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FIRST DIVISION

[G.R. No. 137592. December 12, 2001]

ANG MGA KAANIB SA IGLESIA NG DIOS KAY KRISTO HESUS, H.S.K. SA BANSANG PILIPINAS, INC. *petitioner, vs.* IGLESIA NG DIOS KAY KRISTO JESUS, HALIGI AT SUHAY NG KATOTOHANAN, *respondent.*

SYNOPSIS

When Soriano, *et al.* registered the corporate name of petitioner corporation, respondent corporation filed a petition before the SEC for the change of petitioner's corporate name on the ground that the same causes confusion among their members and the public. Petitioner filed a motion to dismiss the petition but the motion was denied. Thereafter, for failure to file an answer, petitioner was declared in default and later, the SEC rendered a decision ordering petitioner to change its corporate name.

Petitioner alleged that it was deprived of its day in court because its counsel neglected to file an answer to the petition after their motion to dismiss was denied in the SEC. The Court, however, noted that when petitioner was declared in default, their counsel moved for reconsideration. And after judgment by default was rendered against petitioner, their counsel filed a motion for extension of time to appeal/file a motion for reconsideration. Thereafter, petitioner's counsel also filed a motion to set aside the decision. Hence, petitioner's counsel is guilty only of simple negligence that binds the client. At any rate, the SEC can de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion.

SYLLABUS

1. LEGAL ETHICS; NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT; EXCEPTION; NOT PRESENT IN CASE AT BAR. — As a general rule, the negligence of counsel binds the client. This is based on the rule that any act performed by a lawyer

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within the scope of his general or implied authority is regarded as an act of his client. An exception to the foregoing is where the reckless or gross negligence of the counsel deprives the client of due process of law. Said exception, however, does not obtain in the present case. Atty. Garaygay filed before the SEC a motion to dismiss on the ground of lack of cause of action. When his client was declared in default for failure to file an answer, Atty. Garaygay moved for reconsideration and lifting of the order of default. After judgment by default was rendered against petitioner corporation, Atty. Garaygay filed a motion for extension of time to appeal/motion for reconsideration, and thereafter a motion to set aside the decision. Evidently, Atty. Garaygay was only guilty of simple negligence. Although he failed to file an answer that led to the rendition of a judgment by default against petitioner, his efforts were palpably real, albeit bereft of zeal.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ISSUE OF PRESCRIPTION RAISED FOR THE FIRST TIME IN THE COURT OF APPEALS, NOT TENABLE.** — The issue of prescription, which petitioner raised for the first time on appeal to the Court of Appeals, is untenable. Its failure to raise prescription before the SEC can only be construed as a waiver of that defense.

3. **COMMERCIAL LAW; CORPORATION; SECURITIES AND EXCHANGE COMMISSION AUTHORITY TO DE-REGISTER CORPORATE NAMES.** — The SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public. Parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a nonprofit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name. The wholesale appropriation by petitioner of respondent's corporate name cannot find justification under the generic word rule. We agree with the Court of Appeals' conclusion that a contrary ruling would encourage other corporations to adopt verbatim and register

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an existing and protected corporate name, to the detriment of the public. The fact that there are other non-stock religious societies or corporations using the names Church of the Living God, Inc., Church of God Jesus Christ the Son of God the Head, Church of God in Christ & By the Holy Spirit, and other similar names, is of no consequence. It does not authorize the use by petitioner of the essential and distinguishing feature of respondent's registered and protected corporate name.

4. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RELIGIOUS FREEDOM; NOT VIOLATED WHEN THE SEC ORDERED THE CHANGE OF NAME OF A RELIGIOUS CORPORATION.** — Certainly, ordering petitioner to change its corporate name is not a violation of its constitutionally guaranteed right to religious freedom. In so doing, the SEC merely compelled petitioner to abide by one of the SEC guidelines in the approval of partnership and corporate names, namely its undertaking to manifest its willingness to change its corporate name in the event another person, firm, or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it.

APPEARANCES OF COUNSEL

Algarra & Miranda and *Fernandez Adaza Law Firm* for petitioner.

Benedicto M. Acosta for private respondent.

DECISION

YNARES-SANTIAGO, *J.*:

This is a petition for review assailing the Decision dated October 7, 1997[1] and the Resolution dated February 16, 1999[2] of the Court of Appeals in CA-G.R. SP No. 40933, which affirmed the Decision of the Securities and Exchange and Commission (SEC) in SEC-AC No. 539.[3]

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[1] *Rollo*, pp. 57-68; penned Mr. Justice Cancio C. Garcia and concurred in by Mesdames Justices Delilah Vidallion-Magtolis and Marina L. Buzon.

[2] *Ibid.*, pp. 54-55.

[3] *Ibid.*, pp. 70-73.

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Respondent *Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan* (Church of God in Christ Jesus, the Pillar and Ground of Truth),[4] is a non-stock religious society or corporation registered in 1936. Sometime in 1976, one Eliseo Soriano and several other members of respondent corporation disassociated themselves from the latter and succeeded in registering on March 30, 1977 a new non-stock religious society or corporation, named *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan.*

On July 16, 1979, respondent corporation filed with the SEC a petition to compel the *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan* to change its corporate name, which petition was docketed as SEC Case No. 1774. On May 4, 1988, the SEC rendered judgment in favor of respondent, ordering the *Iglesia ng Dios Kay Kristo Hesus, Haligi at Saligan ng Katotohanan* to change its corporate name to another name that is not similar or identical to any name already used by a corporation, partnership or association registered with the Commission.[5] No appeal was taken from said decision.

It appears that during the pendency of SEC Case No. 1774, Soriano, *et al.*, caused the registration on April 25, 1980 of petitioner corporation, *Ang Mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K., sa Bansang Pilipinas.* The acronym "H.S.K." stands for *Haligi at Saligan ng Katotohanan.*[6]

On March 2, 1994, respondent corporation filed before the SEC a petition, docketed as SEC Case No. 03-94-4704, praying that petitioner be compelled to change its corporate name and be barred from using the same or similar name on the ground that the same causes confusion among their members as well as the public.

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[4] Official English translation; see *Rollo*, p. 252.

[5] *Rollo*, pp. 419-424.

[6] *Ibid.*, p. 430.

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Petitioner filed a motion to dismiss on the ground of lack of cause of action. The motion to dismiss was denied. Thereafter, for failure to file an answer, petitioner was declared in default and respondent was allowed to present its evidence *ex parte*.

On November 20, 1995, the SEC rendered a decision ordering petitioner to change its corporate name. The dispositive portion thereof reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of the petitioner (respondent herein).

Respondent *Mga Kaanib sa Iglesia ng Dios Kay Kristo Jesus (sic), H.S.K. sa Bansang Pilipinas* (petitioner herein) is hereby *MANDATED* to change its corporate name to another *not deceptively similar or identical to the same already used by the Petitioner,* any corporation, association, and/or partnership presently registered with the Commission.

Let a copy of this *Decision* be furnished the *Records Division* and the *Corporate and Legal Department [CLD]* of this Commission for their records, reference and/or for whatever requisite action, if any, to be undertaken at their end.

SO ORDERED.[7]

Petitioner appealed to the SEC *En Banc*, where its appeal was docketed as SEC-AC No. 539. In a decision dated March 4, 1996, the SEC *En Banc* affirmed the above decision, upon a finding that petitioner's corporate name was identical or confusingly or deceptively similar to that of respondent's corporate name.[8]

Petitioner filed a petition for review with the Court of Appeals. On October 7, 1997, the Court of Appeals rendered the assailed decision affirming the decision of the SEC *En Banc*. Petitioner's motion for reconsideration was denied by the Court of Appeals on February 16, 1992.

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[7] *Ibid.*, pp. 78-79.

[8] *Ibid.*, pp. 70-73.

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Hence, the instant petition for review, raising the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONER HAS NOT BEEN DEPRIVED OF ITS RIGHT TO PROCEDURAL DUE PROCESS, THE HONORABLE COURT OF APPEALS DISREGARDED THE JURISPRUDENCE APPLICABLE TO THE CASE AT BAR AND INSTEAD RELIED ON TOTALLY INAPPLICABLE JURISPRUDENCE.

II

THE HONORABLE COURT OF APPEALS ERRED IN ITS INTEPRETATION OF THE CIVIL CODE PROVISIONS ON EXTINCTIVE PRESCRIPTION, THEREBY RESULTING IN ITS FAILURE TO FIND THAT THE RESPONDENT'S RIGHT OF ACTION TO INSTITUTE THE SEC CASE HAS SINCE PRESCRIBED PRIOR TO ITS INSTITUTION.

III

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER AND PROPERLY APPLY THE EXCEPTIONS ESTABLISHED BY JURISPRUDENCE IN THE APPLICATION OF SECTION 18 OF THE CORPORATION CODE TO THE INSTANT CASE.

IV

THE HONORABLE COURT OF APPEALS FAILED TO PROPERLY APPRECIATE THE SCOPE OF THE CONSTITUTIONAL GUARANTEE ON RELIGIOUS FREEDOM, THEREBY FAILING TO APPLY THE SAME TO PROTECT PETITIONER'S RIGHTS.[9]

Invoking the case of *Legarda v. Court of Appeals*,[10] petitioner insists that the decision of the Court of Appeals and the SEC should be set aside because the negligence of its former counsel of record, Atty. Joaquin Garaygay, in failing to file an answer after its motion to dismiss was denied by the SEC, deprived them of their day in court.

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[9] *Ibid.*, pp. 18-19.

[10] 195 SCRA 418 [1991].

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The contention is without merit. As a general rule, the negligence of counsel binds the client. This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client.[11] An exception to the foregoing is where the reckless or gross negligence of the counsel deprives the client of due process of law.[12] Said exception, however, does not obtain in the present case.

In *Legarda v. Court of Appeals,* the effort of the counsel in defending his client's cause consisted in filing a motion for extension of time to file answer before the trial court. When his client was declared in default, the counsel did nothing and allowed the judgment by default to become final and executory. Upon the insistence of his client, the counsel filed a petition to annul the judgment with the Court of Appeals, which denied the petition, and again the counsel allowed the denial to become final and executory. This Court found the counsel grossly negligent and consequently declared as null and void the decision adverse to his client.

The factual antecedents of the case at bar are different. Atty. Garaygay filed before the SEC a motion to dismiss on the ground of lack of cause of action. When his client was declared in default for failure to file an answer, Atty. Garaygay moved for reconsideration and lifting of the order of default.[13] After judgment by default was rendered against petitioner corporation, Atty. Garaygay filed a motion for extension of time to appeal/motion for reconsideration, and thereafter a motion to set aside the decision.[14]

Evidently, Atty. Garaygay was only guilty of simple negligence. Although he failed to file an answer that led to the rendition

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[11] *Apex Mining, Inc. v. Court of Appeals, et al.,* 319 SCRA 456, 465 [1999].

[12] *Legarda v. Court of Appeals, supra.*

[13] *Rollo,* p. 75.

[14] *Ibid.,* p. 71.

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of a judgment by default against petitioner, his efforts were palpably real, albeit bereft of zeal.[15]

Likewise, the issue of prescription, which petitioner raised for the first time on appeal to the Court of Appeals, is untenable. Its failure to raise prescription before the SEC can only be construed as a waiver of that defense.[16] At any rate, the SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public.[17]

Section 18 of the Corporation Code provides:

Corporate Name. — No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or is contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name.

Corollary thereto, the pertinent portion of the SEC Guidelines on Corporate Names states:

(d) If the proposed name contains a word similar to a word already used as part of the firm name or style of a registered company, the proposed name must contain two other words different from the name of the company already registered;

Parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a nonprofit organization, if

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[15] *Salonga, et al., v. Court of Appeals, et al.*, 269 SCRA 534, 546 [1997].

[16] *Aldovino, et al., v. Alunan III, et al.*, 230 SCRA 825,833 [1994].

[17] R.E. Agpalo, *Comments on the Corporation Code of the Philippines*, 74, (Fifth Edition, 1993), citing *Universal Mills Corporation v. Universal Textile Mills, Inc.*, 78 SCRA 62 (1977).

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misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.[18]

Petitioner claims that it complied with the aforecited SEC guideline by adding not only two but eight words to their registered name, to wit: *"Ang Mga Kaanib"* and *"Sa Bansang Pilipinas, Inc.,"* which, petitioner argues, effectively distinguished it from respondent corporation.

The additional words *"Ang Mga Kaanib"* and *"Sa Bansang Pilipinas, Inc."* in petitioner's name are, as correctly observed by the SEC, merely descriptive of and also referring to the members, or *kaanib*, of respondent who are likewise residing in the Philippines. These words can hardly serve as an effective differentiating medium necessary to avoid confusion or difficulty in distinguishing petitioner from respondent. This is especially so, since both petitioner and respondent corporations are using the same acronym — H.S.K.;[19] not to mention the fact that both are espousing religious beliefs and operating in the same place. Parenthetically, it is well to mention that the acronym H.S.K. used by petitioner stands for *"Haligi at Saligan ng Katotohanan."*[20]

Then, too, the records reveal that in holding out their corporate name to the public, petitioner highlights the dominant words *"IGLESIA NG DIOS KAY KRISTO HESUS, HALIGI AT SALIGAN NG KATOTOHANAN,"* which is strikingly similar to respondent's corporate name, thus making it even more evident that the additional words *"Ang Mga Kaanib"* and *"Sa Bansang Pilipinas, Inc."*, are merely descriptive of and pertaining to the members of respondent corporation.[21]

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[18] *Philips Export B.V.V. Court of Appeals, et al.*, 206 SCRA 457, 467 [1992]; citing *American Gold Stars Mothers, Inc., National Gold Star Mothers, Inc.*, 89 App DC 269, 191 F 2d 488, 27 ALR 2d 948.

[19] *Rollo*, p. 292.

[20] *Ibid.*, p. 430.

[21] *Rollo*, pp. 487-491.

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Significantly, the only difference between the corporate names of petitioner and respondent are the words *SALIGAN* and *SUHAY*. These words are synonymous — both mean ground, foundation or support. Hence, this case is on all fours with *Universal Mills Corporation v. Universal Textile Mills, Inc.*,[22] where the Court ruled that the corporate names Universal Mills Corporation and Universal Textile Mills, Inc., are undisputably so similar that even under the test of "reasonable care and observation" confusion may arise.

Furthermore, the wholesale appropriation by petitioner of respondent's corporate name cannot find justification under the generic word rule. We agree with the Court of Appeals' conclusion that a contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.

The fact that there are other non-stock religious societies or corporations using the names Church of the Living God, Inc., Church of God Jesus Christ the Son of God the Head, Church of God in Christ & By the Holy Spirit, and other similar names, is of no consequence. It does not authorize the use by petitioner of the essential and distinguishing feature of respondent's registered and protected corporate name.[23]

We need not belabor the fourth issue raised by petitioner. Certainly, ordering petitioner to change its corporate name is not a violation of its constitutionally guaranteed right to religious freedom. In so doing, the SEC merely compelled petitioner to abide by one of the SEC guidelines in the approval of partnership and corporate names, namely its undertaking to manifest its willingness to change its corporate name in the event another person, firm, or entity has acquired a prior right to the use of the said firm name or one deceptively or confusingly similar to it.

WHEREFORE, in view of all the foregoing, the instant petition for review is *DENIED*. The appealed decision of the Court of Appeals is *AFFIRMED in toto*.

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[22] *Supra.*

[23] *Philips Export B.V.V. Court of Appeals, et al.,supra.*

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SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, and *Pardo, JJ.,* concur.

Puno, J., on official leave.

FIRST DIVISION

[G.R. Nos. 147933-34. December 12, 2001]

PUBLIC ESTATES AUTHORITY, *petitioner, vs.* **ELPIDIO S. UY, doing business under the name and style EDISON DEVELOPMENT & CONSTRUCTION, AND THE COURT OF APPEALS,** *respondents.*

SYNOPSIS

The Public Estates Authority (PEA) was tasked to develop a memorial park in Fort Bonifacio, Taguig, Metro Manila. It executed a contract with respondent who undertook to perform all landscaping works therein within 450 days. The period, however, was extended to 693 days caused by PEA's inability to deliver part of the property for landscaping. Respondent then instituted an action for damages against PEA in the Construction Industry Arbitration Commission (CIAC) and it ruled in favor of respondent. Both parties appealed to the Court of Appeals and both petitions were dismissed.

PEA assailed the dismissal of its petition by the Court of Appeals based on technicality; its pleadings were signed by an OIC who did not appear to be authorized. The Court, however, ruled that petitioner is a government corporation and can only act through its duly authorized representatives. PEA also alleged irregularity in the actions taken on its petition but the Court found the same without basis. On the counterclaim of PEA for the unrecouped balance on the advance payment it made to respondent, the CIAC correctly deferred determination thereof as the amount will be determined by deducting from