

SECOND DIVISION

[G.R. No. 193650, October 08, 2014]

**GEORGE PHILIP P. PALILEO AND JOSE DE LA CRUZ,
PETITIONERS, VS. PLANTERS DEVELOPMENT BANK,
RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*^[1] assails the July 28, 2009 Amended Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 01317-MIN, entitled "*Planters Development Bank, Petitioner, versus Hon. Eddie R. Roxas (in his capacity as the former Pairing Judge), Hon. Panambulan M. Mimbisa (in his capacity as the Presiding Judge of RTC, Branch 37, General Santos City), Sheriff Marilyn P. Alano, Sheriff Ramon A. Castillo, George Philip P. Palileo, and Jose Dela Cruz, Respondents,*" as well as its August 23, 2010 Resolution^[3] denying reconsideration of the assailed amended judgment.

Factual Antecedents

In a June 15, 2006 Decision^[4] rendered by the Regional Trial Court (RTC) of General Santos City, Branch 37, in an action for specific performance/sum of money with damages docketed as Civil Case No. 6474 and entitled "*George Philip P. Palileo and Jose Dela Cruz, Plaintiffs, versus, Planters Development Bank, Engr. Edgardo R. Torcende, Arturo R. delos Reyes, Benjamin N. Tria, Mao Tividad and Emmanuel Tesalonia, Defendants,*" it was held thus:

Before this Court is a complaint for specific performance and/or sum of money and damages with prayer for the issuance of writs of preliminary attachment and preliminary injunction filed by Plaintiff George Philip Palileo and Jose L. Dela Cruz against Engr. Edgardo R. Torcende, Planters Development Bank (defendant Bank), Arturo R. Delos Reyes, Benjamin N. Tria, Mao Tividad, and Emmanuel Tesalonia on 22 December 1998.

After summons together with the verified Complaint and its annexes were duly served upon defendants, the latter answered. During Pre-Trial conference defendant Bank manifested [its] intention of settling the case amicably and several attempts to explore the said settlement [were] made as per records of this case. In the last pre-trial hearing dated 17 November 2000, only plaintiffs[,] George Philip Palileo and Jose L. Dela Cruz[,] and their counsel appeared, thus, the latter move [sic] for the presentation of evidence *ex-parte*, which was granted by the Court with the reservation of verifying the return card [to determine] whether the order for the pre-trial was indeed received by defendants. Finally, [at the]

21 November 2001 hearing, x x x defendants [again] failed to appear and their failure to file pre-trial brief was noted; thus [plaintiffs were] allowed to present evidence ex-parte before the Clerk of Court.

x x x x

IN LIGHT OF THE FOREGOING, defendants are hereby ORDERED to jointly and severally PAY plaintiffs as follows:

i) Actual Damages;

a) Plaintiff George Philip Palileo[,], the amount of Two Million Six Hundred Five Thousand Nine [sic] Seventy Two Pesos and Ninety Two Centavos (P2,605,972.92), with 12% compounded interest [per annum] reckoned from the filing of this case until full settlement thereof;

b) Plaintiff Jose R. Dela Cruz[,], the amount of One Million Five Hundred Twenty Nine Thousand Five Hundred Eight Thousand [sic] and Eighty Centavos (P1,529,508.80), with 12% compounded interest [per annum] reckoned from the filing of this case until full settlement thereof;

ii) Moral damages in the amount of Five Hundred Thousand Pesos (P500,000.00) each;

iii) Exemplary Damages in the amount of Five Hundred Thousand Pesos (P500,000.00) each;

iv) Attorney's Fees in the amount of Five Hundred Thousand [Pesos] (P500,000.00) each x x x and to pay the costs.

SO ORDERED.^[5]

Respondent Planters Development Bank (PDB) received a copy of the RTC Decision on July 17, 2006.

On July 31, 2006, PDB filed by private courier service – specifically LBC^[6] – an Omnibus Motion for Reconsideration and for New Trial,^[7] arguing therein that the trial court's Decision was based on speculation and inadmissible and self-serving pieces of evidence; that it was declared in default after its counsel failed to attend the pre-trial conference on account of the distance involved and difficulty in booking a flight to General Santos City; that it had adequate and sufficient defenses to the petitioners' claims; that petitioners' claims are only against its co-defendant, Engr. Edgardo R. Torcende [Torcende]; that the award of damages and attorney's fees had no basis; and that in the interest of justice, it should be given the opportunity to cross-examine the petitioners' witnesses, and thereafter present its evidence.

Petitioners' copy of the Omnibus Motion for Reconsideration and for New Trial was likewise sent on July 31, 2006 by courier service through LBC, but in their address of record – Tupi, South Cotabato – there was no LBC service at the time.

On August 2, 2006, PDB filed with the RTC another copy of the Omnibus Motion for Reconsideration and for New Trial via registered mail; another copy thereof was simultaneously sent to petitioners by registered mail as well.

Meanwhile, petitioners moved for the execution of the Decision pending appeal.

In an August 30, 2006 Order,^[8] the RTC denied the Omnibus Motion for Reconsideration and for New Trial, while it granted petitioners' motion for execution pending appeal, which it treated as a motion for the execution of a final and executory judgment. The trial court held, as follows:

Anent the first motion, records show that the Omnibus Motion for Reconsideration and for New Trial dated 28 July 2006 was initially filed via an LBC courier on 28 July 2006 and was actually received by the Court on 31 July 2006, which was followed by filing of the same motion thru registered mail on 2 August 2006. Said motion was set for hearing by the movant on 18 August 2006 or 16 days after its filing.

The motion fails to impress. Section 5, Rule 15^[9] of the 1997 Rules of Civil Procedure as amended is pertinent thus:

Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing, which must not be later than ten (10) days after the filing of the motion. (Underscoring and italics supplied)

The aforesaid provision requires [that] every motion shall be addressed to all parties concerned, and shall specify the time and date of the hearing NOT later than ten (10) days after the filing of the motion. Being a litigated motion, the aforesaid rule should have been complied [with]. Its noncompliance renders it defective.

[The] Rule is settled that a motion in violation thereof is *pro forma* and a mere scrap of paper. It presents no question which the court could decide [upon]. In fact, the court has NO reason to consider it[;] neither [does] the clerk of court [have] the right to receive the same. Palpably, the motion is nothing but an empty formality deserving no judicial cognizance. Hence, the motion deserves a short shrift and peremptory denial for being procedurally defective.

As such, it does not toll the running of the reglementary period thus making the assailed decision final and executory. This supervening situation renders the Motion for Execution pending appeal academic but at the same time it operates and could serve [as] well as a motion for execution of the subject final and executory decision. Corollarily, it now becomes the ministerial duty of this Court to issue a writ of execution thereon.

IN LIGHT OF THE FOREGOING, the Omnibus Motion for Reconsideration and New Trial is hereby DENIED, and the Motion for Execution Pending

Appeal (which is treated as a motion for execution of a final and executory judgment) is also GRANTED as explained above. Accordingly, let A WRIT OF EXECUTION be issued against herein defendants to enforce the FINAL and EXECUTORY Decision dated 15 June 2006.

SO ORDERED.^[10]

PDB received a copy of the above August 30, 2006 Order on September 14, 2006.^[11]

On August 31, 2006, a Writ of Execution^[12] was issued. PDB filed an Urgent Motion to Quash Writ of Execution,^[13] arguing that it was prematurely issued as the June 15, 2006 Decision was not yet final and executory; that its counsel has not received a copy of the writ; and that no entry of judgment has been made with respect to the trial court's Decision. Later on, it filed a Supplemental Motion to Quash Writ of Execution,^[14] claiming that the writ was addressed to its General Santos branch, which had no authority to accept the writ.

On September 7, 2006, PDB filed a Notice of Appeal.^[15]

In an October 6, 2006 Order,^[16] the RTC denied the motion to quash the writ of execution.

On October 9, 2006, the RTC issued a second Writ of Execution.^[17]

Ruling of the Court of Appeals

On October 11, 2006, PDB filed with the CA an original Petition for *Certiorari*, which was later amended,^[18] assailing 1) the trial court's August 30, 2006 Order – which denied the omnibus motion for reconsideration of the RTC Decision and for new trial; 2) its October 6, 2006 Order – which denied the motion to quash the writ of execution; and 3) the August 31, 2006 and October 9, 2006 writs of execution.

On May 31, 2007, the CA issued a Decision^[19] dismissing PDB's Petition for lack of merit. It sustained the trial court's pronouncement, that by setting the hearing of the Omnibus Motion for Reconsideration and for New Trial on August 18, 2006 – or 16 days after its filing on August 2, 2006 – PDB violated Section 5, Rule 15 of the Rules of Court which categorically requires that the notice of hearing shall specify the time and date of the hearing which must not be later than 10 days after the filing of the motion. Citing this Court's ruling in *Bacelonia v. Court of Appeals*,^[20] the CA declared that the 10-day period prescribed in Section 5 is mandatory, and a motion that fails to comply therewith is *pro forma* and presents no question which merits the attention and consideration of the court.

The appellate court further characterized PDB's actions as indicative of a deliberate attempt to delay the proceedings, noting that it did not timely move to reconsider the trial court's November 17, 2000 ruling^[21] allowing petitioners to present their evidence *ex parte*, nor did it move to be allowed to present evidence in support of its defense. It was only after the RTC rendered its June 15, 2006 Decision that PDB

moved to be allowed to cross-examine petitioners' witnesses and to present its evidence on defense.

The CA likewise held that the RTC did not err in ruling that the omnibus motion for reconsideration did not toll the running of the prescriptive period, which thus rendered the June 15, 2006 Decision final and executory. It noted as well that PDB's September 7, 2006 notice of appeal was tardy.

The CA found no irregularity with respect to the writs of execution, which contained the *fallo* of the June 15, 2006 Decision of the RTC – thus itemizing the amount of the judgment obligation. Additionally, it held that the fact that the judgment debtors are held solidarily liable does not require that the writs should be served upon all of the defendants; that it is not true that the sheriffs failed to make a demand for the satisfaction of judgment upon PDB, as the mere presentation of the writ to it operated as a demand to pay; and that PDB failed to attach the Sheriff's Return to its Petition, which thus prevents the appellate court from resolving its claim that the writs were not validly served.

PDB filed a Motion for Reconsideration,^[22] arguing that Rule 15, Section 5 of the Rules of Court should be relaxed in view of the fact that judgment against it was based on a technicality – and not on a trial on the merits; that there was no deliberate intention on its part to delay the proceedings; that the court acted with partiality in declaring that the Omnibus Motion for Reconsideration and for New Trial was *pro forma*; that its notice of appeal was timely; and that the writs of execution are null and void.

On July 28, 2009, the CA made a complete turnaround and issued the assailed Amended Decision, which decreed thus:

WHEREFORE, the motion for reconsideration is GRANTED. This Court's May 31, 2007 Decision is SET ASIDE and a new one is rendered GRANTING the petition for *certiorari*. The trial court's Order dated August 30, 2006 is SET ASIDE and the Writ of Execution issued by the trial court is QUASHED. The trial court is ORDERED to hear and rule on the merits of petitioner's "Omnibus Motion for Reconsideration and New Trial."

SO ORDERED.^[23]

The CA reversed its original finding that the Omnibus Motion for Reconsideration and for New Trial was *pro forma*. This time, it held just the opposite, ruling that PDB's "tacit argument" that the "distances involved in the case at bench call for a relaxation of the application of Section 5, Rule 15 of the Rules of Court" deserved consideration. It held that Section 5 should be read together with Section 4^[24] of the same Rule, thus:

When a pleading is filed and served personally, there is no question that the requirements in Sections 4 and 5 of Rule 15 of the Revised Rules of Civil Procedure pose no problem to the party pleading. Under this mode of service and filing of pleadings, the party pleading is able to ensure