

VICENTER ROULLO, PLAINTIFF-APPELLANT, VS. MARGARITO LUMAYNO, DEFENDANT-APPELLEE.

G.R. No. L-11444. May 30, 1958

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This appeal involves the application of Rule 27, sec 8 of the Rules of Court which provides:

"x x x Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time,"

Rendered after a trial on the merits and dated April 23, 1956, the decision of the Negros Occidental court of first instance in the above entitled case required defendant to deliver unto plaintiff the total sum of P1,960.00 plus interest and to pay costs.

On June 22, 1956, plaintiff filed a motion for reconsideration discussing at length certain questions fact and claiming for additional damages against defendant. The latter objected to the motion, partly on the ground that the decision had become final, inasmuch as the said motion had been submitted beyond the 30-day period fixed by the Rules. And on that very ground, the judge denied the motion by his order of July 2, 1956. Having failed on a move to reconsider, plaintiff appealed to this Court, on the question his said motion for reconsideration of June 22, 1956, had been submitted in due time.

It was belated, contends the defendant, because copy of the decision having been sent April 27, 1956[1] registered mail to plaintiff's counsel, "the service of said decision was completed (under Rule 27, sec. 8) 5 days after the first notice or about May 3, and from May 3 to June 22 when the motion to reconsider was filed, more than 30 days had elapsed.

Apparently, the court below approved defendant's computation, and threw out the motion to reconsider in [the aforesaid order of July 2, 1956.

Nevertheless plaintiff submitted to the Court the 'postmaster's statement to the effect that the registered mail addressed to him had actually been received by him on May 24, 1956. And on the basis of such statement, he asked the court to declare his motion to have been timely inasmuch as less than thirty days had passed from May 24 to June 22. He argued that his time to move should "not be counted from May 3, 1956, (nor from any other day before May 24) because there was no allegation nor showing that his counsel had received "the first notice from the postmaster" as contemplated in Rule 7, sec. 3 above quoted. His request was denied.

According to the first part of the above Rule, the time within which plaintiff had to move for reconsideration began from May 24, 1956, when his counsel received the registered mail. The second part about failure-to-claim-within-five-days is not to be applied, because there is no proof, nor allegation that a first notice was given to him by the postmaster. The defendant seemed to have acted on the idea that the sending of the letter on April 27, 1956, constituted the first notice within the meaning of Rule 27, sec. 3. Here is what he represented to the court:

"x x x Consequently if the decision was mailed to the counsel for plaintiff on April 26, 1956, the service of

said decision was complete under Rule 27, sec. 8 (5) days after the first notice on or about May 3, 1956. The (30) days period for decision to be final shall be computed as of May 3, 1956, and said motion for reconsideration was filed on June 22, 1956 beyond the period provided by the Rules of Court."

Observe that no statement may be found therein that the first notice was given by the postmaster. It can not be implied that the first notice was given on May 3, 1956, because according to the above, May 3 was the last day of the five-day period. Consequently, the above must be interpreted to mean that in the opinion of defendant the "first, notice" took place on April 27[2] when the copy of decision was deposited in the mail.

Indeed, notwithstanding the fact that plaintiff insisted in the court below, and before this court on appeal, on such lack of notice by the postmaster, we find neither in the court's orders, not in defendant's pleadings and brief any statement as to the date when plaintiff's counsel was notified by the postmaster to get the registered mail addressed to him.

The form of such notice(3) written on a card about 5" x 3" reads like this:

Post Office of

BUREAU OF POSTS PHILIPPINES

Form 1525 Post Mark of

OFFICIAL MAIL REGISTRY NOTICE

Delivery Office

M

Present this notice at this Office and receipt for ____registered letters/parcels addressed to you numbered as follows:

In the absence of such notice by the postmaster, the plaintiff is deemed to have received copy of the decision only upon actual receipt thereof, (May 24).

At the risk of being repetitious, we should explain: The plaintiff proved he actually received on May 24, the copy of the decision sent by registered mail; according to the first part of above Rule 27, his time to move for new trial or reconsideration began on May 24; as the defendant contended that plaintiff's time began earlier, i. e., at the expiration of five days after first notice by the postmaster, it was his duty to prove the date when such first notice had been given. In default of such proof, May 24 must be deemed the starting point. From May 24 to June 22 less than thirty days had elapsed; so on June 22 the decision had not yet become final.

And the court below still had jurisdiction to act upon plaintiff's motion for reconsideration on the merits. Consequently, its order of July 2, 1956, is reversed, and the record remanded for further proceedings. Costs against appellee.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, Felix, JJ., concur.

[1] Appellee's brief p. 4.

[2] Page 4 defendant's brief.

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