

G.A. MACHINERIES, INC., PLAINTIFF AND APPELLEE, VS. FERNANDO JANUTO, DEFENDANT AND APPELLANT.*G.R. No. L-27958. March 31, 1973*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/54a86d6334f7/>**FERNANDO, J.:**

Defendant Fernando Januto would, in this appeal from a decision of Judge Juan de Borja, make capital of an alleged denial of due process, the judgment sought to be executed, according to him, having been the result of a trial of which no notice was personally served on him. It is understandable why the lower court decided as it did, for such an omission was not to be visited with fatal consequences, there being proof of his being represented by counsel. What is more, Judge de Borja was equally on solid ground when, as he pointed out, such defense came rather late, as no such objection was interposed to a writ of execution previously issued on the same decision, one moreover partially satisfied, resulting in his personal property having been levied upon and sold at public auction. Then came this action as such judgment was not fully satisfied. It would thus appear that appellant's case does rest on a shaky foundation. Affirmance, rather than reversal, is indicated.

For a proper understanding of the decision now on appeal, a restatement of the complaint is appropriate. Thus: "That plaintiff is a corporation duly organized and existing under and by virtue of Philippine laws with principal office address at Marulas, Valenzuela, Bulacan; while defendant is of legal age, married and residing at Nor-Ala, Cotabato where he may be served with summons; That on January 30, 1958, the Honorable Court of First Instance of Manila, Branch X, in Civil Case No. 32783 rendered a judgment in favor of plaintiff and against the defendant, a copy of which was received by plaintiff on February 11, 1958 * * *, the dispositive portion of which, we quote hereunder: '[Wherefore] judgment is hereby rendered in favor of the plaintiff and against the defendant sentencing the latter to pay the former the sum of P8,486.22 with interest thereon of 8% per annum from March 9, 1956 until fully paid, plus 25% of the amount due as attorney's fees and costs of collection. [So ordered]'; That said decision has not yet been barred by the statute of limitation although the five (5) year period to execute the same by a mere motion in accordance with Section 6 of Rule 39 has already elapsed; That said decision has been partially satisfied but the amount of P9,863.15 has remained unpaid and demandable; That defendant has failed and refused and still fails and refuses to pay said adjudged pending amount of P9,863.15 to plaintiff despite demands by the latter, as a consequence of which, the latter was compelled to hire the services of counsel with whom it has bound itself to pay the amount of P2,000.00 as attorney's fees and expenses of collection." [1] Defendant, in his answer, would seek to deny liability primarily on his absence of knowledge or information sufficient to form a belief, but would, in addition; interpose as special defense the following: "That the Plaintiff's complaint states no cause of action because granting for the sake of argument that there was actually such a decision * * *, nevertheless, Defendant could not be bound by any such decision as he has never received personally a copy of same and for this reason therefor such decision has never become effective as to bind defendant from the very beginning; * * *." [2] Such a defense was properly rejected in the decision now on appeal in these words: "While the interest of the defendant was undoubtedly prejudiced by his failure to receive notices of the court proceedings, his recourse was to raise that question in the same proceedings in the Court of First Instance of Manila. The fact is that he failed to do so,

even after the writ of execution was issued and his personal properties actually levied upon and sold at public auction. This Court has no authority to inquire into the validity of the proceedings in the original case other than the question of want of jurisdiction, which has not been raised in the present case." [3]

From a recital of the facts, the correctness of the decision appears to be evident. Hence, as noted at the beginning of this opinion, this appeal cannot prosper.

- This is not to deny that appellant would be entitled to invoke the protection of due process if he could validly show that he was not given his day in court. Nothing is better settled than that the right to be heard is an indispensable element of such constitutional guarantee.[4] He would predicate such a grievance on the lack of personal notification as to the date of trial of the original action as a result of which came the decision which was the basis of the first writ of execution only partially satisfied. It is not unknown to him that once a party is represented by counsel, there is no need that he be personally informed of the proceedings in court. It is the lawyer retained by him, whose appearance is duly noted, to whom such notice is sent. That is equally indisputable. The doctrine was first announced in *Palad vs. Cui*, [5] a 1914 decision, the opinion being penned by Justice Moreland. So it has been since then. [6]

How did appellant, who had a counsel of record, seek to avoid the conclusive character of such a principle? This is how his brief would put it: "When the Court of First Instance of Manila allowed plaintiff-appellee to present its evidence ex-parte despite of having been notified by defendant-appellant's counsel of his withdrawal five days prior to the hearing, and without acting on such withdrawal, such allowance by the court had indeed deprived defendant-appellant's right of his day in court which is a violation of his fundamental right." [7] Plaintiff-appellee in turn, in its well-researched brief submitted by its counsel, Bengzon, Villegas and Zarraga, did show how unpersuasive is such a contention. Thus: "[Appellant] has erroneously assumed that Atty. Baclig's withdrawal as counsel of record for the defendant-appellant became immediately effective when the Court of First Instance of Manila received the latter's undated letter of withdrawal on January 25, 1968. Rule 127, Section 24 of the Old Rules of Court (now Rule 138, Section 26 of the New Rules) lays down the manner by which a lawyer can withdraw his appearance from any action: 'Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.' [Italics supplied]" [8] After setting forth that there may be instances where a withdrawal could be in accordance with law, appellee's brief continues in this wise: "In the case at bar, however, the withdrawal of defendant-appellant's counsel of record in Civil Case No. 32783 of the Court of First Instance of Manila was defective as well as ineffective. Atty. Baclig simply backed out without getting defendant-appellant's written consent or express leave from the court. The letter sent by Atty. Baclig addressed to the Clerk of Court of the Court of First Instance of Manila does not contain the written consent of defendant-appellant. There was no court order allowing Atty. Baclig to withdraw his appearance. Thus, when the trial of Civil Case No. 32783 was called on January 30, 1958 as previously scheduled, Atty. Baclig was still the attorney of record of defendant-appellant. His request for withdrawal had not yet been acted upon favorably or unfavorably, as even defendant-appellant admits in his brief * * *. And Atty. Baclig could not — rather, should not — have presumed that the Court of First Instance of Manila would grant his request to withdraw. Hence, it was his duty to attend the hearing on January 30, 1958 as counsel of record for defendant Fernando Januto. His failure to do so constitutes inexcusable negligence, ultimately imputable to defendant-appellant, his client." [9] In support of such a view, *Guanzon vs. Aragon* [10] was cited by appellee. As was there stated in the opinion of the Court penned by Justice Bautista Angelo: "Indeed, the claim of appellant's counsel that he failed to notify his client of the hearing because when appellant took from him the papers of the case to institute the mandamus case in the

Court of First Instance of Rizal he got the impression that appellant has already terminated their relation as attorney and client is untenable, for it runs counter to the mode prescribed in Section 24 of Rule 127 which provides that an attorney may only retire from a case either by the written consent of his client or by permission of the court, after due notice and hearing, in which event the attorney should see to it that the name of the new attorney be recorded in the case. Verily, failure to observe such procedure cannot be considered as excusable negligence on the part of counsel, much less a basis for relief within the meaning of Rule 38." [11] Such a view still prevails. [12]

It would thus clearly appear that the lone assignment of error imputed to the lower court in upholding appellee's suit and thus sustaining the validity and finality of the original judgment of the Court of First Instance of Manila, as a result of which the writ of execution had previously been issued, is clearly devoid of merit.

- There is, moreover, an additional support for the decision of Judge de Borja. The judgment which appellant would now assail as having been rendered without his being given his day in court was promulgated on January 30, 1958 by the Court of First Instance of Manila. [13] As noted in the appealed decision, there was no effort on his part to raise this particular question even after a writ of execution has been issued, with his personal property thereafter levied upon and sold at public auction. [14] It was much too late, then, as held by Judge de Borja, to search for possible defects in the previous judgment thus rendered in the case tried in his sala. That was a matter that should have been earlier ventilated so that it could have been passed upon. This, appellant, for reasons known only to himself, failed to do. He was not without remedy, but he neglected to resort to it. For the prejudice to which he is now subjected — even on the assumption that there was some basis for the defense raised, which, as clearly demonstrated above, is far from being the case — is purely the result of his own inattention. If he were not even minded to take care of his own interest when the law gave him the opportunity to do so, he ought not to labor under a sense of grievance if it is now too late to raise such an issue. This is another manifestation of that well-known maxim in equity, *vigilantibus non dormientibus equitas subvenit*. [15]

- There is this further insuperable obstacle to the success of this appeal. The best that appellant could do is to file a six-page brief with, as above noted, a single assignment of error. The argument covering that portion supporting such alleged error covers only two and a half pages. An excerpt from a recent decision where the due process question was likewise raised, *Florendo vs. Florendo*, [16] appears to be relevant. Thus: "One more thing. Defendants-appellants submitted an eight-page brief. There was nothing in what they referred to as the exposition of the case and brief statement of facts that would in any wise show any right on their part to the land in controversy. When it came to their lone assignment of error, they merely contented themselves with the allegation that they did file a petition for relief within the reglementary period sufficient allegedly in form and substance under the governing procedural rules. Less than two pages of their far-from-extensive brief were devoted to such an assignment of error. It is noteworthy that their sole reliance was on the alleged failure of the lower court to abide by what they considered, albeit erroneously, to be the controlling procedural doctrine. Parenthetically, it may be observed that not one decision from this Court was cited in support of such an untenable plea." [17] The next paragraph of the opinion in *Florendo* likewise has pertinence. There it was noted that even assuming that a hearing could be granted appellants, they did not in any way intimate how they could justify their stand. As a result, it could be plausibly stated in such opinion: "It would be, therefore, both time-consuming as well as futile and would undoubtedly result in a denial of justice, if the lower court did indulge them by assenting to their unwarranted petition for relief. Fortunately, such was not the case. What the lower court did finds support no less in the controlling legal principles than in the interest of what is fair and what is just." [18] What was said then can, with equal reason, be said now. There is no legal justification for reversing Judge de Borja's decision.

WHEREFORE, the decision of the lower court of January 24, 1967 is affirmed. With costs against appellant.

Concepcion, CJ., Makalintal, Zaldivar, Ruiz Castro, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Teehankee, J., took no part.

[1] Complaint, Record on Appeal, 2-3.

[2] Answer, Ibid, 6.

[3] Decision of the lower court, Ibid, 14.

[4] Cf. Macabingkil vs. Yatco, L-23174, Sept. 18, 1967, 21 SCRA 150 citing United States vs. Ling Su Fan, 10 Phil. 104 (1908); El Banco Español-Filipino vs. Palanca, 37 Phil. 921 (1918); Lopez vs. Director of Lands, 47 Phil. 23 (1924); Tayzon vs. Ycasiano, 83 Phil. 921 (1949); Galang vs. Uytiepo, 92 Phil. 344 (1952); Sicat vs. Reyes, 100 Phil. 505 (1956); Cruzcosa vs. Concepcion, 101 Phil. 146 (1957); Hamoy vs. Batingolo, L-18119, Aug. 30, 1962, 5 SCRA 962.

[5] 28 Phil. 44. This case was cited with approval in Chainani vs. Tancinco, 90 Phil. 862 (1952) and Tolentino vs. Ongsiako, L-17938, April 30, 1963, 7 SCRA 1001.

[6] Cf. Ruedas vs. Wislizenus and Director of Lands, 45 Phil. 94 (1923); Esquivas vs. Sison, 61 Phil. 211 (1935); Mabuhay vs. Balleza, 72 Phil. 109 (1941); Notor vs. Daza, 76 Phil. 850 (1946); Perez vs. Ysip, 81 Phil. 218 (1948); Hernandez vs. Clapis, 87 Phil. 437 (1950); Chainani vs. Tancinco, 90 Phil. 862 (1952); Vilorio vs. Vilorio, 93 Phil. 15 (1953); Rodriguez vs. Montalban, 101 Phil. 612 (1957); Elli vs. Ditan, L-17444, June 30, 1962, 5 SCRA 503; Mata vs. Rita Legarda, Inc., L-18941, Jan. 31, 1963, 7 SCRA 227; Tolentino vs. Ongsiako, L-17938, April 30, 1963, 7 SCRA 1001; Palanca vs. The American Food Manufacturing Company, L-22822, Aug. 30, 1968, 24 SCRA 819; De Guzman, Jr. vs. Santos, L-22636, June 11, 1970, 33 SCRA 464.

[7] Brief for the Defendant-Appellant, 4.

[8] Brief for the Plaintiff-Appellee, 7-8.

[9] Ibid, 9-10.

[10] 107 Phil. 315 (1960).

[11] Ibid, 320.

[12] Cf. Valerio vs. Sec. of Agriculture, L-18587, April 23, 1963, 7 SCRA 719; Mina vs. Pacson, L-17828, Aug. 31, 1963, 8 SCRA 774; Ramos vs. Potenciano, L-19436, Nov. 29, 1963, 9 SCRA 589; Joven de Jesus vs. PNB, L-19299, Nov. 28, 1964, 12 SCRA 477; Manila Pest Control vs. WCC, L-27662, Oct. 29, 1968, 25 SCRA 700; Rivera vs. Vda. de Cruz, L-21545, Nov. 27, 1968, 26 SCRA 58; People vs. Tigulo, L-34334, May 12, 1972, 45 SCRA 1.

[13] Complaint, par. 2, Record on Appeal, 2.

[14] Decision, Ibid. 14.

[15] Cf. Vda. de Delima vs. Tio, L-27181, April 30, 1970, 32 SCRA 516.

[16] L-24982, March 28, 1969, 27 SCRA 432.

[17] Ibid, 437-438.

[18] Ibid, 438.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.