

## SECOND DIVISION

**[ G.R. No. 176834, November 21, 2012 ]**

**GOTESCO PROPERTIES, INC., PETITIONER, VS. SPOUSES EDNA  
AND ALBERTO MORAL, RESPONDENTS.**

### R E S O L U T I O N

**CARPIO, J.:**

#### The Case

This petition for review on certiorari<sup>[1]</sup> seeks to reverse the Court of Appeals' (CA) Decision<sup>[2]</sup> dated 14 March 2006 and its Resolution<sup>[3]</sup> dated 18 January 2007 in CA-G.R. CV No. 79570. The CA affirmed the Order<sup>[4]</sup> dated 21 November 2002 of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584 dismissing the case for failure to prosecute.

#### The Facts

The facts, as culled from the records, are as follows:

Petitioner Gotesco Properties, Inc. (Gotesco), a private domestic corporation, owns the Evergreen Executive Village located in Barrio Bagumbong, Kalookan City. On 17 June 1993, respondent spouses Edna and Alberto Moral (Spouses Moral) executed a Reservation-Application Contract with Gotesco to buy a subdivision house and lot located in Phase I, Block 38, Lot 15 of Evergreen Executive Village for P481,450.00. On the same day, Spouses Moral paid the stipulated down payment of P56,450.00. Spouses Moral and Gotesco agreed that the balance would be paid through a Unified Housing Lending Program Scheme by Rural Bank of Parañaque. The Rural Bank of Parañaque approved the loan. In the meantime, Spouses Moral entered the subject property and introduced improvements on it.

On 27 November 1997, Gotesco demanded payment of the unpaid balance from Spouses Moral. Subsequently, Gotesco sent several demand letters, dated 20 February 1998, 12 March 1998, 18 September 1998, and 7 April 1999. On 19 February 2001, Gotesco, through its counsel Atty. Agerico M. Ungson (Atty. Ungson), filed a Complaint for Sum of Money<sup>[5]</sup> against Spouses Moral before the RTC of Kalookan City, Branch 122, docketed as Civil Case No. C-19584. On 28 May 2001, summons was served upon Spouses Moral.

On 7 August 2001, Gotesco moved to declare Spouses Moral in default for failure to file their answer within the reglementary period. However, on 11 September 2001, Spouses Moral filed an Answer. On 24 September 2001, the RTC declared Spouses Moral in default. On 13 November 2001, Spouses Moral filed a Motion for Reconsideration to the Order of Default and to Admit Defendants' Answer. In an Order dated 29 April 2002, the RTC denied the motion on the ground that there was

unreasonable delay in Spouses Moral's filing of an answer.

On 13 June 2002, Gotesco moved to set its presentation of evidence *ex parte*. The RTC granted Gotesco's motion and set the reception of evidence on 5 September 2002. On the said date, Atty. Ungson moved to reset the reception of evidence to 21 November 2002.

On 21 November 2002, Atty. Ungson failed to appear despite notice. On the same day, the RTC issued an Order dismissing the case for failure of Gotesco to prosecute, to wit:

When this case was called for hearing, Atty. Ungson failed to appear despite notice.

It appearing from the record that the defendants had already been declared in default, as per [O]rder dated September 24, 2001 but up to the present, Atty. Ungson never presented his evidence *ex[]parte*.

For failure to prosecute, let this case be, as it is hereby DISMISSED.

x x x x<sup>[6]</sup>

On 22 January 2003, Gotesco filed a Motion for Reconsideration explaining that Atty. Ungson suffered from acute diarrhea and that he requested his wife to call the RTC but its telephone line was unavailable. On the other hand, Spouses Moral submitted a Manifestation seeking to affirm the Order of dismissal of the case. In its Order dated 22 May 2003, the RTC affirmed its 21 November 2002 Order. The RTC ruled that Gotesco has not adequately explained its failure to prosecute and it did not show any compelling reason to disregard strict compliance with the rules. Thereafter, Gotesco filed an appeal to the CA.

### **The Ruling of the Court of Appeals**

In a Resolution<sup>[7]</sup> dated 4 March 2004, the CA dismissed Gotesco's appeal due to the late filing of its Appellant's Brief for 25 days. On 22 March 2004, Atty. Ungson filed a Motion for Reconsideration. In its Resolution<sup>[8]</sup> dated 14 October 2004, the CA granted the motion. The CA found that the Notice to file an Appellant's Brief was received by an unauthorized person and Atty. Ungson exerted extra efforts in verifying the existence of the said notice. Nevertheless, in its Decision dated 14 March 2006, the CA dismissed the appeal and affirmed the Order of the RTC. The dispositive portion of the CA decision reads:

**WHEREFORE**, premises considered, appeal is hereby **DISMISSED** and the November 21, 2002 Order of the Regional Trial Court (RTC) of Kalookan City, Branch 122, in Civil Case No. C-19584, is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[9]</sup> (Emphasis in the original)

In ruling in favor of Spouses Moral, the CA held in part:

In the present case, Gotesco was given several opportunities to present evidence but it failed to do so and in effect failed to present its star witness, who was to testify on its evidence. In fact, on the September 5, 2002 hearing, the postponement of the presentation of Gotesco's evidence was on motion of plaintiff-appellant Gotesco's counsel.

The RTC was being consistent in avoiding delay as prayed for by plaintiff-appellant Gotesco which moved for presentation of evidence ex parte when defendant-appellees were absent, and so to be fair, when it was plaintiff-appellant Gotesco and counsel absent, the trial court dismissed the case.<sup>[10]</sup>

On 5 July 2006, Gotesco, through its new counsel Pacheco Law Office, filed a Motion for Reconsideration on the ground that Atty. Ungson was grossly negligent in representing Gotesco. In its Resolution dated 18 January 2007, the CA denied the motion. Hence, this appeal.

### **The Issue**

Gotesco seeks a reversal based on the sole issue it raised for the first time in its Motion for Reconsideration before the CA, to wit:

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN LAW WHEN IT RULED IN FAVOR OF THE RESPONDENTS, WHEN IT BOUND THE PETITIONER HEREIN TO THE NEGLIGENCE OF IT[S] FORMER COUNSEL THEREBY DEPRIVING HEREIN PETITIONER [OF] SUBSTANTIAL JUSTICE BY NOT GIVING PETITIONER ITS DAY IN COURT.<sup>[11]</sup>

### **The Ruling of the Court**

The petition has no merit.

The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.<sup>[12]</sup> The basis is the tenet that an act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client.<sup>[13]</sup> While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: "(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require."<sup>[14]</sup>

The present case does not fall under the said exceptions. In *Amil v. Court of Appeals*,<sup>[15]</sup> the Court held that "to fall within the exceptional circumstance relied upon x x x, it must be shown that the negligence of counsel must be so gross that