

**SALVACION FERIA VDA. DE POTENCIANO, PLAINTIFF AND
APPELLEE, VS. WILLIAM GRUENBERG, ET AL., DEFENDANTS,
WILLIAM GRUENBERG, DEFENDANT AND APPELLANT.**

G.R. No. L-16956. January 30, 1962

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9a3008cbd2c5/>

LABRADOR, J.:

The above-entitled case (No. 41493 CFI Manila) was instituted on September 21, 1959 to secure the enforcement of a judgment rendered by the same court in Civil Case No. 3996, Philippine National Bank vs. William Gruenberg et al., dated August 12, 1949. This last judgment sentences defendant William Gruenberg to pay to the plaintiff Philippine National Bank, as trustee of Mrs. Salvacion Feria Vda. de Potenciano, the total amount of P7,000 as unpaid rentals corresponding to the months of September and October 1947 of the Lotus Theatre, plus F500 as liquidated damages. After the overruling of a motion to dismiss on January 30, 1960, defendant William Gruenberg, on February 11, 1960, presented an answer denying, for lack of knowledge or information sufficient to form a belief, the existence of the trust agreement or the existence of a judgment rendered against him in Civil Case No. 3996. As affirmative and special defenses he alleged that he was represented by counsel who filed the necessary answer to the complaint; that said counsel filed a motion seeking permission of the court to withdraw as counsel of the defendant; that the defendant was not notified of the resolution of the court on his counsel's motion to withdraw as counsel; that the proceedings held in said Civil Case No. 3996 are null and void for lack of valid notice of hearing on the merits to him as defendant,

"(4) That proceedings held in Civil Case No. 3996 are null and void for lack of valid notice of hearing on the merits of the case to the herein defendant in accordance with law, and, consequently the judgment in question, rendered therein, likewise null and void and of no legal effect and force." (p. 26, Rec. on Appeal).

and that if the said proceedings were valid the decision has not become final, executory and enforceable for lack of proper and legal notice thereof to the defendant. Defendant also alleged that the action had already prescribed.

The court after hearing the case rendered judgment sentencing the defendants, under the terms and conditions mentioned in the judgment sought to be enforced, with legal interest from the date of the filing of the present complaint on the amounts due on the said judgment, plus costs.

On the issue as to whether or not there was notice of hearing given to defendant's counsel or himself, the court made the following findings:

"In Civil Case No. 3996, Philippine National Bank, trustee of Salvation Feria Vda. de Potenciano, vs. William Gruenberg, of which record this Court now takes judicial notice (1) Because anyway, the parties have invoked the proceedings in said case, (3 Moran, p. 31, 1952 Edition), defendants William Gruenberg and Jose Q. Tabora were represented by Atty. Delfin L. Gonzales; it was terminated on November 11, 1948, page 56 of the record, but Atty. Gonzales did not file any memorandum although he asked for time to do so, according to page 67 of the record; the Court ordered the defendants there to file their respective memoranda by order of

February 28, 1949, or else the case would be considered submitted for decision without benefit of memorandum, this order being on page 70 of the record; notice of this order was served on William Gruenberg thru his wife Mercedes, according to the back of page 41; On August 12, 1949, the Court of First Instance thru the Hon. Judge Rafael Dinglasan issued its decision as shown on page 75 of the record in the slid case; again the copy of the decision was sent not to Atty. Gonzales but to defendant William Gruenberg, and according to the back of page 77 it was served on August 21, 1949 upon Agustina Belleza, a maid of William Gruenberg, in both cases, the Sheriff made the return that he served copies of the decision and the order upon a person of sufficient discretion to receive the same; On October 4, 1949, the Court issued an order granting the motion for a writ of execution against William Gruenberg and copy of this order, according to the back of page 80, was served upon William Gruenberg thru Mercedes Lam, a person living in the residence of said defendant and with sufficient discretion to receive the same; this writ was not satisfied; * * *." (pp. 28-29, Record on Appeal.)

In addition to the above findings of the court we find that the trial of the case was terminated on November 11, 1948. Atty. Gonzales for the appellant must have appeared at the time of the trial because the court found that he (Atty. Gonzales) asked for time "to do so," meaning to file a memorandum. It is true that a motion to withdraw was filed by Atty. Gonzales on December 24, 1947, but the said motion to withdraw was denied by the court in its order of July 27, 1948 (Exh. "I-A" of the defendant). So that he must have continued to be present at the time of the trial, which was terminated on November 11, 1948. When the decision was rendered the same was served on Mrs. Gruenberg (plaintiff herein) on August 21, 1949.

The claim of defendant Gruenberg contained in his answer that defendant was not notified of the resolution for withdrawal and that there was no notice of the hearing on the merits of the case to him is without foundation both in fact and in law. At the time of the hearing Atty. Gonzales was still defendant's counsel because his motion to withdraw was denied. Notice of the hearing therefore must have been served upon said counsel. That he received notice and actually appeared at the hearing until its conclusion is shown by the fact that he even asked for time to file a memorandum, in accordance with the findings of the court below.

The decision also was served upon Gruenberg, the plaintiff herein, also in accordance with the rules. This is shown by Exhibits "I-C" and "I-E" of plaintiff and "I-B" of defendant.

In this court defendant-appellant claims that the judgment sought to be enforced is null and void for lack of valid notice of hearing of the case and of the rendition of said judgment, and that the action to enforce the judgment has already prescribed.

The facts stated in the decision of the court below and those set forth hereinabove, clearly show that plaintiff-appellant's counsel was notified, and appeared at the hearing of the case, and that defendant himself received a copy of the decision. His claim that the judgment is null and void for lack of notice to defendant or his counsel is without foundation in fact.

As to the second issue, we find that the judgment of the court dated August 12, 1949 was served on defendant-appellant Gruenberg on August 21, 1949 (Exhibits "I-C" and "I-E" of plaintiff and "I-B" of defendant). The right to enforce the judgment in the action started, therefore, on August 21, 1949, when defendant-appellant Gruenberg received copy of the decision. From said date, August 21, 1949 to the date of the presentation of the complaint on September 21, 1959, a period of only nine years and eleven months had passed. It should be noted that the judgment did not become final and effective until August 21, 1949, when a copy of the said decision was furnished the defendant-appellant Gruenberg or his counsel. The date of the decision is not the effective date from which the period of ten years is to be counted, because said decision cannot be considered as binding on the defendant or any party for that matter, until after he (said defendant) or any party or his counsel had been

furnished a copy thereof.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

AMENDED DECISION

February 27, 1962

LABRADOR, J.:

The judgment rendered by Us in the above-entitled case, promulgated on January 30, 1962, is hereby amended to read as follows:

The above-entitled case (No. 41493 CFI Manila) was instituted on September 21, 1959 to secure the enforcement of a judgment rendered by the same court in Civil Case No. 3996, Philippine National Bank vs. William Gruenberg, et al., dated August 12, 1949. This last judgment sentences defendant William Gruenberg to pay to the plaintiff Philippine National Bank, as trustee of Mrs. Salvacion Feria Vda. de Potenciano, the total amount of P7,000 as unpaid rentals corresponding to the months of September and October 1947 of the Lotus Theatre, plus P500 as liquidated damages. After the overruling of a motion to dismiss on January 30, 1960, defendant William Gruenberg, on February 11, 1960, presented an answer denying, for lack of knowledge or information sufficient to form a belief, the existence of the trust agreement or the existence of a judgment rendered against him in Civil Case No. 3996. As affirmative and special defenses he alleged that he was represented by counsel who filed the necessary answer to the complaint; that said counsel filed a motion seeking permission of the court to withdraw as counsel of the defendant; that the defendant was not notified of the resolution of the court on his counsel's motion to withdraw as counsel; that the proceedings held in said Civil Case No. 3996 are null and void for lack of valid notice of hearing on the merits to him as defendant,

"(4) That proceedings held in Civil Case No. 3996 are null and void for lack of valid notice of hearing on the merits of the case to the herein defendant in accordance with law, and, consequently the judgment in question, rendered therein, likewise null and void and of no legal effect and force." (p. 26. Rec. on Appeal).

and that if the said proceedings were valid the decision has not become final, executory and enforceable for lack of proper and legal notice thereof to the defendant. Defendant also alleged that the action had already prescribed.

The court after hearing the case rendered judgment sentencing the defendants, under the terms and conditions mentioned in the judgment sought to be enforced, with legal interest from the date of the filing of the present complaint on the amounts due on the said judgment, plus costs.

On the issue as to whether or not there was notice of hearing given to defendant's counsel or himself, the court made the following findings:

"In Civil Case No. 3996, Philippine National Bank, trustee of Salvacion Feria Vda. de Potenciano, vs. William Gruenberg, of which record this Court now takes judicial notice (1) Because anyway, the parties have invoked the proceedings in said case, (3 Moran, p. 31, 1952 Edition), defendants William Gruenberg and Jose Q. Tabora were represented by Atty. Delfin L. Gonzales; it was terminated on November 11, 1948, page 56 of the record, but Atty. Gonzales did not file any memorandum although he asked for time to do so, according to page 67 of the record; the Court ordered the defendants there to file their respective memoranda by order of February 28, 1949, or else the case would be considered submitted for decision without benefit of

memorandum, this order being on page 70 of the record; notice of this order was served on William Gruenberg thru his wife Mercedes, according to the back of page 41; on August 12, 1949, the court of First Instance thru the Hon. Judge Rafael Dinglasan issued its decision as shown on page 75 of the record in the said case; again the copy of the decision was sent not to Atty. Gonzales but to defendant William Gruenberg, and according to the back of page 77 it was served on August 21, 1949 upon Agustina Belleza, a maid of William Gruenberg, in both cases, the Sheriff made the return that he served copies of the decision and the order upon a person of sufficient discretion to receive the same; on October 4, 1949, the Court issued an order granting the motion for a writ of execution against William Gruenberg and copy of this order, according to the back of page 80, was served upon William Gruenberg thru Mercedes Lam, a person living in the residence of said defendant and with sufficient discretion to receive the same; this writ was not satisfied; * * *," (pp. 28-29. Record on Appeal)

In addition to the above findings of the court we find that the trial of the case was terminated on November 11, 1948. Atty. Gonzales for the appellant must have appeared at the time of the trial because the court found that he (Atty. Gonzales) asked for time "to do so," meaning to file a memorandum. It is true that a motion to withdraw was filed by Atty. Gonzales on December 24, 1947, but the said motion to withdraw was denied by the court in its order of July 27, 1948 (Exh. "I-A" of the defendant). So that he must have continued to be present at the time of the trial, which was terminated on November 11, 1948. When the decision was rendered the same was served on Mrs. Gruenberg (plaintiff herein) on August 21, 1949.

The claim of defendant Gruenberg contained in his answer that defendant was not notified of the resolution for withdrawal and that there was no notice of the hearing on the merits of the case to him is without foundation both in fact and in law. At the time of the hearing Atty. Gonzales was still defendant's counsel because his motion to withdraw was denied. Notice of the hearing therefore must have been served upon said counsel. That he received notice and actually appeared at the hearing until its conclusion is shown by the fact that he even asked for time to file a memorandum, in accordance with the findings of the court below.

The decision also was served upon Gruenberg, the plaintiff herein, also in accordance with the rules. This is shown by Exhibits "I-C" and "I-E" of plaintiff and "I-B" of defendant.

In this court defendant-appellant claims that the judgment sought to be enforced is null and void for lack of valid notice of hearing of the case and of the rendition of said judgment, and that the action to enforce the judgment has already prescribed.

The facts stated in the decision of the court below and those set forth hereinabove, clearly show that plaintiff-appellant's counsel was notified, and appeared at the hearing of the case, and that defendant himself received a copy of the decision. His claim that the judgment is null and void for lack of notice to defendant or his counsel is without foundation in fact.

As to the second issue, we find that the judgment of the court dated August 12, 1949 (Exhs. "I-C", "I-B" and "I-E" of defendant). The right to enforce the judgment in the action began to accrue, therefore, from the date of the expiration of the period of 30 days from August 21, 1949, this latter date being the date when the defendant-appellant Gruenberg received copy of the decision. The period within which defendant-appellant Gruenberg could appeal was perfected in accordance with Section 1 of Rule 39 of the Rules of Court. The judgment, therefore, became final and executory on September 21, 1949, which is the 31st day from August 22, 1949.

The action having accrued before the effectivity of the Civil Code of the Philippines, the provisions of the Code of Civil Procedure apply, in accordance with the following provision of law:

"Sec. 43. Other Civil Actions.—How Limited.—Civil Actions other than for the recovery of real property can

only be brought within the following periods after the right of action accrues:

"1. Within ten years: An action upon an agreement, contract, or promise in writing, or upon the judgment or decree of a court; * * *."

In accordance with the above section the last day within which the action to enforce the judgment was on September 20, 1959, but that day was a Sunday, so the action was properly filed the next day, September 21, 1959. Neither the date of the decision, nor the date of the service thereof, determines the time from which the action to enforce the judgment may be brought, but the day when the judgment became final and executory, because the action would not accrue until the same could be enforced in a court of justice.

Wherefore, in view of the foregoing, the decision appealed from is hereby affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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.