

**ELOISA, CARLOS, JR., ARCHIMEDES, CAROLINE, AND MA. CARLOTA,
ALL SURNAMED ARAMBULO, PETITIONERS, VS. COURT OF APPEALS
AND ENGR. DANILO G. FERRERAS, RESPONDENTS.**

G.R. No. 105818. September 17, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners urge us to review and set aside the Resolution of the respondent Court of Appeals of 11 November 1991[1] in CA-G.R. CV No. 32348[2] which, for failure to pay the docket fee, considered their appeal "ABANDONED and DISMISSED, pursuant to Section 1(d), Rule 50, Rules of Court," and its Resolution of 8 June 1992[3] which denied their motion to reconsider the former. They claim that the notice to pay the docket fee was addressed to an attorney who had already withdrawn his appearance with their consent.

The pleadings of the parties and the original record of CA-G.R. CV No. 32348 disclose the undisputed antecedents of this case.

Petitioners and private respondent are parties to a contract for the construction of a 4-storey dormitory building. Private respondent, as the contractor, filed an action before Branch LXI of the Regional Trial Court at Angeles City against the petitioners-spouses Carlos S. Arambulo and Eloisa I. Arambulo to claim the balance of the contract price and the increase in the construction cost due to additional scope of work done and increase in the cost of materials. The case was docketed as Civil Case No. 5301. The defendants, through Atty. Romeo P. Pineda, filed an Answer with Counterclaim. At the pre-trial, the defendants were represented by Atty. Jose Jimenez, Jr., who submitted a special power of attorney executed by the defendants wherein he was designated as their attorney. Since then and until he purportedly withdrew as counsel, he appeared at the trial for the defendants, handled the case, and prepared and signed all pleadings for the latter. Both the adverse party and the trial court served pleadings and notices on him.[4]

The minutes of the trial court for the hearings on 20 September 1988, 19 October 1988; 10 November 1988, 19 January 1989, 11 April 1989, 11 August 1988, 5 October 1989 and 7 December 1990[5] reveal that it was Atty. Jimenez who appeared for the Arambulos, cross-examined the witnesses for the plaintiff and conducted the direct examinations of Eloisa and Carlos Arambulo. On 7 December 1990, after Atty. Jimenez cross-examined anew the plaintiff's witness, Architect Ernesto Nasol, the parties agreed to submit the case for decision.

On 30 January 1991, the trial court rendered a decision[6] in favor of the private respondent the dispositive portion of which reads as follows:

“WHEREFORE, by preponderance of evidence, judgment is hereby rendered in favor of Plaintiff Danilo S. Ferreras, ordering defendant Spouses Carlos S. Arambulo and Eloisa I. Arambulo to -?

1) Pay unto said Plaintiff Danilo S. Ferreras the amounts of -?

a) P365,000.00 -- representing the balance of the contract price of P1,700,000.00;

b) P90,333.75 -- proportionate ½ share of defendant-spouses in the increase in the cost of construction materials; and

c) to pay the costs.

Defendants' counterclaim is DISMISSED.

SO ORDERED."[7]

On 7 February 1991, the Arambulos, through Atty. Jimenez, filed their notice of appeal informing the trial court that they are appealing the decision to the Court of Appeals.[8]

On 12 February 1991, Atty. Jimenez filed a Withdrawal of Appearance[9] with the express conformity of the defendants, while Atty. Pineda entered his Appearance as their new counsel.[10] Copies of the pleadings were furnished the counsel for the plaintiff. Furthermore, the Summary Index prepared by one Ramon A. Rosario, Officer-in-Charge of the Office of the Clerk of Court of the trial court and attached to the original record of CA-G.R. CV No. 32348,[11] indicates that the Withdrawal of Appearance and the Appearance are respectively found on pages 209-210 and 207-208 of the original record of Civil Case No. 5301.

Thereafter, an order directing the "Clerk of Court/Officer-In-Charge" of the court to elevate the complete record of the case to the Court of Appeals[12] was issued by the trial court on 4 March 1991.

The Officer-in-Charge of the Office of the Clerk of Court of the trial court transmitted the original record of Civil Case No. 5301, together with pertinent documents, to the Court of Appeals on 24 April 1991 but which the latter received on 16 May 1991.[13] The appeal was then docketed as CA-G.R. CV No. 32348.

On 19 June 1991, the Chief of the Judicial Records Division of the Court of Appeals sent Atty. Jimenez a letter informing him that the original records of the case were being processed and also requiring him to pay the docketing fee of P400.00 and the additional amount of P20.00 pursuant to R.A. No. 3870 within fifteen days from receipt thereof.[14] From the return card,[15] it appears that Atty. Jimenez received this letter on 9 July 1991. No such letter or any notice to pay the aforesaid amounts was sent to Atty. Romeo Pineda.

On 11 November 1991, the Court of Appeals (Third Division) promulgated a Resolution[16] reading as follows:

"For failure to pay the docket fee, the appeal is hereby considered ABANDONED and DISMISSED, pursuant to Section 1 (d), Rule 50, Rules of Court."

A copy of the resolution was furnished to Atty. Jimenez who, per the return card,[17] received it on 21 November 1991.

In a manifestation and motion filed with the Court of Appeals on 21 January 1992, counsel for the plaintiff-appellee prayed that final judgment be entered into the records in view of the failure of the appellants "to perfect their appeal" and that the case be remanded to the trial court for execution of judgment. A copy of the above pleading was sent to Atty. Jimenez.

On 22 January 1992, the Clerk of Court of the Court of Appeals made an entry of judgment in CA-G.R. CV. No. 32348 declaring therein that the Resolution of 11 November 1991 had become final and executory on 7 December 1991.[18] Copy thereof was again sent to Atty. Jimenez.

No copy of the aforementioned resolution of the Court of Appeals of 11 November 1991 and of the entry of judgment of 22 January 1992 was ever sent to Atty. Pineda.

The records of Civil Case No. 5301 were remanded to the court of origin on 12 February 1992,[19] where a

motion for the issuance of a writ of execution was filed by the private respondent on 27 February 1992,[20] copy of which was furnished only to Atty. Jimenez. The trial court granted the motion on 3 March 1992.[21] When the sheriff of the trial court attempted to enforce the writ of execution, the petitioners, through Atty. Pineda, filed a Motion for Reconsideration, Reinstatement of Appeal, and Acceptance of Docket Fee[22] with the Court of Appeals on 12 March 1992. On the said date, they also paid the required docket and other legal fees.[23] But the Court of Appeals denied the motion in its Resolution of 8 June 1992[24] on the ground that the Resolution of 11 November 1991 had already become final and the records had been remanded to the trial court after the entry of judgment was made.

Hence, the instant petition. The petitioners raise this sole assignment of error:

"The public respondent committed a grave abuse of discretion amounting to lack of jurisdiction in dismissing petitioners' appeal for failure to pay docket fee, notwithstanding [sic] the gravely defective service of notices, and in denying petitioners' motion for reconsideration of said Resolution of dismissal." [25]

The main thesis of the petitioners as it appears to us from their petition is that since the notice to pay the docket and other fees was served not on their new counsel, Atty. Pineda, but on Atty. Jimenez who had already withdrawn as their counsel when the case was still with the trial court, the service of such notice on the latter was void and did not bind them, consequently, the dismissal of their appeal deprived them of due process.

The private respondent filed his Comment.[26] He contends therein that Atty. Pineda was the original counsel for the petitioners and that he never formally withdrew as counsel even after Atty. Jimenez, who had not made any "formal appearance," "took over the handling of the defense for and in behalf of defendants Arambulos"; hence, they "gave the impression that they were acting in corroboration [sic] with each other and since Atty. Jimenez took over the active role as counsel, all pleadings and notices were coursed through him." Private respondent then concludes that the "alleged withdrawal of Atty. Jimenez and entry of appearance of Atty. Pineda were of no moment." Moreover, their status as collaborating "counsels for the defendants" is "borne by the fact that the court has not ruled on their motions to withdraw and enter appearance respectively."

We gave due course to the petition after the petitioners filed their Reply to the Comment.

The petition, which is more appropriately a special civil action for certiorari under Rule 65 of the Rules of Court, is partly impressed with merit.

Under the circumstances of this case, we do not hesitate to rule that the public respondent committed grave abuse of discretion in dismissing the appeal of the Arambulos solely on the basis of the alleged failure of the petitioners to pay the docket and other fees. As earlier adverted to, the notice with respect thereto was not furnished to or received by their counsel of record, Atty. Romeo Pineda.

The rule is that every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby; however, service upon a party represented by counsel shall be made on his attorneys or one of them, unless service upon said party himself is ordered by the court.[27] When a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court must be sent to the counsel.[28] Notice to counsel is notice to the client.[29]

In the instant case, it is not disputed that the Withdrawal of Appearance of Atty. Jose Jimenez, Jr. was filed with the trial court on 12 February 1991. Since the withdrawal was with the clients' consent, no approval thereof by the trial court was required because a court approval is indispensable only if the withdrawal is without the client's

consent. The first paragraph of Section 26 of Rule 138 expressly provides:

"SEC. 26. 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."

Under the first sentence of this section, the retirement is completed once the withdrawal is filed in court. No further action thereon by the court is needed other than the mechanical act of the clerk of court of entering the name of the new counsel in the docket and of giving written notice thereof to the adverse party. The failure of the clerk of court to do either does not affect the validity of the retirement. The appearance of the new counsel, Atty. Pineda, did not likewise require the approval of the court. An appearance may be made by simply filing a formal motion, plea or answer, or through the formal method, viz., by delivering to the clerk of court a written direction ordering him to enter the appearance of the counsel.[30] The latter method is exactly what Atty. Pineda followed.

We cannot subscribe to the view of the private respondent that the 12 February 1991 withdrawal by Atty. Jimenez and the appearance of Atty. Pineda were of "no moment" because the former had in fact never made a formal appearance and the latter, who was originally the counsel of record of the defendants, had not formally withdrawn as counsel, hence, both attorneys remained as counsel of the defendants. At its surface, the private respondent's argument appears logical and impressive. But in truth, it is definitely unpersuasive and fallacious. Atty. Jimenez first appeared at the pre-trial fully armed with a special power of attorney. Thereafter, he alone signed all pleadings for the defendants and his appearance for them gained full recognition from the trial court and from the counsel for the private respondent. He had undoubtedly made a valid appearance for the defendants.[31]

On the other hand, although Atty. Pineda did not formally withdraw before Atty. Jimenez took over the handling of the case, the execution by the Arambulos of the special power of attorney in favor of Atty. Jimenez amounted to a dismissal of Atty. Pineda. The latter evidently acceded to his dismissal when he ceased to appear for the Arambulos. Even the trial court and the counsel for the private respondent undoubtedly recognized his dismissal when no notice of hearings, orders, judgment and pleadings were served on him. The dismissal of Atty. Pineda is clearly authorized under the second paragraph of the aforementioned Section 26 of Rule 138 which reads as follows:

"A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract x x x."

Of course, nothing can prevent the Arambulos from re-hiring Atty. Pineda as their counsel. The pleadings do not disclose and no suggestion is made by the private respondent, that the withdrawal of Atty. Jimenez and the re-appearance of Atty. Pineda were done in bad faith to delay the case.

Both the Withdrawal of Appearance of Atty. Jimenez and the Appearance of Atty. Pineda are undeniably found in the original record of Civil Case No. 5301 and are explicitly referred to in the Summary Index in the record of CA-G.R. CV No. 32348. And since the withdrawal of Atty. Jimenez had taken effect upon its filing before the trial court on 12 February 1991, the notice to pay the docket and other fees sent to him by the Judicial Records Division of the Court of Appeals on 4 March 1991 was thus void or otherwise ineffective. Receipt thereof by him did not operate as notice to the Arambulos. It is a fact on record that no notice to pay the docket fee was sent to and received by Atty. Pineda, therefore, the 15-day period to pay the required docket fee did not even commence to run.

Accordingly, the public respondent Court of Appeals should not have declared the appeal abandoned and ordered its dismissal solely on the basis of the failure of the petitioners to comply with the 19 June 1991 notice to pay the docketing and other fees, which was erroneously sent to Atty. Jimenez.

Nevertheless, the appeal can be dismissed, not on the basis of the respondent Court of Appeals' error but on a different ground for which Atty. Pineda must answer. As the new counsel for the petitioners, it was incumbent upon him, consistent with his duty to serve his client with competence and diligence,[32] to inquire either from the trial court or the appellate court about the status of the appeal since he had not received any notice to pay the docketing and other fees despite the lapse of several months from the time he entered his appearance. While he had every reason to expect that the office of the Clerk of Court of the Court of Appeals would faithfully comply with Sections 2(3) and 3, Rule 4 of the Revised Internal Rules of the Court of Appeals on the issuance of notice to the parties to pay the docketing and other fees, his failure to receive the notice for so long a time should have alarmed him to the possibility that something must have gone awry somewhere. The justification given in the Motion for Reconsideration, Reinstatement of Appeal, and Acceptance of Docket Fee that the petitioners "had no reason to be alarmed about the status of the appeal because of the eruption of Mt. Pinatubo in June 1991, which caused disarray and confusion in Angeles City and because of defendants-appellants' reliance on the established judicial practice whereby the proper party is notified of the elevation of the records of the case to this Honorable Court, the receipt of such records by the latter and the need to pay the corresponding docket fee within the prescribed period"[33] is flimsy and wholly unacceptable. On the contrary, the eruption of Mt. Pinatubo provided added reason why they should have verified from the trial court if the records of the case were still intact or had been destroyed or damaged as a consequence of the eruption.

In the fairly recent case of *Mateo vs. Court of Appeals*,[34] this Court, speaking through Mme. Justice Carolina C. Griño-Aquino, made this apt observation:

"Indeed, if the appellant does nothing to press his appeal, it may safely be concluded that he believes the judgment of the trial court to be correct and his appeal aims to accomplish nothing more than mere delay in the execution of the adverse judgment, certainly unfair to the appellee who is denied the enjoyment of the fruits of his victory in the case as long as the appeal is not resolved."

This statement certainly holds true here. Not only did the petitioners and their counsel sleep on their right, they put nothing in their Motion for Reconsideration, Reinstatement of Appeal, and Acceptance of Docket Fee that gives a semblance of merit to their appeal other than their general statement that they "have a meritorious case, and they are confident that they are favored by the evidence, the law, and jurisprudence,"[35] which they merely reiterated in the instant petition.[36] As we see it then, the failure of Atty. Pineda and the petitioners to exercise due diligence with respect to the appeal was either done deliberately to delay the execution of judgment, which we cannot tolerate, or caused by negligence, in which case the settled rule that the negligence of counsel binds the client[37] should be applied.

With the foregoing disquisitions, it is no longer necessary to take up the contention of the private respondent that Atty. Jimenez had the "duty" to inform the Court of Appeals that notices were erroneously or inadvertently sent to him and to inform the petitioners themselves or Atty. Pineda about the notices he received.[38] Suffice it to say that if Atty. Jimenez had any duty, it could only be a moral duty, not a legal or professional one. For all legal intents and purposes, the lawyer-client relationship between him and the petitioners had been completely severed on 12 February 1991 and with it the "duty" spoken of by the private respondent ceased to exist. Of course, fealty to fairness and perhaps consideration for his former clients would have dictated upon him to do that which the private respondent has suggested considering that the notice he received clearly shows that none was furnished to Atty. Pineda or to the petitioners. Nevertheless, his failure to do either can by no means prejudice the petitioners.

In the light of the foregoing, the dismissal of the petitioners' appeal in CA-G.R. CV No. 32348 was justifiable for another reason. Concurrence in the result of the challenged resolutions is inevitable.

WHEREFORE, the instant petition is DENIED.

No costs in this instance.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quiason, JJ., concur.

Griño-Aquino, J., on leave.

[1] Annex "G" of Petition; Rollo, 31. Per Associate Justice Luis L. Victor, concurred in by Associate Justices Santiago M. Kapunan and Segundino G. Chua.

[2] Entitled "Engr. Danilo G. Ferreras, plaintiff-appellee, versus Spouses Carlos S. Arambulo and Eloisa Arambulo, defendants-appellants."

[3] Annex "A" of Petition; Rollo, op. cit., 20. Per Associate Justice Luis L. Victor, concurred in by Associate Justices Jainal D. Rasul and Pacita Cañizares Nye.

[4] Rollo, 46.

[5] Original Records (OR), CA-G.R. CV No. 32348, 8-15.

[6] OR, CA-G.R. CV No. 32348, 16-20; Annex "B" of Petition; Rollo, 21-25. Per Judge David R. Rosete.

[7] Id., 20; Id., 25.

[8] Annex "C" of Petition; Rollo, 26.

[9] Annex "D" of Petition; Rollo, 27.

[10] Annex "E" Petition; Id., 28.

[11] OR, CA-G.R. CV No. 32348, 4-6.

[12] Annex "F" of Petition; Rollo, op. cit., 29.

[13] OR, CA-G.R. CV No. 32348, op. cit., 3.

[14] OR, CA-G.R. CV No. 32348, 21.

[15] Attached at the dorsal portion of page 21, Id.

[16] Id., 28.

[17] Attached to dorsal portion of page 27, Id.

[18] OR, CA-G.R. CV No. 32348, 32.

[19] Id., 31.

[20] Id., 53.

[21] Id., 35.

[22] Id., 33-36.

[23] Xerox copies of the Official Receipts are attached to page 36, Id.

[24] Id., 57.

[25] Rollo, 12.

[26] Id., 40-41.

[27] Section 2, Rule 13, Revised Rules of Court.

[28] Cubar vs. Mendoza, 120 SCRA 768 [1983]; Ruiz vs. Court of Appeals, 201 SCRA 577 [1991].

[29] Palanca vs. The American Food Mfg. Co., 24 SCRA 819 [1968]; Lincoln Gerard, Inc. vs. NLRC, 187 SCRA 701 [1990].

[30] Flores vs. Zurbito, 37 Phil. 746 [1918].

[31] See Rinconada Telephone Co. vs. Buenviaje, 184 SCRA 701 [1990], where an attorney was considered as counsel entitled to notices despite the absence of a formal appearance because the trial court itself recognized his appearance as counsel.

[32] Canon 18, Code of Professional Responsibility.

[33] OR, CA-G.R. CV No. 32348, 34-35.

[34] G.R. No. 97839, 22 April 1993.

[35] OR, CA-G.R. CV No. 32348, 35.

[36] Rollo, 15.

[37] B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28 [1992].

[38] Rollo, 39.

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