT WITH RESPONDENT'S MOTION TO REMAND RECORDS TO THE TRIAL COURT.

II

THE ENTRY OF JUDGMENT ISSUED BY THE HON. COURT OF APPEALS IS PREMATURE, CONSIDERING THAT PETITIONER'S MOTION FOR RECONSIDERATION HAS NOT YET BEEN RESOLVED DESPITE ANNOUNCEMENT OF THE COURT OF APPEALS THAT IT HAD ALREADY RESOLVED SAID MOTION AS EARLY AS NOVEMBER 5, 2001.

III

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN MODIFYING THE JUDGMENT OF THE COURT A QUO BY ORDERING THE PETITIONER TO PAY THE BALANCE OF THE REDEMPTION PRICE OF P2,993,219.41, DESPITE THE FACT THAT PETITIONER HAD ALREADY FULLY PAID HIS OBLIGATIONS TO RESPONDENT BANK, EXCEPT THE AMOUNT OF P289,655.75 WHICH WAS TENDERED BY PETITIONER TO RESPONDENT BUT WHICH IT UNJUSTIFIABLY REFUSED TO ACCEPT.

IV

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN DELETING THE AWARD [FOR] DAMAGES MADE BY THE TRIAL COURT IN FAVOR OF PETITIONER, WHICH WERE SUBSTANTIATED BY COMPETENT AND SUBSTANTIAL EVIDENCE.[28]

Petitioner contends that he inquired about the status of this case from Atty. Britanico, his counsel of record, but Atty. Britanico did not inform him about the Court of Appeals' Resolution dated November 5, 2001, which denied the motion for reconsideration, so that he could have appealed the Resolution, together with the Decision, to this Court. Petitioner allegedly learned that the motion for reconsideration had already been denied only after receipt of the Resolution dated September 10, 2004, denying his Motion to Set Aside Entry of Judgment and to Resolve the Motion for Reconsideration.

Petitioner alleges that Atty. Britanico mismanaged his case and failed to discharge his duties efficiently, and his actuation in this case should not be binding on him as the client, who had no participation whatsoever in the omission or neglect of his former counsel. Petitioner invokes *Amil v. Court of Appeals*,^[29] which held that an exception to the principle that a client is bound by the mistakes of his counsel is one wherein the negligence of the latter is so gross that the former was deprived of his day in court, as a result of which he was deprived of his property without due process.

Petitioner insists that his motion for reconsideration had not yet been resolved by the Court of Appeals, or if it was resolved, he had no knowledge about it until receipt of the Resolution dated September 10, 2004. Thus, he claims that the Entry of Judgment issued by the Court of Appeals on November 30, 2001 was premature, and should be set aside, and the records remanded to the Court of Appeals for resolution of his motion for reconsideration.

The petition lacks merit.

It is settled rule that the mistake of a counsel binds the client.^[30] It is only in case of gross or palpable negligence of counsel when the courts must step in and accord relief to a client who suffered thereby.^[31]

In *Saint Louis University v. Cordero*,^[32] the Court held:

The doctrinal rule is that the negligence of counsel binds the client. Otherwise, there would never be an end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned.

To fall within the exceptional circumstances such as those found in *Amil v. Court Appeals* relied upon by the petitioners, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court, the result of which is that he is deprived of his property without due process of law. Thus, where "a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process."

In the *Amil* case, the petitioner therein was declared in default for failure of his counsel to file an answer

within the reglementary period. The case was heard ex-parte, and judgment was rendered in favor of the respondents. Petitioner's counsel further failed to take any action to protect the interests of the petitioner in subsequent proceedings by filing an opposition to the motion to declare him in default or by moving to set aside the order of default. The petitioner therein was, therefore, deemed to have been deprived of his chance to present his side and to flesh out his arguments.

In contrast, the instant case underwent a full-blown trial. Both parties were adequately heard, and all issues were ventilated before the decision was promulgated. All the necessary pleadings were filed by petitioners' counsel to protect their interests when the case was still before the trial court. In fact, when a decision was rendered, petitioners' counsel even filed an Opposition to respondents' motion for reconsideration. Unlike in *Amil*, herein petitioners were not deprived of their day in court.[33]

Similarly, in this case, petitioner was not deprived of his day in court, because both parties were heard in a full-blown trial and, thereafter, a decision was rendered by the trial court, which decision was appealed by petitioner to the Court of Appeals. The Court of Appeals modified the decision of the trial court, correctly holding that Article 78 of the General Banking Act applies in the determination of the redemption price; thus, petitioner was ordered to pay the deficient amount due to respondent.

Moreover, the Court of Appeals resolved petitioner's motion for reconsideration in its Resolution[34] dated November 5, 2001. The Resolution was properly served on petitioner's counsel of record on November 14, 2001.[35] Notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.[36] Fifteen days from receipt of the Resolution dated November 5, 2001, the Decision became final and executory absent any appeal by petitioner. Hence, the Entry of Judgment issued on November 30, 2001 was in order.

Petitioner contends that the ruling of the Court of Appeals that his motion for reconsideration had been resolved is inconsistent with respondent's Motion to Remand Records to the Court A Quo.

The contention is without merit.

There is no inconsistency as respondent's Motion to Remand Records to the Court A Quo[37] was for the purpose of securing a writ of execution of the Decision of the Court of Appeals dated March 23, 2001. In a Resolution dated October 17, 2002, the Court of Appeals resolved to note the said motion "pending receipt by the Court of the reply to tracer showing the date of receipt by counsel for [petitioner] of a copy of the Resolution dated November 5, 2001 and the subsequent verification by the Judicial Records Office that no Motion for Reconsideration or appeal to the Supreme Court was interposed by the adverse party." [38]

Based on the records of the case, the Resolution dated November 5, 2001, denying petitioner's motion for reconsideration of the Decision dated March 23, 2001, was received by petitioner's counsel on November 14, 2001.[39] Petitioner failed to appeal the Court of Appeals' Decision to this Court.

The failure to file an appeal from the decision rendering it final and executory is not a denial of due process.[40] 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.[41]

Further, the proper remedy for allegations of mistake or inexcusable negligence of counsel, which prevented a party from taking an appeal, is a petition for relief under Rule 38 of the Rules of Court.[42] The petition must be filed within 60 days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered.[43] It must be filed within the reglementary period, which is reckoned from the time the party's counsel receives notice of the decision for notice

to counsel of the decision is notice to the party.[44]

Since the Decision of the Court of Appeals became final and executory and Entry of Judgment was issued on November 30, 2001, the Decision can no longer be reviewed by this Court. Hence, the third and fourth issues raised need not be discussed.

WHEREFORE, the petition is DENIED for lack of merit. The Decision of the Court of Appeals dated March 23, 2001 in CA-G.R. CV No. 46261 is AFFIRMED. No costs.

SO ORDERED.

Corona, Velasco, Jr., Nachura, and Mendoza, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] RTC Judgment, rollo, pp. 94-105.

[3] Exhibit "2," records, vol. I, p. 59.

[4] Exhibit "N," id. at 28.

[5] Exhibit "H," id. at 22.

[6] Id.

[7] Exhibit "K," id. at 25.

[8] Exhibit "M," id. at 27.

[9] Exhibit "A," id. at 14.

[10] Records, vol. I, p. 45.

[11] Exhibit "P," records, vol. II, p. 16.

[12] Rollo, pp. 104-105.

[13] Id. at 56-57.

[14] Id. at 59.

[15] Exhibit "7," records, p. 165.

[16] 254 Phil. 120 (1989).

[17] Sec. 78. Loans against real estate security shall not exceed seventy percent (70 %) of the appraised value of the respective real estate security, plus seventy percent (70 %) of the appraised value of the insured improvements, and such loans shall not be made unless title to the real estate shall be in the mortgagor. In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial

and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned in a judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale by the court and administer the same in accordance with law. (As amended by Presidential Decree No. 1828.) (Emphasis supplied.)

[18] Sy v. Court of Appeals, *supra* note 16, at 129.

[19] CA rollo, pp. 227-234.

[20] *Id.* at 250-251.

[21] *Id.* at 254.

[22] *Id.* at 270.

[23] CA Resolution dated September 10, 2004, rollo, p. 63.

[24] *Id.*

[25] CA rollo, pp. 272-275.

[26] Rollo, pp. 62-64.

[27] *Id.* at 63-64.

[28] *Id.* at 30-31.

[29] 374 Phil. 659 (1999).

[30] Legarda v. Court of Appeals, G.R. No. 94457, March 18, 1991, 195 SCRA 418.

[31] *Id.*

[32] 478 Phil. 739 (2004).

[33] *Id.* at 751-752. (Emphasis supplied.)

[34] CA rollo, p. 254.

[35] *Id.* at 296, 299.

[36] Duran v. Pagarigan, 106 Phil. 907 (1960).

[37] CA rollo, pp. 286-287.

[38] *Id.* at 289.

[39] *Id.* at 296, 299.

[40] Mercury Drug Corporation v. Court of Appeals, 390 Phil. 902, 915 (2000).

[41] *Id.*

[42] Sec. 2. Petition for relief from denial of appeal. - When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[43] Rule 38, Sec. 3. Time for filing petition; contents and verification. - A petition provided for in either of the

preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

[44] Mercury Drug Corporation v. Court of Appeals, *supra* note 40, at 913.

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