

GCP-MANNY TRANSPORT SERVICES, INC., PETITIONER, VS. HON. ABRAHAM Y. PRINCIPE, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 2, TUGUEGARAO, CAGAYAN, CAGAYAN PROVINCIAL SHERIFF OR...

G.R. No. 141484. November 11, 2005

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141484/>

AUSTRIA-MARTINEZ, J.:

GCP-Manny Transport Services, Inc. is now before this Court on a petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 43441 promulgated on May 26, 1999 and the Resolution[2] dated December 29, 1999.

The antecedent facts, as summarized by the CA, are as follows:

On April 18, 1990, private respondent filed the herein complaint for damages docketed as Civil Case No. 4142 for physical injuries sustained by him as a passenger of petitioner's bus.

On November 2, 1995, respondent court[3] rendered a decision in favor of the private respondent ordering the petitioner to pay the former the amount of P58,207.35 as actual and compensatory damages; P150,000.00 as moral damages; P10,000.00 as exemplary damages and P10,000.00 as attorney's fees, and costs. Copy of the decision sent to petitioner was returned for the reason that it had "moved" (residence), while copy sent to Atty. Arnold M. Aquino, then petitioner's counsel, was returned "unserved" being unclaimed. Petitioner states that a copy of the decision was personally delivered by the Civil Docket Clerk of the trial court on Atty. Aquino who had refused to receive the same saying he was no longer counsel for the petitioner, although no notice of withdrawal as counsel was filed by him in court.

On April 11, 1996, private respondent filed a motion for execution of the judgment, copy furnished to Atty. Arnold M. Aquino and petitioner which the court granted on October 9, 1996. The assailed writ of execution was correspondingly issued, which petitioner received on October 30, 1996.

On November 5, 1996, Atty. Jose de Luna entered his appearance as new counsel for the petitioner with motion for reconsideration of the order dated October 9, 1996 granting the motion for execution or the quashal of the writ of execution on the ground that petitioner had not been duly notified of the decision.

On November 9, 1996, petitioner received a Notice of Demand for Payment from the deputies of the Ex-officio Sheriff of the RTC of Cagayan attaching thereto copies of the writ of execution and the decision. On November 14, 1996, petitioner filed a Notice of Appeal. Two(2) months later, on January 23, 1997, the respondent court issued the assailed resolution denying petitioners' motion for reconsideration or to quash writ of execution.[4] (citations omitted)

Petitioner went to the CA on a petition for certiorari claiming that the denial of the respondent Judge of its motion for reconsideration was tainted with grave abuse of discretion since he was not duly notified of the decision and there is no legal and factual basis for the issuance of the writ of execution.[5] The appellate court found no such

abuse of discretion and dismissed the petition.[6] It likewise denied petitioner's motion for reconsideration.[7]

Hence, the present petition for review on certiorari alleging that:

I

THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF IT IN FINDING THAT THE UNJUSTIFIABLE REFUSAL OF PETITIONER'S COUNSEL ON RECORD TO RECEIVE IN OPEN COURT A COPY OF THE SUBJECT DECISION IS ONLY A MERE NEGLIGENCE OF COUNSEL AND THEREFORE, BINDS PETITIONER, HENCE, THE DECISION HAD BECOME FINAL AND EXECUTORY.

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DECISION OF RESPONDENT JUDGE, BY CITING JURISPRUDENCE ON "NEGLECT OF COUNSEL BINDS HIS CLIENT" WHICH IS NOT APPLICABLE IN THE INSTANT CASE BECAUSE THEY HAVE DIFFERENT FACTS.[8]

Petitioner argues that: when a copy of the decision which the court sent to Atty. Aquino was returned to sender, respondent Judge resorted in causing the service of the decision to said counsel in open court, as petitioner's counsel on record, when said lawyer appeared in the sala of respondent Judge for another case; petitioner should be deemed as having no notice of the trial court decision since its counsel, who had not withdrawn as such, refused to receive a copy of the same; such act of its counsel constitutes gross negligence which does not bind petitioner; there was also no valid service to Atty. Aquino because when he refused to receive a copy of the decision, what the civil docket clerk of the trial court should have done under the premises was to resort to substituted service; since there was no notice to petitioner regarding the trial court decision, the issuance of the writ of execution and the denial of petitioner's notice of appeal by respondent Judge are null and void; and the case of *People's Homesite and Housing Corp. vs. Tiongco*[9] held that when the lawyer failed to notify his client about the receipt of the decision, such lawyer is irresponsible and notice to him is not notice to client, such as in the case at bar.[10]

Petitioner prays that the decision and the resolution promulgated by the CA be reversed; that an order be issued nullifying the writ of execution issued by respondent Judge; and that the notice of appeal of petitioner be granted as it has a very meritorious defense based on fortuitous event.[11]

Respondent in his Comment contends that: since Atty. Aquino is the counsel of petitioner from the trial up to its termination and there is nothing in the record to show that he withdrew as counsel of petitioner, the copy of the decision mailed to him by registered mail although returned unserved is sufficient to serve as notice to him and to his client following Sec. 5 of Rule 13 of the Rules of Court; it was the duty of petitioner to notify the court that Atty. Aquino was no longer its lawyer; petitioner was negligent in hiring a new counsel more than a year from July 1995 when Atty. Aquino was no longer its lawyer; the implication is that Atty. Aquino was still its counsel when the decision was rendered and when a copy of the decision was sent to him by registered mail since it is elementary that if a lawyer is going to withdraw as counsel for his client, he should file a motion to withdraw as such with the conformity of the client; in this case, Atty. Aquino did not file any motion to withdraw as counsel for the petitioner thus he remained to be counsel of record of petitioner especially since it was only on October 26, 1996 when the services of Atty. Jose de Luna was engaged by petitioner; and the writ of execution issued is valid and proper considering that the decision of the court has already become final and executory.[12]

Before going to the merits, this Court reiterates the distinction between petition for review on certiorari under Rule 45 and petition for certiorari under Rule 65. It should be recalled that a petition under Rule 45 brings up for

review errors of judgment while a petition under Rule 65 concerns errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. However, a petition for review on certiorari under Rule 45 may be considered as a petition for certiorari under Rule 65 where it is alleged that the respondents abused their discretion in their questioned actions.[13] Such is the case at bar.

It is petitioner's position that the CA committed grave abuse of discretion in finding that the unjustifiable refusal of its counsel on record to receive in open court a copy of the subject decision is only mere negligence of counsel which binds it. It then contends that the writ of execution should be quashed because the decision of the trial court had not become final and executory due to non-service of the decision upon its counsel.

The Court does not agree.

Jurisprudence is replete with pronouncements that clients are bound by the actions of their counsel in the conduct of their case.[14] If it were otherwise, and a lawyer's mistake or negligence was admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned.[15]

The only exception to the general rule is when the counsel's actuations are gross or palpable, resulting in serious injustice to client, that courts should accord relief to the party.[16] Indeed, if the error or negligence of the counsel did not result in the deprivation of due process to the client, nullification of the decision grounded on grave abuse of discretion is not warranted.[17]

In this case, while Atty. Aquino, counsel of petitioner, was far from being vigilant in protecting the interest of his client, his infractions cannot be said to have deprived petitioner of due process that would justify deviation from the general rule that clients are bound by the actions of their counsel.

As may be gleaned from the records, petitioner was able to actively participate in the proceedings a quo. It was duly represented by counsel during the trial. While it may have lost its right to appeal, it was not denied its day in court. As enunciated by this Court, the right to appeal is not a natural right or a part of due process but only a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. [18] As long as a party is given the opportunity to defend its interests in due course, it would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.[19]

The Court has also held that when petitioner is at fault or not entirely blameless, there is no reason to overturn well-settled jurisprudence or to interpret the rules liberally in its favor.[20] Where petitioner failed to act with prudence and diligence, its plea that it was not accorded the right to due process cannot elicit this Court's approval or even sympathy.[21] It is petitioner's duty, as a client, to be in touch with his counsel so as to be constantly posted about the case.[22] It is mandated to inquire from its counsel about the status and progress of the case from time to time and cannot expect that all it has to do is sit back, relax and await the outcome of the case.[23] It is also its responsibility, together with its counsel, to devise a system for the receipt of mail intended for them.[24]

Petitioner was wanting in all these areas. Not only did it fail to regularly check on the status of the case, it also failed to ensure that it could be notified of the decision as soon as it was promulgated. Petitioner did not inform the court that it has severed its relationship with Atty. Aquino, its counsel of record.[25] Thus, insofar as the trial court was concerned, Atty. Aquino was still its counsel. Neither did it hire a new lawyer soon after Atty. Aquino allegedly ceased to be its counsel. Atty. Jose de Luna, its subsequent lawyer, stated that his services were engaged by petitioner only on October 26, 1996 or a year after the decision was rendered by the trial court, while Atty. Aquino is supposed to have resigned as petitioner's counsel in July of 1995 or three months before the questioned

decision was promulgated.[26] Insofar as petitioner is concerned, it knew that it did not have any counsel when the decision of the trial court was due for promulgation yet it did not engage the services of a new one to safeguard its interests.

Petitioner also claims that it had no valid notice of the trial court decision therefore the writ of execution subsequently issued by the respondent Judge is null and void; and claims that the trial court should have resorted to substituted service when its counsel on record refused to receive a copy of the decision.

Such claims have no merit.

The fact that Atty. Aquino refused to receive a copy of the decision and no substituted service was effected does not erase the fact that a copy of the trial court decision had earlier been sent by registered mail to Atty. Aquino which was returned for the reason that he has moved.[27] This is sufficient service of the decision on petitioner since service upon counsel of record at his given address is service to petitioner.[28] As explained in *Macondray & Co., Inc. vs. Provident Insurance Corp.*:[29]

If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision. "The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office." [30]

The rule is that when a party is represented by counsel in an action in court, notices of all kinds including motions, pleadings and orders must be served on the counsel. And notice to such counsel is notice to the client.[31] Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face.[32]

While the rule admits of exceptions, in order to prevent a miscarriage of justice,[33] no such circumstance is here present as petitioner was duly accorded due process.

This Court has also held that in cases where service was made on the counsel of record at his given address, notice sent to petitioner itself is not even necessary.[34] Even then, in the present case, the trial court had sent a copy of the decision to petitioner's known address which was returned however for the reason that it has moved.[35]

Petitioner also claims that the ruling of the Court in *People's Homesite & Housing Corp. vs. Tiongco*[36] should be applied in the present case.

The Court disagrees. The differences in *People's Homesite* with the case at bar are apparent.

In *People's Homesite*, the counsel failed to inform the petitioners of the scheduled hearing and the case was heard in their absence. The counsel also did not inform the petitioners that he had received a copy of the decision neither did he file a motion for reconsideration or a petition to set aside judgment to protect the interests of his clients. As soon as petitioners learned of the decision they contacted their counsel and failing to do so, hired the services of a new one. When asked to explain, the counsel merely said that he did not inform the petitioners because the case escaped his attention. Because of these actions, the Court found that there was "something fishy and suspicious." Indeed, there was nothing which could have prevented the petitioners from attending the trial of the case themselves or moved for a reconsideration of the decision or took the necessary appeal from the judgment if only their counsel had informed them of the court's processes.[37]

In this case, petitioner was able to actively defend its case in court. It also knew that Atty. Aquino was no longer

its counsel months before the decision was rendered, unlike in *People's Homesite*, yet it did not take steps to hire a new one to protect its interests.

The trial court was therefore correct when it denied petitioner's motion for reconsideration of the order issuing the writ of execution. As ably discussed by respondent Judge in his resolution:

The sole issue to be resolved in the case at bar is whether or not there was a valid service of the court's decision to defendants herein and their former counsel.

Defendants' main theory is that there was no valid service of the decision to them by registered mail, and that, neither was there a valid service of the decision to their former counsel, Atty. Arnold Aquino, who refused to receive it when the Civil Docket Clerk of this court personally handed a copy of the decision to him.

Section 7, Rule 13 of the Rules of Court provides as follows:

Section 7 – Service of Final orders of Judgments.

Final orders of Judgments shall be served either personally or by registered mail xxx

For the Rule to apply, service must have been made on the counsel de parte (*FOJAS VS. NAVARRO*, L-26365, April 30, 1970) and if it was sent to his address on record and he fails to receive it for causes imputable to him it is not necessary to effect further service upon the party he represent (*MAGNO, ET AL VS. C.A., et al.* G.R. No. 58781, July 31, 1987).

As borne by the records itself, a copy of this court's decision was sent thru registered mail on December 6, 1995 to Atty. Arnold Aquino, who was at that time defendant's counsel of record, at his given address on record but the same was returned with the annotation on the envelope that said counsel had "moved". A separate copy of the decision was later sent thru registered mail to the defendant GCP Manny Transport Service, Inc. at its given address on record but was also returned to the Court with the same annotation that said defendant had "moved". It is not disputed that the address on record of Atty. Arnold Aquino and GCP Manny Transport Service Inc. is 1310 España Corner Galicia St., Sampaloc, Manila. It was there where copies of the decision were sent.

In the case of *Magno, et al. vs. C.A., et al.*, (G.R. No. 58781, July 31, 1978 [sic]) it was held that:

"(But) where a copy of the decision was sent to counsel at his address of record but the same was not received because he moved to another address without informing the court thereof, such omission or neglect will not stay the finality of the decision."

Neither Atty. Arnold Aquino or defendant GCP Manny Transport Service, Inc. informed the court of their change of address. Naturally, copies of the decision in this case were sent at their address of record. It is not incumbent upon the court to determine the new address of party-litigants. On the contrary, it is the duty of the parties to inform the court of such change address. Moreover, notices of the court processes are ordinarily taken cared of by clerks who are naturally guided by addresses of record. To require the court and its personnel before sending out the notices to be continuously checking the records and the various addresses from which a counsel may have filed his pleadings and sending them to such addresses instead of his address of record is to show (sic) confusion and add an intolerable burden which is not permitted by the Rules of Court (*INANA VS. GARCIA* 25 SCRA 801, see Rule 7, Sec. 5, Rule 13, Sec.5).

Notwithstanding separate service of copy of decision to herein defendant GCP Manny Transport Inc., and its counsel de parte thru registered mail, the Court, likewise, available of personal service of decision pursuant to Section 7 of said Rule 13.

Be it noted that the Civil Docket Clerk personally handed a copy of the decision to Atty. Arnold Aquino who was in court but who refused to receive it alleging that he is no longer the counsel for the defendant. However,

at the time of such service, Atty. Aquino remained to be defendants' counsel of record since he did not formally withdraw as counsel for the GCP Manny Transport Inc. It has been held time and again that personal service of decision cannot be avoided by counsel's declining to accept it and service is deemed complete regardless of such refusal to accept. And notice to counsel operates as notice to clients.

It is now too late for herein defendants to advance the theory that they have not received a copy of the decision in this case, especially if the records thereof, would show otherwise. The Court was not amiss in seeing to it that its final orders and judgment were duly served or furnished the party-litigants and their respective counsels and if they refuse to receive the same, they must suffer the consequences thereof. The decision rendered by this Court has already attained finality, hence, may no longer be set aside not even reconsidered without militating against the provisions of our procedural laws.[38]

As a final note, let it be emphasized that before a counsel of record may be considered relieved of his responsibility as such counsel on account of withdrawal, it is necessary that Section 26, Rule 138 of the Rules of Court, to wit:

Section 26 – Change of Attorneys – An attorney may retire at anytime from an action or special proceeding, by the written consent of his client filed in court. He may also retire at anytime 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 the written notice of the change shall be given to the adverse party.

...

should be observed. Unless said procedure is complied with, the counsel of record is regarded as the counsel who should be served with copies of the judgments, orders and pleadings and who should be held responsible for the case.[39] Indeed, a lawyer's withdrawal as counsel must be made in a formal petition filed in the case, without which, notice of judgment rendered in the case served on the counsel of record, is, for all legal purposes, notice to the client, the date of receipt of which is considered the starting point from which the period of appeal prescribed by law shall begin to run.[40] Petitioner having failed to appeal in due time, the trial court did not commit any error or grave abuse of discretion in granting the motion for execution.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

Costs against petitioner.

SO ORDERED.

Puno, Acting C.J., Callejo, Sr., and Tinga, JJ., concur.

Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Buenaventura J. Guerrero and Eloy R. Bello, Jr., Rollo, pp. 73-77.

[2] Rollo, p. 79.

[3] Regional Trial Court, Branch 2, Tuguegarao, Cagayan.

[4] Rollo, pp. 73-74.

[5] Id., p. 74.

- [6] *Id.*, p. 77.
- [7] *Id.*, p. 79.
- [8] *Id.*, p. 30.
- [9] G.R. No. L-18891, November 28, 1964, 12 SCRA 471.
- [10] Rollo, pp. 30-32.
- [11] *Id.*, p. 32.
- [12] Rollo, pp. 92-96.
- [13] *People vs. Court of Appeals*, G.R. No. 132396, September 23, 2002, 389 SCRA 461, 475.
- [14] *Sublay vs. NLRC*, G.R. No. 130104, January 31, 2000, 324 SCRA 188, 194; *Bernardo vs. Court of Appeals*, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 428; *Heirs of Elias Lorilla vs. Court of Appeals*, G.R. No. 118655, April 12, 2000, 330 SCRA 429, 436.
- [15] *Sublay vs. NLRC*, *supra*, note 14, pp. 194-195.
- [16] *Bernardo vs. Court of Appeals*, *supra*, note 14, p. 428.
- [17] *Ibid.*
- [18] *Mercury Drug Corp. vs. CA*, G.R. No. 138571, July 13, 2000, 335 SCRA, 567, 579.
- [19] *Philhouse Development Corp. vs. Consolidated Orix Leasing and Finance Corp.*, G.R. No. 135287, April 4, 2001, 356 SCRA 281, 286.
- [20] *Macondray & Co., Inc. vs. Provident Insurance Corp.*, G.R. No. 154305, December 9, 2004.
- [21] *Bernardo vs. Court of Appeals*, *supra*, note 14, p. 430.
- [22] *Philhouse Development Corp. vs. Consolidated Orix Leasing & Finance Corp.*, *supra*, note 19, p. 285.
- [23] *Balgami, et al. vs. Court of Appeals*, G.R. No. 131287, December 9, 2004.
- [24] *NIA Consult, Inc. vs. NLRC*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22-23.
- [25] *See, Lee vs. Romillo, Jr.*, No. L-60937, May 28, 1988, 161 SCRA 589, 600.
- [26] Records, pp. 235-237.
- [27] Records, p. 224 b.
- [28] *Supra*, note 20.
- [29] *Ibid.*
- [30] *Ibid.*
- [31] *Supra*, note 23.
- [32] *Mercury Drug Corp. vs. Court of Appeals*, *supra*, note 18, p. 577.
- [33] *GSIS vs. Bengson Commercial Buildings*, G.R. No. 137448, January 31, 2002, 375 SCRA 431, 445.
- [34] *Ibid.*

[35] Records, p. 224 a.

[36] Supra, note 9.

[37] Id., pp. 473-476.

[38] Rollo, pp. 68-70.

[39] Aquino vs. Court of Appeals, G.R. No. 109493, July 2, 1999, 309 SCRA 578, 584.

[40] Cubar vs. Mendoza, No. L-55035, February 23, 1983, 120 SCRA 768, 772-773.

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.