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THIRD DIVISION

[G.R. No. 151963. September 9, 2004]

AIR PHILIPPINES CORPORATION, *petitioner, vs.* **INTERNATIONAL BUSINESS AVIATION SERVICES PHILS., INC.,** *respondent.*

SYNOPSIS

Respondent engaged the services of Universal Weather Aviation, Inc. (UWAI) to ferry the airplane of petitioner from the USA to the Philippines. For failure of petitioner to pay the UWAI for its services, respondent was forced to advance the same to UWAI. Respondent received a Memorandum from petitioner recommending payment only of US$27,730.60. Respondent thus sent petitioner a Statement of Account on the disputed amount of US$37,400.00. Thereafter, Petitioner issued a ₱200,000 check in favor of respondent as partial payment of its obligation and simultaneously, the parties executed a Receipt/Agreement for the balance of the amount. Petitioner, however, refused to honor the same. As the trial court ruled in favor of respondent, petitioner filed a Motion for New Trial on the ground that it was deprived of its day in court due to the gross negligence of its former counsel.

The Court ruled that no new trial can be allowed as petitioner's counsel, who resorted to dilatory schemes, was guilty only of simple negligence. Thus, petitioner is liable for the unpaid balance of respondent's claim under the Receipt/Agreement, including legal interest, and the attorney's fees of 10% of the unpaid balance, excluding interest. No broker's fee can be charged as it has not been proven by respondent.

SYLLABUS

1. LEGAL ETHICS; COUNSEL-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL GENERALLY BINDS THE CLIENT; EXCEPTIONS.— Axiomatic is the rule that "negligence of counsel binds the client." The basis is the tenet that an act performed by counsel within the scope of a "general

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or implied authority" is regarded as an act of the client. "Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client." While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: "(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 so require." Woefully none of these exceptions apply herein. Thus, the Court cannot "step in and accord relief" to petitioner, even if it may have suffered by reason of its own arrant fatuity.

2. ID.; ID.; LAWYERS; SIMPLE NEGLIGENCE; RESORT TO DILATORY SCHEMES; CASE AT BAR.— As aptly determined by the appellate court, petitioner's counsel is guilty of simple, not gross, negligence. We cannot consider as gross negligence his resort to dilatory schemes, such as (1) the filing of at least three motions to extend the filing of petitioner's Answer; (2) his nonappearance during the scheduled pretrials; and (3) the failure to file petitioner's pretrial Brief, even after the filing of several Motions to extend the date for filing. There was only a plain "disregard of some duty imposed by law," a slight want of care that "circumstances reasonably impose," and a mere failure to exercise that degree of care that an ordinarily prudent person would take under the circumstances. There was neither a total abandonment or disregard of petitioner's case nor a showing of conscious indifference to or utter disregard of consequences. Because "pre-trial is essential in the simplification and the speedy disposition of disputes," nonobservance of its rules "may result in prejudice to a party's substantive rights." Such rules are "not technicalities which the parties may ignore or trifle with." The Rules of Court cannot be "ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution." Counsel's patent carelessness in citing conflicting reasons in his Motions for Reconsideration verily displays his lack of competence, diligence and candor, but not his recklessness or total want of care. Indeed, the lawyer's failure to live up to the dictates of the canons of the legal profession makes him answerable to both his profession and his employer.

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3. ID.; ID.; NEGLIGENCE OF CLIENT CORPORATION AND COUNSEL EMPLOYEE CONCURRENT WHEN THE FORMER FAILED TO INQUIRE ABOUT THE CASE.— The negligence of petitioner and that of its counsel are concurrent. As an artificial being whose juridical personality is created by fiction of law, petitioner "can only exercise its powers and transact its business through the instrumentalities of its board of directors, and through its officers and agents, when authorized by resolution or its by-laws." Atty. Manalo is an employee, not an outsider hired by petitioner on a retainer basis. In fact, he is the officer-in-charge of its Legal Department. There is no showing that he was not authorized to exercise the powers of the corporation or to transact its business, particularly the handling of its legal affairs. Besides, it is presumed that the ordinary course of business has been followed. Therefore, counsel's corporate acts are supposed to be known and assented to by petitioner. For petitioner to feign and repeatedly insist upon a lack of awareness of the progress of an important litigation is to unmask a penchant for the ludicrous. Although it expects counsel to amply protect its interest, it cannot just sit back, relax and await the outcome of its case. In keeping with the normal course of events, it should have taken the initiative "of making the proper inquiries from its counsel and the trial court as to the status of its case" and of extending to him the "necessary assistance." For its failure to do so, it has only itself to blame. Indeed, from lethargy is misfortune born.

4. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; GROUNDS; EXCUSABLE NEGLIGENCE; ELUCIDATED.— Under the Rules of Court, an aggrieved party may ask for a new trial on the ground of excusable negligence, but this was not proved in this case. "Negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against" and by reason of which the rights of an aggrieved party have probably been impaired. The test of excusable negligence is whether a party has acted "with ordinary prudence while x x x transacting important business." The reasons raised by petitioner in urging for a new trial do not meet this test; they are flimsy. As we mentioned nearly thirty years ago, "[p]arties and counsel would be well advised to avoid such attempts to befuddle the issues as invariably they will be exposed for what they are, certainly unethical and degrading to the dignity of the law profession."

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5. ID.; ID.; ID.; ID.; ID.; NOT PRESENT AS DUE PROCESS NOT DENIED.— "The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense." Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side" or defend its "interest in due course," "there is no denial of procedural due process." Petitioner has been given its chance, and after being declared in default, judgment has not been automatically "rendered in favor of the non-defaulting party." Rather, judgment was made only after carefully weighing the evidence presented. Substantive and adjective laws do complement each other "in the just and speedy resolution of the dispute between the parties." Petitioner was not deprived of its day in court. Actually, it never even complained against the manner in which its counsel had handled the case, until late in the day. It must therefore "bear the consequences" of its faulty choice of counsel whom it hired itself and whom it had "full authority to fire at any time and replace with another." Much leniency has already been shown by the lower court to petitioner but "*aequetas nunquam contravenit legis.*" Equity never contravenes the law. For these reasons, the rendition of an unfavorable judgment against petitioner by reason of its counsel's simple negligence is therefore apropos. To hold otherwise and grant a new trial will never put an end to any litigation, "as there is a new counsel to be hired every time it is shown that the prior one had not been sufficiently diligent, experienced or learned."

6. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; CREATED BETWEEN PETITIONER CORPORATION AND ITS COUNSEL EMPLOYEE.— The Receipt/Agreement in issue was entered into by respondent and petitioner, which was represented by its agent Atty. Manalo. As an agent, he rendered service to, and did something in representation or on behalf of, his principal and with its consent and authority. It cannot be denied that, on its part, there was an actual intent to appoint its counsel; and, on the latter's part, to accept the appointment and "act on it." A corporation, as "a juridical person separate and distinct from its stockholders," may act "through its officers or agents in the normal course of business." Thus, the general principles of agency govern its relationship with its officers or agents, subject to the articles of incorporation, bylaws and other relevant provisions of law.

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7. ID.; ID.; ID.; ID.; PRINCIPAL SOLIDARILY LIABLE WITH AGENT WHO ACTED AS THOUGH HE HAD FULL POWERS.— Even assuming that Atty. Manalo exceeded his authority, petitioner is solidarily liable with him if it allowed him "to act as though he had full powers." Moreover, as for any obligation wherein the agent has exceeded his power, the principal is not bound except when there is ratification, express or tacit. Estoppel likewise applies. For one, respondent lacked "knowledge and x x x the means of knowledge of the truth as to the facts in question"; namely, whether petitioner's counsel had any authority to bind his principal. Moreover, respondent relied "in good faith" upon petitioner's conduct and statements; and its action "based thereon [was] of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice." If it was also true that petitioner's counsel exceeded his authority in entering into the Receipt/ Agreement, the negligence or omission of petitioner to assert its right within a reasonable time only warranted a presumption that it either abandoned or declined to assert it.

8. ID.; ID.; ID.; ID.; ID.; SPECIAL POWER OF ATTORNEY; NOT REQUIRED FOR PAYMENTS MADE IN THE ORDINARY COURSE OF BUSINESS WHICH IS NOT A COMPROMISE AGREEMENT.— While it is true that a special power of attorney (SPA) is necessary to a compromise, it is equally true that the herein Receipt/Agreement was not a compromise. The payment was made in the ordinary course of business. Whether total or partial, the payment of an ordinary obligation is neither included among nor of a character similar to the instances enumerated in Article 1878 of the Civil Code. All that the law requires is a general power, not an SPA. Moreover, the Receipt/Agreement is not a promise to pay that "amounts to an offer to compromise and requires a special power of attorney or the express consent of petitioner." A compromise agreement is "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced." No such reciprocal concessions were made in this case. Thus, the Receipt/Agreement is but an outright admission of petitioner of its obligation, after making partial payment, to pay the balance of its account. And even if we were to consider the same as a compromise, from its nature as a contract, the absence of an SPA does not render it void, but merely unenforceable.

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9. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ANSWER; FAILURE TO DENY UNDER OATH THE GENUINESS AND DUE EXECUTION OF RECEIPT/ AGREEMENT, DEEMED ADMITTED.— In its Answer, petitioner failed to deny under oath the genuineness and due execution of the Receipt/Agreement, which is thus deemed admitted. Indeed, before a private document offered as authentic is received in evidence, its due execution and authenticity must be proved. However, after it has been offered, failure to deny it under oath amounts to its admissibility. The "party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, x x x which it lacks, are waived by him." The Receipt/Agreement is thus an instrument that is admittedly not "spurious, counterfeit or of different import on its face from the one executed."

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT.— What respondent has paid, it may demand from petitioner; and even if the payment was made without the knowledge or against the will of the latter, respondent can still recover insofar as such payment was beneficial to petitioner. Such payment cannot be considered as one that is neither due under the provisions of *solutio indebiti* nor recoverable from the creditor by respondent; the latter's right is against petitioner whose obligation it has paid in advance.

11. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY; DEEMED WAIVED WHEN NOT OBJECTED TO.— When a party fails to object to hearsay evidence, such party is deemed to have waived its right to do so; thus, "the evidence offered may be admitted," though its weight must still be measured by the court.

12. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PURE OBLIGATION.— The accounting required by petitioner was not a legal impediment to the obligation. There was in fact no indication that the obligation was subject to such a condition. A pure obligation is demandable at once, and there is nothing to exempt petitioner from compliance therewith. In addition, it would be preposterous for it to issue a corporate

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check — without any condition or reservation — and even waive a demand for payment of the balance, if it did not recognize its obligation in the first place.

13. ID.; DAMAGES; LEGAL INTEREST PROPER IN BREACH OF CONTRACT.— The obligation consisted in the payment of a sum of money, and petitioner incurred in delay; hence, there being no stipulation to the contrary, the indemnity for damages shall be the payment of legal interest, which is six percent (6%) per annum. Such interest may be allowed upon damages awarded for a clear breach of contract.

14. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; ONLY QUESTIONS OF LAW MAY BE RAISED.— Indeed, "only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court." Questions of fact cannot be the subject of this mode of appeal, for this Court — we have repeatedly emphasized — is "not a trier of facts." One of the exceptions to this rule, however, is when the factual findings of the CA and the trial court are contradictory.

15. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; ORIGINAL DOCUMENT MUST BE PRODUCED.— The March 19, 1997 Certification issued by Captain Villacampa is inadmissible in evidence. It was a mere reproduction of an original that had never been produced or offered in evidence. Under the best evidence rule as applied to documentary evidence, no evidence shall be admissible other than the original itself when the subject of inquiry is its contents. Since none of the exceptions to this rule has been proven, "secondary or substitutionary evidence" is not permitted. It is of no moment that Nazareno testified as to the intermediary's commission in open court. Whether the Certification has actually been executed cannot be proved by his mere testimony, because he was not a signatory to the document. His assertion was bare and untested. Without substantiation, "such testimony is considered hearsay." Witnesses can testify only to those facts that they know of their personal knowledge or are derived from their own perception.

16. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER WHERE PARTY COMPELLED TO INCUR EXPENSES TO PROTECT HIS INTEREST AND THE SAME INCLUDED IN THE AGREEMENT.— Attorney's fees may

be recovered, since petitioner has compelled respondent to incur expenses to protect the latter's interest in reimbursement. Besides, it is clear from the Receipt/Agreement that petitioner is obliged to pay 10 percent of the principal, as attorney's fees.

APPEARANCES OF COUNSEL

Ocampo & Ocampo for petitioner.
Miguel B. Lukban, Jr. for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Simple negligence of counsel binds the client. This is especially true in this case in which the client was as negligent as its lawyer. Hence, petitioner must bear the consequences and accept its defeat. After all, the winning party did not take advantage of petitioner's fault, but merely complied with the law in prosecuting its valid and proven claims.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the September 28, 2001 Decision[2] and the January 25, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 64283. The dispositive part of the assailed Decision reads:

"**IN THE LIGHT OF ALL THE FOREGOING**, the appeal of the [petitioner] is partially **GRANTED** in that the Decision appealed from is **AFFIRMED** with the modification that the award for a broker's fee in favor of the [respondent] is deleted."[4]

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[1] *Rollo*, pp. 10-48.

[2] *Id.*, pp. 50-78. Penned by Justice Romeo J. Callejo Sr. (Thirteenth Division chair and now a member of this Court), with the concurrence of Justices Renato C. Dacudao and Mariano C. del Castillo (members).

[3] *Id.*, p. 80.

[4] Assailed CA Decision, p. 28; *rollo*, p. 77.

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The assailed Resolution denied reconsideration of the Decision.

The Facts

The facts are narrated by the CA as follows:

"The Air Philippines, Inc., **API for brevity**, was in need of the services of a business establishment to ferry its B-737 airplane, with Registry Number RP C1938, from the United States of America to the Philippines, ***via*** Subic Bay International Airport, at Olongapo City. API, through Captain Alex Villacampa, its Vice-President for Operations, engaged the services of **International Business Aviation Services Phils., Inc., IBASPI for brevity**, as its agent to look for and engage, for API, a business enterprise to ferry the airplane. IBASPI did engage the services of Universal Weather [&] Aviation, Inc., **UWAI for brevity**, to ferry the airplane x x x to the Philippines, ***via*** the International Airport at Subic Bay, Olongapo City, where API took delivery of the plane.

"UWAI sent its **'Billings'** to API, through IBASPI, in the total amount of US$65,131.55 for its services for the ferry of the airplane. API failed to pay its account. On December 2, 1996, the [respondent] wrote a letter to the [petitioner] urging the payment of the bills of UWAI. The [petitioner] refused. Exasperated, UWAI blamed IBASPI for the intransigence of API. IBASPI was impelled to write a letter to UWAI 'to clarify' critical points of API's account. Unable to bear the pressure of UWAI and to avoid corporate embarrassment for API's intransigence, IBASPI was impelled to advance and pay to UWAI the said amount of US$65,131.55 for the account of API. The latter was informed by UWAI of the payment of said account by IBASPI ***via*** its letter dated May 12, 1997.

"IBASPI forthwith wrote a letter to API demanding refund to IBASPI the amount it advanced to UWAI for the account of API. IBASPI received, ***via*** an informant, a copy of a **'Memorandum'** of Rodolfo Estrellado, the President and Chief Executive Officer of API, dated July 29, 1997, to the President of API, recommending that the latter pay only the amount of US$27,730.60, with a recommendation that IBASPI be required to submit documentations/billings in support of the difference of US$37,400.00. However, no payment was effected by API.

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"On November 6, 1997, IBASPI, through counsel, sent another letter to API demanding the payment of the said amount of US$65,131.55 and 10% commission. API ignored the letter. Another letter of demand was sent to API by IBASPI, on December 1, 1997, to no avail. On January 6, 1998, IBASPI wrote another letter of demand to API enclosing therein a **'Summary Statement of Account of Air Philippines, Inc**.' on the disputed amount of US $37,400.00, appending thereto the documentations/billings in support of said claim and 10% commission. On February 26, 1998, API drew Check No. 0521300 against its account, with the Bank of Philippine Islands, in the amount of ₱200,000.00, payable to the order of IBASPI, and offered the same **in partial first payment** of its account with IBASPI for the amount of US$65,131.55 as stated in the letter of the [petitioner]. The [respondent] accepted the said check with a simultaneous **'Receipt/ Agreement'** executed by IBASPI and API, the latter, through Atty. Manolito A. Manalo, the Officer-in-Charge of the Legal Department of the API, obliging itself to pay the balance of its account. API in the said Agreement waived demand by IBASPI. Despite demands of IBASPI, ***via*** its letter, dated April 22, 1998, API refused to pay the balance of its account with IBASPI.

"On June 24, 1998, IBASPI filed a complaint against API, with the Regional Trial Court of Pasay City, for the collection of its account, including a 10% broker's fee, praying that, after due proceedings, judgment be rendered in its favor as follows:

> 'WHEREFORE, [respondent] respectfully prays of this Honorable Court to render judgment:
>
> 1) Ordering the [petitioner] to pay the [respondent] the sum of US$59,798.22 x x x or its equivalent in legal tender with interest at the legal rate from May 1997 until full payment;
>
> 2) Ordering the [petitioner] to pay the [respondent] further sum of US$6,513.00 or its equivalent in legal tender as intermediary's commission;
>
> 3) Ordering the [petitioner] to pay the [respondent] another sum of US$13,026.00 or its equivalent in legal tender as actual damages in the form of attorney's fees;
>
> 4) Ordering the [petitioner] to pay the [respondent] expenses of litigation as can be proved;

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5) Ordering the [petitioner] to pay the costs of the suit; and,

6) [Respondent] prays for such further or other relief as may be deemed just or equitable.'

"The [respondent] appended to its complaint the **'Receipt/ Agreement'** executed by the [petitioner], on March 20, 1998. In its **'Unverified Answer'**, API alleged, ***inter alia***, by way of **'Affirmative Allegations'**, that:

'8. In support of the foregoing denials and by way of affirmative allegations, [petitioner] states:

'9. On 6 November 1997, we received a letter from [respondent] demanding payment of $65,131.00 allegedly for the ferry flight services rendered by Universal and brokered by [respondent].

'10. On 1 December 1997 and 12 January 1998, we sent letters to [respondent] acknowledging receipt of their demand letter[.] However, we mentioned in the letters that we needed time to process the documents submitted by [respondent] to support their claim.

'11. APC made it very clear that if an obligation on the part of [petitioner] is proven to exist, [petitioner] would be more than willing to settle the obligation.

'12. In fact, as mentioned in the complaint, [petitioner] made a payment of ₱200,000.00 to cover claims which [petitioner] did not contest; [petitioner] opted not to settle the balance of the claim pending verification of the submitted supporting documents.

'13. [Petitioner] verbally requested [respondent] to further substantiate its claim by sending their accountants to the offices of APC[.]

'14. [Respondent] did not heed this request; thus, APC could not release any other amounts to cover the claim of [respondent.]

'15. The documents sent by [respondent] were not accompanied by any explanation and were merely a loose collection of statements from various companies[.]

'16. Thus, [petitioner] was surprised when [respondent] filed the instant complaint[,] for[,] as far as the former [was]

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concerned[,] the accounting of the claim was nowhere near definite nor clear[.]'

"On November 17, 1998, the Court issued a **'Pre-Trial Notice**' setting the pre-trial conference on December 7, 1998, at 8:30 x x x in the morning, requiring the parties to file their respective **'Pre-Trial Brief'** at least two (2) days before the scheduled pre-trial. The [respondent] did file its **'Pre-Trial Brief'**[,] but the [petitioner] did not. During the pre-trial, on December 7, 1998, Atty. Manolito Manalo, counsel of the [petitioner], appeared[,] but without any **'Special Power of Attorney'** from the [petitioner]. The Court granted the [petitioner] a period of ten (10) days, from said date, within which to file its **'Pre-Trial Brief'** and **'Special Power of Attorney'** executed by the [petitioner] in favor of its counsel. In the meantime, the pre-trial was reset to January 11, 1999 at the same time. However, the [petitioner] failed to file its **'Pre-Trial Brief.'** On January 11, 1999, at 9:20 x x x in the morning, the [petitioner] filed an **'Urgent Ex-Parte Motion for Extension of Time to File Pre-Trial Brief and For Resetting of Pre-Trial Conference'**, with a plea to the Branch Clerk of Court to submit the said motion for consideration of the Court immediately upon receipt thereof. When the case was called for pre-trial, there was no appearance for the [petitioner] and its counsel. The Court issued an Order denying the motion of the [petitioner] and allowing the [respondent] to adduce its evidence, ***ex parte***, before the Branch Clerk of Court, who was designated, as Commissioner, to receive the evidence of the [respondent], ***ex parte***. On January 13, 1999, the [petitioner] filed with the Court another **'Urgent Ex-Parte Motion for Extension of Time to File Pre-Trial Brief and for Resetting of Pre-Trial Conference**'. On January 15, 1999, the [petitioner] filed a **'Motion for Reconsideration'** of the Order of the Court, dated January 11, 1999. The [petitioner] appended to its motion the **'Affidavit'** of Atty. Manolito Manalo, its counsel, stating the reason for his failure to appear at the pre-trial conference on January 11, 1999. On January 22, 1999, the Court issued an Order denying the **'Motion for Reconsideration'** of the [petitioner]. On January 25, 1999, the [respondent] did adduce testimonial and documentary evidence in support of its complaint.

"Among the documentary evidence adduced by the [respondent] were the xerox copy of the **'Certification'** of Captain Alex Villacampa, and the **'Memorandum'** of Rodolfo Estrellado.

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"On April 7, 1999, the Court rendered judgment in favor of the [respondent] and against the [petitioner], the decretal portion of which reads as follows:

> 'WHEREFORE, IN VIEW OF THE FOREGOING uncontroverted and substantiated evidences of the [respondent], judgment is hereby rendered in favor of the [respondent] and against the [petitioner] ordering the latter to pay the former the following:
>
> 1. the amount of US59,798.22 dollars or its equivalent in legal tender plus interest at the legal rate from May, 1997 until fully paid;
>
> 2. the amount of US6,513.00 or its equivalent as intermediary's commission;
>
> 3. [₱]50,000.00 as and for attorney's fees; and,
>
> Costs of suit.
>
> 'SO ORDERED.'

"The [petitioner] filed a **'Motion for New Trial'** on the grounds that: (a) it was deprived of its day in court due to the gross negligence of its former counsel, Atty. Manolito A. Manalo; (b) the **'Receipt/ Agreement'** executed by Atty. Manolito A. Manalo, in behalf of the [petitioner], was unauthorized as there was no **'Resolution'** of the Board of Directors authorizing him to execute said **'Receipt/ Agreement'** and, hence, said counsel acted beyond the scope of his authority; (c) the claim of IBASPI was excessive and unjustified; [and] (d) the [petitioner] never agreed to pay the [respondent] a commission of 10% of the billings of UWAI.

"On July 26, 1999, the Court issued a **'Resolution'** denying the **'Motion for New Trial'** of the [petitioner]. The latter forthwith interposed its appeal, from said Decision and Resolution of the Court ***a quo***."[5]

Ruling of the Court of Appeals

Affirming the Decision of the lower court with some modification, the CA ruled that under the Rules of Civil

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[5] CA Decision, pp. 1-5; *rollo*, pp. 50-54. Citations omitted. Bold types and emphasis in original.

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Procedure, petitioner could not avail itself of a new trial, because its former counsel was guilty of only simple — not gross — negligence. In addition, petitioner, being equally negligent as its counsel, could not be relieved from the effects of its negligence. Thus, it was held liable for US$59,798.22 and attorney's fees, but not for the 10 percent commission or broker's fee, for which the requisite quantum of evidence in its favor had not been mustered by respondent.

Hence this Petition.[6]

The Issues

Petitioner submits the following issues for our consideration:

"1. Whether or not the Honorable Court of Appeals ruled in accordance with prevailing laws and jurisprudence when it upheld the ruling of the Honorable Trial Court denying the Motion for New Trial dated April 27, 1999 despite the fact that the gross negligence, incompetence and dishonesty of Petitioner APC's former counsel, Atty. Manolito A. Manalo, have effectively denied Petitioner APC of its day in court.

"2. Whether or not the Honorable Court of Appeals ruled in accordance with prevailing laws and jurisprudence when it took cognizance of and/or gave credence to the 'Memorandum' of Rodolfo Estrellado, and the 'Billings' of Universal Weather as well as the documents/receipts in support thereof despite the fact that they are clearly hearsay and have no probative value considering that Luisito Nazareno, the lone witness of Respondent IBAS, had no personal knowledge of the contents and/or factual bases thereof and failed to properly authenticate and/or identify the same.

"3. Whether or not the Honorable Court of Appeals ruled in accordance with prevailing laws and jurisprudence when it took cognizance of and/or gave credence to the Receipt/Agreement dated March 20, 1998 despite the fact that Atty. Manolito A. Manalo was not authorized to execute [the] same for and [in] behalf of Petitioner APC.

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[6] The Petition was deemed submitted for decision on December 16, 2002, upon receipt by the Court of petitioner's Memorandum, signed by Atty. Emmanuel S. Ypil. Respondent's Memorandum, signed by Atty. Miguel B. Lukban Jr., was filed on December 12, 2002.

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"4. Whether or not the Honorable Court of Appeals ruled in accordance with prevailing laws and jurisprudence when it upheld the ruling of the Honorable Trial Court that Petitioner APC is liable to pay and/or reimburse Respondent IBAS for the payments allegedly made by the latter to Universal Weather despite the fact that the claims submitted by Universal Weather and/or Respondent IBAS were patently baseless and/or unsubstantiated.

"5. Whether or not the Honorable Court of Appeals ruled in accordance with prevailing laws and jurisprudence when it upheld the ruling of the Honorable Trial Court that Respondent IBAS is entitled to legal interest and attorney's fees despite the fact that it has failed to establish its claims against Petitioner APC."[7]

These issues all boil down into two: *first*, whether the Motion for New Trial should be denied; and *second*, in the event of such denial, whether the monetary awards were duly proven.

The Court's Ruling

The Petition has no merit.

First Issue:
New Trial Not Warranted by Simple Negligence of Counsel

Axiomatic is the rule that "negligence of counsel binds the client."[8] The basis is the tenet that an act performed by counsel within the scope of a "general or implied authority"[9] is regarded

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[7] Petitioner's Memorandum, pp. 9-10; *rollo*, pp. 208-209. Citations omitted. Original in title case format.

[8] *Saint Louis University v. Cordero*, G.R. No. 144118, p. 9, July 21, 2004, per Davide Jr., *CJ.* See also *Lapid v. Laurea*, 391 SCRA 277, 285, October 28, 2002, per Quisumbing, *J.* (citing *Del Mar v. CA*, 429 Phil. 19, 28, March 13, 2002, per Panganiban, *J.*); and *Curaza v. NLRC*, 354 SCRA 451, 462-463, March 15, 2001 (citing *Que v. CA*, 101 SCRA 13, 20, November 10, 1980).

[9] *Ang Mga Kaanib sa Iglesia ng Dios kay Kristo Hesus, HSK sa Bansang Pilipinas, Inc. v. Iglesia ng Dios kay Cristo Jesus*, 423 Phil. 397, 403, December 12, 2001, per Ynares-Santiago, *J.*

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as an act of the client.[10] "Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client."[11]

While the application of this general rule certainly depends upon the surrounding circumstances of a given case,[12] there are exceptions recognized by this Court: "(1) where reckless or gross negligence of counsel deprives the client of due process of law;[13] (2) when its application will result in outright deprivation of the client's liberty or property;[14] or (3) where the interests of justice[15] so require."[16] Woefully none of these

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[10] *STI Drivers Association v. CA*, 392 SCRA 633, 639, November 26, 2002. See Agpalo, Legal Ethics (4th ed., 1989), p. 278 (citing *Vivero v. Santos*, 98 Phil. 500, 503-504, February 28, 1956; *Isaac v. Mendoza*, 89 Phil. 279, 282, June 21, 1951; *Cruz v. Jugo*, 66 Phil. 102, 105, August 12, 1938; *Montes v. CFI of Tayabas*, 48 Phil. 640, 645, January 27, 1926; and *US v. Umali*, 15 Phil. 33, 35, January 15, 1910).

[11] *Apex Mining, Inc. v. CA*, 377 Phil. 482, 493, November 29, 1999, per Davide Jr., *CJ*. (citing *Salonga v. CA*, 336 Phil. 514, 526-527, March 13, 1997). *See* Agpalo, *supra*, pp. 278-279 (citing *Malipol v. Lim Tan*, 154 Phil. 193, 203, January 21, 1974).

[12] *Apex Mining, Inc. v. CA, supra*, p. 493.

[13] The negligence of counsel may be "so gross, reckless and inexcusable that the client is deprived of his day in court." *Producers Bank of the Phils. v. CA*, 430 Phil. 812, 823, per Carpio, *J*.

[14] The application may result "in the outright deprivation of one's property through a technicality." *Del Mar v. CA, supra*, p. 29, per Panganiban, *J*. (citing *Amil v. CA*, 374 Phil. 659, 665, October 7, 1999; *Kalubiran v. CA*, 360 Phil. 510, 526, December 21, 1998; *Salonga v. CA, supra*, p. 527–528; and *Escudero v. Dulay*, 158 SCRA 69, 78, February 23, 1988).

[15] "x x x [W]here the interests of justice so require, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence." *Salazar v. CA*, 426 Phil. 864, 874, February 6, 2002, per Ynares-Santiago, *J*. (citing *Aguilar v. CA*, 320 Phil. 456, 461-462, November 28, 1995). See *Alabanzas v. IAC*, 204 SCRA 304, 308, November 29, 1991.

[16] *Sarraga Sr. v. Banco Filipino Savings and Mortgage Bank*, 393 SCRA 566, 574, December 9, 2002, per Sandoval-Gutierrez, *J*. (citing *Apex Mining, Inc. v. CA, supra*, p. 493-494).

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exceptions apply herein. Thus, the Court cannot "step in and accord relief"[17] to petitioner, even if it may have suffered[18] by reason of its own arrant fatuity.

First, as aptly determined by the appellate court, petitioner's counsel is guilty of simple, not gross, negligence. We cannot consider as gross negligence his resort to dilatory schemes, such as (1) the filing of at least three motions to extend the filing of petitioner's Answer; (2) his nonappearance during the scheduled pretrials; and (3) the failure to file petitioner's pretrial Brief, even after the filing of several Motions to extend the date for filing.[19] There was only a plain "disregard of some duty imposed by law,"[20] a slight want of care that "circumstances reasonably impose,"[21] and a mere failure to exercise that degree of care[22] that an ordinarily prudent person would take under the circumstances. There was neither a total abandonment or disregard of petitioner's case nor a showing of conscious indifference to or utter disregard of consequences.[23]

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[17] *Heirs of Antonio Pael v. CA*, 382 Phil. 222, 245, February 10, 2000, per Ynares-Santiago, *J.* (citing *Kalubiran v. CA*, *supra*, p. 526).

[18] *People v. Salido*, 327 Phil. 928, 934, July 5, 1996.

[19] Judgment by Default dated April 7, 1999, pp. 1-2; RTC records, pp. 83-84.

[20] *Murillo v. Mendoza*, 66 Phil. 689, 699, December 8, 1938, per Imperial, *J.*

[21] *US v. Juanillo*, 23 Phil. 212, 223, October 3, 1912, per Trent, *J.*

[22] A lawyer is required to exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, as any other member of the bar similarly situated commonly possesses and exercises. Agpalo, *The Code of Professional Responsibility for Lawyers* (1st ed., 1991), p. 210 (citing *Alcala v. De Vera*, 155 Phil. 33, 40-41, March 21, 1975). *See Suarez v. CA*, 220 SCRA 274, 279, March 22, 1993.

[23] *Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission*, 99 Phil. 480, 485, June 30, 1956.

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Because "pre-trial is essential in the simplification and the speedy disposition of disputes,"[24] nonobservance of its rules "may result in prejudice to a party's substantive rights."[25] Such rules are "not technicalities which the parties may ignore or trifle with."[26] The Rules of Court cannot be "ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution."[27]

Counsel's patent carelessness in citing conflicting reasons in his Motions for Reconsideration verily displays his lack of competence,[28] diligence[29] and candor,[30] but not his recklessness or total want of care.

Indeed, the lawyer's failure to live up to the dictates of the canons of the legal profession makes him answerable to both his profession and his employer.[31]

Second, the negligence of petitioner and that of its counsel are concurrent.[32] As an artificial being whose juridical personality

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[24] *Tiu v. Middleton*, 369 Phil. 829, 837, July 19, 1999, per Panganiban, *J*. (citing *Development Bank of the Philippines v. CA*, 169 SCRA 409, 411-413, January 26, 1989).

[25] *Saguid v. CA*, 403 SCRA 678, 684, June 10, 2003, per Ynares-Santiago, *J*.

[26] *Tiu v. Middleton, supra*, p. 837, per Panganiban, *J*.

[27] *Limpot v. CA*, 170 SCRA 367, 377, February 20, 1989, per Cruz, *J*.

[28] Rules 15.05 and 15.07 of Canon 15, and Canon 17 of the Code of Professional Responsibility.

[29] Rules 18.03 and 18.04 of Canon 18 of the Code of Professional Responsibility.

[30] Rules 10.01 and 10.03 of Canon 10, and Rules 12.03 and 12.04 of Canon 12 of the Code of Professional Responsibility.

[31] Failure to submit pleadings "within the reglementary period entails disciplinary action. Not only is it a dereliction of duty to his client but also to the court as well." *Torres v. Orden*, 386 Phil. 216, 220, April 6, 2000, per Vitug, *J*.

[32] *See Villanueva v. People*, 330 SCRA 695, 703, April 12, 2000; and *Macapagal v. CA*, 338 Phil. 206, 217, April 18, 1997.

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is created by fiction of law,[33] petitioner "can only exercise its powers and transact its business through the instrumentalities of its board of directors, and through its officers and agents, when authorized by resolution or its by-laws."[34] Atty. Manalo is an employee, not an outsider hired by petitioner on a retainer basis. In fact, he is the officer-in-charge of its Legal Department.

There is no showing that he was not authorized to exercise the powers of the corporation or to transact its business, particularly the handling of its legal affairs. Besides, it is presumed that the ordinary course of business has been followed.[35] Therefore, counsel's corporate acts are supposed to be known and assented to by petitioner.

For petitioner to feign and repeatedly insist upon a lack of awareness of the progress of an important litigation is to unmask a penchant for the ludicrous. Although it expects counsel to amply protect its interest, it cannot just sit back, relax and await the outcome of its case.[36] In keeping with the normal course of events, it should have taken the initiative "of making the proper inquiries from its counsel and the trial court as to the status of its case"[37] and of extending to him the "necessary assistance."[38] For its failure to do so, it has only itself to blame. Indeed, from lethargy is misfortune born.

It is of no consequence that its Human Resources and Personnel Departments were not aware of the progress of its case. Of judicial notice is the fact that a corporation has much

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[33] Section 2 of the *Batas Pambansa Blg. 68*, otherwise known as the "Corporation Code of the Philippines."

[34] *De Liano v. CA*, 421 Phil. 1033, 1052, November 22, 2001, per De Leon Jr., *J.*

[35] Section 3(q) of Rule 131 of the Rules of Court.

[36] *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, 504, August 15, 2001.

[37] *Id.*, p. 504, per Bellosillo, *J.*

[38] *Ibid*.

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leeway in determining which of its units, singly or in consonance with others, is responsible for specific functions. Yet, it is unusual that these departments were tasked with monitoring the progress of legal matters involving petitioner. Nonetheless, having assigned these matters to them, it should have undertaken prompt and proper monitoring and reporting thereof. Again, for its failure to do so, it has only itself to blame. These departments do get involved in finance and accounting, especially in budget preparation and payroll computation, but billing and collection are hardly tangential to their concerns.

Third, there was no denial of due process[39] to petitioner. Under the Rules of Court, an aggrieved party may ask for a new trial on the ground of excusable negligence,[40] but this was not proved in this case.[41] "Negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against"[42] and by reason of which the rights of an aggrieved party have probably been impaired.[43]

The test of excusable negligence is whether a party has acted "with ordinary prudence while x x x transacting important business."[44] The reasons raised by petitioner in urging for a new trial do not meet this test; they are flimsy. As we mentioned nearly thirty years ago, "[p]arties and counsel would be well advised to avoid such attempts to befuddle the issues as invariably

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[39] Section 1 of Article III of the 1987 Constitution.

[40] Section 1(a) of Rule 37 of the Rules of Court.

[41] "A new trial may be granted where the incompetency of counsel is so great that the defendant is prejudiced and prevented form fairly presenting his defense." *Suarez v. CA, supra*, p. 280, per Melo, *J.*

[42] *Gold Line Transit, Inc. v. Ramos, supra*, p. 503, per Bellosillo, *J.*

[43] Section 1(a) of Rule 37 of the Rules of Court.

[44] *Grandy v. Carolina Metal Products Co.*, 95 SE 914, 915, May 8, 1918, per Allen, J. (citing *Gaylord v. Berry*, 86 SE 623, 624, October 27, 1915). *See Chatham Lumber Co. v. Parsons Lumber Co.*, 90 SE 241, 243, October 25, 1916.

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they will be exposed for what they are, certainly unethical and degrading to the dignity of the law profession."[45]

"The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense."[46] Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can "present its side"[47] or defend its "interest in due course,"[48] "there is no denial of procedural due process."[49] Petitioner has been given its chance, and after being declared in default, judgment has not been automatically "rendered in favor of the non-defaulting party."[50] Rather, judgment was made only after carefully weighing the evidence presented. Substantive and adjective laws do complement each other[51] "in the just and speedy resolution of the dispute between the parties."[52]

Petitioner was not deprived of its day in court. Actually, it never even complained against the manner in which its counsel

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[45] *Lim Tanhu v. Hon. Ramolete*, 66 SCRA 425, 451, August 29, 1975, per Barredo, *J.*

[46] *Ramoran v. Jardine CMG Life Insurance Co., Inc.*, 383 Phil. 83, 99, February 22, 2000, per De Leon Jr., *J.* (citing *Oil and Natural Gas Commission v. CA*, 354 Phil. 830, 848, July 23, 1998, per Martinez, *J.*). *See Salonga v. CA, supra*, p. 528, per Panganiban, *J.*

[47] *Villa Rhecar Bus v. De la Cruz*, 157 SCRA 13, 16, January 7, 1988, per Gancayco, *J.*

[48] *Producers Bank of the Phils. v. CA, supra*, p. 826, per Carpio, *J.*

[49] *Salonga v. CA, supra*, p. 528, per Panganiban, *J. See Mutuc v. CA*, 190 SCRA 43, 49, September 26, 1990, per Paras, *J.* (citing *Juanita Yap Say v. IAC*, 159 SCRA 325, 327, March 28, 1988, per Sarmiento, *J.*; *Richards v. Asoy*, 152 SCRA 45, 49, July 9, 1987; and *Tajonera v. Lamaroza*, 110 SCRA 438, 448, December 19, 1981.

[50] *Pascua v. Hon. Florendo*, 220 Phil. 588, 595-596, April 30, 1985, per Gutierrez Jr., *J.*

[51] *Tupas v. CA*, 193 SCRA 597, 600, February 6, 1991.

[52] *Limpot v. CA, supra*, p. 369, per Cruz, *J.*

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had handled the case,[53] until late in the day. It must therefore "bear the consequences"[54] of its faulty choice of counsel whom it hired itself and whom it had "full authority to fire at any time and replace with another."[55] Moreover, in all the pertinent cases cited by petitioner, the denial of due process was attributable to the gross negligence of retained counsels, who had either been single practitioners or law firms; none had referred to counsels who, like Atty. Manalo, were employees of the aggrieved party.

Fourth, the negligence of petitioner's counsel did not result in the outright deprivation of its property. In fact, it intractably refused to comply with its obligation to reimburse respondent, after having already generated profits from operating the ferried unit. When sued, it simply relied upon its own dillydallying counsel without even monitoring the progress of his work. Now it tries to pass the buck entirely to him, after he has been relieved and replaced by another. Throughout the course of litigation, none of its assets was reduced; on the contrary, its fleet of aircraft even increased. While it has incurred legal expenses, it has also earned interest on money that should have been reimbursed to respondent.

Fifth, the interests of justice require that positive law be equally observed. Petitioner has not sufficiently proved the injustice of holding it liable for the negligence of its counsel. On the contrary, there is a preponderance of evidence[56] to demonstrate that both law and justice demand otherwise. Much leniency has already been shown by the lower court to petitioner,

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[53] *Tenebro v. CA*, 341 Phil. 83, 87-88, July 7, 1997.

[54] *STI Drivers Association v. CA, supra*, p. 640, per Corona, *J*.

[55] *Del Mar v. CA, supra*, p. 29, per Panganiban, *J*. (citing *Salva v. CA*, 364 Phil. 281, 301, March 11, 1999, per Puno, *J*.).

[56] "By preponderance of evidence is meant the greater weight of the evidence; that it outweighs the evidence of the adverse party." *Nickey v. Steuder*, 73 NE 117, 118, February 3, 1905, per Monks, *J*.

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but "*aequetas nunquam contravenit legis*."[57] Equity never contravenes the law.[58]

For these reasons, the rendition of an unfavorable judgment against petitioner by reason of its counsel's simple negligence is therefore apropos. To hold otherwise and grant a new trial will never put an end to any litigation,[59] "as there is a new counsel to be hired every time it is shown that the prior one had not been sufficiently diligent, experienced or learned."[60]

Second Issue:
Monetary Awards Sufficiently Established by a Preponderance of Evidence

As correctly put by the appellate court, the Receipt/Agreement executed by the parties validated the inter-office Memorandum that petitioner issued on July 29, 1997, and the set of Billings it had received from respondent in 1996.

Liability per Receipt/Agreement and Interest Thereon

First, the Receipt/Agreement was entered into by respondent and petitioner, which was represented by its agent Atty. Manalo. As an agent, he rendered service to, and did something in

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[57] *Heirs of Spouses Dela Cruz v. Heirs of Florentino Quintos Sr.*, 385 SCRA 471, 477-478, July 30, 2002, per Austria-Martinez, *J.* (citing *Aguila v. CFI of Batangas, Branch I*, 160 SCRA 352, 359, April 15, 1988, per Cruz, *J.*).

[58] *See Tupas v. CA, supra*, p. 602.

[59] *Saint Louis University v. Cordero, supra*, p. 9.

[60] *Boaz International Trading Corp. v. Woodward Japan, Inc.*, GR No. 147793, p. 13, December 11, 2003, per Panganiban, *J.* (citing *Gold Line Transit, Inc. v. Ramos, supra*, p. 505; and *Fernandez v. Tan Tiong Tick*, 111 Phil. 773, 779, April 28, 1961). See *Heirs of Spouses Dela Cruz v. Heirs of Florentino Quintos Sr., supra*, p. 477 (citing *Gacutana-Fraile v. Domingo*, 348 SCRA 414, 422, December 15, 2000).

Petitioner cannot complain that the result of its case may have been different had its counsel proceeded differently. See *Five Star Bus Co., Inc. v. CA*, 328 Phil. 426, 434, July 17, 1996.

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representation[61] or on behalf of, his principal[62] and with its consent[63] and authority. It cannot be denied that, on its part, there was an actual intent to appoint its counsel;[64] and, on the latter's part,[65] to accept the appointment and "act on it."[66]

A corporation, as "a juridical person separate and distinct from its stockholders,"[67] may act "through its officers or agents in the normal course of business."[68] Thus, the general principles of agency govern its relationship with its officers or agents, subject to the articles of incorporation, bylaws and other relevant provisions of law.[69]

Second, even assuming that Atty. Manalo exceeded his authority, petitioner is solidarily liable with him if it allowed him "to act as though he had full powers."[70] Moreover, as for any

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[61] *Dominion Insurance Corp. v. CA*, 426 Phil. 620, 625-626, February 6, 2002 (citing *Bordador v. Luz*, 347 Phil. 654, 661-662, December 15, 1997).

[62] *Uy v. CA*, 372 Phil. 743, 753, September 9, 1999 (citing Article 1868 of the Civil Code).

[63] *Shopper's Paradise Realty & Development Corp. v. Roque*, G.R. No. 148775, p. 9, January 13, 2004.

[64] *Victorias Milling Co., Inc. v. CA*, 333 SCRA 663, 675, June 19, 2000 (citing *Connell v. McLoughlin*, 42 P. 218, 219, November 11, 1895).

[65] De Leon, *Comments and Cases on Partnership, Agency, and Trusts* (4th ed., 1996), p. 322.

[66] *Victorias Milling Co., Inc. v. CA, supra*, p. 675, per Quisumbing, *J.* (citing *Central Trust Co. of New York v. Bridges*, 57 F. 753, 764, August 1, 1893, per Taft, *J.*).

[67] *San Juan Structural and Steel Fabricators, Inc. v. CA*, 357 Phil. 631, 643, September 29, 1998, per Panganiban, *J.*

[68] *Id.*, p. 644, per Panganiban, *J.*

[69] *Ibid.* (citing *Yao Ka Sin Trading v. CA*, 209 SCRA 763, 781, June 15, 1992).

[70] *Lustan v. CA*, 334 Phil. 609, 620, January 27, 1997, per Francisco, *J.* (citing Article 1911 of the Civil Code and *Cuison v. CA*, 227 SCRA 391, 400, October 26, 1993, per Bidin, *J.*).

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obligation wherein the agent has exceeded his power, the principal is not bound except when there is ratification,[71] express or tacit.[72]

Estoppel likewise applies. For one, respondent lacked "knowledge and x x x the means of knowledge of the truth as to the facts in question";[73] namely, whether petitioner's counsel had any authority to bind his principal. Moreover, respondent relied "in good faith"[74] upon petitioner's conduct and statements; and its action "based thereon [was] of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice."[75] If it was also true that petitioner's counsel exceeded his authority in entering into the Receipt/Agreement, the negligence or omission of petitioner to assert its right within a reasonable time only warranted a presumption that it either abandoned or declined to assert it.[76]

Third, while it is true that a special power of attorney (SPA) is necessary to a compromise, it is equally true that the herein Receipt/Agreement was not a compromise.[77] The payment was made in the ordinary course of business. Whether total or partial, the payment of an ordinary obligation[78] is neither included among

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[71] Campos and Campos, *The Corporation Code: Comments, Notes and Selected Cases* (1990), Vol. I, pp. 384-385. See *Harry E. Keeler Electric Co., Inc. v. Rodriguez*, 44 Phil. 19, 25, November 11, 1922.

[72] 2nd par. of Article 1910 of the Civil Code.

[73] *Kalalo v. Luz*, 145 Phil. 152, 162, July 31, 1970, per Zaldivar, *J.*

[74] *Arcelona v. CA*, 345 Phil. 250, 284, October 2, 1997, per Panganiban, *J.* (citing *Cruz v. CA*, 201 SCRA 495, 505, September 11, 1991, per Davide, *J.*, now *CJ*).

[75] *Kalalo v. Luz, supra*, p. 162.

[76] Therefore, there is also laches which refers to "the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier x x x." Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (1991), Vol. IV, p. 661.

[77] Article 1878(3) of the Civil Code.

[78] In fact, the words used in the Receipt/Agreement are "in settlement of the demand x x x contained in x x x letter dated Nov. 6, 1997 x x x."

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nor of a character similar to the instances enumerated in Article 1878 of the Civil Code.[79] All that the law requires is a general power,[80] not an SPA.

Moreover, the Receipt/Agreement is not a promise to pay that "amounts to an offer to compromise and requires a special power of attorney or the express consent of petitioner."[81] A compromise agreement is "a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced."[82] No such reciprocal concessions[83] were made in this case. Thus, the Receipt/Agreement is but an outright admission of petitioner of its obligation, after making partial payment, to pay the balance of its account. And even if we were to consider the same as a compromise, from its nature as a contract, the absence of an SPA does not render it void, but merely unenforceable.[84]

Fourth, in its Answer,[85] petitioner failed to deny under oath the genuineness and due execution of the Receipt/Agreement,

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[79] There are acts of administration as distinguished from those of strict dominion or ownership. Although conveying the ownership of money or property, payment is considered a mere act of administration when made in the ordinary course of management, and is included in an agency couched in general terms. *See* De Leon, *supra*, pp. 398-399.

[80] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (1992), Vol. V, p. 405.

[81] *Kanlaon Construction Enterprises Co., Inc. v. NLRC*, 344 Phil. 749, 760, September 18, 1997, per Puno, *J*.

[82] *Sanchez v. CA*, 345 Phil. 155, 182, September 29, 1997, per Panganiban, *J*. (citing Article 2028 of the Civil Code).

[83] *Anacleto v. Van Twest*, 339 Phil. 211, 215, August 29, 2000. See also *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. CA*, 370 Phil. 150, 162, July 26, 1999; *Galay v. CA*, 321 Phil. 224, 231, December 4, 1995; and *Rovero v. Amparo*, 91 Phil. 228, 234-235, May 5, 1952.

[84] De Leon, *supra*, p. 400 (citing *Duñgo v. Lopena*, 116 Phil. 1305, 1312, December 29, 1962).

[85] Dated October 4, 1998; RTC records, pp. 31, 34.

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which is thus deemed admitted.[86] Indeed, before a private document offered as authentic is received in evidence, its due execution and authenticity must be proved. However, after it has been offered, failure to deny it under oath[87] amounts to its admissibility.[88] The "party whose signature it bears admits that he signed it or that it was signed by another for him with his authority;[89] that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, x x x which it lacks, are waived by him."[90] The Receipt/Agreement is thus an instrument that is admittedly not "spurious, counterfeit or of different import on its face from the one executed."[91]

Fifth, what respondent has paid, it may demand from petitioner; and even if the payment was made without the knowledge or against the will of the latter, respondent can still recover insofar as such payment was beneficial to petitioner.[92] Such payment cannot be considered as one that is neither due under the provisions of *solutio indebiti*[93] nor recoverable from the creditor by respondent;[94] the latter's right is against petitioner whose obligation it has paid in advance.[95]

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[86] Section 8 of Rule 8 of the 1997 Rules of Civil Procedure. See *Syddayao v. Agatep*, 46 O.G. No. 3, 1118, 1121, June 24, 1948.

[87] *Ramirez v. Orientalist Co*., 38 Phil. 634, 642, September 24, 1918.

[88] Herrera, *Remedial Law* (1999), Vol. VI, pp. 260-264, 326.

[89] *Merchant v. International Banking Corp*., 6 Phil. 314, 316, July 11, 1906.

[90] *Hibberd v. Rohde*, 32 Phil. 476, 478, December 9, 1915, per Trent, *J*.

[91] *Bough v. Cantiveros*, 40 Phil. 209, 213, September 29, 1919, per Malcolm, *J*.

[92] Article 1236 of the Civil Code.

[93] Article 2154 of the Civil Code.

[94] The debt has not been remitted, paid, compensated or prescribed.

[95] Tolentino, *supra*, Vol. IV, p. 280.

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Sixth, the Memorandum and the Billings have probative value. While it is true that Nazareno[96] did not have any personal knowledge of the contents thereof, nevertheless, these two documents were validated by the Receipt/Agreement. Petitioner's Memorandum contained a recommendation to pay respondent the amount of US$27,730.60 and to require additional documentation in support of the balance. In compliance, a Summary of Statement of Account dated January 6, 1998[97] was sent to and received by petitioner, substantiating it to the extent of US$37,400.95. Not only did these amounts sum up to a total of US$65,131.55, the unsettled account indicated in the Billings, but these are also unrefuted by petitioner. In fact, the Receipt/Agreement executed two months later did not contest this balance, although unvalued therein. When a party fails to object to hearsay evidence,[98] such party is deemed to have waived its right to do so; thus, "the evidence offered may be admitted,"[99] though its weight must still be measured by the court.

Seventh, the accounting required by petitioner was not a legal impediment to the obligation. There was in fact no indication that the obligation was subject to such a condition. A pure obligation is demandable at once,[100] and there is nothing to exempt petitioner from compliance therewith.[101] In addition,

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[96] As flight operations officer of respondent, he is in charge of daily business, including "ground handling, both domestic and international, and to see to it that all operation and flight services will be in order." TSN, January 25, 1999, p. 3.

[97] RTC records, pp. 53-129.

[98] *Go v. CA*, 351 SCRA 145, 160, February 5, 2001.

[99] *Bon v. People*, GR No. 152160, p. 12, January 13, 2004, per Panganiban, *J*. (citing *SCC Chemicals Corp. v. CA*, 353 SCRA 70, 76, February 28, 2001; and *Krohn v. CA*, 233 SCRA 146, 154, June 14, 1994, per Bellosillo, *J*.).

[100] Article 1179 of the Civil Code.

[101] Tolentino, *supra*, Vol. IV, p. 143. See *Floriano v. Delgado*, 11 Phil. 154, 157, August 27, 1908.

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it would be preposterous for it to issue a corporate check[102] — without any condition or reservation — and even waive a demand for payment of the balance, if it did not recognize its obligation in the first place.

Eighth, the obligation consisted in the payment of a sum of money, and petitioner incurred in delay; hence, there being no stipulation to the contrary, the indemnity for damages shall be the payment of legal interest, which is six percent (6%) per annum.[103] Such interest may be allowed upon damages awarded for a clear breach of contract.[104]

Commission or Broker's Fee

Indeed, "only questions of law[105] may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court."[106] Questions of fact cannot be the subject of this mode of appeal,[107] for this Court — we have repeatedly emphasized — is "not a trier of facts."[108] One of the exceptions to this rule, however, is when the factual findings of the CA and the trial court are contradictory.[109]

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[102] BPI Check No. 0521306 dated February 26, 1998 for ₱200,000, payable to IBAS, is under the account name of "Air Phils. Corp." Annex A; RTC records, p. 6.

An exchange rate of ₱37.50:US$1 was used. The equivalent of ₱200,000, or US$5,333.33, deducted from US$65,131.55, gives a difference of US$59,798.22, the amount of the balance granted by the lower court.

[103] Article 2209 of the Civil Code.

[104] Article 2210 of the Civil Code.

[105] *Metropolitan Bank and Trust Co. v. Wong*, 412 Phil. 207, 216, June 26, 2001.

[106] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, p. 14, July 30, 2004, per Panganiban, *J.*

[107] *Perez v. CA*, 374 Phil. 388, 409-410, October 1, 1999.

[108] *De Castro v. CA*, 384 SCRA 607, 621, July 18, 2002, per Carpio, *J.*

[109] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 381 SCRA 244, 253, April 17, 2002 (citing *Fuentes v. CA*, 335 Phil. 1163, 1167-1169, February 26, 1997, per Panganiban, *J.*). In this cited case, the

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The lower court held petitioner liable for the 10 percent broker's fee, but the appellate court found otherwise. It is true that respondent — on commission basis — engaged itself as a broker to negotiate "contracts relative to property,"[110] the custody of which it had no concern over; to never act "in its own name but in the name of those who employed"[111] it; and "to bring parties together x x x in matters of trade, commerce or navigation."[112] However, we agree with the CA that respondent's entitlement to a broker's fee should have been adequately proven.

Court said that the findings of fact of the CA may admit of review under any of the following conditions:

"(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the findings are grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record."

[110] *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp.*, 166 SCRA 493, 501, October 18, 1988, per Cortés, *J.*

[111] *Ibid*.

[112] *Tan v. Gullas*, 393 SCRA 334, 339, December 3, 2002, per Ynares-Santiago, *J.* (citing *Schmid & Oberly, Inc. v. RJL Martinez Fishing Corp., supra*, p. 501, per Cortés, *J.*

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The March 19, 1997 Certification issued by Captain Villacampa is inadmissible in evidence. It was a mere reproduction of an original that had never been produced or offered in evidence.[113] Under the best evidence rule[114] as applied to documentary evidence, no evidence shall be admissible other than the original itself when the subject of inquiry is its contents.[115] Since none of the exceptions to this rule has been proven,[116] "secondary or substitutionary evidence"[117] is not permitted.[118]

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[113] "The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had." *Philippine Banking Corp. v. CA*, G.R. No. 127469, p. 30, January 15, 2004, per Carpio, *J.* (citing *Intestate Estate of the late Don Mariano San Pedro y Esteban v. CA*, 333 Phil. 597, 624, December 18, 1996, per Hermosisima Jr., *J.*).

[114] Regalado, *Remedial Law Compendium* (9th rev. ed., 2001), Vol. II, p. 590.

[115] Section 3 of Rule 130(B)(1) of the Rules of Court. See *Philippine National Bank v. CA*, 326 Phil. 46, 53-54, April 2, 1996.

[116] §3 of Rule 130(B)(1) of the Rules of Court provides:

"SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office."

[117] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. No. 149454/149507, May 28, 2004, p. 14, per Panganiban, *J. See* Regalado, *supra*, pp. 589-595.

[118] Section 5 of Rule 130(B)(2) of the Rules of Court.

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It is of no moment that Nazareno testified as to the intermediary's commission in open court. Whether the Certification has actually been executed cannot be proved by his mere testimony, because he was not a signatory to the document. His assertion was bare and untested. Without substantiation, "such testimony is considered hearsay."[119] Witnesses can testify only to those facts that they know of their personal knowledge or are derived from their own perception.[120] Unlike the unvalued balance in the Receipt/ Agreement, the broker's fee herein has not been supported by any admissible evidence other than the demand letters sent by respondent's counsel.

Attorney's Fees

Attorney's fees may be recovered, since petitioner has compelled respondent to incur expenses to protect the latter's interest[121] in reimbursement. Besides, it is clear from the Receipt/ Agreement that petitioner is obliged to pay 10 percent of the principal, as attorney's fees.

In sum, petitioner is liable for the unpaid balance of respondent's claim amounting to US$59,798.22 or its equivalent in legal tender under the Receipt/Agreement, including legal interest from May 12, 1997 until fully paid; and for attorney's fees of 10 percent of this unpaid balance, excluding interest. No broker's fee can be charged, as it has not been proven by respondent. Since the counsel of petitioner is guilty of simple negligence only, and since it was equally negligent as he, no new trial can be allowed.

WHEREFORE, the Petition is hereby *DENIED*, and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioner.

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[119] *D.M. Consunji, Inc. v. CA*, 357 SCRA 249, 253-254, April 20, 2001, per Kapunan, *J*. (citing *People v. Ramos*, 122 SCRA 312, 320, May 16, 1983, per Guerrero, *J*.). See Regalado, *supra*, pp. 638-639.

[120] Section 36 of Rule 130(C)(5) of the Rules of Court.

[121] Article 2208(2) of the Civil Code.

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SO ORDERED.

Sandoval-Gutierrez and *Corona, JJ.*, concur.

Carpio Morales, J., on official leave.

SECOND DIVISION

[G.R. No. 157767. September 9, 2004]

REYNALDO BALOLOY and ADELINA BALOLOY-HIJE, *petitioners, vs.* **ALFREDO HULAR,** *respondent.*

SYNOPSIS

Respondent Hular filed a complaint for quieting of title of real property with damages against the Baloloys. Allegedly, Iluminado Baloloy, petitioners' predecessor-in-interest, was able to secure a Free Patent over the property through fraud, on the basis of which, the Register of Deeds issued an Original Certificate of Title to Iluminado Baloloy. Respondent later discovered in the cadastral survey of lands that the acquired property of his father was made to form part of Lot No. 3353, the property of Iluminado Baloloy. According to respondent, he had acquired ownership of the property by acquisitive prescription; he and his predecessors had been in continuous, uninterrupted and open possession of the property in the concept of owners for more than 60 years.

The Court noted that respondent alone filed the complaint. He should have included his siblings as co-owners to the property as required by the Rules. Nonetheless, the Court ruled that respondent failed to prove the material allegations of his complaint against petitioners. He was thus not entitled to the reliefs prayed for and the Torrens Title of Iluminado Baloloy prevails.