

MULTI-TRANS AGENCY PHILS. INC., PETITIONER, VS. ORIENTAL ASSURANCE CORP., RESPONDENT.*G.R. No. 180817. June 23, 2009*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-180817/>

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, which seeks the reversal and setting aside of the Decision[1] of the Court of Appeals dated 4 December 2006 in CA-G.R. CV No. 67581 affirming with modification the decision[2] and order[3] of the Regional Trial Court (RTC) of Manila, Branch 13, in Civil Case No. 97-84259; and its Resolution[4] dated 10 December 2007 denying petitioner Multi-Trans Agency Phils., Inc.'s (Multi-Trans) Motion for Reconsideration.

The instant case arose from a complaint for sum of money filed by respondent Oriental Assurance Corporation (Oriental) against petitioner and Neptune Orient Lines, Ltd. (Neptune) before the RTC of Manila on 22 July 1997. The case was raffled to Branch 13. The complaint alleged, inter alia, that Multi-Trans was the operator/ship agent of the vessel "Tokyo Bay" while Neptune was the operator/ship agent of the vessel "M/V Neptune Beryl." Oriental's predecessor-in-interest - Imrex Enterprises - imported from England seventy-two (72) boxes and one (1) pal/box of various colors of Opacolor, contained in one container van which was transported from Southampton to Manila on board the vessel "Tokyo Bay" as evidenced by Bill of Lading No. MA-19943/02. The shipment was transshipped from Singapore on board the vessel "M/V Neptune Beryl," which arrived and docked at the Manila International Port, Manila, on 29 August 1996. The shipment was insured by respondent against loss and/or damage for P1,078,012.16 under Marine Insurance Policy No. OAC-M-96/688.

The container van containing the shipment was unloaded from the carrying vessel and stripped of its contents at the open Container Yard of the Manila North Harbor. Only 72 boxes were found, while the one pal/box of Opacolor CC 22932 Yellow weighing 500 kilos was not delivered by the carrying vessel, or was shortlanded, as evidenced by Good Order Cargo Receipt No. 1792 issued by Neptune. The 72 boxes were withdrawn from the Manila North Harbor and delivered to the consignee's (Imrex Enterprises') warehouse at No. 7 Jose Cruz St., Barrio Ugong, Pasig City.

Respondent alleged that the non-delivery or shortlanding of one box of the shipment was due to the negligence of petitioner and Neptune and/or the captain and crew of the vessels "Tokyo Bay" and/or "MV Neptune Beryl" in loading, stowing, taking care of, handling and unloading the shipment. By being negligent, petitioner and Neptune breached their contract of carriage in failing to deliver one box of the shipment to Imrex Enterprises at the point of destination. Imrex Enterprises filed a claim with respondent for the value of the one box that was shortlanded. Pursuant to the terms and conditions of Marine Insurance Policy No. OAC-M-96/688, respondent paid Imrex Enterprises the amount P256,937.03, for which reason, it claims that it is subrogated into the rights of Imrex Enterprises to be indemnified by petitioner and Neptune.

Respondent made demands upon petitioner and Neptune to pay, but they refused to satisfy the former's claim. As a result, the complaint was filed and both petitioner and Neptune were sued, because respondent was uncertain from whom it was entitled to relief. It prayed that either or both petitioner and Neptune be ordered to pay (a) P256,937.03 with legal interest from the date of the filing of the complaint; (b) P50,000.00 as attorney's fees; and

(c) costs of suit.[5]

Neptune filed its Answer with Compulsory Counterclaim.[6] It alleged, among other things, that it was a mere commercial agent of "M/V Neptune Beryl;" and that it had no knowledge of the contents, quantity, quality, condition and value of the subject shipment, as it was carried on a "Said to Contain" (or STC) and "Shipper's Load and Count" basis. It claimed that the dorsal portion of Bill of Lading No. MA-19943/02 was not produced. It added that the shipment was discharged from the vessel complete and in good order, and that it exercised the diligence required by law in the handling of and vigilance over the shipment. It also alleged that no demand was made. It invoked the following defenses: the complaint stated no cause of action; the plaintiff and subrogor had no privity of contract with Neptune; plaintiff and Neptune were not the real parties-in-interest; the subject shipment was discharged at the Port of Manila complete and in good order; its responsibility ceased upon the shipment's discharge from the ship's tackle; the damages, losses and spillages, if any, were due to the inherent nature, vice or defect of the goods; or the perils, dangers and accidents of the sea; pre-shipment loss or damage; or the insufficiency of the packing thereof, for which it was not liable; the alleged payment made by plaintiff to the alleged assured/consignee was not legally due and demandable, so there was consequently no legal subrogation in favor of the plaintiff; its liability should not exceed the cost insurance freight value of the loss or damaged shipment or the amount of \$500 per package; or in any event, said liability, if any, should not exceed the limitation of liability provided for in the Bill of Lading; no invoice of loss/damage was made by the consignee within the time required by law, the Bill of Lading, and the pertinent charter party; the complaint was barred by prescription and/or laches; plaintiff's claim was excessive and unreasonable; the terms and conditions of the relevant Bill of Lading, Carriage of Goods by Sea Act and existing laws absolved it from any and all liability for the alleged loss/damage; the damage, if any, to the shipment was due to the negligent acts or omissions committed by the consignee or its representatives, or to causes for which defendant is not responsible; the shipment was loaded on board the vessel subject to the terms and conditions of the relevant Bill of Lading; the subject shipment was carried under "weight, measure, marks and numbers, quality, contents and value unknown," indicating that the carrier did not know the exact quantity, quality and weight of the shipment, as it was not given the opportunity to inspect the same; and the Bill of Lading was issued based on the declaration made by the shipper; and the vessel (M/V Neptune Beryl) acted as a special carrier, and Neptune was a mere commercial agent of "M/V Neptune Beryl."

On the other hand, petitioner, through its counsel Jose Ma. Q. Austria, filed a Motion to Dismiss[7] on the ground that the complaint did not state a cause of action. It argued that the complaint stated that petitioner Multi-Trans was the "operator/ship agent of the vessel "Tokyo Bay." However, in the Bill of Lading attached to the complaint, petitioner was named agent of Multimodal Transport Operator and not of the vessel "Tokyo Bay." Neither can it be the operator of the said vessel, there being no allegation that said vessel was on a bareboat charter to Transtainer Lines, the principal of petitioner. It maintains that the evidence presented by plaintiff defeats its own allegations as to the participation of petitioner in the transaction.

On 8 October 1997, respondent opposed the motion to dismiss.[8] On 23 October 1997, respondent filed its answer to counterclaim.[9]

In an Order dated 25 October 1997, petitioner's motion to dismiss was denied.[10]

In an Order dated 20 February 1998, the trial court directed its personnel to transmit immediately to counsel of petitioner a copy of the Order dated 25 October 1997 it appearing that Multi-Trans was not sent a copy thereof. For this reason, it declared that petitioner's period to file an answer had not yet started to run.[11]

On 15 January 1999, the trial court archived the case, there being no movement in the case.[12]

On 17 February 1999, respondent filed a motion to declare defendant Multi-Trans in default for failure to file its answer to the complaint.[13]

In its order[14] dated 26 February 1999, the trial court stated that the copy of the Order dated 25 October 1997 was sent to defendant Multi-Trans and not to its counsel. For this reason, the period to file an Answer had not yet started to run. It directed that a copy of the 25 October 1997 Order be sent to defendant Multi-Trans' counsel. A notice of the transmittal of the Order dated 25 October 1997 to Atty. Austria was shown to the trial court without any return.

Per Order dated 27 March 1999, petitioner Multi-Trans was declared in default, there being a certification from the Post Office of Makati showing that counsel for petitioner received a copy of the Order dated 25 October 1997 denying its motion to dismiss, and that it had not yet filed an Answer.[15]

The trial court scheduled the pre-trial between respondent and Neptune and required them to submit their pre-trial briefs.

On 14 April 1999, respondent reiterated its motion to declare petitioner Multi-Trans in default.[16] On 15 April 1999, the trial court reiterated its earlier Order of 27 March 1999 declaring petitioner Multi-Trans in default.[17]

Respondent Oriental filed its pre-trial brief on 6 May 1999,[18] while Neptune filed its pre-trial brief on 18 May 1999.[19]

In an Order dated 20 May 1999, respondent Oriental was allowed to present its evidence ex parte for failure of Neptune and its counsel to appear at pre-trial despite notice.[20]

On 17 June 1999, Oriental presented two witnesses: (1) Erlinda Espiritu and (2) Perfecto Mojica. It formally offered in evidence Exhibits A to O, inclusive,[21] which the trial court admitted.[22]

On 30 August 1999, the trial court rendered its decision finding petitioner and Neptune solidarily liable to respondent. The dispositive portion of the decision reads:

WHEREFORE, judgment is rendered ordering defendants Multi-Trans Agency Phils., Inc. and Neptune Orient Lines Ltd. jointly and severally to pay the plaintiff Oriental Assurance Corporation the sum of P256,937.03 with legal interest of 6 percent per annum from the date of filing of the complaint until payment, plus reasonable attorney's fees of P30,000, and costs.[23]

On 10 September 1999, Atty. Jose Ma. Austria, with conformity of petitioner, filed a Notice of Withdrawal of Appearance.[24] The trial court ordered notices be furnished petitioner until a new counsel appeared.[25]

On 27 September 1999, Melgar Tria & Associates entered its appearance for petitioner Multi-Trans.[26] Simultaneously with its entry of appearance, new counsel for petitioner filed a Motion for New Trial and to Admit Attached Answer.[27] Petitioner prayed that the judgment of the trial court be set aside and a new trial be granted on the ground of its former counsel's negligence/incompetence constituting excusable neglect, and that its Answer to the Complaint be admitted. The following are contained in the Affidavit of Merit executed by petitioner's Administration Manager:

4. That I was surprised considering that per last conversation with our lawyer Atty. Jose Ma. Austria, he informed us that we have been declared in default and that they have already filed a Motion to Lift Order of default;

5. That upon verification of the records of the case, I found out that our lawyer Atty. Jose Ma. Austria did not actually file any Motion to Lift Order of Default despite receipt of the Order of the Court declaring us in default;

6. Furthermore, review of the records of the case, disclosed that the only action taken by our counsel was to file in our behalf a Motion to Dismiss but the same was denied by this Honorable Court on October 25, 1997 and received by Atty. Austria on February 25, 1998 as evidenced by the Certification coming from the Post Office of Makati City;

x x x x

9. As can be clearly seen, from the time he received the order of this Court dated October 25, 1997 denying its Motion to Dismiss, up to the time he received plaintiff's motion to declare defendant in default until the time he received the Order of this Court declaring us in default, our lawyer has not done nothing (sic) either by filing an answer or a motion to lift the order of default (which he led us to believe that he indeed filed the same) which is clearly a breach of trust that we have reposed in him;

10. By the negligence of our counsel, we were denied the opportunity to present evidence and participate in the trial, and thus deprived us the chance to contest the suit that has been filed against us by the plaintiff;

11. That we have a good and meritorious defense in that our company is just a mere freight forwarding firm. Likewise our principal in London, John Goods & Sons (London) Ltd. is also a freight forwarder. While Transtainer Systems (UK) Ltd., Multimodal Operators (wherein John Goods & Sons Ltd. is the agent) is a non-operating vessel cargo consolidator.

12. As can be shown, neither one of us is the owner/operator of the vessel "Tokyo Bay" wherein the subject cargo was loaded and shipped nor have we any participation in the filing up, packing, storing of the subject cargo in the container nor in the loading and shipping of the same in the vessel; x x x.[28]

On 28 September 1999, Neptune filed a Motion for Reconsideration of the decision of the trial court.[29]

Respondent filed its opposition to the motions for new trial and for reconsideration.[30]

In its Order dated 29 November 1999, the trial court denied the motion for new trial. It declared:

In seeking new trial, defendant Multi-Trans Agency assails its former counsel Atty. Jose Ma. Austria for not taking any action at all from the time that he received the denial of his motion to dismiss until the decision was rendered. It cites rulings to the effect that negligence or incompetence of counsel is a well-recognized ground for new trial. While this may be true in a number of cases, the factual backdrop therein will reveal that the parties aggrieved by the inaction of their counsels had not contributed to the situation in which they found themselves. A party must truly be a victim of its counsel's misconduct for it to claim new trial. This is not the case here. Atty. Austria may have ignored the orders and other papers sent to him, but the records will show that defendant was also furnished copies of the same papers. It cannot pretend to be ignorant of what was going on. In particular, it had received copy of the Order of March 27, 1999 declaring it in default, but from the time it received this in April until the decision on August 30, 1999 - a period of four months - it did nothing to regain its standing. Defendant was already alerted to the fact that its counsel was remiss in his duties. A normally prudent and careful person would have taken pains to rectify the situation when there was still time to do so. In not making a response until it was too late, defendant can no longer claim any relief. It is as irresponsible as its lawyer and unworthy to invoke the higher right of equity to rescue it from the consequences of its inaction. As provided in Section 1, Rule 37 of the Rules of Court, a party may move to set aside the judgment and ask for new trial if it can show that its negligence was, at the least, excusable. The facts show otherwise.

The plaintiff has also presented enough evidence to establish the liability of defendant for the loss of a part of the cargo. As stated in the decision, the bill of lading clearly points to the defendant as the shipagent of the vessel in which the cargo was loaded. The loss of the cargo is deducible from the quantity loaded at the point of shipment and the quantity discharged at the point of delivery.[31]

The motion for reconsideration filed by Neptune was denied by the trial court in its Order dated 1 December 1999.[32]

Petitioner filed a notice of appeal informing the trial court that it was appealing from the decision it had rendered and the Order denying the motion for new trial.[33] Neptune also filed a notice of appeal.[34] With notices of appeal having been filed, the trial court forwarded the records of the case to the Court of Appeals.[35]

On 4 December 2006, the Court of Appeals promulgated its decision denying the petitioner's appeal, while granting that of Orientals. It affirmed with modification the trial court's decision dated 30 August 1999 and Order dated 29 November 1999 ruling that it was only petitioner that was liable to respondent.

Petitioner filed a Motion for Reconsideration.[36] Respondent filed a Partial Motion for Reconsideration, praying that the Court of Appeals' decision be reversed and set aside, and that Neptune be held solidarily liable with petitioner.[37] On 10 December 2007, the Court of Appeals denied both motions.[38]

Petitioner Multi-Trans Agency Phils. Inc. is now before us via a petition for review, praying that the decision and Order of the Court of Appeals be set aside, and that its Motion for New Trial and to Admit Answer be granted.[39] Respondent Oriental Assurance Corporation filed its Comment on the petition filed by Multi-Trans.[40]

Both petitioner and respondent filed their respective memoranda.[41]

Petitioner makes the following assignment of errors:

FIRST

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE SIGNIFICANT AND UNCONTROVERTED ACTS OF PETITIONER'S FORMER COUNSEL AMOUNTING TO A "BETRAYAL" OF HIS CLIENT'S INTEREST AND WHICH ARE SUFFICIENT REASONS FOR A NEW TRIAL.

SECOND

THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE AWARD OF DAMAGES DESPITE LACK/INSUFFICIENT EVIDENCE AND THE FACT THAT PETITIONER IS NOT THE AGENT OF THE CARRIER.[42]

Petitioner argues that the Court of Appeals erred in holding that its former counsel's failure to file an answer and to act after receipt of the declaration of default merely constituted "simple negligence" binding the petitioner and not entitling it to a new trial. In support of its position, petitioner enumerates the significant and uncontroverted acts of its counsel amounting to a "betrayal" of its interests. These are:

- He failed to file its Answer to the Complaint despite receipt of the Court's Order denying his motion to dismiss.
- He failed to inform his client of the fact of his failure to file its Answer and of the Court Order declaring them in default and allowing plaintiff to present evidence ex-parte.
- He failed to file the Motion to Lift Order of Default to regain his client's standing in Court.
- He misrepresented that he already filed the Motion to Lift Order of Default when confronted by client when it learned of said Order of default.
- He never bothered to verify what transpired at the ex-parte hearing and was not able to file the necessary pleadings to lift order considering that the case was submitted for decision without petitioner's evidence.

- He miserably failed to inform client of the adverse decision despite receipt and practically did nothing to protect its client's interest.[43]

The foregoing acts, petitioner maintains, amply show that its former counsel misrepresented the true status of the case. On account of these acts which amount to incompetence or negligence, it has been unduly deprived of its rights to be heard and to present its defense and thus has been deprived of its day in court, violating its right to due process of law through no fault of its own. It explains that while it is settled that negligence of counsel binds the client, this rule is not without exception. In cases where reckless or gross negligence of counsel, like in this case, deprives the client of due process of law, or when the application would result in outright deprivation of the client's liberty or property, or where the interest of justice so requires, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. Citing *Tan v. Court of Appeals*,^[44] petitioner pleads that because it is similarly situated with the petitioner therein, the ruling in said case - granting the motion for new trial after counsel failed to file an answer and the client was declared in default - should be applied to the case at bar.

Petitioner further disputes the Court of Appeals' ruling that there is no compelling reason to relax the rules in its favor, because it is not entirely blameless and should have taken a more active role in the proceedings of the case against it. It contends that it is not correct to state that it did not do anything despite being alerted that it was already declared in default.

After going over the records of this case, we find the petition meritorious.

One of the grounds for the granting of a new trial under Section 1 of Rule 37 of the 1997 Revised Rules of Civil Procedure is excusable negligence.^[45] It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client.^[46] Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client.^[47] We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence.^[48] In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into. In cases where one of the exceptions is present, the courts must step in and accord relief to a client who suffered thereby.^[49]

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them.^[50]

In the case before us, we find the negligence of petitioner's former counsel to be so gross that it was deprived of its day in court, thus denying it due process. The records show that petitioner was declared in default for failure of its former counsel to file an answer to the complaint after the motion to dismiss he filed was denied by the trial court. Atty. Austria did not do anything to protect the interests of petitioner. He neither opposed the plaintiff's motion to declare his client in default despite due notice thereof; nor filed any motion to set aside the order declaring his client in default, also after he was apprised of the adverse order. He failed to inform his client of the fact that he failed to file an Answer and of the Court Order declaring it in default and allowing plaintiff to present evidence *ex parte*. He even misrepresented that he already filed a Motion to Lift Order of Default when confronted by his client after the latter learned of said Order of Default. As a result of Atty. Austria's inaction, respondent was allowed to present its evidence. Petitioner failed to adduce any evidence to rebut the allegations contained in the complaint. It was deprived of due process. The gross negligence of petitioner's former counsel,

coupled with its deprivation of due process, will ultimately result in its deprivation of property.

For a claim of counsel's negligence to prosper, nothing short of clear abandonment of the client's cause must be shown.[51] In this case, the only pleading filed by petitioner's former counsel was a motion to dismiss. After the same had been denied, he did not file anything more until a decision was rendered by the trial court. This is compounded by the fact that he misrepresented to petitioner that he had filed the proper motion to set aside the order of default. These acts of petitioner's counsel amount to gross negligence.

The Court of Appeals said that petitioner was not entirely blameless, because it failed to take a more active role in the proceedings. Quoting the trial court, it declared that "Defendant was already alerted to the fact that its counsel was remiss in his duties. A normally prudent and careful person would have taken pains to rectify the situation when there was still time to do so. In not making a response until it was too late, defendant can no longer claim any relief. It is as irresponsible as its lawyer and unworthy to invoke the higher right of equity to rescue it from the consequences of its inaction."

Under the circumstances of the case, petitioner cannot be blamed for relying on the assurance of its former counsel. Petitioner cannot be said to have utterly failed to do anything to regain its standing after being declared in default. After being informed that it was declared in default, it confronted Atty. Austria of the same and was assured by him that a motion to lift the order of default had been filed. This, we know, was not true since petitioner never regained its standing, and a decision was rendered by the trial court in favor of the plaintiff without petitioner having the opportunity to present its evidence.

In *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*,[52] we held:

A client may reasonably expect that his counsel will make good his representations and has the right to expect that his lawyer will protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a case or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution and management of the suit, and in a defendant's attorney, the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant.

In *Amil v. Court of Appeals*,[53] we ruled that trial courts should be liberal in setting aside orders of default and granting motions for new trial if the defendant appears to have a meritorious defense. Parties must be given every opportunity to present their side. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.

In the case under consideration, petitioner appears to have a defense that should be looked into more closely. Petitioner insists that it is not the agent of the vessel "Tokyo Bay," the vessel that carried the subject shipment. As can be seen from the International Bill of Lading[54] issued by John Goods & Sons (London), and as admitted by petitioner, it is the local agent of John Goods & Sons (London) that is, in turn, the agent of Transtainer Systems (UK) Ltd., Multimodal Transport Operators. Looking at the complaint,[55] respondent alleges that petitioner is the operator/shipagent of the vessel "Tokyo Bay." Both lower courts ruled that petitioner was liable for being the agent of "Tokyo Bay," the vessel in which the cargo was loaded. There appears to be some inconsistency between the allegation in the complaint and the decisions of the lower courts that was not fully explained. In light of these, it would be in accord with justice and equity to allow petitioner's prayer for new trial, so that it can present its evidence; and for the trial court to determine with certainty where the liability, if any, of petitioner arises - whether as agent of "Tokyo Bay" or as agent of John Goods & Sons (London).

Our pronouncement in *Apex Mining, Inc. v. Court of Appeals*[56] applies to this case:

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result

thereof is so serious that the clients, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer's professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the client's being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.

In view of the foregoing circumstances, higher interests of justice and equity demand that petitioners be allowed to present evidence on their defense. Petitioners may not be made to suffer for the lawyer's mistakes and should be afforded another opportunity, at least, to introduce evidence on their behalf. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to a party whose only fault was to repose his faith and entrust his innocence to his previous lawyers.

What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities. In cases involving gross or palpable negligence of counsel the courts must step in and accord relief to a client who has suffered thereby. This Court will always be disposed to grant relief to parties aggrieved by perfidy, fraud, reckless inattention and downright incompetence of lawyers, which has the consequence of depriving their clients, of their day in court.

WHEREFORE, premises considered, the petition is GRANTED. The Decision of the Court of Appeals dated 4 December 2006 in CA-G.R. CV No. 67581 is SET ASIDE.

The case is hereby REMANDED to the Regional Trial Court of Manila, Branch 13, for a new trial. It is DIRECTED to admit the Answer of petitioner and to receive the latter's evidence, and rebuttal and sur-rebuttal evidence if warranted, and to dispose of the case with reasonable dispatch.

The former counsel for petitioner, Jose Ma. Q. Austria, is hereby required to show cause within ten (10) days from notice why he should not be held administratively liable for his acts and omissions as aforementioned in this decision.

SO ORDERED.

Ynares-Santiago, Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Rodrigo V. Cosico and Edgardo F. Sundiam, concurring. Rollo, pp. 40-69.

[2] Records, pp. 138-140.

[3] Id. at 180-180a.

[4] Rollo, pp. 71-72.

[5] Records, pp. 1-4.

[6] Id. at 21-27.

[7] Id. at 30-32.

[8] Id. at 33-37.

- [9] Id. at 45-46.
- [10] Id. at 47.
- [11] Id. at 50.
- [12] Id. at 53.
- [13] Id. at 57-58.
- [14] Id. at 60.
- [15] Id. at 70.
- [16] Id. at 72-73.
- [17] Id. at 74.
- [18] Id. at 80-86.
- [19] Id. at 90-94.
- [20] Id. at 95.
- [21] Id. at 108-134.
- [22] Id. at 135.
- [23] Id. at 140.
- [24] Id. at 142-143.
- [25] Id. at 144.
- [26] Id. at 145.
- [27] Id. at 146-162.
- [28] Id. at 153-154.
- [29] Id. at 163-168.
- [30] Id. at 172-179.
- [31] Id. at 180-180a.
- [32] Id. at 181-182.
- [33] Id. at 188.
- [34] Id. at 190.
- [35] Id. at 191.
- [36] CA rollo, pp. 153-161.
- [37] Id. at 165-173.
- [38] Id. at 215-216.
- [39] Rollo, pp. 10-38.

[40] Id. at 87-99.

[41] Id. at 106-141; 154-173.

[42] Id. at 21.

[43] Id. at 23-24.

[44] 341 Phil. 570, 582 (1997).

[45] Section 1. Grounds of and period for filing motion for new trial or reconsideration. - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; x x x.

[46] *Salonga v. Court of Appeals*, 336 Phil. 514, 526 (1997).

[47] *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, 25 November 2004, 444 SCRA 355, 361.

[48] *Gacutana-Fraile v. Domingo*, 401 Phil. 604, 615 (2000).

[49] *Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222, 244-245 (2000).

[50] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 245 (2002).

[51] *Que v. Court of Appeals*, G.R. No. 150739, 18 August 2005, 467 SCRA 358, 369.

[52] 442 Phil. 55, 65 (2002).

[53] 374 Phil. 659, 666 (1999).

[54] Exh. K.

[55] Records, p. 1.

[56] 377 Phil. 482, 495-496 (1999).

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