

## FIRST DIVISION

[ G.R. No. 151963, September 09, 2004 ]

**AIR PHILIPPINES CORPORATION, PETITIONER, VS.  
INTERNATIONAL BUSINESS AVIATION SERVICES PHILS., INC.,  
RESPONDENT.**

### DECISION

**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<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the September 28, 2001 Decision<sup>[2]</sup> and the January 25, 2002 Resolution<sup>[3]</sup> 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."<sup>[4]</sup>

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.

"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 P200,000.00, 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;

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 P200,000.00 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] 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.

"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 US\$9,798.22 dollars or its equivalent in legal tender plus interest at the legal rate from May, 1997 until fully paid;
2. the amount of US\$6,513.00 or its equivalent as intermediary's commission;
3. [P]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*."<sup>[5]</sup>

### **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 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\$9,798.22 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.<sup>[6]</sup>

### **The Issues**