

**PANFILO V. VILLARUEL, JR., PETITIONER, VS. REYNALDO D. FERNANDO, MODESTO ABARCA, JR. AND MARILOU M. CLEOFAS, RESPONDENTS.**

*G.R. No. 136726. September 24, 2003*

Ponente: CARPIO, J.

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**CARPIO, J.:**

**The Case**

This petition for review on certiorari[1] seeks to reverse the Decision[2] of the Court of Appeals in CA-G.R. SP No. 48233[3] dated 30 September 1998 denying due course to the petition for certiorari[4] filed by Panfilo V. Villaruel, Jr. and the Resolution dated 3 December 1998 denying the motion for reconsideration.

**The Facts**

Petitioner Panfilo V. Villaruel, Jr. ("petitioner") is the former Assistant Secretary of the Air Transportation Office ("ATO"), Department of Transportation and Communication ("DOTC"). Respondents Reynaldo D. Fernando, Modesto E. Abarca, Jr. ("Abarca"), and Marilou M. Cleofas are the Chief, Chief Administrative Assistant, and Administrative Assistant, respectively, of the Civil Aviation Training Center ("CATC"). The CATC is an adjunct agency of the ATO tasked to train air traffic controllers, airway communicators and related civil aviation personnel for the local aviation industry as well as for the Southeast Asian and Pacific region.

Petitioner issued a memorandum dated 27 April 1995 addressed to the respondents, detailing them to the Office of DOTC Undersecretary Primitivo C. Cal effective 2 May 1995.

On 29 April 1995, respondents wrote to DOTC Secretary Jesus B. Garcia and Undersecretary Josefina T. Lichauco through petitioner requesting for reconsideration of the detail order.

On 7 May 1995, in compliance with the detail order, respondents reported to the Office of Undersecretary Cal at DOTC.

Without acting on respondents' request for reconsideration, petitioner issued a memorandum on 19 July 1995 addressed to Abarca placing him under "preventive suspension" for 90 days without pay pending investigation for alleged grave misconduct.

On 10 August 1995, respondents requested Secretary Garcia to lift the detail order and to order their return to their mother unit since more than 90 days had already lapsed. Respondents also sought the intervention of the Ombudsman in their case. As a result, the Ombudsman inquired from Secretary Garcia the action taken on respondents' request for reconsideration of the detail order.

On 22 November 1995, Secretary Garcia replied to the Ombudsman that he had issued a memorandum dated 9 November 1995 directing petitioner to recall respondents to their mother unit. Secretary Garcia declared that the law does not sanction the continuous detail of respondents.

Despite repeated demands by respondents, petitioner failed and refused to reinstate respondents to their mother unit.

On 24 January 1996, respondents filed a Petition for Mandamus and Damages with Prayer for a Preliminary Mandatory Injunction against petitioner with the Regional Trial Court of Pasay City docketed as Civil Case No. 96-0139. Respondents prayed for the following:

P R A Y E R

WHEREFORE, premises considered, petitioners herein respectfully pray of this Honorable Court that:

- Pending the determination of the merits of this petition, a writ of preliminary mandatory injunction be issued ex-parte directing respondent Panfilo V. Villaruel, Jr., to recall the petitioners herein within twenty four (24) hours from receipt hereof to their mother unit, the Civil Aviation Training Center, Air Transportation Office, DOTC, and to forthwith allow them to assume, perform and discharge the functions, duties and responsibilities inherent, appurtenant and incident to their respective offices.

- After hearing on the merits, judgment be rendered confirming the writ of preliminary mandatory injunction earlier issued by this Honorable Court and declaring the same permanent, and ordering the respondent Panfilo Villaruel, Jr., to pay petitioners herein the following damages, to wit:

a) to pay petitioner Reynaldo D. Fernando the amount of P50,000 as actual and compensatory damages;

b) to pay petitioners herein moral, exemplary and temperate damages, in such amounts as may hereafter be proven in the course of trial, which petitioners herein are leaving to the sound discretion of this Honorable Court to determine and adjudge;

c) to pay petitioners herein attorney's fees in the amount of P100,000;

d) to pay petitioners herein the costs of suit.

Petitioners herein pray for such other and further relief as may be just and equitable in the premises.[5]

On 23 February 1996, the trial court granted respondents' prayer for a preliminary mandatory injunction.

Meanwhile, Judge Aurora Navarette-Reciña of the trial court was appointed Chairman of the Commission on Human Rights. Consequently, the case was re-raffled and assigned to Branch 231 of the Regional Trial Court, Pasay City.[6]

On 12 April 1996, the trial court issued an order modifying the 23 February 1996 order of Judge Reciña. The trial court issued a writ of preliminary mandatory injunction ordering petitioner to comply with the 9 November 1995 order of Secretary Garcia directing petitioner to recall respondents to their mother unit until further orders by the trial court.

For petitioner's continued failure to comply with the writ of preliminary injunction, respondents moved to cite petitioner in contempt. Respondents also moved to declare petitioner in default for not filing an answer within the period prescribed in the trial court's order of 26 January 1996.

On 28 May 1996, the trial court granted the motion and declared petitioner guilty of indirect contempt. The trial court issued a bench warrant against petitioner.

Petitioner, through the Office of the Solicitor General ("OSG"), filed a special civil action for certiorari with the Court of Appeals[7] assailing the trial court's order finding petitioner guilty of indirect contempt. The case was docketed as CA-G.R. SP No. 41263.

Meanwhile, the trial court declared petitioner in default for his failure to file an answer to the petition for mandamus and damages. Accordingly, respondents adduced their evidence ex-parte before the Clerk of Court.

On 11 July 1996, the trial court rendered a Decision the dispositive portion of which reads:

Wherefore, considering the foregoing premises, judgment is hereby rendered in favor of the petitioners and against the respondent declaring mandamus permanent and thereby ordering respondent Panfilo V. Villaruel, Jr., to pay the following:

- (1) One hundred thousand pesos (P100,000.00) each as moral damages;
- (2) Twenty five thousand pesos (P25,000.00) each as exemplary damages;
- (3) Twenty five thousand pesos (P25,000.00) each as temperate damages, and;
- (4) Fifty thousand pesos (P50,000.00) as attorney's fees.

SO ORDERED.[8]

Aggrieved, petitioner, represented by the OSG, appealed to the Court of Appeals. The appeal was docketed as CA-G.R. SP No. 42447.[9] With the filing of the appeal, the Court of Appeals granted respondents' motion for the dismissal of the petition for certiorari in CA-G.R. SP No. 41263 for being moot and academic.

The Court of Appeals granted the OSG a non-extendible extension until 13 December 1996 within which to file petitioner's memorandum. However, the OSG failed to file the memorandum. Subsequently, Solicitor Restituto Tuando, Jr. who was handling the case was appointed Regional Trial Court judge of Dumaguete City. The case was re-assigned to Assistant Solicitor Luciano Joson, Jr. On 13 March 1997, the Court of Appeals issued a Resolution dismissing petitioner's appeal for failure to file the required memorandum. The OSG, through Assistant Solicitor Luciano Joson, Jr., filed a Motion for Reconsideration, but the Court of Appeals denied the same. The Resolution became final and executory on 14 June 1997.

Consequently, the respondents filed a Motion for Execution with the trial court. Although served a copy of the motion for execution, the OSG did not file any opposition.

Acting on the motion for execution, the trial court issued a Writ of Execution on 22 September 1997. On 3 February 1998, the Sheriff issued a Notice of Sheriff's Sale setting on 23 February 1998 the sale of petitioner's real property covered by Transfer Certificate of Title No. 83030.

On 17 February 1998, petitioner, through his new counsel,[10] filed a Motion to Quash the Writ of Execution and to Suspend Sheriff's Sale. In his motion, petitioner alleged that the trial court's decision never became final and executory as the trial court deprived him of his right to due process. Petitioner claimed that the OSG failed to file petitioner's memorandum in CA-G.R. SP No. 42447 resulting in the dismissal of his appeal. Furthermore, petitioner alleged that the OSG failed to inform him of the dismissal of his appeal and of the trial court's order granting respondents' motion for execution. Petitioner further asserted that the Resolution of the Ombudsman in OMB-ADM 0-96-0090[11] superseded the decision of the trial court. The Ombudsman's Resolution approved the following recommendation of the reviewing Assistant Ombudsman:

PREMISES CONSIDERED, respondent MODESTO ABARCA, JR., is hereby found GUILTY of violation of Section 7(d) of Republic Act 6713, for which the penalty of Suspension Without Pay for Six (6) Months is hereby recommended pursuant to Section 10(b), Rule III of Administrative Order No. 07, in relation to Section 25(2) of Republic Act No. 6770.

It is also respectfully recommended that the charge against respondents REYNALDO FERNANDO and

MARY LOU CLEOFAS be DISMISSED.[12]

On 23 February 1998, the trial court issued an Order quashing the Writ of Execution because the Sheriff failed to follow Section 9, Rule 39 of the Rules of Court. The trial court, however, issued an Alias Writ of Execution. Petitioner filed a Motion for Reconsideration but the trial court denied the same on 28 April 1998.

Dissatisfied with the trial court's orders, petitioner filed a special civil action for certiorari with the Court of Appeals docketed as CA-G.R. SP No. 48233 assailing the execution of the trial court's decision of 11 July 1996. The Court of Appeals denied due course to the petition for certiorari and dismissed the same in the Decision dated 30 September 1998. Petitioner moved for reconsideration but the appellate court denied the motion in a Resolution of 3 December 1998.

Hence, the instant petition.

#### The Ruling of the Court of Appeals

Petitioner raised before the Court of Appeals the following issues:

- THE TRIAL COURT'S DECISION DATED JULY 11, 1996 IS VOID FOR LACK OF DUE PROCESS AND COULD NOT HAVE BECOME FINAL AND EXECUTORY.
- SUPERVENING FACTS AND CIRCUMSTANCES HAVE TRANSPIRED WHICH RENDERED EXECUTION OF THE JUDGMENT UNJUST AND INEQUITABLE.[13]

On the first issue, the Court of Appeals ruled that the negligence of the OSG could not relieve petitioner of the effects of such negligence and prevent the decision of the trial court from becoming final and executory. In short, the OSG's negligence binds petitioner.

The Court of Appeals admonished petitioner for his failure to ascertain periodically from the OSG or from the Court of Appeals the status of his appeal. The appellate court cited *Reyes v. Court of Appeals*,[14] which held that it is the duty of a party litigant to make inquiries to his counsel on matters concerning his case. A party litigant bears the responsibility of contacting his lawyer periodically to apprise himself of the progress of the case. A lawyer's negligence binds a party litigant who must suffer the consequences of such negligence. The Court of Appeals further held that there was no proof that the OSG failed to inform petitioner of the dismissal of his appeal.

On the second issue, the Court of Appeals concurred with the trial court's ruling that the nature of the case before the Ombudsman is different from the case before the trial court. The former deals with a violation of Republic Act No. 6713 ("RA 6713")[15] punished with suspension from office while the latter deals with an ultra vires act punished with damages. The appellate court ruled that the findings of the Ombudsman had nothing to do with the findings of the trial court, as the two forums are separate and distinct from each other.

Moreover, the Court of Appeals opined that petitioner failed to prove that the trial court committed grave abuse of discretion to warrant the writ of certiorari. The appellate court ruled that the trial court acted in accord with law and prevailing jurisprudence in issuing the questioned orders.

#### The Issues

Petitioner presents the following issues for resolution of this Court:[16]

- Whether the award of moral, exemplary and temperate damages to respondents has legal basis.
- Whether the trial court correctly ruled that the negligence of the OSG could not relieve petitioner of the effects

of such negligence and prevent the decision of the trial court from becoming final and executory.

- Whether petitioner was denied of his right to due process when the appellate court dismissed his appeal for failure of the OSG to file the memorandum.
- Whether the resolution of the Ombudsman finding Modesto Abarca, Jr. guilty of violating Section 7 of RA 6713 rendered the execution of the trial court's decision unjust and inequitable.

The main issue to resolve is whether the Court of Appeals erred in dismissing the petition for certiorari assailing the trial court's orders dated 23 February 1998 and 28 April 1998. Resolving this issue necessarily determines the validity of the questioned orders. This in turn resolves the questions of whether the trial court denied petitioner of his right to due process and whether the Ombudsman's resolution rendered the execution of the trial court's decision unjust and inequitable.

We can no longer resolve the issue regarding the validity and reasonableness of the award of damages for three reasons. First, the decision of the trial court dated 11 July 1996 is already final and executory. Second, the petition for certiorari filed by petitioner was simply a direct consequence of the trial court's issuance of the writ of execution and notice of sheriff's sale. In other words, petitioner merely questioned the execution of the trial court's decision in his petition for certiorari. Third, petitioner did not raise the issue of the validity and reasonableness of the award of damages before the Court of Appeals.[17]

#### The Court's Ruling

The petition has no merit.

We begin by pointing out that petitioner failed to allege the essential requisites under Section 1, Rule 65 of the Rules of Court for a petition for certiorari to prosper. Specifically, petitioner never alleged that the trial court acted without or in excess of its jurisdiction in issuing the questioned orders. Neither did petitioner allege that the trial court gravely abused its discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. In other words, there is no issue that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in handing down the questioned orders. On this score alone, the dismissal of the petition for certiorari before the Court of Appeals is in order. However, in disposing of the instant case, we shall still resolve the principal issues raised by petitioner.

#### No Denial of Petitioner's Right to Due Process

Petitioner essentially contends that the judgment of the trial court in Civil Case No. 96-0139 is void for lack of due process. Petitioner alleges that the trial court never gave him the chance to be heard and to submit his evidence. Petitioner, formerly represented by the OSG, failed to file an answer to respondents' petition for mandamus and damages. Consequently, the trial court declared petitioner in default. While the OSG filed a notice of appeal of the judgment by default, it failed to file with the Court of Appeals the required memorandum resulting in the dismissal of the appeal. In petitioner's words, the OSG "virtually abandoned"[18] his case. Petitioner argues that the inexcusable negligence of the OSG did not bind him and prevented the decision of the trial court from becoming final and executory.

We do not agree.

Due process, in essence, is simply an opportunity to be heard[19] and this opportunity was not denied petitioner. Throughout the proceedings in the trial court as well as in the Court of Appeals, petitioner had the opportunity to present his side but he failed to do so. Clearly, petitioner's former counsel, the OSG, was negligent. This negligence, however, binds petitioner. The trial and appellate courts correctly ruled that the negligence of the

OSG could not relieve petitioner of the effects such negligence[20] and prevent the decision of the trial court from becoming final and executory.

In *Villa Rhocar Bus v. De la Cruz*,[21] which petitioner himself cited, the Court ruled:

It is unfortunate that the lawyer of the petitioner neglected his responsibilities to his client. This negligence ultimately resulted in a judgment adverse to the client. Be that as it may, such mistake binds the client, the herein petitioner. As a general rule, a client is bound by the mistakes of his counsel. Only when the application of the general rule would result in serious injustice should an exception thereto be called for. Under the circumstances obtaining in this case, no undue prejudice against the petitioner has been satisfactorily demonstrated. At most, there is only an unsupported claim that the petitioner had been prejudiced by the negligence of its counsel, without an explanation to that effect. (Emphasis supplied)

In the present case, there was no proof that petitioner suffered serious injustice to exempt him from the general rule that the negligence of the counsel binds the client. Petitioner did not even attempt to refute the respondents' allegations in the petition for mandamus and damages.

Moreover, petitioner is not entirely blameless for the dismissal of his appeal. After the OSG's failure to file the answer to the petition for mandamus and damages and to have the order declaring petitioner in default lifted, petitioner should have already replaced the OSG with another lawyer. However, petitioner still retained the services of the OSG, despite its apparent lack of interest in petitioner's case, until the trial court's decision became final. In *Salva v. Court of Appeals*,[22] the Court declared:

Respondent's reliance on Legarda is inapropos. Notably, the decision in said case was not yet final in 1991. The private respondent therein then filed a timely motion for reconsideration. In granting the motion for reconsideration, the Court en banc held:

xxx

Neither Cathay nor Cabrera should be made to suffer for the gross negligence of Legarda's counsel. If she may be said to be 'innocent' because she was ignorant of the acts of negligence of her counsel, with more reason are respondents truly 'innocent.' xxx In this case, it was not respondents, but Legarda, who misjudged and hired the services of the lawyer who practically abandoned her case and who continued to retain him even after his proven apathy and negligence."

At any rate, we find that respondent Governor Sato, as well as the Province of Occidental Mindoro which she represents, were not denied their day in court. Responsive pleadings were filed before the lower courts, and respondent was given all the opportunities to prove her case. Her chosen counsel did not diligently exhaust all legal remedies to advance respondent's cause, yet respondent did not terminate his services. She was aware of the repeated negligence of her counsel and cannot now complain of counsel's errors. Hence, there is no justifiable reason to exempt her from the general rule that clients should suffer the consequences of the negligence, mistake or lack of competence of the counsel whom they themselves hired and had the full authority to fire at any time and replace with another even without justifiable reason. (Emphasis supplied)

Furthermore, petitioner cannot now complain of the OSG's errors. Petitioner should have taken the initiative of making periodic inquiries from the OSG and the appellate court about the status of his case.[23] Litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.[24] To agree with petitioner's stance would enable every party to render inutile any adverse order or decision through the simple expedient of alleging negligence on the part of his counsel.[25] The Court will not countenance such ill-founded argument which contradicts long-settled doctrines of trial and procedure.[26]

The Ombudsman's Resolution Does Not Render the Execution

of the Trial Court's Decision Unjust and Inequitable

Petitioner contends that the Ombudsman's Resolution finding Abarca guilty of violating Section 7(d) of RA 6713 superseded the trial court's decision finding petitioner liable for damages. Petitioner insists that the Ombudsman's resolution rendered the execution of the trial court's decision unjust and inequitable.

We are not persuaded.

Settled is the rule that a judgment that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect except only to correct clerical errors or mistakes.[27] True, this rule admits of certain exceptions. One of these exceptions is whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[28] This, however, is not the case here. In the present case, the Ombudsman issued his Resolution prior to the finality of the trial court's decision. The Ombudsman issued his Resolution on 22 January 1997 while the trial court's decision became final and executory on 14 June 1997. Therefore, the resolution of the Ombudsman is not a supervening event to warrant the stay of the execution of the decision of the trial court.

Furthermore, the resolution of the Ombudsman finding Abarca guilty of violating Section 7(d) of RA 6713 did not and could not supersede the decision of the trial court holding petitioner liable for damages. The action filed by the petitioner before the Ombudsman is completely different from the action instituted by respondents before the trial court. The two actions, which are clearly separate and distinct from each other, presented two different causes of action. Petitioner's cause of action arose from respondents' alleged violation of certain provisions of RA 6713 whereas respondents' cause of action resulted from petitioner's refusal to recall respondents to their mother unit at CATC. In the administrative case before the Ombudsman, the issue was whether respondents were guilty of violating RA 6713. In contrast, the issue in the civil action before the trial court was whether respondents were entitled to the issuance of the writ of mandamus and damages.

The findings of the Ombudsman did not render the execution of the trial court's decision unjust and inequitable. The resolution of the Ombudsman finding Abarca guilty of violating Section 7(d) of RA 6713 did not state that petitioner had a valid reason to detail respondents to the Office of Undersecretary Cal. In fact, the Ombudsman dismissed the charges against Reynaldo Fernando and Mary Lou Cleofas. Thus, the trial court correctly awarded damages to respondents. Contrary to petitioner's contention, awarding damages to respondents does not amount to rewarding respondents for their alleged wrongdoing. The award merely compensates respondents for petitioner's own unlawful acts. Clearly illegal were petitioner's acts of unjustifiably detailing respondents to the office of DOTC Undersecretary Cal and refusing to comply with the 9 November 1995 directive of Secretary Garcia to recall immediately respondents to their mother unit.

WHEREFORE, we DENY the instant petition. The Decision of the Court of Appeals in CA G.R. SP No. 48233 dated 30 September 1998 and the Resolution dated 3 December 1998 are AFFIRMED. No costs.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Vitug, and Ynares-Santiago, JJ., concur.  
Azcuna, J., on leave.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Romeo J. Callejo, Sr. (now Associate Justice of this Court), with Associate Justices Fermin A. Martin, Jr., and Mariano M. Umali concurring.

[3] Entitled "Panfilo V. Villaruel, Jr. v. Hon. Cesar Z. Ylagan, as Judge of the Regional Trial Court, Branch 231, Pasay City, Deputy Sheriff Lawrence B. Uy, RTC-Branch 231, Pasay City, Reynaldo Fernando, Modesto Abarca, Jr. and Marilou M. Cleofas."

[4] Under Rule 65 of the Rules of Court.

[5] CA Rollo, pp. 26-27.

[6] Presided by Judge Cesar Z. Ylagan.

[7] Entitled "Panfilo Villaruel, Jr. v. Hon. Aurora Navarette-Reciña, et al." Rollo, p. 36.

[8] CA Rollo, p. 34.

[9] Rollo, p. 38.

[10] Francisco F. Brillantes, Jr. & Associates.

[11] Entitled "Panfilo Villaruel, Jr. v. Reynaldo D. Fernando, et al."

[12] Rollo, pp. 118-119.

[13] Ibid., p. 7.

[14] G.R. No. 70510, 24 August 1990, 189 SCRA 46.

[15] Otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

Sec. 7 of RA 6713 provides as follows:

Sec. 7. Prohibited Acts and Transactions. In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(d) Solicitation or acceptance of gifts. Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

[16] Summarized from the Statement of the Issues in petitioner's Memorandum. Rollo, pp. 270-271.

[17] *Safic Alcan & Cie v. Imperial Vegetable Oil Co., Inc.*, G.R. No. 126751, 28 March 2001, 355 SCRA 559; *Magellan Capital Management Corporation v. Zosa*, G.R. No. 129916, 26 March 2001, 355 SCRA 157.

[18] Rollo, pp. 271, 280.

[19] *Batangas Laguna Tayabas Bus Company, Inc. v. Bitanga*, G.R. No. 137934, 10 August 2001, 362 SCRA 635.

[20] *Producers Bank of the Philippines v. Court of Appeals, et al.*, G.R. No. 126620, 17 April 2002.

[21] No. L-78936, 7 January 1988, 157 SCRA 13.

[22] 364 Phil. 281 (1999).

[23] *Gold Line Transit, Inc. v. Ramos*, G.R. No. 144813, 15 August 2001, 363 SCRA 262.

[24] Ibid.

[25] Producers Bank of the Philippines v. Court of Appeals, et al., supra, see note 20.

[26] Ibid., citing Salonga v. CA, 336 Phil. 514 (1997).

[27] Korean Airlines Co., Ltd. v. CA, 317 Phil. 700 (1995); Yu v. NLRC, 315 Phil. 107 (1995).

[28] Cabrias, et al. v. Hon. Midpantao, etc., et al., 220 Phil. 41 (1985).

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