356 Phil. 1058

# FIRST DIVISION

# [ G.R. No. 130314, September 22, 1998 ]

## ANNIE TAN, PETITIONER, VS. COURT OF APPEALS AND BLOOMBERRY EXPORT MANUFACTURING, INC., RESPONDENTS.

## D E C I S I O N

**PANGANIBAN, J.:**

Before a trial court, a motion for reconsideration that does not contain the requisite notice of hearing does not toll the running of the period of appeal. It is a mere scrap of paper which the trial court and the opposite party may ignore.

### The Case

Petitioner seeks to set aside the August 22, 1997 Decision of the Court of Appeals[1] in CA-GR SP No. 43293, the dispositive portion of which reads:[2]

> "WHEREFORE, [i]n view of all the foregoing considerations, the petition for certiorari and prohibition is granted. The Order dated October 4, 1996, of public respondent is hereby **SET ASIDE** and public respondent is ordered to desist from further proceeding with the hearing of the Motion for Reconsideration. The Decision dated July 18, 1996, of public respondent is declared final and executory."

### The Facts

Petitioner Annie Tan, doing business under the name and style "AJ & T Trading," leased a portion of the ground floor of her building, more specifically described as Stall No. 623, Carvajal Street, Binondo, Manila, in favor of Bloomberry Export Manufacturing, Inc. The lease was for a period of five years starting on February 17, 1995 and ending on February 17, 2000, at a monthly rental of P20,000 for the first three years.[3] For several alleged violations of the lease contract, petitioners filed against private respondent a complaint for ejectment, docketed as Civil Case No. 148798-CV.[4] As its rental payment was refused by petitioner, private respondent instituted on July 13, 1995 a case for consignation, docketed as Civil Case No. 148814-CV.[5]

The two cases were consolidated. In due course, the Metropolitan Trial Court (MTC) of Manila, Branch I, rendered on February 1, 1996 a Decision[6] which disposed as follows:[7]

> "WHEREFORE, in Civil Case No. 148798-CV for [b]reach of [c]ontract, failure to pay rentals on time, encroachment on the adjacent premises without the consent of [petitioner], [she] failed to substantiate her case with that degree of proof required by law. For this reason, except for the

costs of suit, this Court hereby orders the dismissal of the complaint of [petitioner]. The counterclaim and damages sought by [private respondent are] likewise ordered dismissed. The case for consignation in Civil Case No. 148814-CV has become moot and academic for failure of [petitioner] to appeal the decision of the Metropolitan [Trial] Court, Branch 15, Manila, allowing the [private respondent] to consign rental payments to the Court of Manila. Besides, the [c]omplaint for consignation being in conformity with law, [private respondent] is allowed to continue consigning with this Court all rentals that [may be] due."

On appeal, the Regional Trial Court (RTC) of Manila, Branch 2, in its Decision dated July 18, 1996, affirmed the aforementioned MTC Decision thus:

"WHEREFORE, finding no cogent reasons to disturb the joint decision dated February 1, 1996 of the Metropolitan Trial Court of Manila, Branch 1, the Court sustains and affirms in toto the said decision."

Respondent Court related the incidents that ensued, as follows:[8]

"xxx [F]rom the Decision of the [RTC] dated July 18, 1996, [petitioner] filed a Motion for Reconsideration of the aforesaid decision. The Motion for Reconsideration did not contain any notice of hearing as required under Section 5, Rule 15 of the Revised Rules of Court.

"On August 23, 1996, [private respondent] filed an ex-parte Motion for Entry of Judgment upon the ground that said motion for reconsideration is a mere scrap of paper which should not merit the attention of the [RTC] and in support thereof, cited the case of Traders Royal Bank vs. Court of Appeals, 208 SCRA 199. [Private respondent] contends that since the Motion for Reconsideration is a mere scrap of paper aside from being pro forma, said Motion for Reconsideration did not toll the period of appeal[;] hence, the Decision dated July 18, 1996, had become final and executory.

"On September 3, 1996, [petitioner] filed a Motion to Set for Hearing the Motion for Reconsideration which was vehemently opposed by [private respondent] on September 23, 1996.

"On October 4, 1996, [the RTC] issued an Order granting the motion to set for hearing [petitioner's] Motion for Reconsideration and set[ting] the hearing [for] October 21, 1996, at 8:30 o'clock in the morning. On October 20, 1996, [private respondent] filed a Motion for Reconsideration of the Order dated October 4, 1996, which was set for hearing on October 25, 1996.

"On November 11, 1996, [the RTC] issued an Order denying [private respondent's] Motion for Reconsideration. Hence, the Petition for Certiorari and Prohibition. xxx."

In the assailed Decision, Respondent Court of Appeals reversed the trial court's Order setting for hearing petitioner's Motion for Reconsideration.

## The Ruling of the Court of Appeals

Respondent Court held that the trial court acted with grave abuse of discretion in setting for hearing petitioner's Motion for Reconsideration, notwithstanding the fact that said Motion contained no notice of hearing.

Citing a litany of cases, it ruled that petitioner's failure to comply with the mandatory provisions of Sections 4 and 5, Rule 15 of the Rules of Court, reduced her motion to a mere scrap of paper which did not merit the attention of the court. Respondent Court also held that those cases in which the Court allowed a motion for reconsideration that had not been set for hearing -- *Galvez v. Court of Appeals,*[9] *Tamargo v. Court of Appeals*[10] and *Que v. Intermediate Appellate Court*[11]-- were inapplicable.

Respondent Court held that the facts in *Galvez* drastically differ from those in the present case. *Galvez* involved a motion to withdraw the information -- not a motion for reconsideration -- that was filed ex parte before the arraignment of the accused. In that case, the Court held that there was no imperative need of notice and hearing because, first, the withdrawal of an information rests on the discretion of the trial court; and, second, the accused was not placed in jeopardy. On the other hand, the subject of the present controversy is a motion for reconsideration directed against the Decision of the RTC; thus, the motion affects the period to perfect an appeal.

*Que* is not applicable, either. In said case, the trial court set the Motion for Reconsideration (MR) for hearing, which was actually attended by the counsel for the adverse party. This was not so in the case at bar; petitioner's MR was set for hearing, because she belatedly moved for it upon the filing of private respondent's Motion for Entry of Judgment. Likewise, the present case differs from Tamargo, wherein the application of the aforesaid mandatory provisions was suspended. The Court did so in order to give substantial justice to the petitioner and in view of the nature of the issues raised which were found to be highly meritorious.

Hence, this petition.[12]

## The Issue

In her Memorandum,[13] petitioner presents a fairly accurate statement of the main issue to be resolved:[14]

"Whether xxx the omission [through] inadvertence of a notice of hearing of a motion for reconsideration filed with the trial court xxx is a fatal defect which did not stop the running of the period to appeal[,] thus rendering the assailed decision final [and] executory."

## The Court's Ruling

The petition is devoid of merit.

## Sole Issue:
## Omission of Notice of Hearing Fatal

Petitioner admits the categorical and mandatory character of the directives in Sections 4 and 5 of Rule 15 of the Rules of Court, which read:[15]

> "SEC. 4. *Hearing of motion.*"Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> "Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.(4a)
>
> "SEC. 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. (5a)"

In *De la Peña v. De la Peña,*[16] the Court presented a resume of earlier decisions regarding the necessity of the notice of hearing in motions for reconsideration:

> "In *Pojas v. Gozo-Dadole,*[17] we had occasion to rule on the issue of whether a motion for reconsideration without any notice of hearing tolls the running of the prescriptive period. In Pojas, petitioner received copy of the decision in Civil Case No. 3430 of the Regional Trial Court of Tagbilaran on 15 April 1986. The decision being adverse to him petitioner filed a motion for reconsideration. For failing to mention the date when the motion was to be resolved as required in Sec. 5, Rule 15, of the Rules of Court, the motion for reconsideration was denied. A second motion for reconsideration met the same fate. On 2 July 1986 petitioner filed a notice of appeal but the same was denied for being filed out of time as 'the motion for reconsideration which the Court ruled as pro forma did not stop the running of the 15-day period to appeal.'[18]
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> "In resolving the issue of whether there was grave abuse of discretion in denying petitioner's notice of appeal, this Court ruled"
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> 'Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Section 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.'[19]
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> "In *New Japan Motors, Inc. v. Perucho,*[20] defendant filed a motion for reconsideration which did not contain any notice of hearing. In a petition

for certiorari, we affirmed the lower court in ruling that a motion for reconsideration that did not contain a notice of hearing was a useless scrap of paper. We held further-

'Under Sections 4 and 5 of Rule 15 of the Rules of Court, xxx a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that "(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof xxx." It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rules 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.[21]

"In Sembrano v. Ramirez,[22] we declared that-

'(A) motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for reconsideration. Without such notice, the motion is pro forma. And a pro forma motion for reconsideration does not suspend the running of the period to appeal.'

"In In re Almacen,[23] defendant lost his case in the lower court. His counsel then filed a motion for reconsideration but did not notify the adverse counsel of the time and place of hearing of said motion. The Court of Appeals dismissed the motion for the reason that 'the motion for reconsideration dated July 5, 1966 does not contain a notice of time and place of hearing thereof and is, therefore a useless piece of paper which did not interrupt the running of the period to appeal, and, consequently, the appeal was perfected out of time.' When the case was brought to us, we reminded counsel for the defendant that -

'As a law practitioner who was admitted to the bar as far back as 1941, Atty. Almacen knew - or ought to have known - that [for] a motion for reconsideration to stay the running of the period of appeal, the movant must not only serve a copy of the motion upon the adverse party x x x but also notify the adverse party of the time and place of hearing x x x.'

"Also, in *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Company,*[24] we ruled--

'The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to Section 6 of the same Rule no motion shall be acted upon by the court without proof of such notice. Indeed, it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious; unless the movant sets the time and place of hearing