

## PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, PETITIONER, VS. HON. RODOLFO ORTIZ, ROGELIO MARA-VILES AND QUEZON CITY SHERIFF, RESPONDENTS.

*G.R. No. L-49223. May 29, 1987*

Ponente: NARVASA, J.

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### NARVASA, J.:

The case at bar, described by petitioner as simple both as to the facts involved and as to the issue,[1] principally relates to the well known rule that service of notices, pleadings, motions and other papers, to be valid and efficacious, shall be made on the party's attorney of record and not on the party himself, unless the court shall otherwise direct.[2]

The party directly affected by the rule is the petitioner, Philippine Commercial and Industrial Bank, hereafter simply referred to as PCIB, defendant in Civil Case No. Q-23275 of the Court of First Instance at Quezon City. The action was instituted by one of its depositors, Rogelio Maraviles, for the recovery of damages resulting from the dishonor of two (2) of his checks on account of the negligence of employees of PCIB.<sup>1</sup>

The law firm of Ledesma Saludo & Associates appeared for PCIB in the suit, and gave its address as 3rd Floor, LTR Building, 5548 South Superhighway, Makati, Metro Manila.<sup>2</sup> Holding office in the same LTR Building, at the ground floor, was a corporation known as Commercial Exponent Philippines, Inc., COMMEEX, for short.<sup>3</sup>

After Maraviles had presented his evidence, the trial was reset for the reception of PCIB's proofs, but the latter's lawyers failed to appear at the appointed time. Consequently, the Trial Court dictated an Order dated June 23, 1978 considering the case submitted for decision, and on June 28, 1978, rendered judgment for the plaintiff, ordering the payment to him by PCIB of P20,000.00 as moral damages: P5,000.00 as exemplary damages: and P2,500.00 as attorneys fees.<sup>4</sup>

PCIB's lawyers filed on August 15, 1978 a Motion for Reconsideration (RE: Order dated June 23, 1978 and/or Decision).<sup>5</sup> They argued that the award of damages was exorbitant,<sup>6</sup> and proffered the following explanation for their non-appearance at the continuation of trial on June 23, 1978, viz:

The failure of Atty Segundo Mangohig, associate lawyer of the \*\* Firm who was personally handling the \*\* case to appear at the June 23, 1978 hearing is explained by the fact that in the middle of June 1978 Atty. Mangohig suddenly resigned from the law firm. As is the usual procedure, Atty. Mangohig was required to submit a list of his pending cases accounts with their respective status. Atty. Mangohig did submit a report. Unfortunately, the present case was not listed in his report. Thus, the present case was not reassigned in time for another lawyer to attend the June 23 1978 hearing.<sup>7</sup>

An opposition was presented by Maraviles,<sup>8</sup> in which he asserted (1) that judgment had already become final, notice thereof having been served on PCIB, thru COMMEEX, on July 15, 1978, and the fifteen-day period to appeal therefrom had already lapsed when PCIB's motion for reconsideration was filed on August 15, 1978; and

(2) Mangohig's failure to include the case in his report did not constitute excusable negligence warranting relief, and clients are bound by their counsels mistakes. PCIB replied,<sup>1</sup> arguing that (1) service of the judgment on COMMEEX on July 15, 1978 was inefficacious, and the period for appeal should be reckoned only from July 17, 1978 when COMMEEX delivered the notice to PCIB's lawyers; and (2) there was no need to append an affidavit of merits to its motion for reconsideration, this being required only when the motion for new trial was based on grounds other than excessive award of damages. Maraviles submitted a rejoinder,<sup>2</sup> pointing out that (1) the notice of the judgment was received on July 15, 1978 by precisely the same person who had received the notice of the Order of June 23, 1978; (2) an affidavit of merits was in fact indispensable because PCIB's lawyers were invoking excusable negligence as ground to set aside the Order of June 23, 1978 considering the case submitted for decision.

Thereafter, the Trial Court denied PCIB's motion for reconsideration by Order dated September 18, 1978.<sup>3</sup> Respecting the issue of whether the motion for reconsideration was filed seasonably, the Court first drew attention to the fact that Atty. Mangohig had received (1) copy of the Order re-setting the hearing on June 23, 1978 "thru COMMEEX" on May 9, 1978; (2) copy of the Order of June 23, 1978 (declaring the case submitted for decision) "thru COMMEEX on JULY 13, 1978"; and (3) copy of the judgment of June 28, 1978, also "thru COMMEEX on July 15, 1978." It then said:

"From these antecedents, this Court is not persuaded by the soundness of the submission of defendant's counsel that they received a copy of the decision only on July 17, 1978, as shown by the stamped 'RECEIVED' of the Ledesma, Saludo & Associates appearing on \*\* (PCIB's copy) of the decision. \*\* For, as the records will show, Atty \*\* Mangohig \*\* had been receiving notices of hearing and orders, from this Court, thru COMMEEX. In fact, the notices of hearing (of) January 3, 1978, and April 25, 1978, sent to Atty \*\* Mangohig were also received by him thru COMMEEX. Defendant having filed its motion for reconsideration only on August 15, 1978, or one (1) day after the judgment had become final and executory on August 14, 1978, clearly, said motion was filed out of time.

"Moreover, \*\* the failure of \*\* Atty. Mangohig to appear at the trial on June 23, 1978 \*\* is not constitutive of excusable negligence. And \*\* well-settled is the rule that clients are not excused from and are bound by the mistakes and negligence of their attorneys.

"More importantly, it appears in the answer of the defendant that it has no good and valid defenses which might change or alter the judgment of this Court \*\* even as the defendant failed to state this in an affidavit of merit which is required \*\* to be attached to the defendant's motion for reconsideration which is also undoubtedly based upon the alleged excusable negligence of defendant's lawyer"

By Order dated September 20, 1978, the Court decreed the issuance of a writ of execution at Maraviles instance, "judgment \*\* being already final and executory."<sup>1</sup> But when PCIB attempted to perfect an appeal, and filed at the same time a second motion for reconsideration, as shall shortly be narrated, the Court ordered the sheriff "to desist, in the meantime, from the enforcement of the Writ of Execution, until after the resolution of the pending incidents."<sup>2</sup>

Now, the records do not show when and how notice of the Order of September 18, 1978 (denying PCIB's motion for reconsideration) was served on PCIB's lawyers. These lawyers do not state this material fact anywhere in their pleadings. Be this as it may, as aforesaid they filed with the Trial Court on September 25, 1978 a notice of appeal, an appeal bond, a record on appeal.<sup>3</sup> And on the same day they also filed a second Motion for Reconsideration, insisting that service of notice of the judgment should be reckoned not as of July 15, 1978 (when COMMEEX received it), but July 17, 1978 (when COMMEEX gave the notice to PCIB's lawyers).<sup>4</sup>

Without awaiting service of notice of the resolution of its second motion for reconsideration, but expressing the

fear that execution of the judgment might render the issues moot.<sup>5</sup> PCIB instituted in this Court on November 7, 1978 the instant special civil action for certiorari praying for the annulment of the Trial Court's Orders dated September 18, 1978 --- denying its first motion for reconsideration and declaring the judgment final and executory -- and September 20, 1978 -- granting execution -- as well as the anticipated order denying its second motion for reconsideration.

To complete the narration of the relevant facts, it should be mentioned that the Trial Court did indeed subsequently deny PCIB's second motion for reconsideration. This it did by Order dated November 6, 1978 in which it ruled -

" \*\* (1) that defendant's counsel had been receiving orders and notices of hearing from this court, in this case, through COMMEX, whose authority to do so the defendant is now estopped from denying, and (2) that even granting arguendo, that defendant's first Motion for Reconsideration" dated August 15, 1978 was filed on time, the same did not interrupt the period of appeal, since it was not accompanied by an affidavit of merit, as required by the rules, neither does the motion itself, although verified, state the good and valid defenses, if any, of the defendant which, as ruled by this Court in its order dated August 15, 1978, do not exist even in defendant's answer itself \*\*."1

The chief issue is indeed simple, as petitioner intimates, and is quickly resolved. While it is true that the address of record of PCIB's counsel is entered as the "3rd Floor, LRT Building," which is different from that of COMMEX, which is on the "Ground Floor, LRT Building," it is equally true that notices served on the latter had been reaching the former and that, in any event, the PCIB lawyers had never protested such service on them thru COMMEX. The only single instance of protest was as regards the particular instance of service of notice of the judgment on COMMEX on July 15, 1978. Thus, as shown by the record, and not at all disputed by PCIB, service was accepted by its lawyers "thru COMMEX" without demur, of the court notices for (1) the hearing of January 3, 1978, (2) the hearing of April 25, 1978, and (3) the hearing of June 23, 1978.

It is of course the rule that notices, pleadings, motions and papers should be served on a party's counsel of record, at the latter's given address. But it is certain that the counsel is entirely at liberty to change his address, for purposes of service, or expressly or impliedly adopt one different from that initially entered in the record. When he does this, he cannot afterwards complain that the person who received the notice, pleading, motion or paper at such new address did not promptly deliver the same to him or bring it to his attention. This is what happened in this case. PCIB's attorney's had acquiesced to and impliedly adopted a different address for service of notices to them. They had accepted service at this place, three floors down from the address originally given by them, without objection of any sort. They cannot now disown this adopted address to relieve them from the effects of their negligence, complacency or inattention. Service, therefore, on July 15, 1978 of the notice of judgment at the Ground Floor, LRT Building, should be deemed as effective service on PCIB's attorneys. The failure of the receiving clerk to deliver the notice to them on the same day, and what is worse, the lawyers' omission to inquire of said receiving clerk exactly when the notice was received, and their blithe assumption that service was effected on July 17, 1978 since this was the day that the notice was handed over to them, is arrant imprudence and cannot in any sense be deemed to constitute that excusable negligence as would warrant reconsideration under Section 1 [a], Rule 37 of the Rules of Court.

Moreover, the Trial Court's ruling that as "appears in the answer," PCIB "has no good and valid defenses which might change or alter the judgment of this Court if it were to set (it) aside and \*\* (reopen the case) to allow the defendant to cross examine the plaintiff and to present its evidence",<sup>1</sup> appears to be correct. A perusal of PCIB's unverified answer in the Court a quo discloses that is made up mostly of denials "for lack of knowledge"<sup>2</sup> and an averment of "special and affirmative defenses" consisting in the insinuation that the dishonor of Maraviles checks

was due to "mechanical and human errors which are expected and inevitable" and for which "reasonable allowance" should be made; and that Maraviles should verify the amount of his deposit before issuing any check against it.<sup>3</sup> In the light of its express admission that Maraviles did indeed have a sufficient deposit at the time of the issuance of the checks in question, these defenses are patently unsubstantial and unmeritorious. It furthermore appears that no other defense has been asserted by PCIB, whether in an affidavit of merit attached to its two (2) motions for reconsideration or otherwise. It would thus really make no sense, as the Court *a quo* opines, to set aside the judgment, reopen the case and allow PCIB to present evidence of defenses which are inconsequential, and would not at all negate or mitigate its liability.

Two more points need be dealt with before this opinion is ended.

It is true that when fraud, accident, mistake or excusable negligence is invoked as ground of a motion for new trial,<sup>4</sup> it should be proved in the manner provided for proof of motions,<sup>5</sup> i.e., by "affidavits or depositions" unless the court should direct that "the matter be heard wholly or partly on oral testimony or depositions."<sup>6</sup> It is also required that "affidavits of merits" be attached to the motion.<sup>1</sup> A motion for new trial grounded on fraud, accident, mistake or excusable negligence should thus ordinarily be accompanied by two (2) affidavits: one, setting forth the facts and circumstances alleged to constitute such fraud, accident, mistake or excusable negligence; and the other, an affidavit of merits, setting forth the particular facts claimed to constitute the movant's meritorious cause of action or defense.<sup>2</sup> The reason for the first is quite obvious: it is to enable the court to determine if the movant's claim of fraud, etc., is not a mere conclusion but, is indeed borne out by the relevant facts. The reason for the second is equally evident: it would be useless, a waste of time, to set aside the judgment and reopen the case to allow the movant to adduce evidence when he has no valid cause of action or meritorious defense.<sup>3</sup>

Where, therefore, a motion for new trial on the ground of fraud, etc., is unaccompanied by either or both affidavits, the motion is *pro forma* a scrap of paper, as it were, and will not interrupt the running of the period of appeal.<sup>4</sup> But where, as here, the motion for new trial is founded not only on fraud, accident, mistake or excusable negligence, but also on the ground of "award of excessive damages,"<sup>5</sup> as to which no affidavit of fraud, etc., or of merits is required, what being required of the movant being to "point out specifically the findings or conclusions of the judgment demonstrating the invoked ground, the motion cannot be denied as *pro forma* simply because no affidavit of merits is appended thereto, provided there be a specification of the findings or conclusions of the judgment alleged to be erroneous because awarding excessive damages. The tenability of the grounds is dependent upon different premises. The untenability of one does not of itself, render the other unmeritorious.

Finally, it bears stressing that the filing of a proper motion for new trial interrupts the running of the period of appeal which begins to run again from receipt of notice by the movant of the order denying his motion. In this situation, the party adversely affected has only the balance of the period of appeal within which to perfect his appeal, the balance being the number of days remaining of the reglementary period after deducting the time during which the motion was pending; i.e., from the date when the motion was filed to the date when notice of the order of denial was served on the movant.<sup>1</sup> If the motion for new trial was filed on the last day of the reglementary appeal period, the movant may appeal within the day following service on him of the notice of the order denying his motion.<sup>2</sup> It is well to also emphasize, in this connection, that the requirement for the perfection of an appeal within the time prescribed is mandatory and jurisdictional, that the lapse of said period without an appeal being taken operates to divest the court of all jurisdiction over the case and leaves it with no alternative but to order, on motion, the execution of the judgment.<sup>3</sup>

In fine, it not being possible under the facts to ascribe the commission of an act with grave abuse of discretion to the Trial Court, none having been shown by the petitioner, the verdict must go against the latter.

WHEREFORE, the petition is dismissed, with costs against petitioner.

Yap, (Chairman), Melencio-Herrera, Cruz, Gancayco, and Sarmiento, JJ., concur.  
Feliciano, J., on leave.

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[1] Rollo, p. 13

[2] Sec 2, Rule 13 Rules of Court

1 Rollo, pp 23, 111

2 Id., p. 31

3 Id., p. 14

4 Id., pp 32-29

5 Id., pp. 40-48

6 Id., pp. 44-45

7 Id., p 41

8 Id., pp. 50-53

1 Id., pp. 54-59

2 Id., pp. 60-62

3 Id., pp. 63-64

1 Id., p. 68

2 Annex O, petition, rollo, p. 73

3 See Annex O, petition, rollo, p. 73

4 Rollo, pp. 65-67

5 Id., p. 3

1 Id., p. 82

1 Order, Sept 18, 1978, rollo, pp. 63, 64

2 As regards e.g., pars. 1, and 6 to 17, inclusive, of the complaint rollo, pp. 28-29

3 Rollo, pp. 29-30

4 Sec. 1 (a), Rule 37, Rules of Court

5 Sec. 2 (second par.), Rule 37

6 Sec. 7, Rule 133

1 Sec. 2 (third par.), Rule 37

2 See Feria, Civil Procedure, 1969 ed., pp. 514-515, Moran, Comments on the Rules, 1979 ed., Vol. 2. pp. 214-215

3 See Feria, op. cit., p. 514, Moran, op cit., p 215

4 Sec 3, Rule 41; Feria, op. cit., pp. 515-516, Moran, op. cit., pp. 216-218

5 Sec. 1 (c), Rule 37

1 Sec. 3, Rule 41, providing in part that "The time during which a motion to set aside the judgment or order or a motion for new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37."

2 Sec 3, second par., Rule 41, Rules of Court; Lloren v. de Veyra 4 SCRA 637

3 Galima, et al. v. C.A., 16 SCRA 140, 143-144, citing Garganta v. C.A., 56 O G, 4323, 4327; Espartero v. Ladaw, 92 Phil 704; Remorin v. Valles, 92 Phil. 991 (and cases therein cited), Miranda v. Guanzon, 92 Phil 168 Valdez v. Acumen, L-13526, Jan 28, 1960, Gov't v. Luis Antonio, et al, L-23736, Oct 19, 1965.

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