

MA. LIZA FRANCO-CRUZ, PETITIONER, VS. THE COURT OF APPEALS, VICTORY LINER, INC., MARITES M. GANELO, CATHERINE C. SANTOS, AND MA. THERESA Q. FABIAN, RESPONDENTS.*G.R. No. 172238. September 17, 2008*

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-172238/>**CARPIO MORALES, J.:**

On January 4, 1998, a Franco Transit bus bearing license plate number AVC 228 collided with the rear portions of a bus and truck wrecker both owned by respondent Victory Liner, Inc. (Victory Liner) which were stalled "along kilometer 63, North Expressway, San Felipe, San Fernando, Pampanga." The collision damaged both vehicles of Victory Liner and killed Manuel Fabian, Rodel Ganelo, Caesar Santos, and Michael Figueroa. The driver of the Franco Transit bus likewise died in the accident.

On February 11, 1998, Victory Liner and respondents Marites M. Ganelo, Catherine C. Santos, and Ma. Theresa Q. Fabian (Ma. Theresa) - the surviving spouses of Rodel Ganelo, Caesar Santos, and Manuel Fabian, respectively - filed before the Regional Trial Court (RTC) of Caloocan City a complaint (Civil Case No. C-18212),[1] for damages against Maria[2] Liza Franco-Cruz (petitioner), alleged to be "the registered owner and operator of public transportation utilities and whose bus is known as and by the name of FRANCO TRANSIT and which she has been operating prior to January 4, 1998." [3]

Respondents claimed that petitioner failed to exercise the diligence of a good father of a family in the selection and supervision of the driver of the Franco Transit bus.[4]

In her Answer,[5] petitioner, after denying the material allegations of the Complaint, alleged as among her Affirmative Defenses that she is not the real party-in-interest and, therefore, the complaint stated no cause of action against her, hence, must be dismissed; that the owner and the management of the bus involved in the case have always exercised the due diligence of a good father of a family in the selection and supervision of their employees; and that the proximate cause of the collision was the negligence and recklessness of a third party, the driver of a Philippine Rabbit bus.[6]

Petitioner and her counsel failed to appear during the pre-trial scheduled on June 5, 1998 despite due notice thereof, albeit her counsel filed on even date an urgent motion to postpone. The motion was denied, however, and petitioner was declared "as in default" [sic]. Respondents at once started presenting evidence ex-parte.[7]

On June 23, 1998, petitioner filed a Motion for Reconsideration[8] of the June 5, 1998 order declaring her "as in default," alleging that, inter alia, she had meritorious defenses that included her not being the real party-in-interest as she is not the registered owner of the Franco Transit bus[9] but Felicisima R. Franco, in support of which she attached a Certificate of Registration issued on October 28, 1988 in the name of Felicisima R. Franco.[10]

Petitioner's Motion for Reconsideration was denied by the trial court by Order[11] of July 20, 1998 in this wise:

Indeed, a cursory examination of the instant motion will readily show that it was filed in patent violation of the

provision of the rules.

While the movant alleged that [she] has a meritorious defense which would justify the granting of [her] motion, [she] nevertheless failed to submit an Affidavit of Merit. Worst, the motion was not even verified.[12] (Emphasis and underscoring supplied)

Petitioner thereafter filed an Omnibus Motion[13] alleging that it was error to declare her "as in default" for the declaration "as in default" of a defendant who fails to attend pre-trial had been eliminated in the 1997 Rules of Civil Procedure. She thus prayed that she be allowed to participate in the proceedings and to present evidence on her affirmative defenses. The Omnibus Motion was denied for failure of petitioner's counsel to appear at the hearing thereon.[14]

After respondents rested their case, Branch 121 of the Caloocan City RTC, by Decision[15] dated March 30, 1999, found that, inter alia, the negligence of the driver of the Franco Transit bus resulted in the accident which "the defendant [-herein petitioner] failed to rebut" and that, moreover, "the defendant [-herein petitioner] totally failed to present evidence to overthrow the presumption of negligence against her pursuant to Article 2180 of the Civil Code." [16] It thus rendered judgment in favor of respondents, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered against MARIA LIZA FRANCO-CRUZ, operator of FRANCO TRANSIT, ordering her:

- 1) To pay P50,000.00 each by way of actual damages and lost income to plaintiffs Marites M. Ganelo, Catherine C. Santos and Ma. Theresa Q. Fabian;
- 2) To pay moral damages to the above-named plaintiffs in the amount of P100,000.00;
- 3) To pay actual damages in the amount of P515,631.00 to plaintiff Victory Liner, Inc., and lost income in the amount of P50,000.00;
- 4) To pay attorney's fees of P50,000.00 and the costs of the suit.

SO ORDERED.[17]

Respondent Ma. Theresa filed a Motion for Partial Reconsideration and Clarification.[18] Petitioner filed a Motion for Reconsideration[19] of the trial court's decision reiterating her plea that she is not the real party-in-interest against whom the action should be brought, she again submitting the Certification of Registration of the bus in the name of Felicisima R. Franco, together with an Official Receipt of payment as Annex "A" to the motion.

By Order[20] dated June 25, 1999, the trial court denied Ma. Theresa's partial motion for reconsideration but clarified that the attorney's fees "should be divided according to the following proportion: three-fourths (3/4) for Atty. Atilano Huaben B. Lim who represented three of the plaintiffs and one-fourth (1/4) for Atty. Roberto A. Unciano who represented plaintiff Ma. Theresa Q. Fabian." [21]

Respecting petitioner's Motion for Reconsideration of the decision, the trial court denied the same for having been filed beyond the 15-day reglementary period, it having been filed only on the 18[th] day (May 17, 1999) following the receipt by petitioner's counsel of a copy of the decision on April 29, 1999.[22]

On petitioner's appeal,[23] the Court of Appeals, by Decision[24] of September 22, 2005, dismissed the same after noting that her motion for reconsideration of the trial court's decision was filed only on the 18[th] day following receipt by her counsel of a copy of the decision. The appellate court thus held that the trial court's decision had become final and executory.[25]

Her Motion for Reconsideration[26] of the appellate court's Decision having been denied,[27] petitioner filed the present Petition for Certiorari.[28]

One of the requirements for certiorari to lie is that there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[29] Any judgment which finally disposes of a case, leaving nothing more for the court to do in respect thereto - such as the judgment of the Court of Appeals dismissing petitioner's appeal as she had lost the right thereto - is appealable.[30] Petitioner's remedy is, therefore, appeal, not certiorari.

As a general rule, the requirements for perfecting an appeal within the reglementary period specified in law must be strictly followed,[31] appeal not being a constitutional right but a mere statutory privilege.[32] The perfection of an appeal in the manner and within the period permitted by law is thus not only mandatory, but also jurisdictional.[33]

Petitioner argues, however, that:

The ruling of the respondent Court of Appeals contained in its questioned Decision dated March 30, 1999 that the Petitioner had lost her right to appeal is a patent nullity. What the respondent Court of Appeals missed is the fact that before the period to appeal or file a Motion for Reconsideration expire[d], respondent Ma. Theresa Q. Fabian filed a Partial Motion for Reconsideration of the Decision of the lower court dated March 30, 1999, which motion asserted that the lower court erred in not awarding indemnity for the death of each victims [sic] to the plaintiffs and that it failed to clarify the award of attorney's fees of P50,000.00 as to its awardees and its division. With the filing of such Partial Motion for Reconsideration by respondent Ma. Theresa Q. Fabian which prayed for the modification and clarification of the Decision dated March 30, 1999, then, the said decision did not become final.[34] (Underscoring supplied)

In the case at bar, the records show that petitioner's counsel indeed received notice of the trial court's decision on April 29, 1999.[35] Following Rule 37, Section 1 vis-à-vis Rule 41, Section 3 of the Rules of Court, petitioner had 15 days or until May 14, 1999 to file a motion for reconsideration or notice of appeal. She filed a motion for reconsideration on May 17, 1999, thus rendering the trial court's decision as to her final and executory. Testate Estate of Manuel v. Biascan[36] so teaches:

It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. Thus, finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or [no] motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration after the lapse of the period for taking an appeal. x x x The subsequent filing of a motion for reconsideration cannot disturb the finality of the judgment or order.[37] (Emphasis and underscoring supplied)

The filing of a motion for reconsideration by respondent Ma. Theresa within the reglementary period prevented, with respect to her, the decision from becoming final, but not with respect to petitioner.

In *Bank of the Philippine Islands v. Far East Molasses Corporation*,[38] this Court, passing on Section 3, Rule 41 of the Rules of Court which provides that "[t]he appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from" (underscoring supplied), held:

x x x the commencement of the period to appeal x x x should x x x be reckoned x x x from the respective dates each of the parties received a copy of the decision. Therefore, each party has a different period within which to appeal, unless, of course, all of them received their copies on the same date and none filed a motion for reconsideration.[39] (Emphasis and underscoring supplied)

Since each party has a different period within which to appeal, the timely filing of a motion for reconsideration by

one party does not interrupt the other or another party's period of appeal.

In petitioner's case, her Motion for Reconsideration of the trial court's decision was filed three days after the expiration of the reglementary period for the purpose, hence, the Court of Appeals' dismissal of her appeal was in order.

The faux pas or negligence of petitioner's counsel, however, in failing to file a timely motion for reconsideration should not be taken against her. Ordinarily, the negligence of counsel binds the client.[40] However, this Court has recognized the following exceptions to this rule: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice require.[41] In the case at bar, the application of the rule would result in petitioner being held liable for the damages suffered by respondents even without them having established the basis of her liability, thus depriving her of due process of law.

Compounding petitioner's plight is the trial court's procedural error which precluded petitioner from presenting evidence in her behalf.[42] The trial court denied her motion for reconsideration of its order declaring her "as in default" on the ground that she failed to submit an affidavit of merit respecting her claim that she had meritorious defenses. This ratio is, of course, erroneous, for an affidavit of merit is not required to support a motion for reconsideration of an order allowing the ex-parte presentation of evidence by the plaintiff, the defenses having already been laid down in the answer[43] as in petitioner's case.

Petitioner, early on in the Affirmative Defenses segment of her Answer, already disclaimed the allegation in respondents' complaint that she is the registered owner of the bus, hence, not a real party-in-interest-ground to dismiss the complaint for lack of cause of action. She raised it again in her Motion for Reconsideration from the order declaring her "as in default," to which motion she in fact attached the Certificate of Registration showing that the bus was registered in the name of Felicisima R. Franco. Thus, petitioner had alleged and shown her meritorious defense by submitting the Certificate of Registration of the bus, which is evidence that she is not the registered owner of the bus, or that something would be gained by setting aside the order declaring her "as in default." [44]

On the merits of the case, a review of the evidence for respondents shows that individual respondents took the witness stand to testify on the damages they suffered.[45] And they presented the Victory Liner bus inspector;[46] SPO2 Edgardo F. Balajadia (Balajadia) who investigated the site of the accident right after it happened;[47] the Victory Liner maintenance foreman regarding the damage sustained by the Victory Liner vehicles;[48] the death certificates of Rodel Ganelo and Caesar Santos;[49] the marriage certificate of respondent Marites Ganelo;[50] Balajadia's Traffic Accident Report;[51] photographs of the damaged vehicles;[52] and the damage report showing the expenses incurred in repairing both damaged vehicles.[53]

There was no attempt, however, on the part of any of the witnesses for respondents, to controvert petitioner's affirmative defense that there is no cause of action against her, she not being the registered owner of the Franco Transit bus, even despite her submission of the bus' Certificate of Registration in the name of Felicisima R. Franco which is conclusive proof of ownership.

Respondents, in maintaining their cause of action against petitioner, relied on the January 4, 1998 Traffic Accident Report[54] of Balajadia, who conducted a spot investigation after the occurrence of the accident,[55] wherein he stated that the Franco Transit bus was "[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte." (Emphasis supplied) How Balajadia arrived at such statement, he did not indicate in his Report. Neither did he pass on it when he took the witness stand on February 11, 1999.[56]

Rule 130, Section 44 of the Rules of Court, provides:

SEC. 44. Entries in official records. - Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated. (*Italics in the original*)

For the entries in Balajadia's Report to qualify as prima facie evidence of the facts therein stated, the following conditions must be present:

x x x (a) that the entry was made by a public officer, or by another person specially enjoined by the law to do so; (b) that it was made by the public officer in the performance of his duties or by such other person in the performance of a duty enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[57] (*Underscoring supplied*)

Balajadia's statement that the Franco Transit bus was "[r]egistered under the name of Marializa Franco-Cruz of Batac, Ilocos Norte" was not shown, however, to have been based on his personal knowledge or that he had sufficient knowledge thereof acquired by him personally or officially.

It bears emphasis that the presentation by respondents of evidence ex-parte did not relieve them of the burden of proving their claims against petitioner.

As in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's own evidence and not upon the weakness of the opponent's defense. This applies with more vigor where, as in the instant case, the plaintiff was allowed to present evidence ex parte. The plaintiff is not automatically entitled to the relief prayed for. The law gives the defendant some measure of protection as the plaintiff must still prove the allegations in the complaint. Favorable relief can be granted only after the court is convinced that the facts proven by the plaintiff warrant such relief. Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.[58] (*Emphasis and underscoring supplied*)

Respondents having failed to discharge the onus of proving that petitioner was, at the time of the accident, the registered owner of the bus, it was error for the trial court to credit respondents' evidence.

Just as it was error for it to hold that "the defendant [-herein petitioner] failed 1) to rebut" the evidence showing the accident was the result of the negligence of the Franco Transit bus driver and 2) to present evidence to overthrow the presumption of negligence against her pursuant to Article 2180 of the Civil Code in light of its order allowing respondents to present evidence ex-parte and denying petitioner's pleas to be allowed to participate in the proceedings and present evidence on her affirmative defenses.

The trial court's decision in favor of respondents must thus be set aside.

Given the attendant facts and circumstances, in the interest of justice, this Court resolves to remand the case to the trial court to afford petitioner her right to due process.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals dated September 22, 2005 dismissing petitioner's appeal from the decision of Branch 121 of the Caloocan City Regional Trial Court is SET ASIDE. The decision of the trial court is vacated. Civil Case No. C-18212 is REMANDED to Branch 121 of the Regional Trial Court of Caloocan City which is hereby directed to allow petitioner to present evidence on her affirmative defenses and/or rebut respondents' evidence and to allow respondents to submit additional evidence if necessary and/or they so desire.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., Concur.

[1] Records, pp. 1-5.

[2] Sometimes spelled as "Ma."

[3] Records, p. 1.

[4] Id. at 4.

[5] Id. at 11-15.

[6] Id. at 12.

[7] Id. at 28.

[8] Id. at 30-31.

[9] Id. at 30-A.

[10] Id. at 40.

[11] Id. at 51-52.

[12] Id. at 51.

[13] Id. at 69-72.

[14] Id. at 80.

[15] Id. at 146-151.

[16] Id. at 151.

[17] Ibid.

[18] Id. at 157-162.

[19] Id. at 153-154.

[20] Id. at 165-166.

[21] Id. at 166.

[22] Id. at 165.

[23] Id. at 169-170.

[24] Penned by Justice Santiago Javier Ranada and concurred in by Justices Roberto A. Barrios and Mario L. Guariña III; CA rollo, pp. 73-77.

[25] Id. at 75-76.

[26] Id. at 78-82.

[27] Id. at 91.

- [28] Rollo, pp. 3-13.
- [29] Rules of Court, Rule 65, Section 1.
- [30] Vide *Intramuros Tennis Club, Inc. v. Phil. Tourism Authority*, 395 Phil. 278, 293-294 (2000).
- [31] Vide *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).
- [32] Vide *ibid*.
- [33] Vide *ibid*.
- [34] Rollo, p. 9.
- [35] Vide records, p. 152.
- [36] 401 Phil. 49 (2000).
- [37] *Id.* at 59 (citations omitted).
- [38] G.R. No. 89125, July 2, 1991, 198 SCRA 689.
- [39] *Id.* at 703-704.
- [40] Vide *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, 442 Phil. 55, 63 (2002).
- [41] Vide *id.* at 64.
- [42] Vide *Lorbes v. Court of Appeals*, 404 Phil. 567, 580 (2001).
- [43] *Jonathan Landoil Int'l. Co., Inc. v. Mangudadatu*, G.R. No. 155010, August 16, 2004, 436 SCRA 559, 570-571.
- [44] Vide *ibid*; *Villareal v. Court of Appeals*, 356 Phil. 826, 846 (1998).
- [45] TSN, June 5, 1998, pp. 2-15; TSN, September 17, 1998, pp. 2-7.
- [46] TSN, December 16, 1998, pp. 2-13.
- [47] TSN, February 11, 1999, pp. 2-10.
- [48] TSN, February 26, 1999, pp. 2-8.
- [49] Exhibits "B" and "C," folder of exhibits.
- [50] Exhibit "A," *id.*
- [51] Exhibit "D," *id.*
- [52] Exhibit "E," *id.*
- [53] Exhibits "F" and "G," *id.*
- [54] Exhibit "D," Traffic Accident Report, *id.*
- [55] Vide TSN, February 11, 1999, pp. 2-10.
- [56] *Ibid.*
- [57] *Africa, et al. v. Caltex (Phil.), Inc., et al.*, 123 Phil. 272, 277 (1966).

[58] Saguid v. Court of Appeals, 451 Phil. 825, 837 (2003). (Citations omitted)

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.