



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

-versus -

SET Case No. 001-16

LEILA M. DE LIMA,
Protestee.
X- - - - -X

RESOLUTION NO. 16-31

Protestee Leila de Lima seeks a reconsideration of Resolution No. 16-20 dated 01 December 2016, praying that the same be set aside and in its stead, another resolution be issued dismissing Protestant Francis N. Tolentino's election protest for his failure to file the required Preliminary Conference Brief pursuant to Rules 43 and 41 and for his failure to comply with Rule 22 in relation to Rule 23 of the 2013 Rules of the Tribunal.

The dispositive portion of SET Resolution No. 16-20 dated 01 December 2016 reads:

"IN VIEW OF THE FOREGOING, this Tribunal resolves to REQUIRE the parties and their respective counsel to appear before the Tribunal at the Preliminary Conference to be held on 26 January 2017, at the Supreme Court *En Banc* Conference Room, 2nd Floor, Supreme Court Building I, Padre Faura, Manila at ten o'clock in the morning.

SO ORDERED."

Protestee de Lima posits that Protestant Tolentino himself was negligent. All the procedural maneuverings, the numerous motions filed to delay the proceedings, and the utter disregard of this Tribunal's Rules of Procedure were all

made at the behest and with the knowledge of Protestant Tolentino. Thus, the negligence of his former counsel should necessarily bind him and his engagement of a collaborating counsel must not be seen as vigilance on his part as it only seeks to remedy what he himself had brought about.

Protestee de Lima points to the fact that Protestant Tolentino is himself a lawyer and is thus presumed to know the law and the Rules. One cannot believe that all those procedural maneuverings as well as the substantial and procedural infractions were not known to Protestant Tolentino. Protestant Tolentino's previous actions, such as the verification of his Original Election Protest and his 27 July 2016 Amended Election Protest, both of which failed to comply with Rule 22 of the 2013 Rules of the Tribunal as well as his confirmation during the scheduled Preliminary Conference last 06 October 2016, that no preliminary conference brief was filed on his behalf, attest to the fact that he was aware of all attendant circumstances. To be aware is to share in the negligence of his counsel.

Protestee de Lima stressed that the case of *Henry Ong Lay Hin vs. Court of Appeals (2nd Division), Hon. Gabriel T. Ingles as Presiding Judge of RTC Branch 58, Cebu City, and the People of the Philippines*, G.R. No. 19172, 26 January 2015, does not squarely apply because Protestant Tolentino was himself negligent, and his negligence was aggravated by the fact that he is himself a lawyer who is rightly expected to know that Rules of Procedure are not to be belittled or ignored and that it should instead be followed and obeyed absent very compelling reasons justifying deviation from it.

Moreover, Protestee de Lima states that the bare invocation of "the interest of substantial justice" will not automatically compel the Tribunal to suspend procedural rules since the rules may be relaxed only in "exceptionally meritorious cases."¹ There is likewise no valid justification for Protestant Tolentino and his counsel in not filing the Preliminary Conference Brief when it fell due. Consequently, the doctrine of binding agency between counsel and client should operate against him.

¹ *Bank of America, NT & SA v. Gerochi*, 230 SCRA 9, February 10, 1994.

Furthermore, Protestee de Lima argues that Protestant Tolentino's Election Protest should be dismissed outright for being insufficient in form and substance and this Tribunal is without jurisdiction to take cognizance of the Protest because Protestant Tolentino has twice failed to specify with clarity the total number of contested precincts per municipality or city that he is protesting and the precinct number and location of the contested precincts with reference to the 2016 Project of Precincts.

Protestee de Lima states that the allegations in Protestant Tolentino's protest fail to show sufficient specificity. He is unable to identify the particular precincts where fraud or irregularities occurred and the number of votes garnered by the parties concerned and even by each candidate in each precinct. The Rules therefore warrants the summary dismissal of the Amended Protest in accordance with Rule 23 of the 2013 Rules of the SET.

Acting on Protestee de Lima's *Motion for Reconsideration*, the Executive Committee of the Tribunal issued on 09 January 2017 SET Resolution No. 16-24, requiring counsel for Protestant Tolentino to comment on the said *Motion* within five (5) days from receipt of Resolution No. 16-24.

On 17 January 2017, Protestant Tolentino filed his *Comment/Opposition* to Protestee De Lima's *Motion for Reconsideration* dated 27 December 2016, praying that the same be denied for utter lack of merit.

Protestant Tolentino claims that Protestee de Lima's contentions are baseless, misleading and are mere rehash, which do not warrant this Tribunal's consideration.

Protestant Tolentino points out that Protestee de Lima herself admits that Protestant Tolentino's former lead counsel was grossly and inexcusably negligent; erroneously concludes that as a lawyer, Protestant Tolentino cannot sever himself from the gross and inexcusable negligence of his counsel; and did not likewise refute the Tribunal's finding that Protestant Tolentino's failure to timely file his preliminary conference brief was due to the gross negligence and/or lack of

familiarity of electoral rules and proceedings of his former lead counsel, Ho & Uy Law Firm.

According to Protestant Tolentino, the diligence required from him in this case is to keep himself updated with the status of his electoral protest. Being the prudent litigant that he is, he kept himself well-informed of the development of this case and likewise promptly took action by hiring a collaborating counsel when he learned of his former lead counsel's gross negligence.

To follow Protestee de Lima's logic that a lawyer-client-principal must likewise be bound by the gross negligence of his lawyer-agent undermines the highly fiduciary character of a client-lawyer relationship. It is tantamount to punishing the lawyer-client-principal for reposing his utmost trust and confidence on his counsel, which is the ordinary and most basic thing litigants do.

Protestant Tolentino concludes that considering that there was no negligence on his part, the gross negligence of his former counsel in belatedly filing his preliminary conference brief should not bind him, especially when doing so would deprive him not only of his cause but also the Filipino electorate of their true will.

With respect to the issue of insufficiency in form and substance of his *Amended Election Protest* dated 27 July 2016, Protestant Tolentino submits that this issue had already been laid to rest when the Tribunal admitted the same in its Resolution No. 16-04 dated 28 July 2016, which was again confirmed in its Resolution No. 16-07 dated 8 September 2016.

In resolving the *Motion for Reconsideration*, we revisit the duties and responsibilities of a client under the Doctrine of Binding Agency as well as the exceptions to the doctrine, as enunciated by the Supreme Court in several cases.

In the case of *Henry Ong Lay Hin vs. Court of Appeals et. al.*, G.R. No. 19172, January 26, 2015, the Honorable Supreme Court stated, thus:

“Hiring legal counsel does not relieve litigants of their duty to ‘monitor the status of [their] case[s],’ especially if their cases are taking an ‘unreasonably long time’ to be resolved.”²

The High Court continued:

“The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

“Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

“This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.

“But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

“Thus, in *Bejarasco, Jr. v. People*, this court reiterated:

“For the exception to apply . . . the gross negligence should not be accompanied by the client’s own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

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² Emphasis and underscoring supplied.

“This court rejected Peter Bejarasco, Jr.’s argument, ruling that ‘[i]t is the client’s duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case.’ [T]o merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.”³

In the case of *Melchor L. Laguna vs. Court of Appeals and People of the Philippines*, G.R. No. 173390, June 27, 2012, the Supreme Court ruled as follows:

“It is the client’s duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.”

In *Tan v. Court of Appeals*, 524 Phil. 752, 760-761 (2006), the Court explained:

“As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care which an ordinarily prudent man bestows upon his business.” (Emphasis and underscoring supplied.)

In sum, the duties and responsibilities required from a client are as follows:

1. Hiring legal counsel does not relieve litigants of their duty to monitor the status of their case[s];
2. Finding good counsel is also the responsibility of the client especially when he or she can afford to do so;
3. The gross negligence should not be accompanied by the client’s own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case;

³ Emphasis and underscoring supplied.

4. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; and
5. It is the client's duty to exercise that standard of care which an ordinarily prudent man bestows upon his business.

On the other hand, the additional requirements before the exception to the doctrine may be allowed are as follows:

1. The due process rights of the client were violated;
2. The client was so maliciously deprived of information that he or she could not have acted to protect his or her interests; and
3. For the client to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.

We do not subscribe to Protestee de Lima's assessment that Protestant Tolentino was likewise negligent. Protestant Tolentino took positive steps to protect his interest when he hired the services of collaborating counsel. He was not remiss in his responsibility to employ the services of another counsel the moment he felt dissatisfied with the services being performed by his former counsel.

As to the allegation of Protestee de Lima that Protestant Tolentino is in fact a lawyer and is thus presumed to know the law and the Rules, we observe that settled jurisprudence does not distinguish between an ordinary client and a client who happens to be a lawyer. Jurisprudence does not impose any additional obligation on the part of a client who is a lawyer by profession and neither should we. The diligence which is required from a client is to exercise that standard of care which an ordinarily prudent man bestows upon his business; that is, ordinary diligence. Thus, as the legal maxim goes, *ubi lex non distinguit nec nos distinguere debemus* (when the law does not distinguish, we must not distinguish).

We agree with Protestee de Lima's proposition that the bare invocation of "the interest of substantial justice" will not automatically compel this Tribunal to suspend procedural rules since the rules may be relaxed only in "exceptionally meritorious cases." When this Tribunal resolved to continue with the proceedings at bar despite the failure of Protestant Tolentino to file his preliminary conference brief on time, to the mind of the Tribunal, "the interest of substantial justice" to be subserved by such continuation is true, real and legitimate. The ruling was made "in adherence to the Tribunal's mission, to give Protestant his day in court to prove his case not only to uphold his own interest but to ascertain and uphold the true will of the electorate."

The issue on the insufficiency in form and substance of the *Original* and *Amended Election Protest*, was resolved in SET Resolution No. 16-10 dated 29 September 2016 wherein Protestee De Lima was directed to include in her Preliminary Conference Brief her intention to set for hearing or oral arguments before the Tribunal the Special and Affirmative Defenses raised in her Answer dated 29 July 2016.

IN VIEW OF THE FOREGOING, the *Motion for Reconsideration* (of Resolution No. 16-20) of Protestee Leila de Lima dated 27 December 2016 is hereby **DENIED** for lack of merit.

SO ORDERED.

26 January 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member


LUCAS P. BERSAMIN
Associate Justice
Member


CYNTHIA A. VILLAR
Senator
Member

GRACE L. POE
Senator
Member


MA. LOURDES "NANCY" S. BINAY
Senator
Member


RICHARD J. GORDON
Senator
Member


FRANKLIN M. DRILON
Senator
Member

ANTONIO "SONNY" F. TRILLANES IV
Senator
Member