Republic of the Philippines
COURT OF APPEALS
Manila

FOURTH DIVISION

ALBERT TAN,
Petitioner,

- versus -

INTELLECTUAL PROPERTY OFFICE, OFFICE OF THE DIRECTOR GENERAL and **COBY ELECTRONICS CORPORATION,**
Respondents.

CA-G.R. SP No. 127039

Members:

TIJAM, NOEL, G.,
Chairperson,
ACOSTA, F. P., *and*
PERALTA, E. B., JR., JJ.:

Promulgated:

27 JULY 2015

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DECISION

ACOSTA, J.:

This is a Petition for Certiorari[1] seeking to nullify the Order[2] dated August 13, 2012 of Director General Ricardo R. Blancaflor of the Intellectual Property Office (IPO) in Appeal No. 14-09-43 entitled *"Coby Electronics Corporation, appellant, versus Albert Tan, appellee,"* which dismissed petitioner's Petition for Relief from Judgment.

THE FACTS and ANTECEDENT PROCEEDINGS

Petitioner Albert Tan (Tan) applied for registration of the mark COBY for use on goods falling under Class 9 of the Nice Classification. Subsequent to the publication of Tan's application, an Opposition thereto was filed by Coby Electronics Corporation alleging, among others, that it is the prior user and owner of COBY in the Philippines.

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1 Dated October 22, 2012; Rollo, pp. 3-16, with Annexes.
2 Rollo, pp. 17-20.

In her Decision[3] dated December 15, 2008, the Director of the Bureau of Legal Affairs denied Coby Electronic Corporation's Opposition on the ground that the latter failed to prove that COBY is well-known. The Director of the Bureau of Legal Affairs further held that Tan has a better right for COBY and that his trademark application was filed earlier hence deserves priority and protection. Coby Electronic Corporation's motion for reconsideration was denied by the Director of Bureau of Legal Affairs in her Decision dated May 18, 2009.

Subsequently, however, Tan learned that the Director General had issued a Decision[4] dated November 10, 2011 reversing the Director of the Bureau of Legal Affairs' Decision and thus rejecting Tan's application.

Tan did not receive a copy of the Director General's Decision dated November 10, 2011. Upon subsequent investigation, Tan learned that a copy of said Decision was furnished to his counsel, Atty. Jorge Cesar M. Sandiego. Atty. Sandiego, on the other hand, failed to notify Tan of the Director General's adverse Decision.

Hence, on June 1, 2012, Tan, through the services of new counsel, filed before the Director General a Petition for Relief from Judgment essentially alleging as follows:

> "5. Subsequent inquiries undertaken by the respondent after finding out the adverse decision rendered by this Honorable Office yielded that pertinent notices relative to the above-captioned case, as well as the copy of the subject decision, were purportedly received by Atty. Jorge Cesar M. Sandiego. Such investigation and inquiries likewise unveiled that Atty. Sandiego failed to inform the respondent-appellee of the subsequent proceedings, notice/s and most importantly the decision. Such notices, orders, papers and decision never came to the attention of the respondent.
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> 6. At the time the case was pending before this Honorable Office, it was extremely difficult for the respondent-appellee to follow-up the status of the case with his former counsel. He could not contact his former counsel. He eventually found out that Atty. Sandiego was stricken with a serious health problem that could have

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3 Rollo, pp. 40-50.

4 *id.,* pp. 22-29.

> prevented him from performing his regular duties to his clients. Likewise, respondent's family was experiencing hard times. Respondent-appellee's wife, Ma. Olivia Tan, had her own serious health issues that needed primary and serious attention. Thus, everything came second place to the concern of bringing back respondent-appellee's wife to normal health. It was during these unfortunate troubled times, respondent and counsel failed to communicate with each other regarding the status of the case.
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> 7. Thus, herein respondent-appellee was obviously deprived of his right to due process and evidently rendered unsuspecting of any decision rendered in this case.
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> 8. When herein respondent-appellee failed to file and/or perfect any appeal from the decision dated 10 November 2011, it was solely and primarily by reason of mistake, excusable negligence and lack of knowledge of the issuance of the subject decision. Thus, not only did respondent-appellee had a wrong conception by purportedly awaiting the issuance of the subject decision (which had already been issued without them knowing) but also lacked the appropriate knowledge and was ignorant with respect to the time when the same was actually and concomitantly issued so as to have engendered them to file the necessary appeal. The Code (Civil Code) does not distinguish between mistake as such and ignorance. Consequently, as it is understood in the Civil Code, mistake may be defined not only as the wrong conception of a thing, but also the lack of knowledge with respect to a thing."[5]

In its presently assailed Order[6] dated August 13, 2012, the Director General dismissed Tan's Petition for Relief from Judgment, disposing thus:

> "Wherefore, premises considered, the PETITION FOR RELIEF FROM JUDGMENT is hereby dismissed. Let a copy of this Order be furnished to the Director of the Bureau of Legal Affairs, the Director of the Bureau of Trademarks, and the library of the Documentation, Information and Technology Transfer Bureau for information, guidance, and records purposes.
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> SO ORDERED."

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5 *id.,* pp. 18-19.

6 *Supra,* note 2.

Hence this Petition ascribing grave abuse of discretion on the part of the Director General.

THE ISSUES

Presently, Tan argues that his failure to file and/or perfect the Petition for Review from the Director General's Decision dated November 10, 2011 was by reason of mistake, excusable negligence and lack of knowledge of the issuance of said Decision. Tan maintains that not only was he mistaken in still awaiting for the issuance of the Director General's Decision on the Appeal, he was likewise ignorant as to when the same was issued and actually received by his counsel so as to have moved him to take the necessary appeal. Hence, the Director General should have allowed him to correct the mistake and excusable negligence by giving due course to his Petition for Relief from Judgment.

Tan finally argues that his case is meritorious considering that he has a better right to the mark COBY for goods falling under Class 9 because his application has an earlier filing date pursuant to the doctrine of First to File Rule. Coby Electronics Corporation, on the other hand, failed to substantiate its claim that it is an internationally well-known mark.

In its Comment, Coby Electronics Corporation argues that the Uniform Rules on Appeals of the Intellectual Property Office do not allow the filing of a Petition for Relief from Judgment. It further argues that a Petition for Relief from Judgment is a remedy that is equitable in character which is allowed only if there is no other available remedy. Further, Coby Electronics Corporation contends that the instant Petition should be dismissed for lack of proper verification.

Finally, Coby Electronics Corporation argues that the Director General is correct in rejecting Tan's application because it had satisfactorily and adequately established that its COBY trademark enjoys international renown.

The issues which directly bear on the merits of the Opposition to the application for registration of the mark COBY are best left to be determined in the proper forum at the proper opportunity; hence, the issues to be resolved in the instant Petition are limited to: whether or not (a) the Petition should be dismissed outright for lack of proper

verification; and (2) the Director General gravely abused its discretion in failing to give due course to Tan's Petition for Relief from Judgment.

THE RULING OF THE COURT

We dismiss the Petition. While the perceived defect in the verification does not invalidate the Petition, the same is nonetheless dismissible for lack of merit.

Coby Electronics Corporation opposes the Petition for lack of proper verification because the Verification Page was signed by Tan on October 19, 2012 while the Petition itself is dated October 22, 2012.

While the verification attached to the Petition appears to have been signed on October 19, 2012 and the Petition is dated later, such procedural lapse will not invalidate the Petition. Verification is simply a condition affecting the form of pleadings and non-compliance therewith does not necessarily render it fatally defective.[7] Indeed, verification is merely a formal and not a jurisdictional requisite which does not affect the validity or efficacy of the pleading or the jurisdiction of the court.[8] In other words, a defective verification does not render the pleading or the petition invalid.[9]

Further, there appears to be no deliberate intention to circumvent the rules on properly verifying the Petition, which are in the first place intended to assure the truthfulness and correctness of the allegations therein contained. Hence, the policy of liberal interpretation of procedural rules[10] gives Us reason to give due course to the Petition.

Nevertheless, a review of the instant Petition on the merits reveals no grave abuse of discretion on the part of the Director General in dismissing Tan's Petition for Relief from Judgment. Contrary to Tan's allegations, there is neither mistake nor excusable negligence attendant in the instant case as to grant relief from judgment.

A Petition for Relief from Judgment is primarily governed by Rule 38, Section 2 of the Revised Rules of Court. Through this remedy,

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7 *In-N-Out Burger, Inc. v. Sehawani, Inc. et al.,* G.R. No. 179127, December 24, 2008.

8 *Manila Lodge No. 761 v. Court of Appeals,* 73 SCRA 12 (1976).

9 *Navarro, et al. v. Court of Appeals, et al.,* G.R. No. 141307, March 28, 2001.

10 *Pilipinas Shell Petroleum Corp. v. John Bordman Ltd. Of Iloilo, Inc.,* G.R. No. 159831, October 14, 2005.

a final and executory judgment or order may be set aside on the ground of fraud, accident, mistake or excusable negligence. Additionally, the petitioner must assert facts showing that he has a good, substantial and meritorious defense or cause of action.[11]

In this case, Tan failed to appeal from the Director General's Decision on the alleged honest but mistaken belief that no resolution or decision on Coby Electronics Corporation's Appeal has yet been rendered by the Director General, hence he maintains that a mistake of fact has prevented him from perfecting the Appeal.

The mistake contemplated under said Rule pertains generally to one of fact, not of law.[12] Tan's erroneous belief or opinion that no Decision has yet been issued by the Director General is not the mistake for which a Petition for Relief is available. While it constitutes a mistake of a party, such is not a mistake which confers the right to the relief. This is so because Tan was never prevented from interposing his Appeal – in fact, he was not prevented from simply inquiring whether a decision has been rendered by the Director General.

It is difficult to believe Tan's allegation of mistake or lack of knowledge that a Decision has been issued by the Director General as the pleadings of the parties disclose that Tan actively participated in the mediation conferences that were held while the IP case was on Appeal. As observed by the Director General, it is not accurate to say that Tan was ignorant of the status of the case including the fact that an Appeal was then pending resolution by the Director General considering that he actually participated in the mediation proceedings[13] and even filed his Comment/Memorandum therein.[14]

Further, Tan imputes excusable negligence on the part of his counsel who was allegedly notified of the Director General's Decision but failed to promptly inform Tan thereof.

The rule is that negligence of counsel is binding on the client. Said rule is relaxed and a litigant is allowed another chance to present his case in instances (1) *where the reckless or gross negligence of counsel deprives the client of due process of law;* (2) *when the*

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11 *Tuason v. Court of Appeals, et al.,* G.R. No. 116607, April 10, 1996.
12 *Agan v. Heirs of Sps. Nueva,* G.R. No. 155018, December 11, 2003.
13 Rollo, page 20.
14 Rollo, page 127.

application of said rule will result in outright deprivation of the client's liberty or property; or (3) *where the interests of justice so require.*[15] In such cases, the courts are mandated to step in and accord relief to a client who suffered thereby.[16]

We find that the imputed negligence of Atty. Sandiego does not fall under any of the enumerated exceptions. To set aside a judgment through a Petition for Relief, the negligence must be so gross *"that ordinary diligence and prudence could not have guarded against."*[17] The reason for this is to prevent parties from reviving the right to appeal already lost through inexcusable negligence.[18] There is no rule more settled than that a client is bound by his counsels' conduct, negligence and mistake in handling the case.[19] To allow a party to disown his counsel's conduct would render proceedings indefinite, tentative and subject to reopening by the mere subterfuge of replacing counsel.[20] Tan failed to show that his counsel's negligence was so gross and palpable as to call for the exercise of the court's equity jurisdiction.

Similarly, there is no showing that the alleged negligence could not have been prevented through the exercise of ordinary diligence and prudence. To reiterate, Tan could have simply inquired with the Office of the Director General as to the status of his own case. For unknown reasons, this he allegedly failed to do.

Moreover, We find that the Director General did not err in dismissing Tan's Petition for Relief from Judgment as said remedy is not available under the IPO Rules. Section 9 of the Uniform Rules on Appeals[21] of the IPO provides:

> Section 9. Decision - The decision or order of the Director General shall be final and executory fifteen (15) days after receipt of a copy thereof by parties unless appealed to the Court of Appeals in case of appeals from decisions or final orders of the BLA, BOP and BOT, or the

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15 *Spouses Que, et al. v. Court of Appeals, et al.,* G.R. No. 150739. August 18, 2005.

16 *Sarraga, Sr., et. al., v. Banco Filipino Savings and Mortgage Bank,* G.R. No. 143783, December 9, 2002.

17 *Guevarra v. Bautista,* 593 Phil. 20, 26 (2008).

18 *id.,*

19 *Heirs of the Late Cruz Barredo v. Asis*, G.R. No. 153306, August 27, 2004, 437 SCRA 196, 200, citing *Alabanzas v. Intermediate Appellate Court*, G.R. No. 74697, November 29, 1991, 204 SCRA 304.

20 *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 708.

21 Dated February 8, 2002.

> Secretary of the Department of Trade and Industry in case of appeals from the decisions or final orders of the DITTB.
>
> The appeal shall not stay the decision or order of the Director General unless the Court of Appeals or the Secretary of the Department of Trade and Industry direct otherwise. No motion for reconsideration of the decision or order of the Director General shall be allowed.

The IPO Rules, therefore, is explicit in providing that a Decision or Order of the Director General shall be final and executory fifteen (15) days from receipt of a copy thereof by the parties unless appealed to the Court of Appeals or the Secretary of the Department of Trade and Industry, as the case may be. Here, no Appeal from the Director General's Decision issued in the exercise of his exclusive appellate jurisdiction has been taken by Tan to this Court. Hence, the inescapable conclusion is that the Director General's Decision has attained finality.

In sum, in the absence of fraud, accident, mistake or excusable negligence, the remedy of a Petition for Relief from Judgment is unavailing, more so when such remedy is not made available from a Decision or Order of the IPO's Director General.

WHEREFORE, the Petition is **DISMISSED**. The Order dated August 13, 2012 of the Director General of the Intellectual Property Office is **AFFIRMED** *in toto*.

SO ORDERED.

FRANCISCO P. ACOSTA
Associate Justice

WE CONCUR:

NOEL G. TIJAM
Associate Justice

EDUARDO B. PERALTA, JR.
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

NOEL G. TIJAM
Associate Justice
Chairperson, Fourth Division