SUPREME COURT
THIRD DIVISION

MERCURY DRUG CORPORATION,
***Petitioner*,**

-versus-

G.R. No. 138571
July 13, 2000

THE HONORABLE COURT OF APPEALS, and the SPOUSES EDUARDO AND CARMEN YEE,
***Respondents*.**
x----------x

D E C I S I O N

GONZAGA-REYES, *J.*:

This Petition for Review on *Certiorari* seeks the reversal of the Decision of the Court of Appeals[1] in CA-G.R. SP No. 437765 entitled "SPOUSES EDUARDO AND CARMEN YEE versus HONORABLE ALEJANDRO VELEZ, RTC JUDGE, BRANCH 20, CAGAYAN DE ORO CITY and MERCURY DRUG CORPORATION."

The following facts as found by the Court of Appeals are undisputed:

> "On 27 January, 1993, petitioners filed a complaint docketed as Civil Case No. 93-055 in the Regional Trial Court of Cagayan de Oro City against herein private respondent for annulment and/or reformation of contract of lease dated 31 March 1984 (Rollo, p. 26) covering (5) twos-storey units specified as door numbers 3, 4, 5, 6 and 7 of a commercial building owned by petitioners located in front of Carmen Market, Carmen, Cagayan de Oro City. The complaint prayed that the contract be either annulled or the rentals increased from P6,900,00 a month as originally stipulated therein to P50,000.00 a month based on paragraph no. 3 thereof which reads:
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> > '3. In case of official devaluation of the Philippine pesos, the parties hereto shall by mutual consent make the necessary adjustment in the rate of rentals. Should they fail to agree on the rate of rentals, the same shall be submitted to a group of arbitrators composed of three (3) members, one to be appointed by LESSOR, another by LESSEE and a third one to be agreed upon by the two (2) arbitrators previously chosen and the parties hereto shall submit to the decision of the arbitrators;'
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> Petitioners' demand for increase of rentals had been refused by private respondent lessee Mercury Drug Corporation on the ground that there was no official devaluation of the peso thus no basis for a rental increase.
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> On 28 February 1995, the lower court rendered judgment as follows:
>
> > 'WHEREFORE, judgment is hereby rendered in favor of the defendant corporation and against the herein plaintiffs, dismissing the complaints and the claim for annulment and/or reformation of lease contract as well as the claim for damages for not being supported by the law

and the pertinent jurisprudence on the matter, with costs against plaintiffs herein.

'However, in the spirit of equity and human justice as defendant has not shown any unwillingness to quiet the unease of the plaintiffs if the obligation is not every burdensome and onerous the defendant corporation, to maintain the good and harmonious relations between the parties herein, is hereby ordered to pay a relative increase in rent over the property in question, to the plaintiffs spouses, in the following manner:

'a) an increase of fifteen (15) percent of the lease contract rental from August 1, 1992 up to the end of the 'second five years' on May 31, 1994;

b) an increase of twenty (20) percent in rent from June 1, 1994 to May 31, 1999 which is the end of the third 'third five (5) years' of the contract based on the new rate of the rental increase in the immediate preceding paragraph; and

c) an increase of thirty (30) percent of rent from June 1, 1999 to May 31, 2004 based on the new rate of the rental increase in the immediate preceding paragraph as the computation, without interest.

'In view of the desire of the court to put an end to litigation and preserve the peace, no pronouncement shall be made by this court on the counterclaim.

'SO ORDERED.' (Rollo, p. 39-40)

based principally on the ruling was (sic) that there was no devaluation of the peso as a result of an extra-ordinary inflation.

The former counsel for the petitioners Atty. Ralph Lou I. Willkom received a copy of the decision on 3 March 1995 but

did not inform petitioners nor take any step to protect the interests of his clients by presenting a motion for reconsideration or taking an appeal. Petitioners learned of the judgment only on 24 March 1995 when they visited his office. The 15-day period within which to appeal lapsed. On 15 May 1995 petitioners filed thru their present counsel a petition for relief from judgment under Rule 38 (Rollo, p. 43). The lower court denied the petition, ruling as follows:

> 'It is true that under Sec. 2, Rule 38 of the New Rules of Court the verified petition such as this must be filed within 60 days after petitioners learn of the judgment and nor (sic) more than six (6) months after such judgment or order was issued.
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> 'The record shows that Atty. Ralph Lou I. Willkom, former counsel of petitioners, did not inform the petitioners that he received the judgment in question on March 3, 1995. It was only on March 24, 1995 that petitioners learned of the judgment. These facts are, admitted by petitioners on record in their pleadings so that there is no further need to discuss this matter.
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> 'Even if counsel did not inform his client of the judgment for reasons only known to him still such failure is ruled by the Supreme Court as an act binding upon his clients and in this case the herein petitioners. (B. R. Sebastian Et Al.., Inc. vs. CA, 206 SCRA 28; Suarez vs. Ca, 220 SCRA 274; Ilasco vs. CA 228 SCRA 413) Since the judgment at bar was received on March 3, 1995 by petitioner's counsel the sixty (60) days period will expire after May 3, 1995. The instant petition was filed on May 15, 1995 so much so that it was filed twelve (12) days after the 60 day period fixed by the Rules but certainly the petition was filed within six (6) months from the date it was issued on February 28, 1995.
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> 'In several cases the Supreme Court had uniformly ruled that both the 60 days from knowledge and the six (6) months from issuance must concur before a petition for

relief from the judgment can be given due course, when the Supreme Court said this wise, to wit:

> 'Motion for relief from judgment is, subject to a fixed period inextendible, never interrupted and cannot be subjected to any condition or contingency.' (Arcilla vs. Arcilla, Sept. 16, 1985)
>
> 'Considering the rule of notice to counsel as notice to client it becomes evidently clear that the requirements fixed by law and jurisprudence on petitioner for relief from judgment have not been met by the petitioners herein, ergo the petition must fall on its own dead weight. Besides, this court does not consider that there was negligence on the part of Atty. Ralph Willkom in not taking any appeal from the judgment of this court especially if one considers the character and the convictions of a person who adheres to his 'lawyer's oath.' Lawyers of known perceptions normally do not appeal from a judgment that had granted an award 'in equity' even in the face of a very palpably adverse ruling of the Supreme Court that beset his clients. The act of counsel in respecting the final judgment is one that led to a 'conflict of interest' between attorney and. client but certainly not an act of omission or neglect on his part.
>
> 'The other grounds raised like devaluation and reformation of contract does not merit any further discussion here because petitioners do not have any legal authority to declare their national devaluation thru the expedience of this petition. Parties never availed of the arbitration procedure as agreed in the contract hence, the matter of increase in rent by the avenues of the contract was totally foreclosed by the failure of the plaintiffs to exhaust all administrative remedies before going to court.

> 'WHEREFORE, except that portion which as in all good faith rectified by this court as far as the building in question is concerned as belonging to and having been built by the herein petitioners, for lack of merit and legal basis, the petition is hereby DISMISSED by reason of the foregoing premises, with costs against petitioners.' (Rollo, pp. 59-60)
>
> Petitioner's motion for reconsideration was likewise denied (Rollo, p. 61)."[2]

Aggrieved by the Order[3] of the RTC, the spouses Eduardo and Carmen Yee (YEES), the herein respondents, appealed to the Court of Appeals, which granted their Petition and set aside the order of the RTC the dispositive portion of the Decision reads:

> "WHEREFORE, the petition is hereby GRANTED. The assailed orders as well as the Decision dated February 28, 1995 are hereby SET ASIDE. This case is remanded to the court a quo for further proceedings and thereafter to render judgment accordingly. Without pronouncement as to costs."

In reversing the RTC, the Court of Appeals held inapplicable the general rule that notice to counsel is notice to client. The Court of Appeals considered that it was precisely the inaction of the counsel of the YEES in not informing them of the decision which resulted in the lapse of the period to appeal forcing them to file their petition for relief through another lawyer. Their former counsel also failed to point out the erroneous finding of the lower court that it was MERCURY, which, constructed the building subject of the lease contract. Such finding, which was later corrected by the trial court, was the basis for said court's ruling that the YEES were bound to accept low rentals inasmuch as the building supposedly constructed by MERCURY would in the end be owned by the YEES after the expiration of the lease. These facts led the Court of Appeals to conclude that the YEES' counsel was grossly negligent and clearly demonstrates why the lower court ratiocinated as follows:

> "Under the foregoing circumstances, we hold inapplicable the commonly observed rule that notice to counsel be deemed

notice to the client for to do otherwise would result in a grave miscarriage of justice. The rule that mistakes of counsel bind his client should not be applied, when as a result of counsel's reckless and gross negligence, the client (would be) deprived of his property without due process of law (Legarda vs. Court of Appeals, 195 SCRA 418).

Our courts are not only courts of justice but also of equity (Air Manila Inc. vs. Commissioner of Internal Revenue 83 SCRA 589). Procedural technicalities should not be made a bar to the vindication of a legitimate grievance (People's Homesite & Housing Corporation PHHC) vs. Tiongco, Nov. 28, 1964 (12 SCRA 471). In the foregoing case our Supreme Court allowed the late filing of a petition for relief from judgment arising from the mistake of counsel when as a result of counsel's reckless and gross negligence, the client was deprived of due process of law. Thus, the period to file was computed from the date of receipt of the writ of execution by the client.

There, as in this case, the very allegations in the petition for relief justify the setting aside of the assailed Decision and the remand of the case to the court a quo to hear and determine the case as if a timely motion for new trial or reconsideration has been granted by it (Rule 38 sec. 6, Rules of Civil Procedure)."[4]

Motion for Reconsideration was denied.[5] Hence this petition where the petitioner, Mercury Drug Corporation (MERCURY) raises the following issues:

"A. Whether the Court of Appeals erred in not applying the law and jurisprudence providing that notice to counsel is likewise notice to the party;

B. Whether the Court of Appeals erred in disregarding the rule that a party-litigant is bound by the mistakes of his counsel;

C. Whether the Court of Appeals erred in reckoning the sixty-day period to file the Petition for Relief from judgment from the alleged date of actual receipt by Respondents of a

copy of the decision of the trial court and not from the date of receipt thereof by their counsel;

D. Whether the Court of Appeals departed from the accepted and usual course of judicial proceedings when it decided the merits of Respondents' Petition for Relief from Judgment notwithstanding that the only issue that should have been passed upon in the certiorari petition before it was whether the trial court gravely abused its discretion in dismissing the Petition for Relief from Judgment for having been filed out of time; and

E. Whether the Court of Appeals erred in remanding the case to the trial court for further proceedings notwithstanding that the remedy of reformation of the Contract of Lease is clearly not available to any of the parties there being no mistake or ambiguity in the instrument embodying the terms thereof."[6]

The petitioner contends that the respondents' petition for relief from judgment failed to comply with the requirements of the Rules of Court inasmuch as the petition was filed more than sixty days from the receipt by their lawyer of the decision of the RTC. Petitioner argues that it is long established by jurisprudence that notice to the counsel is binding upon the client and that the client is bound by the mistakes of his lawyer. The failure of the YEES' lawyer to inform them of the decision resulting in the failure to appeal therefrom is not the accident, mistake or excusable negligence referred to in the Rules that would warrant the granting of the petition for relief. The petitioner further argues that respondents' counsel did not corroborate their allegation that they only learned of the judgment in Civil Case No. 93-055 against them on March 24, 1995. It should be presumed that their lawyer, Attorney Willkom, communicated to the respondents receipt by him of the judgment. MERCURY also maintains that the YEES cannot claim that they were denied due process considering that the YEES were given a chance to present and submit their evidence during the trial of the merits of the case. Their failure to appeal the decision against them cannot be considered a denial of due process for the right to appeal is purely statutory and must be

prosecuted within the time and pursuant to the procedure prescribed for it.[7]

The threshold issue to be resolved in this present petition is whether the YEES timely filed their petition for relief.

After a careful analysis of the issues presented for consideration, we rule in the negative and find the petition impressed with merit.

A petition for relief from judgment is governed by Rule 38 — "RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS" — of the 1997 Rules on Civil Procedure. 8 Sections 1 and 3 of the aforementioned rule read:

> "SECTION 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.
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> SECTION 3. Time for filing petition; contents and verification. — A petition provided for in either of the preceding sections of the 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."

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition.[9] In order

for a petition for relief to be entertained by the court, the petitioner must satisfactorily show that he has faithfully and strictly complied with the provisions of Rule 38.[10] It is also incumbent upon the petitioner to show that the said petition was filed within the reglementary period specified in Section 3, Rule 38 (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).[11] And the rule is that the reglementary period 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 for purposes of Section 3 of Rule 38.[12]

In the present case, the YEES were served a copy of the judgment of the lower court through their counsel, Attorney Ralph Lou I. Willkom on March 3, 1995. Thus, the YEES are considered to have received notice on March 3, 1995 when their counsel was served notice and not on March 24, 1995 when they actually learned of the adverse decision. Consequently, their petition for relief, which was filed on May 15, 1995 or over sixty days from notice of their counsel, was filed out of time. This Court has consistently held that the failure of a party's counsel to notify him on time of the adverse judgment to enable him to appeal therefrom is negligence, which is not excusable.[13] However, notice sent to counsel to 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.[14]

We find no basis for respondents' insistence on the application of the doctrines enunciated by this court in Legarda vs. Court of Appeals[15] and People's Homesite and Housing Corporation vs. Tiongco,[16] where this Court departed from the established rule that notice to counsel is notice to the client considering that in said cases, the lawyers miserably failed in their duty to maintain their client's cause and that the lawyers' inaction and wanton disregard of procedural rules were extremely reckless and grossly negligent and amounted to a deprivation of their client's property without due process of law.

First, this Court reversed its ruling in Legarda on reconsideration in a Resolution dated October 16, 1997[17] for the reason that the judgment

sought to be annulled became final when the petitioner failed to avail of the remedies available to her such as filing a motion for reconsideration or appealing the case despite her claim that her lawyer never informed her of the decision against her. This Court emphasized the need to impose finality on judgments and that public policy and sound practice demand that, at the risk of occasional errors, judgments should become final at some definite date fixed by law. And when judgments of lower courts become final, not even the Supreme Court can in anyway review or modify them directly or indirectly.[18] This Court clearly recognized that the negligence of the petitioner's counsel in failing to protect her interests was binding upon her despite counsel's failure to inform her of the adverse decision of her case.

Second, the case of People's Homesite is not squarely in point. In said case, we gave due course to a petition for relief from judgment despite the fact that it was filed out of time, the lawyer having failed to inform his clients of the scheduled hearing of the case which was heard in their absence. When judgment was rendered against them, their lawyer failed to take any steps to protect the interest of their clients. In giving due course to the petition for relief, this Court found that "there was something fishy with the actuations" of their lawyer which deprived the petitioners of their day in court. Consequently, we ruled that the client was denied due process and gave due course to their petition.

The circumstances in the case at bar are different. We are not persuaded by the YEES' claim that they were denied due process inasmuch as they were not denied their day in court. In fact, they were able to prosecute their action and actively participated through counsel in the proceedings before the lower court. Their failure to file an appeal from the decision rendering it final and executory is not a denial of due process. They may have lost their right to appeal but they were not denied their day in court. 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.[19] In the same manner, the YEES' failure to file their petition for relief within the period provided for under the Rules is not tantamount to a denial of due process. More important, no evidence was presented to support respondents' bare

and self-serving allegation that their lawyer did not inform them of the decision against them. It bears stress that we are not concerning ourselves with the lawyer's duty to his client but with the timeliness of the filing of the petition for relief which cannot be given due course on the simple and expedient claim of a party that their lawyer failed to inform them of the decision in the case. Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost though inexcusable negligence.[20]

Parenthetically, it is noted that in its decision, the Court of Appeals stated that the finding of ownership was a pivotal consideration for the trial court's ruling to the effect that the YEES were bound to accept low rentals because the building which was supposed to be constructed by MERCURY would ultimately be owned by the YEES. However, a reading of the trial court's decision shows that the primary basis for its ruling was that there was no devaluation in currency, which would entitle the YEES to a reformation of their contract. On the contrary, the trial court, in granting the YEES an increase in the stipulated rentals contained in their contract with MERCURY based its ruling on the "meteoric boom" that the City of Cagayan de Oro was experiencing which equity and human justice could not ignore. Moreover, MERCURY did not show unwillingness to the said adjustments in order to maintain good and harmonious relations with the YEES. Thus, even assuming arguendo that the YEES' petition for relief is given due course, the judgment of the trial court denying the YEES' principal prayer to reform the contract on the ground of the devaluation of the currency is not affected for the reason that the finding of the trial court as to whether it is Mercury or the YEES who built the building is irrelevant to the determination of whether there was indeed a devaluation in the currency.

ACCORDINGLY, the instant petition is **GRANTED** and the decision of the Court of Appeals in CA-G.R. SP No. 43765 is [2] and **SET ASIDE**. The Order of the Regional Trial Court of Misamis Oriental, Branch 20 dated October 17, 1995 dismissing the respondents' Petition for Relief from judgment is hereby **AFFIRMED** and **REINSTATED**.

No pronouncement as to costs.

SO ORDERED.

Melo, Vitug, Panganiban and Purisima, *JJ.*, concur.

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[1] Thirteenth Division composed of the ponente J. Portia Aliño-Hormachuelos and the members: J. Buenaventura J. Guerrero (Chairman) and J. Candido V. Rivera concurring.
[2] Decision, pp. 2-8; Rollo, pp. 39-45.
[3] Record; pp. 58-60.
[4] Decision, p. 13; Rollo, p. 49.
[5] Resolution dated May 4, 1999; Rollo, pp. 52-53.
[6] Petitioner's Memorandum, pp. 8-9.
[7] Petitioner's Memorandum; pp. 29.
[8] The petition for relief was also governed by Rule 38 of the old rules of Civil Procedure.
[9] Tuason vs. Court of Appeals, 256 SCRA 158 at p. 167 [1996].
[10] Arcilla vs. Arcilla, 138 SCRA 560 at p. 566 [1985].
[11] Ibid.
[12] Francisco vs. Puno, 108 SCRA 427 at p. 433 [1981].
[13] Tuason vs. Court of Appeals, Supra at p. 166.
[14] Ibid.; Palanca vs. American Food Manufacturing Co., 24 SCRA 819 at pp. 825-830 [1968].
[15] 195 SCRA 419 [1991].
[16] 12 SCRA 471 [1964].
[17] Legarda vs. Court of Appeals, 280 SCRA 642 [1997].
[18] Ibid., at p. 661.
[19] Ortiz vs. Court of Appeals, 299 SCRA 708 at p. 713 [1998].
[20] Tuason vs. Court of Appeals, Supra at p. 167.
