

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SECOND DIVISION

JEANE CATHERINE NAPOLES, CTA Case No. 9354

Petitioner,

Members:

-versus-

CASTAÑEDA, JR., *Chairperson*

CASANOVA, and

COMMISSIONER OF INTERNAL REVENUE,

MANAHAN, JJ.

Respondent.

Promulgated:

JUN 21 2017

4:05 pm 

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R E S O L U T I O N

For resolution is petitioner's "Motion for New Trial *Ad Cautelam* filed on May 5, 2017 (Re: Resolution dated April 10, 2017) with respondent's Opposition filed on June 5, 2017. A "Second Motion for New Trial *Ad Cautelam*" was subsequently filed by petitioner on June 13, 2017 which will also be resolved by this Court in this Resolution.

In the first "Motion for New Trial *Ad Cautelam*" filed on May 5, 2017, petitioner seeks for a new trial on the ground that the mistake and excusable negligence of her duly authorized representative, who at the time was at the vicinity of the Court premises, failed to appear during the scheduled pre-trial conference. As a result of the non-appearance of counsel, the Court dismissed the Petition for Review which was followed by a confirmatory Order dated February 16, 2016, a portion of which is quoted below:

“Upon motion of respondent’s counsels, on the ground that the pre-trial of this case was reset several times at the instance of petitioner’s counsel, and for failure of petitioner’s counsel to appear at today’s pre-trial despite notice, the case in caption is hereby DISMISSED, without prejudice (Section 5, Rule 18 of the 1997 Rules of Civil Procedure, as amended).”

Petitioner filed a “Motion for Reconsideration” (Re: The above Order dated February 16, 2017) which was denied by this Court in a Resolution dated April 10, 2017.

In the instant motion, petitioner asserts that the mistake and excusable negligence of her counsel is of such a nature that ordinary prudence could not have guarded against and will work to the prejudice of her rights and cause of action.

In his Opposition to petitioner’s “Motion for New Trial *Ad Cautelam*”, respondent submits that said motion is effectively a second “Motion for Reconsideration” which is prohibited under Section 5, Rule 37 of the Rules of Court. Respondent also assails the grounds relied upon by the petitioner for a new trial as being bereft of factual and legal bases.

RULING OF THIS COURT

The Court finds no merit in petitioner’s “Motion for New Trial *Ad Cautelam*”

An analysis of the arguments propounded by the petitioner in her motion convincingly shows that these are mere repetitions of the arguments raised in her first “Motion for Reconsideration” filed via courier on March 6, 2017 and which were sufficiently discussed and resolved by this Court in the Resolution dated April 10, 2017. Nevertheless, we are constrained to address the justifications submitted by petitioner for a new trial under Section 1 of Rule 37 as this is the relief sought for in the instant motion.

The Court finds the grounds used by petitioner for a new trial without legal basis.

Section 1 (a) of Rule 37 of the Rules of Court reads as follows:

Rule 37

Section 1. Grounds of and period for filing motion for new trial or reconsideration. – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights

Petitioner attributes the non-appearance of counsel during the pre-trial conference to the latter's mistake and excusable negligence.

We are not convinced.

Primarily, it has often been reiterated by the Supreme Court that a client is bound by his counsel's conduct, negligence and mistake in handling a case.¹ Now for such alleged negligence and mistake of counsel to warrant a new trial is another matter to consider altogether in the light of the attendant circumstances of this case as it relates to relevant rules and jurisprudence.

Black's Law Dictionary defines "mistake" as some unintentional act, omission or error arising from ignorance, surprise, imposition or misplaced confidence. As for "excusable negligence", the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. CIR*², ruled that under Section 1 of Rule 37 of the Rules of Court, negligence to be "excusable" must be one which ordinary diligence and prudence could not have guarded against.

¹ Romeo Samonte vs. S. F. Naguiat, Inc., G.R. No. 165544, October 2, 2009.

² G.R. Nos. 141104 and 148763, June 8, 2007.

In the case before us, we find that the failure of petitioner's counsel to appear during the scheduled pre-trial conference does not constitute as a "mistake" or "excusable negligence" as these terms are defined above. It is clear from this Court's Resolution dated April 10, 2017 that counsel failed to appear during the scheduled hearing despite due notice and after several requests for postponements which the Court obligingly granted. We succinctly stated in our Resolution that the wide latitude and flexibility accorded by this Court to petitioner's counsel should, at the very least, given the petitioner a mindful attitude to ensure the attendance of counsel during the hearing set on February 16, 2017. Only ordinary diligence and prudence are required to make the necessary preparations to ensure the prompt attendance in a court's scheduled hearing. It is hard to believe that it would entail extraordinary diligence for a counsel to appear at the date and time set by the Court several days before the schedule.

The aforecited *Atlas* case is instructive in that it narrates in detail the relationship between client and counsel and the effects of mistakes and negligence committed by the latter, and we quote:

Under Section 1, Rule 37 of the Revised Rules of Court, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client. To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative and subject to re-opening by the mere subterfuge of replacing counsel. What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.

"xxx xxx xxx It has been held time and again that blunders and mistakes made in the conduct of proceedings in the trial court as a result of the ignorance, inexperience or incompetence of counsel do not qualify as a ground for new trial. If such were to be admitted as valid reasons for re-opening cases, there would never be an end to litigation so long as a new counsel could be employed to allege and show that prior counsel had not been sufficiently diligent, experienced or learned."

The Supreme Court in the same *Atlas* case continued to elucidate on the conditions before a new trial on the ground of mistake or excusable negligence may be granted, thus:

"Besides, litigation is not a "trial and error" proceeding. *A party who moves for a new trial on the ground of mistake must show*

that ordinary prudence could not have guarded against it. A new trial is not a refuge of the obstinate." (Italics ours).

Stripped of its grounds to justify a new trial, the motion of the petitioner can be classified as a mere second Motion for Reconsideration which is a prohibited pleading under Section 2 of Rule 52 of the Rules of Court which states:

Rule 52

Section 2. Second Motion for Reconsideration. – No second motion for reconsideration of a judgment or final resolution shall be entertained."

The rationale on the prohibition against second motions for reconsideration has been explained in a case decided by the Supreme Court³ in this way:

"This prohibition is justified by public policy which demands that at the risk of occasional errors, judgments of courts must become final at some definite time fixed by law."

And so must our Resolution denying the Motion for Reconsideration.

As to the "Second Motion for New Trial *Ad Cautelam*" filed by petitioner on June 13, 2017 on the ground of newly discovered evidence, this Court finds that the same has no legal leg to stand on as no evidence has yet been offered because the trial has not even started due to the several postponements that have characterized the proceedings of this case. Section 1 (b) of Rule 37 provides as follows:

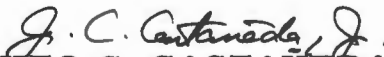
"(b) Newly discovered evidence which he could not, with reasonable diligence, *have discovered and produced at the trial*, and which if presented would probably alter the result." (italics ours).

WHEREFORE, premises considered, the "*Motion for New*

³ Dinglasan vs, Court of Appeals, G.R. No. 145420, September 19, 2006.

Trial *Ad Cautelam* and the “Second Motion for New Trial *Ad Cautelam*” filed by petitioner are hereby **DENIED** for lack of merit.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
CAESAR A. CASANOVA
Associate Justice


CATHERINE T. MANAHAN
Associate Justice