

## TENTH DIVISION

[ CA-G.R. SP No. 132751, November 26, 2014 ]

**BERNIE G. MIAQUE, PETITIONER, VS. HON. LUCIA P. PURUGGANAN, IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 30, MANILA, AND SPS. HUAI SHENG HSIAO & CHIN LI HUNG, RESPONDENTS.**

### D E C I S I O N

**VELOSO, J.:**

#### *The Case*

In this **Petition for Certiorari**<sup>[1]</sup> filed under Rule 65 of the Rules of Court, petitioner Bernie G. Mique ("Mique") seeks the nullification of the:

(1) **Decision** dated **June 21, 2013**<sup>[2]</sup> of the Regional Trial Court of Manila<sup>[3]</sup> ("RTC") in Civil Case No. 04-110984 entitled "*Sps. Huai Sheng Hsiao & Chin Li Hung, Plaintiffs/Respondents, versus Bernie Mique, Defendant/Petitioner,*" the dispositive portion of which reads:

"WHEREFORE, for the reasons mentioned and discussed above, the Petition for Relief is DENIED for lack of merit.

SO ORDERED."<sup>[4]</sup>

(2) **Order**, dated **September 18, 2013**,<sup>[5]</sup> denying Mique's Motion for Reconsideration dated July 20, 2013,<sup>[6]</sup> for lack of basis.

#### *The Facts*

This case stems from a **Complaint for Rescission of Contract, Specific Performance and Damages**<sup>[7]</sup> filed by Sps. Huai Sheng Hsiao and Chin Li Hung ("**Sps. Huai**") against Mique relating to the sale of a condominium unit at No. 2512, Paragon Plaza, EDSA corner Reliance Street, Mandaluyong City for a consideration of Php4,125,000.00. Allegedly, Mique was able to pay only eleven post dated checks each amounting to P25,000.00, or a total of P275,000.00, and despite demands, he still failed to comply with the terms of their contract. Hence, the filing of the complaint.

In his **Answer**, Mique admitted that he and Sps. Huai entered into a contract of

conditional sale for the subject condominium unit. He however averred that said agreement has already been **novated** and pursuant to their new agreement, he issued *seven (7) new checks* which, to date, are still in the possession of Sps. Huai.  
[8]

On August 13, 2012, the RTC rendered a **Decision**<sup>[9]</sup> declaring the Deed of Conditional Sale between the parties as rescinded, *viz.*:

"WHEREFORE, premises considered, the Deed of Conditional Sale between the parties herein is hereby RESCINDED. Defendant is ordered to:

1. Turnover the peaceful possession of the subject condominium unit;
2. Pay plaintiffs P25,000.00 a month from May, 2003 until he has vacated the premises;
3. Pay the condominium association dues and property taxes from June 25, 2003 until possession of the unit has been relinquished;
4. Pay the amount of P100,000.00 as attorney's fees, and
5. Pay the cost of this suit.

SO ORDERED."<sup>[10]</sup>

Aggrieved, Miaque filed, on September 13, 2012, a **Motion for Reconsideration** (of the Decision dated 13 August 2012).<sup>[11]</sup>

However, on September 20, 2012, Miaque filed a **Manifestation and Motion to Admit**<sup>[12]</sup> disclosing that "*(w)hen the undersigned counsel checked the files of the case, she discovered that the Notice of Hearing of the Motion for Reconsideration was inadvertently omitted to be attached to the motion*"<sup>[13]</sup> and thus prayed that his "Notice of Hearing on the Motion for Reconsideration, set on **24 September 2012 at 8:30 o'clock in the morning**, be admitted."<sup>[14]</sup>

Meanwhile, on September 17, 2012, the RTC already issued an **Order**<sup>[15]</sup> declaring that Miaque failed to comply with Sections 4 and 5, Rule 15 of the Rules of Court, hence, his Motion for Reconsideration was deemed a mere scrap of paper. **The order was received by Miaque's counsel on September 24, 2012.**<sup>[16]</sup>

Again, on October 2, 2012, Miaque moved for reconsideration of the September 17, 2012 Order.<sup>[17]</sup> However, it appears from the record of this case that even before the filing of the aforesaid motion, *i.e.*, on September 25, 2012, the RTC already issued another **Order**<sup>[18]</sup> declaring its August 13, 2012 Decision to be final and

executory, viz.:

"The filing by the defendant on September 20, 2012 of a Manifestation and Motion to Admit proffering inadvertence as his excuse for not complying with the Rule did not cure the fatally defective Motion for Reconsideration. Moreover, the Manifestation and Motion to Admit was filed after the expiration of the period to appeal.

Considering that plaintiffs received a copy of the Decision on August 31, 2012 without any motion for reconsideration or notice of appeal filed by them, the Decision became final and executory on September 16, 2012.

Accordingly, let a Certificate of Finality be issued.

SO ORDERED."<sup>[19]</sup>

On September 27, 2012, the RTC, through its Branch Clerk of Court, issued a **Certificate of Finality**<sup>[20]</sup> declaring that the above-mentioned August 13, 2012 Decision had become **final and executory**.

On November 23, 2012, Miaque filed a **Petition for Relief** (from Order dated 17 September 2012)<sup>[21]</sup> averring that the omission of the notice of hearing in the motion for reconsideration was totally due to excusable oversight and inadvertence.  
<sup>[22]</sup>

On June 21, 2013, the RTC rendered the herein assailed Decision, denying Miaque's Petition for relief. It explained:

"In justifying the petition at bar, defendant-petitioner avers that his failure to include a notice of hearing in the motion for reconsideration on the August 13, 2012 Decision was **due to excusable oversight and inadvertence**. The blame is being made on an alleged **computer glitch or error** that occurred as a result of the several corrections or revisions that were made on the draft of the motion in question. All the while, it was thought that the final draft and from already contained the required notice of hearing on the last page.

While the error is indeed lamentable, the same is not excusable. Even a nonchalant and cursory review of the motion in its final and printed form would have easily and glaringly revealed the omission. Attys. Rex G. Rico and May R. Pandoy placed their signatures on the last page of the motion. Simple prudence would and should have already prompted and alerted them that the page on which they signed should not have been the last page of the motion, it being a litigated one. Such backdrop makes the omission or negligence inexcusable. **Negligence, to be 'excusable', must be such that ordinary diligence and prudence could not have guarded against it.**

Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into **through fraud, accident, mistake, or excusable negligence**. The relief provided for is of equitable character, allowed only in exceptional cases as where there is no other available or adequate remedy. Relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to mistaken mode of procedure by counsel.

Thus, **failing to show and prove that excusable negligence** attended defendant-petitioner's failure to observe the pertinent rules on notice and hearing on their motion for reconsideration, relief under Rule 38 cannot be had. His insistence that the motion in question presents substantial defense and arguments which may sway the mind of the court does not constitute a valid and sufficient ground to erase the consequence of his negligence and reopen the case. The emphasis is made that **fraud, accident, mistake, or excusable negligence should first be established before relief from judgment can be granted.**"<sup>[23]</sup> (emphasis Ours)

Miaque moved for reconsideration<sup>[24]</sup> of the aforequoted Decision, but the same was denied by the RTC in its other assailed September 18, 2013 Order.<sup>[25]</sup>

**Hence, this petition.**

***Issue:***

In his Petition, Miaque (now "petitioner") avers:

"26. Miaque respectfully submits, the trial court committed grave abuse of discretion amounting to lack/excess of jurisdiction when (a) he was not accorded relief from its 17 September 2012 Order in the interest of substantial justice and due process; and (b) it did not admit and grant the verified Manifestation and Motion to Admit of petitioner, which has cured the deficiency and omission, i.e., notice of hearing, in the motion for reconsideration over the 13 August 2012 Decision, when he has succinctly shown, the omission was owing to excusable omission or oversight."<sup>[26]</sup>

In fine, what We shall resolve is the question of:

WHETHER OR NOT THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION DATED JUNE 21, 2013 AS WELL AS ITS ORDER DATED SEPTEMBER 18, 2013 WHICH DENIED THE RELIEF SOUGHT FOR.

### **OUR RULING**

At issue is whether petitioner's failure to include a notice of hearing in his motion for reconsideration constitutes excusable negligence entitling him to a relief from judgment.

**Section 1, Rule 38 of the 1997 Rules of Civil Procedure** provides:

*"Sec. 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside."*

As can be clearly gleaned from the foregoing provision, the remedy of **relief from judgment** can only be resorted to on grounds of fraud, accident, mistake or excusable negligence.<sup>[27]</sup> **Negligence** to be excusable must be one which ordinary diligence and prudence could not have guarded against.<sup>[28]</sup>

In this case, petitioner admittedly committed a procedural lapse in **failing to include a notice of hearing** in his **September 13, 2012 Motion for Reconsideration** that was filed one (1) day before the very last day of the fifteen-day reglementary period for filing the motion. He avers, however, that said omission was due to an **excusable oversight and inadvertence** caused by an unexplained computer glitch or error which escaped the attention of his counsels;<sup>[29]</sup> that his subsequent filing of a **Manifestation and Motion to Admit**<sup>[30]</sup> [the notice of hearing] on September 20, 2012 has effectively cured said deficiency and omission;<sup>[31]</sup> and that the adverse party suffered no substantial prejudice by such inadvertent omission or oversight.<sup>[32]</sup>

A **notice of hearing** is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion.<sup>[33]</sup> Pertinently, **Section 4, Rule 15 of the Rules of Court** reads:

*"Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, **every***