SUPREME COURT
THIRD DIVISION

GEORGE F. SALONGA and SOLID INTERTAIN CORPORATION,
***Petitioners*,**

-versus-

G.R. No. 111478
March 13, 1997

COURT OF APPEALS, HON. JULIO R. LOGARTA, and PAUL GENEVE ENTERTAINMENT CORPORATION,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Are the professional lapses, inefficiency, carelessness and negligence of a lawyer enough to annul a default judgment? Do they constitute "extrinsic fraud"? Alternatively, do they amount to deprivation of due process? Is a motion (as distinguished from an independent and separate petition) sufficient to vest contempt jurisdiction on a trial court? These questions are answered by the Court as it resolves this petition assailing the Decision of respondent Court of Appeals[1] in CA-G.R. SP No. 29138 promulgated on August 26, 1993, affirming with slight modification the judgment by default rendered by the trial court.

The Antecedent Facts

The court of origin (Regional Trial Court of Makati, Branch 63, presided by Judge Julio R. Logarta) narrated the facts it culled from the evidence, as follows:

> "Astra Realty Development Corporation owned a property located at No. 32 Jupiter St., Bel-Air Village, Makati. This property is being leased to Alelie A. Montojima under a 'bilateral' contract of lease. Alelie Montojima constructed a building in the leased premises and opened a restaurant (sic) under the name and style Aquatic Chef Seafoods Restaurant which however, did not prosper. Alelie Montojima then came to transact with (herein private respondent) Paul Geneve Entertainment Corporation and with the consent of the lessor Astra Realty they agreed on a Joint Venture Agreement (JVA) with the following terms: that upon the signing and due execution of the JVA, Alelie Montojima will be selling all her existing rights and interests over the leased premises in favor of (herein private respondent) for P3 Million pesos. The JVA was executed and signed on September 1, 1989. (Herein private respondent) paid Alelie Montojima the total amount of P1,000,000.00. (Herein private respondent) took over the possession of the leased premises, but before (herein private respondent) could open her business, a complaint was lodged by Bel-Air Village Homeowner's Association for violation of some municipal ordinances. Astra was also informed by the Bel-Air Village Association of the complaint and Alelie Montojima demanded (herein private respondent) to vacate the premises. Meanwhile, (herein private respondent), through Mrs. Milagros Izon, the president, was looking for a possible taker of the leased premises for a consideration, so she could recover the huge investments she had made. Thereafter, (herein private respondent) filed a civil case with prayer for preliminary injunction and writ of attachment against Montojima. A Temporary Restraining Order against Montojima was issued on March 22, 1990 while the writ of preliminary injunction was granted on November 29, 1991. Mrs. Milagros Izon was introduced by her friend, Ed Calveria, to (herein petitioner)

> George Salonga. (Herein petitioner) Salonga was supposed to buy-out all the leaseholding rights of the (herein private respondent) in the amount of P5.5 Million. Since (herein petitioner) Salonga did not have the sum of money(,) he proposed instead to Mrs. Izon a joint venture enterprise between (herein petitioner) Salonga's company (herein petitioner) Solid Intertain and (herein private respondent). The idea was that (herein petitioner) Solid Intertain Corporation and (herein private respondent) Paul Geneve Corporation will form a new corporation and the name Solidisque Inc. (sic). The documents all in seven (7) sets were drafted by both parties' respective counsels, Atty. Garlitos for (herein petitioners) and Atty. Sadili for (herein private respondent). (Herein private respondent) through Mrs. Izon has signed the joint venture agreement. The document with extra copies were then delivered to (herein petitioner) Salonga for his signature and for notarization. The document together with the extra copies remained unsigned and unexecuted. With the memorandum of agreement still unsigned, not notarized and in the possession of (herein petitioner) Salonga, the latter transferred all his equipments and properties from his former business site, Metro Disco, to the subject premises in question after informing Mrs. Izon that he did not have a place where he can transfer his things and asked that he be allowed to put it at No. 32 Jupiter St. Club Ibiza was thus opened and made operational on the leased premises in question under the name (of herein petitioner) Solid Intertain Corporation. No corporation under the name Solidisque (sic) Inc. was ever registered as agreed upon in the Securities and Exchange Commission. (Herein private respondent) was totally left out."[2]

To continue the story, we now quote from the respondent Court of Appeals:

> "It appears that on November 26, 1991 herein private respondent (Paul Geneve Entertainment Corporation) filed a complaint for specific performance with temporary restraining order and preliminary injunction with prayer for damages against herein petitioners (George Salonga and Solid Intertain Corporation) to enforce a memorandum of agreement that was

> supposedly perfected between the parties (Rollo, p. 157). On November 29, 1991 petitioners received a copy of the summons and complaint, including a copy of the restraining order issued in the said civil case by public respondent, enjoining 'petitioners from further operating club Ibiza,' which order was referred by petitioners to Atty. Onofre G. Garlito, Jr., the former counsel of record (Petition, p. 8 paragraph 16).

During the scheduled hearing for injunction on December 4, 1991, only private respondents appeared despite notice to petitioners (Rollo, p. 31 Annex 'A'). For disobeying the restraining order issued on November 29, 1991, private respondent sought to cite petitioner for indirect criminal contempt (Rollo, p. 217) during the hearing on the civil case whereby Atty. Garlito, Jr. presented George F. Salonga in support of the opposition to the issuance of the Writ of Preliminary Injunction (Rollo, p. 125, Comment).

On December 9, 1991, petitioners and their counsel failed to appear on the date set for hearing the motion for issuance of the writ of preliminary injunction (Rollo, p. 38). Acting on private respondent's motion to submit the application for the writ of preliminary injunction, the (Regional Trial Court a quo) resolved to grant the same on December 12, 1991 (Rollo, p. 38, Decision, Annex 'A').

In the meantime, and despite two motions for extension of time to file an answer, (Petition, paragraphs 21 and 22) no answer was filed (Rollo, p. 39). However, (the) trial court received on June 16, 1992 (Petition, p. 10) an answer purportedly dated January 14, 1992.

On January 15, 1992, petitioner's counsel move (sic) to dissolve the injunction (Rollo, p. 232) and set the hearing thereof on January 17, but on said latter date, only private respondent's counsel showed up (Rollo, p. 237).

Due to petitioner's failure to file an answer, private respondent submitted a third ex parte motion to declare petitioner, as defendant (before the Regional Trial Court), in default on March 4, 1992 (Rollo, p. 238) which was favorably acted upon on March 10, 1992 (Petition, paragraph 25).

On April 14, 1992, the impugned decision was handed down by (the Regional Trial Court) judge, thus:

> "WHEREFORE, judgment is hereby rendered as follows:
>
> 1. The writ of preliminary injunction issued on December 12, 1991 is hereby made permanent;
>
> 2. Ordering defendants to sign, perform and execute the formalities of the Memorandum of Agreement (Exh. 'K'), pursuant to the Joint Venture Agreement (Exh. 'C');
>
> 3. Ordering defendants to undertake the creation and formation, organization and registration of a new corporation pursuant to and in accordance with Philippine Laws before the Securities and Exchange Commission, under the business name and style 'Solidisque Inc.' whose primary purpose shall be to operate a discotique (sic), club restaurant and/or other forms of business similar thereto on the aforesaid leased premises setting the authorized capital stock of the Joint Venture Corporation to be registered at PESOS TEN MILLION (P10,000,000.00), twenty five (25 %) per cent of the total subscription as paid-up capital, in compliance to paragraphs Nos. 1 and 2, page (3), of the Memorandum of Agreement;
>
> 4. Ordering defendants to perform and provide as its equity participation to SOLIDISQUE, INC. a total of SEVEN MILLION PESOS (P7,000,000,00), more or less consisting of audio and lighting equipment, inclusive of electrical and construction materials, among others, and to prepare a list of the aforesaid equipment, materials together with their present value and cost of improvements to be introduced on the establishment to be operated on the leased premises and make such list available to the plaintiff the soonest possible time, in compliance to paragraph No. 3, of the Memorandum of Agreement;

5. Ordering defendants to faithfully and religiously perform, comply, fulfill and satisfy all the terms and conditions as embodied under paragraphs Nos. 4, 5, 5(a) and 5(b), 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16, pages (3) to (6), of the Memorandum of Agreement, Exh. 'K';

6. Ordering the defendants to pay the plaintiff, jointly and severally the cash amount of P500,000.00 plus legal interest, computed from November 1, 1990, for being in default, until fully paid, pursuant to paragraph No. 6, page (4) of the MOA as ACTUAL DAMAGES;

7. Ordering the defendants to pay the plaintiff, jointly and severally the amount of P100,000.00 as exemplary damages;

8. Ordering the defendants jointly (and) severally to pay the amount of P100,000.00 attorney's fees; and

9. Costs of Suit.

SO ORDERED." (PETITION, pp. 2-3)

Petitioner claims that he received a copy of the decision only on October 7, 1992 (Petition, par. 3). Yet, a Motion for Reconsideration was filed on July 28, 1992 by his counsel (Petition, par. 24).

On September 25, 1992, herein petitioner George F. Salonga was adjudged guilty of civil contempt, thus:

'IN VIEW THEREOF, plaintiff's motion are hereby GRANTED and defendant George F. Salonga, is hereby adjudged guilty of indirect contempt of court. Accordingly, the (Regional Trial Court) hereby orders defendant George F. Salonga jointly and severally with the corporation to pay a fine of TWO THOUSAND (P2,000.00) PESOS), a day reckoned from November 1991 until he complies with the orders of the Court

aforementioned and the default judgment. Such fine shall pertain to the benefit of plaintiff.

Let a warrant of arrest issue on defendant George F. Salonga, who shall be placed under the custody of the law until such time that he obeys the orders and judgment of the Court aforementioned (sic).

SO ORDERED.' (Rollo, pp. 115-116)

Four days later, an order for issuance of a writ of execution was issued over petitioner's plea for a period of five days within which to submit an opposition. (Rollo, p. 300)

On October 13, 1992, (the Court of Appeals) issued a Temporary Restraining Order enjoining public respondent (trial court) from enforcing the Decision dated April 14, 1992 and the Order dated September 15, 1992 (Rollo, p. 45) and on November 3, 1992, a writ of preliminary injunction was issued by the (Court of Appeals) upon approval of the required bond (Rollo, p. 300)."[3]

Petitioners raised before the public respondent Court of Appeals the following arguments:

"1. The Judgment/Decision dated 14 April 1992 and the Order dated 25 September 1992 issued in Civil Case No. 91-3261 must be annulled on the ground of fraud on the part of petitioners' previous counsel.

2. The public respondent judge never acquired jurisdiction over the person of petitioner Salonga in hearing the criminal contempt proceedings, thereby depriving petitioner Salonga of his basic constitutional right to due process and justifying the annulment of the Order dated 25 September 1992."[4]

The respondent Court disagreed with these arguments and ruled that:

"WHEREFORE, IN THE LIGHT OF THE FOREGOING, the petition is hereby DENIED. The Writ of Preliminary Injunction

earlier issued by this Court is hereby LIFTED and SET ASIDE. Insofar as the fine for contempt is concerned, the same is reduced to only P1,000.00, pursuant to and as provided under Section 6, Rule 71 of the Rules of Court."[5]

The Issues

Before us, petitioners allege the following "errors" in the challenged Decision of public respondent:

"I

The public respondent Court of Appeals grievously erred in denying the Petition for Annulment of Default Judgment filed in CA-G.R. SP No. 29138 and disregarding the blatant, serious and culpable negligence and professional misconduct of petitioners' previous counsel amounting to deprivation of due process of law.

II

The public respondent Court of Appeals committed grave and serious reversible error in merely reducing the fine for the indirect contempt instead of nullifying the entire contempt proceedings as having no basis in law and procedure."[6]

In the main, the issue is whether extrinsic fraud and denial of due process obtain in this case to justify annulment of the default judgment rendered by the trial court against petitioners.

The Court's Ruling

The petition has no merit.

First Issue: Annulment of Judgment

Well-settled is the doctrine that "a judgment can be annulled only on two (2) grounds: (a) that the judgment is void for want of jurisdiction or lack of due process of law; or (b) that it has been obtained by

fraud."[7] Absent any of these grounds, a final and executory judgment cannot be voided.

Petitioners George Salonga and Solid Intertain Corporation allege that the "inimical and antagonistic acts" of their counsel Atty. Onofre G. Garlitos constitute extrinsic fraud "entitling them to the remedy of annulment of the assailed Judgment/Decision dated 14 April 1992 and of the Order dated 25 September 1992" that they "may be afforded substantial justice and their day in court."[8] These allegedly fraudulent acts of their previous counsel Garlitos in handling Civil Case No. 91-3261 are:[9] (1) his "very late" arrival at the December 4, 1991 hearing tackling private respondent's application for a Writ of Preliminary Injunction, arriving only after the testimony of private respondent's witness; (2) his failure to appear at the December 9, 1991 hearing "for purposes of submitting evidence/opposition to private respondent's aforementioned application for the issuance of a Writ of Preliminary Injunction, as a consequence of which said private respondent's application was deemed 'submitted for resolution.'" by the trial judge; (3) his failure to appear on the date he himself requested, January 17, 1992, for the hearing of the Motion for Dissolution of Injunction he had filed on behalf of petitioners; (4) his failure to file an answer within the period required by the Rules of Court, which resulted in a decision by default in favor of private respondents; (5) his failure to appear on the date he requested for hearing petitioners' Motion for Reconsideration on July 8, 1992, as a result of which the motion was considered submitted for resolution since only the counsel for private respondent was present; and (6) his failure to appear at the August 26, 1992 hearing during which the counsel for private respondent successfully obtained denial of the aforementioned motion.

No Extrinsic Fraud

Jurisprudence teaches us that "(i)n order for fraud to serve as a basis for the annulment of a judgment, it must be extrinsic or collateral in character, otherwise there would be no end to litigations. Extrinsic fraud refers to any fraudulent act of the prevailing party which is committed outside the trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practised on him by his opponent."[10] Thus, it "refers to

some act or conduct of the prevailing party which has prevented the aggrieved party from having a trial or presenting his case to the court, or was used to procure judgment without a fair submission of the controversy. It must be distinguished from intrinsic fraud which refers to acts of a party at a trial which prevented a fair and just determination of the case and which could have been litigated and determined at the trial or adjudication of the case."[11]

The petitioners argue that "extrinsic fraud justifying the annulment of a judgment should not and cannot be solely limited to acts attributable to the adverse party. It likewise includes instances wherein a party was prevented from defending the action brought against him on account of the delinquent acts and omissions of his attorney. In other words, there is extrinsic fraud when a party was prevented from having presented all of his case to the court as when the lawyer connives at his defeat or corruptly sells out his client's interests (Laxamana vs. Court of Appeals, 87 SCRA 48)."[12] (Emphasis found in the original.)

We disagree. The nature of extrinsic fraud, as discussed previously, necessarily requires that its cause be traceable to some fraudulent act of the prevailing party committed outside the trial of the case. The Court notes that the previously enumerated negligent acts attributed to petitioner's former counsel Garlitos were in no way shown or alleged to have been caused by private respondents. Atty. Garlitos neither connived nor sold out to the latter.

Laxamana vs. Court of Appeals[13] cited by petitioners does not support their cause because its factual background is different from the instant case. In that case, the Court found that "Laxamana had directly charged his lawyer with having deliberately failed to appear at the trial after having received P1,500 from Mallari. He introduced evidence in support of that charge. His lawyer, although subpoenaed by the Mallari plaintiffs, did not testify to deny that charge." Thus, the fraudulent act of the aggrieved parties' counsel in the cited case was clearly caused by and done in connivance with the prevailing party. In contrast, Atty. Garlitos, in the instant case, was not even charged with, much less shown guilty of, having neglected his duties to his clients by reason of any compensatory arrangement or collusion with Private Respondent Paul Geneve Entertainment Corporation. In fact,

petitioners never alleged that private respondent had anything to do with petitioner's counsel Garlitos. Since there was no extrinsic fraud, the assailed judgment may not be annulled on such ground.[14]

Negligence of Counsel Binds Client

On the other hand, it is well-settled that the negligence of counsel binds the client.[15] This is based on the rule that any act performed by a lawyer within the scope of his general or implied authority is regarded as an act of his client.[16] Consequently, the mistake or negligence of petitioners' counsel may result in the rendition of an unfavorable judgment against them.[17]

Exceptions to the foregoing have been recognized by the Court in cases where reckless or gross negligence of counsel deprives the client of due process of law,[18] or when its application "results in the outright deprivation of one's property through a technicality."[19] None of these exceptions has been sufficiently shown in the present case.

Gross or Simple Negligence?

Petitioners argue that their previous counsel Garlitos was guilty of gross negligence in handling their case before the trial court and, thus, they should not be bound by the consequences of his said negligence. They insist on the applicability of Legarda vs. Court of Appeals[20] asserting that "it sets the correct directions upon which the Public Respondent Court of Appeals should have steered its course."[21] We are not persuaded. The factual scenario in Legarda is not on all fours with the case before us. The counsel in the cited case was found grossly negligent because of the sheer absence of real effort on his part to defend his client's cause. In the present case, however, counsel Garlitos was merely guilty of simple negligence. Although his failure to file a timely answer had led to a judgment by default against his clients, his efforts at defending their cause were palpably real, albeit bereft of zeal. As succinctly stated by the Court of Appeals:

> "It may be noted that in the case of Legarda vs. Court of Appeals, supra, counsel for petitioner Legarda merely entered his appearance and filed a motion for extension of time to file

answer before the lower court. When the lower court declared petitioner Legarda as in default and subsequently issued a judgment by default, her counsel did nothing and allowed the judgment to become final and executory. Upon the prodding of petitioner Legarda, her counsel filed a petition for annulment of judgment before the (Court of Appeals). When the (Court of Appeals) denied the petition, her counsel allowed the judgment to become final and executory. Petitioner Legarda's counsel was, therefore, adjudged as grossly negligent by the Supreme Court. The case at bar is different. Herein petitioners' previous counsel presented petitioner Salonga as witness to oppose the issuance of the writ of preliminary injunction. When the writ of injunction was issued by (the trial court), petitioners' counsel filed a motion to dissolve the writ. When the assailed judgment was rendered by (the trial court), petitioners' counsel filed a motion for reconsideration. Petitioners' previous counsel was present during one of the hearings of the motion for contempt and even filed and objection/comment to the private respondent's offer of exhibits in support of their motion. Thus, while petitioners' counsel failed to file some pleadings or to attend other hearings before (the trial court), (the Court of Appeals) holds that such negligence is purely simple, not gross as would amount to a deprivation of petitioner's right to due process of law."[22]

No Denial of Due Process

The Constitution mandates that "(n)o person shall be deprived of life, liberty, or property without due process of law."[23] 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. 'To be heard' does not mean only verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process."[24] Hence, due process was never denied petitioners Salonga and Solid Intertain Corporation because the trial court had given them a reasonable opportunity to be heard and present their side in all the proceedings before it. The records reveal that the judgment by default was rendered by the trial court in

faithful compliance with Rule 18 of the Rules of Court and the constitutional guaranty of due process.

In fact, petitioners were declared in default only on the third ex parte motion filed by private respondents on March 4, 1992.[25] Acting on the private respondents' first motion to declare petitioners in default for their failure to appear at the hearing of the Motion for Dissolution of Injunction, on the hearing date petitioners themselves requested, the trial court issued an order dated February 3, 1992, which read as follows:

> "After examination of the record this court finds that the interest of justice would be better served by giving the parties opportunities to ventilate their respective positions.
>
> Furthermore, this Court finds that motion to Declare Defendants (herein petitioners) in Default prematurely filed considering that (herein petitioners) filed a Motion for Extension of Time to File Responsive Pleading on December 27, 1991, which was granted by the Court."

The failure of petitioners and their counsel Garlitos to take full advantage of this opportunity to be heard does not change the fact that they were accorded such opportunity.

To agree with petitioners' tenuous argument would enable any defeated party to render inutile any default judgment through the simple expedient of alleging negligence of counsel in filing a timely answer. This Court will not countenance such a farce which contradicts long-settled doctrines of trial and procedure. As correctly stated by Respondent Court of Appeals:

> "Neither can petitioners claim that they were denied of their day in court. It is axiomatic that as long as the parties were given the chance to present their case or defense before judgment was rendered, the demands of due process are sufficiently met. In the case at bar, petitioners were served with copies of the summons and the complaint. Petitioners were allowed to present their evidence in support of their opposition to the writ of preliminary injunction. They were given the chance to oppose

> the motion to cite them in contempt of court. Counsel for petitioners had filed before respondent court several pleadings and had attended hearings of the case. Indeed, it cannot be gainsaid that petitioners were given the opportunity to be heard.
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> Corollarily, the records of the case would suggest that petitioner Salonga is also negligent. For instance, petitioner Salonga knew that the initial hearing of the application for issuance of writ of injunction was set on December 4, 1991 but he did not attend. His former counsel attended, albeit he arrived late. During the hearing on December 6, 1991, petitioner Salonga arrived late such that (the Regional Trial Court), the private respondent and his former counsel had to wait for him. After giving his testimonies on December 6, 1991, petitioner Salonga knew that the next hearing for injunction was on December 9, 1991 but he, as well as his counsel, did not arrive on said date. (The Court of Appeals) also notes that the motion for dissolution of injunction filed by petitioner's former counsel was verified by petitioner Salonga. Therefore, petitioner Salonga must have known that as requested by his counsel, the motion for dissolution was set for hearing on January 17, 1972, yet he and his counsel again failed to appear during the hearing. Petitioner Salonga knew about private respondent's motion to cite him in contempt of court but he did not attend the hearing of said motion. The above incidents clearly manifest the in officiousness or lack of zeal on the part of petitioner Salonga in pursuing his defense."[26]

Parenthetically, petitioners admit that on July 22, 1992, Atty. Garlitos was able to file a timely Motion for Reconsideration on their behalf which was set for hearing by the trial court.[27] The fact that petitioners and their counsel Garlitos failed to attend said hearing and adduce evidence on their behalf is of no moment. What is important is that they were given the chance to do so. "Indeed, deprivation of due process cannot be successfully invoked where a party was given the chance to be heard in his motion for reconsideration."[28]

Memorandum of Agreement Consented to by Petitioners

Petitioners further attack the validity of the decision of the trial court by contending that they "were unjustly and unlawfully compelled to pay the Private Respondent Corporation the amount of five hundred thousand pesos (P500,000.00), compelled to make Private Respondent Corporation a partner of the petitioners in the latter's business under the name and style 'Solidisque, Inc.' and to provide the former with thirty percent (30%) equity participation in exchange for the alleged three million pesos (P3,000,000.00) capital contribution, compelled to provide as petitioners' alleged equity participation in the supposed Joint Venture with Private Respondent Corporation the exorbitant amount of seven million pesos (P7,000,000.00) consisting of audio and lightning (sic) equipment, electrical and construction materials and other assets necessary in the creation and construction of a discoteque, (sic) and, compelled to enter into a Joint Venture with the Private Respondent Corporation, all on the basis of an unsigned Memorandum of Agreement."[29] Thus, petitioners' contention is based on their alleged lack of consent to the Memorandum of Agreement.

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court.[30] Hence, the factual finding of the trial court affirmed by the respondent Court of Appeals as to the perfection of the Memorandum of Agreement between petitioners and private respondent, is binding on this Court. This is more than sufficient to debunk petitioners' contention.

Understood properly, it is clear that the lower courts are not compelling petitioners to enter into any contract or to pay any sum of money. The courts are merely enforcing the terms of the agreement voluntarily entered into by the parties, particularly petitioners.

Second Issue: Petitioners Guilty of Indirect Contempt?

Petitioners argue that the trial court never acquired jurisdiction over the person of Petitioner Salonga because the contempt proceedings were "wrongly initiated." Citing Slade Perkins vs. Director of Prisons,[31] they contend that the Motion to Cite for Indirect

Contempt filed by private respondent partakes of the nature of criminal contempt as distinguished from civil contempt; hence, the mode of procedure and rules of evidence in criminal prosecutions should apply.[32]

The Court is not persuaded. The distinction between civil and criminal contempt made by this Court in Slade Perkins does not support petitioners' contention. As we stated in Slade Perkins, the "question of whether the contempt for which the petitioner was committed in jail is civil or criminal, does not affect either the jurisdiction or the power of the court in the premises."[33] The Court of Appeals correctly ruled that "(in) indirect contempt proceedings such as in the case at bar, a mere motion to that effect will suffice for the (trial court) to acquire jurisdiction."[34] For after all, Section 3 of the Rules of Court requires merely that "a charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel" before one guilty of indirect contempt may be punished therefor. The conclusion of Respondent Court of Appeals was based on the pronouncement of this Court in Gavieres vs. Falcis:

> "A court's power to punish for contempt is primarily self-preservative, in the exercise of which the interest of private parties — be they litigants or not in the case in which it is invoked — is at best only a coincidental, not a necessary or an indispensable, factor. A citation for indirect contempt issued by the Court itself, even if based on information only privately or informally communicated to the court, operates as the written charge prescribed by the Rule and if duly and regularly heard, makes a resulting contempt order no less valid than if it had been rendered upon formal charges preferred by a party-litigant. Indeed, it has been held that such charges may be made, not only by the court or the prosecuting office, but 'even by a private person.'"[35]

Incidentally, as aptly observed by respondent appellate court, the order for petitioners to pay a fine inuring to the benefit of private respondent finds support in Slade Perkins, viz.:

> "Where the punishment is by fine directed to be paid to a party in the nature of damages for the wrong inflicted or by

> imprisonment as a coercive measure to enforce the performance of some act for the benefit of the party or in aid of the final judgment or decree rendered in his behalf, the contempt judgment will, if made before final decree, be treated as in the nature of an interlocutory order, or, if made after final decree, as remedial in nature, and may be reviewed only on appeal from the final decree, or in such other mode as in appropriate to the review of judgments in civil cases."[36]

Finally, this Decision is without prejudice to whatever cause of action petitioners may have in law against their former counsel Garlitos. Elementary dictates of due process prevent us from acting against him in this proceeding.

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit, for its failure to show any reversible error on the part of Respondent Court. The assailed Decision is **AFFIRMED** in toto. No costs.

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Former Eleventh Division, composed of J. Manuel C. Herrera, ponente, and JJ. Justo P. Torres, Jr. (now Associate Justice of this Court) and Pacita Canizares-Nye, concurring.
[2] Rollo, pp. 117-119.
[3] Ibid., pp. 50-54.
[4] Ibid., pp. 54, 145.
[5] Ibid., pp. 57-58.
[6] Petition, p. 21, and Memorandum for Petitioners, p. 20; rollo, pp. 22 and 492.
[7] Santos vs. Court of Appeals, 224 SCRA 673, July 21, 1993; citing Ruiz vs. Court of Appeals, 201 SCRA 577, September 13, 1991.
[8] Memorandum of Petitioners, p. 32; rollo, p. 504.
[9] Ibid., pp. 22-25; rollo, pp. 494-497; citing Comment of Private Respondents, rollo, pp. 218-273.
[10] Santos vs. Court of Appeals, supra, p. 224.
[11] Ybañez vs. Court of Appeals, 253 SCRA 540, 551, February 9, 1996; citing in agreement p. 8 of the Court of Appeals' Decision therein.

[12] Memorandum of Petitioners, p. 32; rollo, p. 504.
[13] 87 SCRA 48, November 24, 1978.
[14] Aring vs. Original, 6 SCRA 1021, 1025, December 29, 1962.
[15] B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28, 39, February 7, 1992; citing Manila Electric Co. vs. Court of Appeals, 187 SCRA 200, July 4, 1990.
[16] Agpalo, Ruben A., Legal Ethics, p. 278, (1989); citing Cruz vs. Jugo, 66 Phil. 102, (1938), Montes vs. CFI of Tayabas, 48 Phil. 640, (1926), U.S. vs. Umali, 15 Phil. 33 (1910), Isaac vs. Mendoza, 89 Phil. 279, (1951), and Vivero vs. Santos, 98 Phil. 500, (1956).
[17] Supra, pp. 278-279; citing Malipol vs. Tan, 55 SCRA 202, January 21, 1974.
[18] Legarda vs. Court of Appeals, 195 SCRA 418, 426, March 20, 1991.
[19] Escudero vs. Dulay, 158 SCRA 69, 78, February 23, 1988.
[20] 195 SCRA 418, March 18, 1991.
[21] Memorandum of Petitioners, p. 29; rollo, p. 501.
[22] Decision, pp. 6-7; rollo, pp. 55-56.
[23] Section 1, Article III, Constitution.
[24] Mutuc vs. Court of Appeals, 190 SCRA 43, 49, September 26, 1990; citing Tajonera vs. Lamaroza, 110 SCRA 438, December 19, 1981, Richards vs. Asoy, 152 SCRA 45, July 9, 1987, and Juanita Yap Say vs. IAC, 159, SCRA 325, March 28, 1988.
[25] Comment of Private Respondent, pp. 20-22; rollo, pp. 237-239.
[26] Decision, p. 6-7; rollo, p. 55-56.
[27] Memorandum for Petitioners, p. 17; rollo, p. 489.
[28] Rodriguez vs. Project 6 Market Service Cooperative, Inc., 247 SCRA 528, 534, citing Mendiola vs. Civil Service Commission, 221 SCRA 295, April 7, 1993, Villareal vs. Court of Appeals, 219 SCRA 292, March 1, 1993, and Imperial Textile Mills, Inc. vs. National Labor Relations Commission, 217 SCRA 237, January 19, 1993.
[29] Petition, p. 30; rollo, p. 31.
[30] Juan Castillo and Maria Masangya-Castillo, et al. vs. Court of Appeals, et al., G.R. No. 106472, p. 9, August 7, 1996.
[31] 58 Phil. 271, (1933).
[32] Memorandum of Petitioners, pp. 38-40, rollo, pp. 510-512.
[33] Slade Perkins vs. Director of Prisons, supra, p. 279.
[34] Decision, p. 7; rollo, p. 56.
[35] 193 SCRA 649, 659-660, February 7, 1991.
[36] Rollo, p. 8.