

**TOMAS L. LANTING (DOING BUSINESS UNDER THE STYLE AND FIRM NAME, LANTING SECURITY AND WATCHMAN AGENCY),
PETITIONER-APPELLANT, VS. RESTITUTO GUEVARA, HON. ANTONIO
PAREDES AND THE ...**

G.R. No. L-22799. April 25, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In a suit to collect unpaid wages filed by respondent Restituto Guevara against petitioner Tomas L. Lanting (doing business under the style and firm name, Lanting Security and Watchman Agency),[1] judgment was on May 9, 1963 rendered by the City Court directing petitioner to pay respondent "the amount of P380.00 representing unpaid wages of plaintiff, with legal interest thereon from the filing of this complaint until fully paid; to pay the further sum of P180.00 representing holiday and overtime wages; to pay the amount of P50.00 as attorney's fees, aside from the costs of this suit." Notice of the foregoing decision was received by petitioner on May 20, 1963.

On May 23, 1963, petitioner moved for a reconsideration of the decision and/or new trial. On the following June 4, respondent City Judge denied the motion in an order, notice of which was received by petitioner on June 14, 1963. Notice of appeal and appeal bond were filed on June 20, 1963. But the appellate docket fee was never paid. On July 1, 1963 respondent City Judge denied appeal for failure to perfect the same within the reglementary period of 15 days.

On July 5, 1963, respondent Guevara filed a motion for the execution of the judgment. This drew from petitioner a "motion for the reconsideration of the order dated July 1, 1963 and opposition to the motion for execution dated July 5, 1963." Petitioner pleaded excusable negligence and honest mistake for its failure to perfect its appeal. He annexed to his motion what he would want to pass on as affidavit of merits. By order of July 27, 1963, the motion for reconsideration was denied. And, on August 23, 1963 respondent Judge issued an order of execution.

Petitioner then went to the Court of First Instance of Manila on certiorari and mandamus. Target thereof is the order of July 1, 1963 and all orders of respondent City Judge subsequent thereto. His prayer is for the annulment of all these orders.[2]

The decision of the Court of First Instance of December 2, 1963, dismissed the petition with costs against petitioner. Petitioner's motion for reconsideration having been thwarted, he appealed direct to this Court from the decision of December 2, 1963 and the order of January 4, 1964 denying its motion for reconsideration.

There is no dispute as to the fact that the appellate court docket fee required by Section 2, Rule 40 of the Rules of Court was never paid.

Of interest is petitioner's verified motion for reconsideration of the order of July 1, 1963 (combined with his opposition to the motion for execution dated July 5, 1963). It was accompanied by an affidavit executed by petitioner Tomas L. Lanting on July 12, 1963, the text of which is as follows:

"1. That I am one of the defendants in CIVIL CASE NO. 97777 of the Municipal Court of the City of Manila (Branch II);

2. That I was given instructions by my lawyer, Atty. Mariano L. Andrada, to file the (1) 'NOTICE OF APPEAL' and (2) 'APPEAL BOND' which he prepared on June 18, 1963 with the aforesaid court and pay the appellate court docket fee;

3. That as I was leaving for the province, I instead ordered my messenger to file with the court the said notice of appeal and appeal bond and pay the corresponding appellate court docket fee;

4. That as I am a very busy man, and honestly believing in the efficiency and trustworthiness of my messenger, I never inquired from him as to whether he had complied with my aforesaid order, EXCEPT when my lawyer informed me that my appeal was denied by the court. My office messenger said that he was able to file the notice of appeal and appeal bond but did not pay the appellate court docket fee because the court's personnel never required him to pay and so he said, he believed and concluded that it is not required after all. Upon inquiry he informed me that he sent the amount of P30.00 I gave him to his mother because, according to him, he received a letter from his sister informing him that their mother is ill, and that was on June 23, 1963;

5. That I honestly believe that con-sidering the facts and circumstances which were not disputed, the applicable law and decided cases support my contention that I am not liable to the plaintiff's claim."[3]

For two reasons, the judgment and order under review must be affirmed.

First. The excuse given for the failure to pay the appellate court docket fee is unacceptable. It is appellant's duty and that of his attorney to see to it that the appeal is perfected within the time limit so markedly set forth in the Rules. To perfect an appeal payment of the appellate docket fee is a prerequisite. This is elementary. Of course, petitioner averred that it was he who was instructed by his lawyer to file the notice of appeal and the appeal bond and to pay the appellate court docket fee; that petitioner in turn gave this job to his messenger as he was leaving for the province; and that petitioner was "a very busy man" who believed "in the efficiency and trustworthiness" of his messenger to do the work his lawyer entrusted to him. But all these constitute, in the words of Mr. Justice J. B. L. Reyes, "the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court."[4]

Nor are we to be carried away by petitioner's said affidavit that his messenger told him that he "did not pay the appellate docket fee because the court's personnel never required him to pay." For which reason, the messenger told petitioner, that he "believed and concluded that it is not required after all." This statement is hearsay. It is so patently unsubstantial. Worse than this is the further statement in petitioner's affidavit that according to petitioner, upon inquiry, his messenger also informed him that he sent that amount of P30.00 - intended for appellate court docket fee - to his (messenger's) mother because "according to him, he received a letter from his sister informing him that their mother is ill, and that was on June 23, 1963." This last one, like the others, is no valid excuse at all: not for the lawyer; not for petitioner; not for the messenger. It demonstrates gross unconcern on the part of all three.

Second. Paragraph 5 of the affidavit heretofore transcribed was written in an effort to show that petitioner had a good defense. But paragraph 5 contains nothing more than an averment couched in conclusionary terms. Petitioner there merely said that he believed that "considering the facts and circumstances which are not disputed, the applicable law and the decided cases," - without spelling them out - he was not liable to plaintiff. Such affidavit does not contain an averment of facts constituting a valid defense and is not the one contemplated by the Rules.[5]

At all events, petitioner's own brief before this court recites stipulation between the parties, viz:[6]

"That plaintiff was on order of the Lanting Watchman and Security Agency made to render ser-vice in guarding houses contracted for construction by Antonio Francisco; that Antonio Francisco would pay Lanting Watchman and Security Agency for the security services and in turn Lanting Watchman and Security Agency would pay Guevara his corresponding wages for guarding the houses under construction by Antonio Francisco."

Correctly, did the respondent City Judge in his decision declare that "plaintiff's (respondent Guevara's) relation with defendant (petitioner) is direct and proximate" and that said petitioner "contracted in his own name with Francisco." Appeal would then be a waste of effort.

For the reasons given, the judgment and order under review are affirmed. Costs shall be paid by petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, and Barredo, JJ., concur. Castro and Capistrano, JJ., did not take part.

[1] Civil Case No. 97777 of the City Court of Manila entitled "Restituto Guevara, Plaintiff, v. Tomas Lanting (doing business under the style and firm name LANTING WATCHMAN AND SECURITY AGENCY), Defendant."

[2] Case No. 54985 of the Court of First Instance of Manila, entitled "Tomas L. Lanting (doing business under the style and firm name, Lanting Security and Watchman Agency), Petitioner, vs. Restituto Guevara, Hon. Antonio Paredes, and The Sheriff of Manila, Respondents."

[3] Emphasis supplied.

[4] Philippine Air Lines, Inc. vs. Arca, 19 SCRA, 300, 302.

[5] Jocson vs. Nable, 87 Phil. 337, 340.

[6] Appellee's Brief, p. 3.

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