

BPI-FAMILY SAVINGS BANK, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE SPOUSES GAIL MANALANG, AND ERIC B. MANALANG, RESPONDENTS.

G.R. No. 94925. April 22, 1991

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-94925/>

GUTIERREZ, JR., J.:

The instant case stems from the order of default issued by the trial judge on March 15, 1988 for the petitioner's failure to appear during the pre-trial hearing.

The antecedent facts are as follows:

The petitioner, BPI Family Savings Bank, is the owner of a commercial building along Taft Avenue. The private respondents, spouses Gail and Eric Manalang are tenants of a rental unit which was used for the couple's "Lareina Pawnshop" business.

The private respondents entered into a lease contract with the former Family Savings Bank and Trust Company (FBTC) over the premises in question for a term of thirty-five and a half (35-1/2) months starting from January 16, 1985 and ending on December 31, 1987.

On September 4, 1987 or four (4) months before the expiration of the lease, a fire occurred at the Orions Electronic Supplies which is a business establishment located on the left side, facing Taft Avenue, Manila of the private respondents' place of business, the right side being occupied by the BPI Family Savings Bank. The fire destroyed a major portion of the leased premises. It was for this reason that the petitioner considered the lease contract terminated on account of the fortuitous event under the authority of Article 1655 of the Civil Code over private respondents' objections.

On December 3, 1987, the private respondents filed a complaint for specific performance with damages against FBTC with the Regional Trial Court (RTC), Makati, alleging that the termination of the lease contract by the petitioner was illegal.

On February 12, 1988, the petitioner filed its answer with counterclaim, alleging that it was the successor-in-interest of the defendant FBTC and that its termination of the lease contract was rightful, just and legal pursuant to Article 1655 of the Civil Code.

The Court set the case for pre-trial on March 15, 22 and 28, 1988 at 8:30 A.M.

On March 15, 1988, after due notice to all parties and their counsel, pre-trial was heard by the RTC Judge but because the petitioner's counsel, Atty. Dante T. Ramos (of D. T. Ramos and Associates) was not able to appear during the pre-trial because of illness, an order was issued by the trial court, which reads as follows:

"For failure of the defendant to appear despite due notice during pre-trial, said defendant is declared as in Default and the plaintiff is allowed to present evidence ex-parte before a court-appointed Commissioner.

With the completion of the testimony of plaintiff's witnesses, Gail Manalang, Eric H. Manalang and Luz Dizon Korionoff, the plaintiff rested their case.

After all the exhibits were formally offered and admitted by the Court, this case is deemed submitted for decision." (Rollo, p. 6)

That same morning, the private respondents presented their evidence ex-parte before a Commissioner appointed by the trial court.

On March 16, 1988, the petitioner filed a Verified Urgent Ex-Parte Motion to Set Aside Order of Default (dated March 15, 1988) alleging that the petitioner's counsel failed to appear at the pre-trial conference because he was sick with fever due to influenza. It further alleged that the petitioner's representative, Mrs. Lorna Cenzone was, however, present at the trial court's office at that time waiting for Atty. Ramos to arrive so she did not hear the case being called. A copy of the motion was furnished to the private respondents' counsel on the same day by personal delivery.

The private respondent filed its opposition dated March 16, 1988 to the said motion after which the petitioner filed its reply dated May 5, 1988.

On May 11, 1988, the trial court denied the petitioner's motion to set aside order of default on the ground that said motion failed to comply with the 3-day notice of hearing under Sections 4 and 5 of Rule 15 of the Rules of Court.

On December 13, 1988, judgment by default was rendered against the petitioner. The dispositive portion of the decision reads as follows:

"WHEREFORE, premises considered, the Court hereby renders judgment against the defendant Family Savings Bank & Trust Company (now BPI Family Savings Bank, Inc.) directing it:

- 1) To give plaintiff a one (1) year lease contract over the subject premises under the terms and conditions agreed upon between them;
- 2) To pay plaintiffs actual/compensatory damages in the sum of P20,000.00;
- 3) To pay plaintiffs, moral damages in the sum of P1,000,000.00;
- 4) To pay plaintiffs exemplary damages in the sum of P500,000.00;
- 5) To pay attorney's fees in the sum of P100,000.00; and
- 6) To pay the costs of suit." (Rollo, p. 50)

On January 10, 1989, the petitioner filed with the trial court a notice of appeal from the judgment of default.

On or about February 27, 1989, the private respondents filed a motion for execution of the judgment by default alleging that said judgment had already become final. The petitioner's notice of appeal was filed out of time, since a copy of the trial court's decision was received by the petitioner on December 22, 1988 and not December 26, 1988 as alleged.

Trial was conducted on the private respondent's motion for execution and the petitioner's opposition thereto with the presentation of the petitioner's and the private respondents' witnesses.

Thereafter, the court issued an order on October 19, 1989 granting the private respondents' motion for execution of the judgment by default and ordering the issuance of the corresponding writ of execution.

The petitioner consequently filed a petition for certiorari with the Court of Appeals docketed as CA-G.R. SP No. 19117 with a prayer for a temporary restraining order.

On March 19, 1990, the Court of Appeals dismissed the petition with the finding that the petitioner's notice of appeal was filed out of time.

The petitioner's motion for reconsideration was likewise denied. The petitioner now raises the following assignment of errors:

I. THE COURT OF APPEALS EITHER OVERLOOKED OR FAILED TO CORRECTLY APPLY BY ANALOGY THE RULING OF THE SUPREME COURT IN *PLDT V. NLRC*, 128 SCRA 402 (1984), TO THIS CASE.

II. AND GRANTING FOR THE SAKE OF ARGUMENT THAT *PLDT V. NLRC* DOES NOT APPLY IN FAVOR OF PETITIONER, THE COURT OF APPEALS ERRED IN DECIDING THIS CASE ON PURELY TECHNICAL GROUNDS AND OVERLOOKED OR FAILED TO APPLY THE MANDATE OF THE SUPREME COURT IN *DIMAYACYAC V. COURT OF APPEALS*, 93 SCRA 265 (1979) AND *CONTINENTAL LEAF V. INTERMEDIATE APPELLATE COURT*, 140 SCRA 269 (1985), WHICH AUTHORIZE AN APPELLATE COURT IN CERTIORARI PROCEEDINGS TO REVERSE OR NULLIFY DECISIONS OF TRIAL COURTS FLAWED BY ABUSE OF DISCRETION AND/OR PATENT ERROR IN THE APPLICATION OF LAW AND JURISPRUDENCE DESPITE THE LOSS OR NON-AVAILMENT OF THE REMEDY OF APPEAL. (Rollo, p. 11)

There is merit in the petition.

The first issue raised by the petitioner brings us to the question as to whether or not there was a valid service of the decision dated December 13, 1988 of the trial court to the petitioner's counsel.

The respondent court based the dismissal of the petition on the finding that the petitioner received its copy of the judgment by default on December 22, 1988 through the petitioner's authorized representative, Mr. Reynaldo Quintos who is also alleged to be the authorized representative of the petitioner's counsel, D. T. Ramos & Associates.

The records disclose that BPI-Family Savings Bank is located at the Filinvest Center. The office of the petitioner's counsel, D. T. Ramos & Associates is also located at the Filinvest Center on the 15th floor. Makati Central Postmaster Mr. Projecto Tomagen testified that Mr. Reynaldo Quintos is not connected with D. T. Ramos & Associates but he is an authorized representative of the BPI Family Savings Bank. All the mails addressed to the center which includes the mail addressed to D. T. Ramos & Associates were included in the Direct Delivery Book of Family Savings Bank of which Mr. Quintos is the authorized representative.

The respondent court concluded that D. T. Ramos and Associates receives its mail in the ordinary course of business through Mr. Quintos who receives them from the Central Post Office.

Thus, it is averred that the trial court did not commit any abuse of discretion when the court a quo computed the last day for filing the notice of appeal from December 22, 1988 when the decision was received by Reynaldo Quintos and considered January 7, 1989 as the last day for the filing of the notice of appeal.

We agree with the petitioner that the ruling in the case of *PLDT v. NLRC* (128 SCRA 402 [1984]) is applicable in the instant case. The ruling is reiterated in *Adamson Ozanam Educational Institution, Inc. v. Adamson University Faculty and Employees Association* (179 SCRA 279 [1989]).

The PLDT case states:

Section 2, Rule 13 of the Revised Rules of Court reads:

"Papers to be filed and served. — Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the

parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them unless service upon the party himself is ordered by the court. x x x."

xxx xxx xxx

Under the above provisions, it is clear that service of notice, pleadings, orders, and the like, should be made on the party, if not represented by counsel (*Elli v. Ditan*, 1 SCRA 503) and when a party is represented by counsel, notice should be made upon the counsel. Notice upon the party himself, is not considered in law unless service upon the party is ordered by the Court. The term 'every written notice', includes notice of decisions or orders. (*Jalover v. Ytoriaga*, 80 SCRA 100).

Service should be made upon the lawyer (or the lawyer's authorized representative) and not upon the client (or any of the client's representative). Service upon the client is not service upon the lawyer in the contemplation of law. (*Zoleta v. Drilon*, 166 SCRA 548 [1988]) The respondent court erred in considering Reynaldo Quintos as the authorized representative of the petitioner's counsel D. T. Ramos & Associates. The testimony of the Postmaster of the Makati Post Office is clear, to wit:

"Court:

Q: Who is this Reynaldo Quintos:

A: He is not in any way connected with D. T. Ramos and Associates, he is an authorized representative of the Bank of PI Family Savings bank, which has [its] office at the Filinvest Center, incidentally, the D.T. Ramos and Associates at that time was also holding office in said center, I came to know that all the mails addressed to that center which includes the mail addressed to D.T. Ramos and Associates were included in that Direct Delivery Book of Family Savings Bank of which Mr. Quintos is the authorized representative, it appears also in our verification that whatever mails that Mr. Quintos received from our office, he delivers that to D.T. Ramos and Associates.

Q: Do you know whether he is also authorized by D.T. Ramos and Associates to receive communications from him?

A. When I verified this, there was no authority, that is why I stated in my letter certification that it was inadvertently included in that Direct Delivery Book because that letter was supposed to be delivered by the letter carrier concern[ed] to D.T. Ramos and Associates, but as I have previously stated in my certification that the person or employee assigned to this Direct Delivery Book included the mail, registered mail addressed to D.T. Ramos and Associates it being holding office in the Filinvest Center. x x x)" (Records, pp. 140-141; Underlining supplied)

Reynaldo Quintos may have picked up letters in the post office for D.T. Ramos and Associates but this was perhaps a mere voluntary gesture on his part. It is, however, clear that he was not duly authorized by D. T. Ramos and Associates to receive its mails so as to bind it in any legal proceeding. Service upon said counsel was not actually effected. We also agree with the petitioner that the respondent court erroneously fused the separate personalities of the petitioner as a banking entity with Reynaldo Quintos as its postal representative and D. T. Ramos and Associates as counsel of record for the petitioner. The petitioner as a banking entity cannot be equated with D.T. Ramos and Associates and service upon the petitioner as a banking entity through its postal representative cannot be the equivalent of a service upon counsel.

The trial court also averred in its order dated October 19, 1989 that D. T. Ramos and Associates are not only the lawyers of the defendant bank but also the latter's salaried employees. In the PLDT case, the judgment addressed to the Legal Services of PLDT was received at the ground floor of the building. The Legal Services is undoubtedly part of PLDT but the Court ruled that service of notice or pleadings must be effected at the exact given address of the lawyer which in that case was on the 9th floor of the building.

In the instant case, D. T. Ramos and Associates is actually a law office separate and distinct from BPI-Family Savings Bank. It is of no moment that D. T. Ramos and Associates are paid by BPI Family Savings Bank. It is however a fact that D. T. Ramos and Associates is the counsel of record of the petitioner in the instant case. Thus, any pleadings or notices must be served upon the lawyer and not on the client unless otherwise ordered by the court. Its address on record is the 15th floor of Filinvest Center. We do not see why the principle embraced in the PLDT case cannot be applied which states:

"In modern multi-storied buildings, there may be several hundred rooms with hundreds of different employees discharging different functions. A receiving clerk in a given mailing section may not know the difference between a notice to a lawyer and the thousands of other communications received by her either by mail or through personal or commercial messengers and may not act accordingly. Service upon a lawyer must be effected at the exact given address of the lawyer and not in the vicinity or at a general receiving section of an entire multi-storied building with many offices."

Personal service upon the lawyer was not effected as Postmaster Tomagan himself admitted that the letter was supposed to be delivered by the letter carrier concerned to D. T. Ramos and Associates but said "letter" containing the judgment by default was "inadvertently" included in the Direct Delivery Book of the BPI-Family Savings Bank, of which Mr. Quintos is the authorized representative to pick up its mail. Delivery by the postmaster of the trial court's judgment by default upon the petitioner's representative in the person of Reynaldo Quintos on December 22, 1988 was not delivery upon its counsel. The service of the court's order upon any person other than the party's counsel is not legally effective. Where the copy of the decision is served on a person who is neither a clerk or one in charge of the attorney's office, such service is invalid and the decision does not therefore become executory. (*Adamson v. Adamson*, supra) There was proper and valid service only when the decision of the trial court was actually received by the petitioner's counsel, D.T. Ramos and Associates at its offices at the 15th floor of Filinvest Center on December 26, 1988. Consequently, the reglementary period for the filing of the petitioner's notice of appeal from the judgment by default did not commence to run from December 22, 1988 but from December 26, 1988 when the decision was actually received by the petitioner's former counsel.

It was therefore grave abuse of discretion on the part of the trial court not to have admitted the notice of appeal filed by the petitioner.

Considering the foregoing, we do not find it necessary to discuss the second issue raised by the petitioner since the remedy of appeal is now available to the petitioner. The appellate court is the proper forum where it may question the judgment rendered against it as being contrary to the evidence or to the law. (see *Tiburcio v. Castro*, 161 SCRA 583 [1988]; *Jungco v. Court of Appeals*, 179 SCRA 213 [1989]; and *Luzon Concrete Products, Inc. v. Court of Appeals*, 135 SCRA 455 [1985])

WHEREFORE, the petition is hereby GRANTED. The decision of the Court of Appeals is SET ASIDE. The case is REMANDED to the Regional Trial Court which is directed to admit the Notice of Appeal.

SO ORDERED.

Feliciano, Bidin, and Davide, Jr., JJ., concur.

Fernan, C.J., (Chairman), No part. Formerly counsel for BPI Cebu.

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.