

## FIRST DIVISION

[ A.M. No. CA-99-9-P, April 30, 2003 ]

**MAGTANGGOL GABRIEL, COMPLAINANT, VS. ATTY. VIRGINIA C. ABELLA, DIVISION CLERK OF COURT OF THE 17TH DIVISION; OLIMPIA V. TRAMBULO, RECORDS OFFICER III, RECEIVING SECTION; FERDINAND HERAMIS, CLERK, CIVIL CASE SECTION; AND ALBERTO TARIGA, JR., VERIFICATION CLERK, ALL FROM THE COURT OF APPEALS, RESPONDENTS.**

### **RESOLUTION**

**YNARES-SANTIAGO, J.:**

On July 2, 1998, complainant Magtanggol Gabriel filed an affidavit-complaint<sup>[1]</sup> before the Office of the Court Administrator (OCA) against Atty. Virginia C. Abella, Division Clerk of Court of the 17<sup>th</sup> Division; Olimpia V. Trambulo, Records Officer III, Receiving Section; and Ferdinand Heramis, Clerk, Civil Cases Section – all from the Court of Appeals – charging them with grave misconduct.

Complainant alleged that he is the Vice-President of Manila Metal Container Corporation, plaintiff-appellant in CA-G.R. CV. No. 46153 entitled, "*Manila Metal Container Corporation (MMCC), Plaintiff-Appellant versus Philippine National Bank, Defendant-Appellee; Reynaldo C. Tolentino, Intervenor-Appellant,*" filed with the Court of Appeals.

On May 15, 1998, upon motion of intervenor Reynaldo C. Tolentino, the 17<sup>th</sup> Division of the Court of Appeals issued a Resolution substituting said intervenor as plaintiff and granting the withdrawal of appeal in CA-G.R. CV No. 46153. On May 27, 1998, complainant filed a motion for reconsideration of the aforesaid Resolution. On the same date, intervenor Tolentino also filed a motion for reconsideration praying for the issuance of an entry of judgment.

Based on the above motion of intervenor Tolentino, respondent Atty. Virginia C. Abella prepared and issued an entry of judgment in CA-G.R. CV. No. 46153, despite the pendency of the motion for reconsideration filed by complainant on May 27, 1998. Thus, complainant went to the Receiving Section of the Court of Appeals and requested for a certification that his counsel filed a motion for reconsideration of the Resolution dated May 15, 1998. However, respondent Olimpia V. Trambulo refused to give him the certification and, in a loud and belligerent voice, said that she did not have custody of the records of the case.

Complainant further alleged that respondent Ferdinand Heramis of the Civil Cases Section was negligent in recording and handling the motion for reconsideration he filed. When confronted by complainant's counsel, respondent Heramis denied having received any motion for reconsideration from plaintiff-appellant. Later, he admitted that he actually received the said motion for reconsideration from the Receiving

Section and recorded the same in the Civil Cases Docket Book.

In her answer to the complaint, respondent Abella averred that when she prepared the entry of judgment in question on June 18, 1998, she strictly followed the Revised Internal Rules of the Court of Appeals and Section 10, Rule 51 of the 1997 Rules of Civil Procedure. She prepared the said entry of judgment only after (1) the reglementary period to file a motion for reconsideration has elapsed; (2) a proper verification from Mr. Alberto Tariga, Jr. of the Judicial Records Division that there was no motion for reconsideration filed; and (3) Justice Corona Ibay-Somera, the *ponente* of the case, made a marginal note on intervenor Tolentino's motion for reconsideration that "ENTRY OF JUDGMENT ENTERED". She was officially furnished a copy of the plaintiff-appellant's motion only on June 22, 1998, which she promptly reported to Justice Ibay-Somera.<sup>[2]</sup>

Respondent Trambulo, on the other hand, denied that she was arrogant or belligerent when she attended to complainant and his counsel. Her speaking in a loud manner was meant to emphasize the reason why she cannot issue the requested certification, owing to her failure to verify complainant's motion for reconsideration from the rollo of the case. Moreover, the said motion for reconsideration was properly received, recorded and delivered by her staff from the Receiving Section to the Civil Cases Section. Thus, any tampering of the docket book and the loss of complainant's motion for reconsideration was beyond her control since it did not happen in her section.<sup>[3]</sup>

Respondent Hramis claimed that when he received the motion for reconsideration filed by plaintiff-appellant from the Receiving Section, he immediately recorded it in the docket book of the Civil Cases Section. Afterwards, he placed the motion, together with the other motions received on that day, on top of the table of Mr. Augusto Alba, the rollo clerk. He alleged that he only learned of the loss of plaintiff-appellant's motion for reconsideration after complainant's counsel inquired about it.<sup>[4]</sup>

This complaint was referred to then Acting Presiding Justice of the Court of Appeals (now retired Associate Justice of this Court) Arturo B. Buena for investigation, report and recommendation. Justice Buena in turn directed Atty. Elisa B. Pilar-Longalong, Assistant Clerk of Court, to conduct the investigation.

After the investigation, Atty. Pilar-Longalong found that respondent Atty. Abella exercised due diligence before issuing the entry of judgment. She waited for the lapse of the reglementary period to file a motion for reconsideration and considered the mailing time allowance provided in Section 6, Rule 11 of the Revised Internal Rules of the Court Appeals.

On the other hand, Atty. Pilar-Longalong found respondent Trambulo's actions unjustified. As Chief of the Receiving Section, she could have easily verified whether the motion for reconsideration filed by plaintiff-appellant was indeed recorded in the Receiving Sections' logbook. Furthermore, it appears from the record that while the intervenor's motion for reconsideration was stamped "received" by the Receiving Section, it was not recorded in its logbook. Nevertheless, the record shows that the intervenor's motion was forwarded to the Judicial Records Division. Hence, Atty. Pilar-Longalong recommended that respondent Trambulo should exercise closer

supervision over her personnel.

Finally, Atty. Pilar-Longalong found that the testimony of respondent Herais is contrary to what appears in the record. While he claimed that the plaintiff-appellant's motion for reconsideration was recorded in the docket book on June 1, 1998, the index card of CA-G.R. CV No. 46153 in the possession of the rollo clerk shows that the motion for reconsideration was entered only on June 5, 1998. Moreover, since it was respondent Herais who was last seen handing the motion for reconsideration to the rollo clerk, he must bear the responsibility for its loss. His act of placing the motion on top of the table of Mr. Alba without asking the latter to acknowledge receipt thereof constituted negligence.

On September 4, 1998, Atty. Pilar-Longalong submitted her Report to Justice Buena with the recommendation that:

Premises considered, it is respectfully recommended that:

1. The case of grave misconduct against respondent Virginia C. Abella be dismissed for lack of merit;
2. While respondent Olimpia V. Trambulo is not shown to have committed any act constituting grave misconduct, nevertheless, she may be held liable for discourtesy and willful refusal to issue the requested certification for which she may be reprimanded and sternly warned against a repetition of said or similar acts in the future. Likewise, the office may consider requiring her to henceforth exercise closer supervision over her personnel; institute remedial measure, if warranted, on the manner by which her personnel discharge their respective functions; and correct existing procedures in her Section to avoid the occurrence of similar incidents in the future;
3. While respondent Ferdinand C. Herais is not shown to have committed any act constituting grave misconduct either, nevertheless, he may be held liable for negligence in the discharge of his official functions for which he may be imposed the penalty of one month suspension; and
4. As a necessary incident/consequence of the foregoing findings in the case, to:
  - a. Require the personnel of the Civil Cases Section, specifically Messrs. Augusto Alba and Reynaldo Faraon, although not respondents in the case, to henceforth indicate in their index cards and logbooks the name of filers of the pleadings received by them;
  - b. Admonish Mr. Alberto Tarigan (*should read "Tariga"*) of the Civil Cases Section who, although not a respondent in this case either, but whose erroneous report resulted in the premature entry of judgment, to henceforth be more careful in verifying pleadings and in reporting to the Division clerks, as