

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

CITY ASSESSOR AND CITY
TREASURER, CITY GOVERNMENT
OF MALOLOS, BULACAN,

Petitioners,

-versus-

CTA *EB* NO. 2709
(CTA AC No. 241)

Present:
DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, JJ.

NATIONAL FOOD AUTHORITY,
Represented by ELVIRA C. OBAÑA,
Regional Director of NFA-Region III,

Respondent.

Promulgated:

OCT 09 2023

x

x

RESOLUTION

For the Court’s resolution is petitioners’ “Motion for Reconsideration” (“Motion”),¹ filed on 19 June 2023, with respondent’s “Comment (To Petitioners’ Motion for Reconsideration of the Resolution dated 22 May 2023)” (“Comment”),² filed on 11 July 2023. Petitioners pray that this Court *En Banc* (a) reverse and set aside its Resolution, dated 22 May 2023, (“Assailed Resolution”),³ which dismissed the instant case for being filed out of time; and (b) reinstate their Petition for Review, filed on 24 October 2022.

The central issue here is when petitioners received the Resolution (“Division Resolution”)⁴ of this Court’s First Division (“Court in Division”) in CTA AC No. 241, dated 18 August 2022. In the Assailed Resolution, this Court *En Banc* found that petitioners received the Division Resolution on 12 September 2022, justifying the dismissal of their Petition for Review, which

¹ *EB* Records, pp. 309-313.

² *Id.*, pp. 320-324.

³ *Id.*, pp. 303-308.

⁴ Division Records, pp. 304-307.

was filed on 24 October 2022.⁵ Petitioners, meanwhile, claim to have received the Division Resolution on 7 October 2022.⁶

Petitioners raise the following claims in support of their contention:

- (a) The “Klarisse” who received the Division Resolution on 12 September 2022 is Klarisse R. Dela Cruz, a legal secretary at Reyes and Associates Law Offices. As proof, petitioners attached a Certificate of Employment issued by said law firm on 13 June 2023 to their Motion.⁷ Said law firm is owned and managed by Atty. Raymond C. Reyes, petitioners’ counsel before the Regional Trial Court. As such, Ms. Dela Cruz is not the secretary of Atty. Christian Peter C. Bautista, contrary to this Court *En Banc*’s findings in the Assailed Resolution; and
- (b) Neither Atty. Reyes nor Atty. Bautista were petitioners’ counsel of record when the Division Resolution was promulgated, as their services with the City Government of Malolos ended on 8 March 2022 and 30 June 2022, respectively. To prove this, petitioners attached Certifications, both issued by the Government of Malolos on 8 June 2023, to their Motion.⁸ Rather, their counsel of record at the time was Atty. Darwin Dionisio Clemente, their current counsel.

Meanwhile, in its Comment, respondent argues that Atty. Clemente only filed his Entry of Appearance on 10 October 2022, meaning that Atty. Bautista was still petitioners’ counsel of record when the Division Resolution was promulgated. Service to Atty. Bautista’s secretary, then, was service to petitioner, so 12 September 2022 should be treated as the starting point of the prescriptive period at issue.

Finally, it should be noted here that the Court *En Banc*, in the Assailed Resolution, and respondent, in its Comment, based their conclusion that the aforementioned “Klarisse” was Atty. Bautista’s secretary on petitioners’ own claim, in its Petition for Review, that they received the Division Resolution when a copy of the same “was forwarded to the City Legal Office (CLO) by *the secretary of Atty. Christian Peter C. Bautista*” (italics supplied).⁹

⁵ See Resolution, dated 22 May 2023, pp. 2-3, *EB Records*, pp. 304-305.

⁶ See Petition for Review, p. 3, *id.*, p. 3; see also Amended Petition for Review, p. 3, *id.*, p. 175.

⁷ “Annex A”, Motion for Reconsideration, *id.*, p. 314.

⁸ “Annex B” and “Annex C”, Motion for Reconsideration, *id.*, pp. 315-316. Note that, as written, the Certifications are dated 8 June 2022. However, the Certification on Atty. Bautista states that his last day of service with the City Government of Malolos “was on 30 June 2022” (emphasis supplied), a later date. Given the discrepancy, We consider the printed date a typographical error and treat 8 June 2023 as the actual date of issuance.

⁹ *Supra* note 5.

The instant Motion must be denied. Atty. Reyes was still petitioners' counsel of record when the Division Resolution was issued, so notice to his secretary was notice to petitioners.

Notice to counsel is notice to the client-litigant.

The Supreme Court, in *Philippine National Bank v. Spouses Nestor and Felicidad Victor and Spouses Reynaldo and Gavina Victor*,¹⁰ recently reaffirmed the principle that “notice sent to a counsel of record is equivalent to notice sent to the client-litigant”. Earlier, the High Court also held, in *Puregold Price Club, Inc. v. Court of Appeals and Renato M. Cruz, Jr.*,¹¹ that “for purposes of appeal, the period [to file the same] shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record”. In brief, the period allowed for filing an appeal should be counted from receipt of the same by a party's counsel, as notice to said counsel is equivalent to notice to said party.

Petitioners do not disagree with this doctrine. Rather, they claim that the Division Resolution was *not* served to their counsel of record but to their previous counsel. This contention, however, is misplaced.

Absent a formal withdrawal or substitution of the counsel of record, the same remains the counsel of record.

Sec. 26, Rule 138 of the Rules of Court lays down the procedure to be followed when a counsel of record seeks to withdraw from the case or is to be substituted by another:

SEC. 26. Change of attorneys. — An attorney may retire at any time from any action or special proceeding, by the written consent of [the attorney's] client filed in court. [An attorney] may also retire at any time from an action or special proceeding, without the consent of [the attorney's] client, should the court, on notice to the client and attorney, and on hearing, determine that [the attorney] ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.”
(Emphasis supplied.)

¹⁰ G.R. No. 207377, 27 July 2022.

¹¹ G.R. No. 244374, 15 February 2022.

Building on this, the Supreme Court, in *Fernando G. Manaya v. Alabang Country Club, Incorporated* (“*Manaya Case*”),¹² held that a litigant’s counsel of record remains as such, absent any formal withdrawal or substitution of the same:

“It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. **In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent [their] client** and receipt of notice by the former is the reckoning point of the reglementary period. As heretofore adverted, **the original counsel did not file any notice of withdrawal.** Neither was there any intimation by respondent at that time that it was terminating the services of its counsel.

For negligence not to be binding on the client, the same must constitute gross negligence as to amount to a deprivation of property without due process. This does not exist in the case at bar. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face.

Even more, it is respondent’s duty as a client to be in touch with [its] counsel so as to be constantly posted about the case. It is mandated to inquire from its counsel about the status and progress of the case from time to time and cannot expect that all it has to do is sit back, relax and await the outcome of the case.”
(Citations omitted; emphasis supplied.)

The above has been repeatedly stressed and reaffirmed by the Supreme Court in the years since its pronouncement, such as in *National Food Authority represented by the Director of its Legal Affairs Department v. Ramon Batuhan*¹³ and *Ma. Teresa A. Gunday Valmocena v. Josefina S. Valmocena*,¹⁴ with the latter even mandating that such notice of withdrawal or substitution be “in accordance with the procedure laid down in **Section 26, Rule 138 of the Rules of Court**”. For the counsel of record to be properly changed, then, a proper notice of withdrawal or substitution must be accomplished. Contra petitioners’ implicit arguments, whether or not a given attorney’s services with a client has ended is of no moment.

In the case at bar, Atty. Reyes never filed any formal notice of withdrawal. Additionally, Atty. Bautista never filed a formal, standalone notice of substitution or entry of appearance, instead opting to include the following request in the prayer of the Motion for Reconsideration he filed for petitioners before the Court in Division:✓

¹² G.R. No. 168988, 19 June 2007.

¹³ G.R. No. 226773, 7 December 2021.

¹⁴ G.R. No. 257291, 27 September 2021.

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“WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that the Decision of this Honorable Court dated 16 March 2022 dismissing the case [sic] be reconsidered. **Further, all orders and processes of this Honorable Court be furnished in the address given below the name of the undersigned counsel.**”
(Emphasis supplied.)

This Court *En Banc* cannot consider this a proper and valid substitution of counsel.

The Supreme Court has spoken, in the past, on informal changes of counsel, such as in *Elizabeth Sublay v. National Labor Relations Commission, Euro-Swiss Food Inc., Werdenberg International Corporation and Werner Berger* (“*Sublay Case*”),¹⁵ where it held that Courts cannot presume the substitution of a counsel of record:

“The rule is that when a party is represented by two (2) or more lawyers, notice to one (1) suffices as a notice to the party represented by [said lawyer]. Hence, the Labor Arbiter was not in error when he served a copy of the decision only on Atty. Marquez who after all was still the counsel of record when the decision was rendered. Likewise petitioner cannot claim that although Atty. Marquez was not asked to formally withdraw he has for all intents and purposes withdrawn because, by failing to actively represent petitioner, he virtually relinquished his responsibility over the case to Atty. Alikpala

The unbroken stream of judicial dicta is that clients are bound by the action of their counsel in the conduct of their case. Otherwise, if the lawyer's mistake or negligence was admitted as a reason for the opening of a case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned. **Besides, without formally withdrawing his appearance, Atty. Marquez continued to be the counsel of petitioner. Courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter. In the absence of compliance with the essential requirements for valid substitution of counsel of record, the court can safely presume that he continuously and actively represents his client.**”

(Citations omitted; emphasis supplied.)

In the *Sublay Case*, Atty. Alikpala, who was petitioner Sublay’s “active” counsel, had already filed an entry of appearance, yet was *not* considered, by the Labor Arbiter or by the High Court, to have validly replaced Atty. Marquez as petitioner Sublay’s counsel of record, as Atty. Marquez had not formally withdrawn his appearance from the case. The situation was instead interpreted as one of *collaboration*, with the “former”, “inactive” lawyer becoming one (1) of two (2) counsels of record, and service to said “former” lawyer being treated as valid service to petitioner Sublay. ✓

¹⁵ G.R. No. 130104, 31 January 2000.

To be fair, the issue was given more nuance and made less restrictive in *Spouses Luisito Pontigon and Leodegaria Sanchez-Pontigon v. Heirs of Meliton Sanchez*,¹⁶ citing *Land Bank of the Philippines v. Pamintuan Development Co., represented by Mariano Pamintuan, Jr.*,¹⁷ which broached the topic of intent:

“Apropos herein is the Court's teaching in *Land Bank of the Phils. v. Pamintuan Dev. Co.*, to wit:

[A] substitution cannot be presumed from the mere filing of a notice of appearance of a new lawyer and that the representation of the first counsel of record continuous until a formal notice to change counsel is filed with the court. Thus, absent a formal notice of substitution, all lawyers who appeared before the court or filed pleadings in behalf of the client are considered counsels of the latter. All acts performed by them are deemed to be with the clients' consent. (Emphasis supplied)

Applying the afore-quoted doctrine, **it is imperative that the intention of the petitioners to replace their original counsel, Atty. Sanchez-Malit, be evidently clear before substitution of counsel can be presumed.** The records readily evince, however, that herein petitioners did not manifest even the slightest of such intention. No inference of an intent to replace could be drawn from the tenor of either the first Motion for Reconsideration or in Atty. Muñoz's Entry of Appearance.”
(Citations omitted; emphasis supplied.)

Substitution can thus be presumed if a litigant's pleadings clearly evince the intent to change its counsel of record. In the case at bar, Atty. Bautista's request that all Court issuances be sent to him could be seen as an expression of such intent on the part of petitioners.

However, petitioners' subsequent actions, or rather *inaction*, cast doubt upon this intent and introduces an element of negligence to the issue.

Following petitioners' filing, through Atty. Bautista, of their Motion for Reconsideration before the Court in Division, said Court issued a Resolution,¹⁸ dated 1 June 2022, ordering petitioners to file additional copies of said Motion. The corresponding Notice of Resolution¹⁹ lists Atty. Reyes as a recipient but *not* Atty. Bautista, implying that said Resolution was sent to the former *only* and *not* to the latter. Nevertheless, Atty. Bautista filed a Compliance²⁰ on 23 June 2022. The same is true of the Resolution,²¹ dated 15

¹⁶ G.R. No. 221513, 5 December 2016.

¹⁷ G.R. No. 167886, 25 October 2005.

¹⁸ Division Records, p 267.

¹⁹ *Id.*, p. 266.

²⁰ *Id.*, p. 270.

²¹ *Id.*, p. 269.

June 2022, submitting the Motion for resolution, in that the Notice of Resolution²² included Atty. Reyes as a recipient but *not* Atty. Bautista.

Petitioners and their “active” counsel thus had two (2) separate chances to formally substitute Atty. Bautista for Atty. Reyes as counsel of record. They had two (2) chances to notice that the Court did not yet consider Atty. Reyes to have officially withdrawn as their counsel of record. They had two (2) chances to realize that they could not simply assume that their informal request for substitution of counsel of record, which, it must be added, was not done in accordance with ***Sec. 26, Rule 138 of the Rules of Court***, would not automatically be granted by the Court. Despite this, they did not act to have Atty. Bautista recognized by this Court as petitioners’ representative in CTA AC No. 241 or to ensure that the Court’s issuances in said case were not sent to Atty. Reyes. As such, notice to the latter (or his law firm’s secretary) was notice to petitioners.

Assuming *arguendo* that Atty. Bautista properly became petitioners’ counsel of record, the Court in Division could still not have ascertained, *sans* doubt, that what took place was a substitution of counsel. Such substitution, again, cannot simply be presumed. One could reasonably infer that Atty. Reyes and Atty. Bautista were *collaborating* as counsels for petitioners, given that the latter was still able to act on a Resolution served only upon the former.

It must also be noted that petitioners never controverted the finding, in the Division Resolution, that they failed to timely file their Motion for Reconsideration before the Court in Division.²³ Petitioners even admitted as much in their Petition for Review filed before this Court *En Banc*, agreeing that they filed the Motion for Reconsideration late but instead arguing that the Court in Division should not have applied technical rules so strictly.²⁴ Said finding, however, was based on the understanding that Atty. Reyes was still their counsel of records and could thus validly receive Court issuances on their behalf.²⁵ Petitioners thus never denied, and even implicitly affirmed, that Atty. Reyes was still their counsel of record, or one of their counsels of record, despite the appearance of other attorneys in this case.

As such, and to follow the ***Sublay Case*** as quoted above, notice to Atty. Reyes (or his secretary) was notice to petitioners.

Either way, Atty. Reyes remained petitioners’ counsel of record. When the Notice of the Division Resolution was served to him (or his secretary) on 12 September 2022, it was validly served to petitioners. Petitioners thus filed ✓

²² *Id.*, p. 268.

²³ *Id.*, pp. 305-306.

²⁴ See Petition for Review, pp. 6-8, *EB Records*, pp. 6-8.

²⁵ *Supra* note 23.

their Petition for Review before this Court *En Banc* late when they filed said Petition on 24 October 2022.

At this juncture, the Court wishes to once again echo the Supreme Court in the *Manaya Case* in saying that a litigant *must* keep itself informed of its case and cannot simply “sit back, relax and await the outcome of the case”. This is doubly significant here because, as evidenced by the Certifications issued by the Human Resource Management Office of the City Government of Malolos, Atty. Reyes and Atty. Bautista served the same City Government that petitioners serve. In line with this, Atty. Bautista’s given address matches the office address of petitioners, as they themselves identify in their Petition for Review before the Court *En Banc*.²⁶ They thus had every opportunity to check on their case and confirm that they were being properly represented yet failed to do so.

Finally, We wish to emphasize that this dismissal is not borne out of mere technicalities. The Court is not blind to the possibility of abuses that allowing such informal substitutions would open. An unscrupulous litigant could, for example, hire new attorneys in the middle of proceedings, then claim that it intended the substitution of one for the other, in order to cheat prescriptive periods, deny having been served notice, or engage in other tactics patently unfair to the adverse party. Rules of procedure are instituted by laws and jurisprudence precisely to promote the proper dispensation of justice. Unless adherence to these rules would evidently and indisputably lead to injustice, and thus effect the opposite of their very purpose, these rules must be followed as closely as is reasonably possible.

All told, the Court *En Banc* sees no reason to overturn its earlier dismissal of this Petition for Review.

WHEREFORE, the petitioners’ Motion for Reconsideration, filed on filed on 19 June 2023, is hereby **DENIED** for lack merit. This Court’s Resolution, dated 22 May 2023, is hereby **AFFIRMED**.

SO ORDERED.

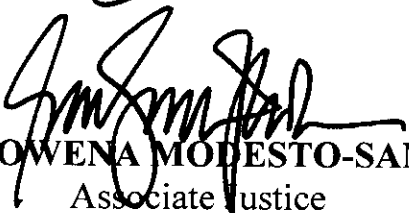

ROMAN G. DEL ROSARIO
Presiding Justice

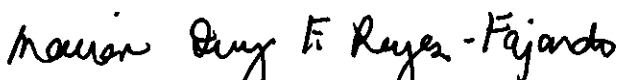
²⁶ See Petition for Review, p. 2, *EB Records*, p. 2; see also Amended Petition for Review, p2, *id.*, p. 174.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

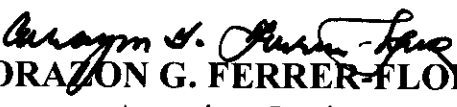

CATHERINE T. MANAHAN
Associate Justice


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

(On leave.)
HENRY S. ANGELES
Associate Justice