

ELINO ONG REYES, PETITIONER, VS. THE HON. COURT OF APPEALS AND SEGUNDINO EVANGELISTA, RESPONDENTS.

G.R. No. 70510. August 24, 1990

Ponente: MEDIALDEA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-70510/>

MEDIALDEA, J.:

This is a Petition for Review of the resolution of the then Intermediate Appellate Court, now Court of Appeals, dated March 28, 1985, which set aside its previous resolution dismissing herein respondent's appeal for failure to pay docket fees.

On July 22, 1982, the then Court of First Instance of Bulacan, Branch 3, issued a Resolution in AD Case No. 198-V-79, entitled, "RE: In the Matter of Issuance of Writ of Possession, Elinong Ong, Petitioner v. Segundino Evangelista, Oppositor," the dispositive portion of which reads in part as follows:

"WHEREFORE, finding this petition to be sufficiently substantiated, justified and proper (Mabale vs. Apalisok, L-46942, Feb. 6, 1979) and there being no showing of fraud, let a writ of possession issue in favor of Elinong Ong and against spouses Segundino Evangelista and Consuelo Heraldo with respect to Lot 1-A, Subdivision Plan (LRC) Psd 229084 of Transfer Certificate of Title No. B-26017 of the Register of Deeds of Metro Manila, District III." (p. 42, Rollo)

Respondent Evangelista sought to appeal the above quoted resolution and filed a "Notice of Appeal" and "Record on Appeal" for the purpose. These were approved by the trial court and the records were transmitted to the Court of Appeals. Subsequently, the appellate court sent notice to respondent to pay docket fees within fifteen (15) days from notice. For failure of respondent to pay, the Court of Appeals issued a resolution, dated September 7, 1983, dismissing his appeal pursuant to Section 1 (d), Rule 50 of the Rules of Court. This resolution became final on September 28, 1983 and Entry of Judgment was made on November 8, 1983. On November 15, 1983, the records of the case were remanded to the trial court.

On December 2, 1983, the trial court, on motion of petitioner Elinong Ong (also, Elinong Ong Reyes), ordered the issuance of a writ of possession, which was issued on December 8, 1983 and served on respondent on even date. Respondent opposed the implementation of the writ. He further filed with the Court of Appeals on February 6, 1984 a motion for reconsideration of its resolution dismissing his appeal alleging that he delivered P800.00 to his former counsel, Atty. RICARDO G. GALANG, for payment of the docket fees amounting to P58.00 but which the latter, for reasons of his own, did not pay; that he became aware of the dismissal of his appeal only when he was served the writ of possession; and that he hired the services of his present counsel only on January 20, 1984.

On February 9, 1984, the Court of Appeals denied reconsideration reasoning that the dismissal of the appeal had become final and entry of judgment made, and thus, it had lost jurisdiction over the matter. Undaunted, respondent filed another motion for reconsideration with the appellate court who, this time, required petitioner to comment. Petitioner complied with the resolution. Atty. Galang, who was also required to comment on Evangelista's allegation against him, denied receiving any money from the latter and surmised that the imputation

"is an afterthought in an attempt to resurrect what appears to have been a lost remedy."

Meanwhile, on March 9, 1984, the trial court denied respondent's opposition to the execution of the writ of possession. Petitioner was placed in possession of the subject realty on March 19, 1984 as shown by the receipt issued by him on the same date and the Sheriff's Return, dated March 20, 1984. In the evening of March 19, 1984, however, respondent regained possession of the subject realty allegedly by forcing his way in with the aid of several persons and by intimidating the two security guards assigned in the premises. For this reason, the trial court issued on April 13, 1984 an order directing the issuance of an alias writ of possession without prejudice to whatever action it may take against respondent. The writ, however, remains unsatisfied up to this time.

On March 28, 1985, the Court of Appeals, without any pronouncement with regard the allegation of respondent against Atty. Galang, reconsidered its previous resolutions and ordered the reinstatement of respondent's appeal. Said the appellate court:

"After a careful review of the pleadings, and of the original records of AD Case No. 198-V-79, the Court has come to the conclusion that procedural technicalities should be relegated to secondary importance, in order to allow proper resolution of the issues on their merit. Only a full ventilation of the issues will definitively resolve this controversy and this will ultimately result in justice to both parties." (p. 26, Rollo)

We agree with petitioner that the Court of Appeals can no longer resuscitate respondent's appeal as it had lost jurisdiction over the case. Having dismissed the appeal in a resolution dated September 7, 1983 for non-payment of docket fees and having entered judgment on November 8, 1983 after its resolution became final and executory on September 28, 1983, it no longer had any power to revoke, vacate or amend the same except to correct clerical errors. The records of the case had, in fact, been remanded to the trial court on November 15, 1983 and further, the judgment sought to be appealed had been executed on March 19, 1984 when petitioner was placed in possession of the subject realty. The effect of the satisfaction of the judgment was to place the decision beyond review. While respondent, through force, had regained possession of the subject realty, this does not alter the final nature of the judgment. If at all, the judgment merely reverted from an executed judgment to an executory judgment and the act of dispossession could hold respondent liable for contempt under Section 3 (b), Rule 71 of the Rules of Court (see *Quizon v. Philippine National Bank*, 85 Phil. 459).

The Court of Appeals therefore departed from the accepted and usual course of judicial proceedings when it entertained private respondent's second motion for reconsideration dated February 17, 1984, which was not only too late but also premised only on the negligence of his former counsel. Our jurisprudence on the matter is to the effect that this allegation does not detract from private respondent's own negligence because it is the duty of a party litigant to make inquiries to counsel on matters concerning his case (*Florendo v. Florendo*, L-24982, March 28, 1969, 27 SCRA 432). He is duty bound to contact his lawyer from time to time in order that he may be informed of the progress of his case. Thus, a party is bound by the mistake and may suffer for the negligence of his lawyer.

ACCORDINGLY, the petition is GRANTED. The resolution of the Court of Appeals dated March 25, 1985 reinstating Segundino Evangelista's appeal is REVERSED and SET ASIDE and the resolution dated September 7, 1983 dismissing the appeal is REINSTATED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

* The questioned resolution is entitled "*Elino Ong v. Segundino Evangelista*."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.