

WILSON NG, COMPLAINANT, VS. ARACELI A. ALFARO, BRANCH CLERK OF COURT, BRANCH 3, REGIONAL TRIAL COURT OF MANILA, NATIONAL CAPITAL JUDICIAL REGION, RESPONDENT.

A.M. No. P-93-959. December 01, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In a sworn complaint filed on 29 July 1993, the complainant, who is the president of Golden Flame Sawmill Corporation (hereinafter Golden Flame), charged the respondent branch clerk of court of Branch 3 of the Regional Trial Court (RTC) at Manila, with "willful omission of the performance of official duty."

He alleges in his complaint that his corporation was the defendant-intervenor in Civil Case No. 91-57097, entitled "Max B. Alfaro vs. Capt. Arturo Y. Capada," an action for the recovery of two barges, which was assigned to Branch 3 of the RTC. The case was set for pre-trial on 15 October 1991. All the parties to the case, except Golden Flame and its counsel, were furnished with copies of the notices of pre-trial. For failure of Golden Flame and its counsel, Atty. Datu Firdausi Abbas, to appear at the pre-trial, Golden Flame was declared as in default. The respondent did not send a copy of the order of default to Golden Flame. The court received ex-parte the plaintiff's evidence on 18 October 1991, and on 7 November 1991 it rendered a decision against Golden Flame. Again, the respondent did not furnish Golden Flame with a copy of the decision. The latter obtained a copy thereof "for purposes of filing the necessary pleadings in court" on 15 November 1991. As a consequence of the respondent's nonfeasance, Golden Flame was prevented "from presenting strong evidence of its ownership of the barges ... and the decision rendered has deprived it of its ownership of said barges without due process of law."

In her comment, the respondent denies the charges and alleges that the complaint "is absolutely without basis in fact and in law, and was filed merely either to save face, on the part of complainant's counsel, or for pure harassment." She asserts that Golden Flame, as shown in the notice,[1] was served with the notice of pre-trial through its counsel on 8 October 1991; having been declared as in default on 15 October 1991[2] for the failure of its counsel to appear at the pre-trial, it lost its legal standing in court and was no longer entitled to notice of subsequent pleadings, except that of the judgment. On 7 November 1991, the court rendered its decision.[3] On 15 November 1991, a representative of Atty. Abbas or the complainant came to the court and was furnished with a copy of the 15 October 1991 order of default and the decision of 7 November 1991. In addition, copies of the order and the decision were separately sent by registered mail to Atty. Abbas.

The respondent further alleges that on 18 November 1991, Golden Flame filed a motion to reconsider the order of default, which the plaintiff opposed. These incidents were not resolved at first because Golden Flame filed a petition for certiorari (CA-G.R. SP No. 26241) with the Court of Appeals which issued a temporary restraining order. This petition was later dismissed by the Court of Appeals. The motion to reconsider the default order was eventually denied in the order of 23 October 1992.[4] On 22 January 1993 the Court of Appeals, in CA-G.R. SP No. 29437 -- a petition for certiorari filed by Golden Flame to annul the trial court's order of default and its

decision of 7 November 1991 -- promulgated a decision dismissing the petition therein.[5]

In his reply to the comment,[6] the complainant claims that he happened to obtain a copy of the 7 November 1991 decision on 15 November 1991 because at the hearing on 15 November 1991 in the Court of Appeals of CA-G.R. SP No. 26241, he and his counsel were informed that Golden Flame had been declared as in default on 15 October 1991 and that a decision had been rendered on 7 November 1991. He avers that the order of default was sent to Golden Flame's counsel only on 31 October 1991, and that the respondent furnished Golden Flame's counsel with a copy of the decision of 7 November 1991 only on 18 July 1993 through registered mail.

Issues having been joined, the Court required the parties to inform it if they wished to submit the case for decision on the basis of the pleadings already filed.

Both the complainant and the respondent manifested their willingness to submit this case for decision on the basis of the pleadings.

The Court gathers from the reply to the comment and the trial court's order of 23 October 1992[7] that Golden Flame had earlier filed a petition for certiorari with the Court of Appeals which was docketed therein as CA-G.R. SP No. 26241. The Court of Appeals dismissed that petition in its decision of 8 June 1992. The dispositive portion thereof, as quoted in the aforesaid order of 23 October 1992, reads as follows:

"IN VIEW WHEREOF, the Amended Petition filed on November 19, 1991 is dismissed and the trial court now presided by the Honorable Senecio O. Ortile is directed to resolve petitioner's Motion for Reconsideration of the Order of Default with all deliberate speed. Petitioner's Motion to Cite for Contempt Atty. Felix Serina is also denied for lack of merit."

After the trial court denied its motion for reconsideration, Golden Flame filed another petition for certiorari with the Court of Appeals to annul (1) the trial court's order of 15 October 1991 declaring it as in default, (2) the aforesaid order of 23 October 1992 denying the motion for reconsideration, and (3) the decision of 7 November 1991. The case was docketed as CA-G.R. SP No. 29437. In its petition, it asserted that it was denied due process and that the respondent judge acted with grave abuse of discretion when he issued the order of default, rendered the decision, and denied the motion to reconsider the order of default.

The Court of Appeals dismissed the petition in its decision of 22 January 1993.[8] The Court of Appeals sustained the trial court's finding that Golden Flame and its counsel were notified of the pre-trial and found Golden Flame's allegation in its motion for reconsideration that its absence "during the pre-trial conference as well as his counsel is excusable negligence if not an accident in the light of the questionable date of the receipt of the handcarried notice" as an admission of the receipt of the notice.

"If the petitioner had not really been sent a notice of the pre-trial as averred, what need was there for it to allege 'excusable negligence if not an accident' with reference to its 'late receipt' of the notice? There would be no excusable neglect to talk about for the simple reason that no notice whatsoever was sent to it.

In view of the foregoing, this Court finds it proper to give due weight and respect to the statement of the court a quo that due notice had been sent to petitioner Golden Flame Sawmill through counsel considering the accepted presumption that official duty has been regularly performed as against what appears to Us to be a doubtful and sometimes equivocal assertions of the petitioner to the contrary."

The Court of Appeals further observed that since Golden Flame and its counsel were aware before the filing of the petition that the trial court had already rendered judgment in the case

"the proper procedure to have been followed was for the petitioner to file a motion for reconsideration of the decision. Upon denial of such motion for reconsideration, what should have been done was for the said

petitioner to appeal, asserting as an error its alleged deprivation of the opportunity to be heard as far as its claim to the two subject barges is concerned."

The complainant does not claim that this decision of the Court of Appeals did not attain finality. Nor does he claim that at any time during the pendency of CA-G.R. SP No. 29437 or after the promulgation of the decision therein, Golden Flame had appealed the trial court's decision of 7 November 1991. It is thus assumed that the aforesaid decisions of the Court of Appeals and that of the trial court had long become final. The correctness of the Court of Appeals' conclusion that Golden Flame and its counsel were duly notified of the pre-trial is beyond our power to review and this administrative complaint by a complainant who is not a party to Civil Case No. 91-57097 but merely a president of the intervenor should not be allowed as a vehicle for such review.

The instant complaint is thus clearly without merit. There seems, indeed, to be some truth to the claim of the respondent that because the counsel of the complainant failed to appeal the judgment by default, the instant complaint was filed "to save face for such a grave error, if not to harass herein respondent."

The Court takes this opportunity to stress that:

"A notice of pre-trial must be served on the party affected separately from his counsel (Heirs of Fuentes, et al. vs. Macadaeg, et al., L-45445, June 16, 1978), and the same may be served directly to him or through his counsel (Lim vs. Animas, L-39094, April 18, 1975) otherwise the proceedings will be null and void (Sagarino vs. Pelayo, L-27927, June 20, 1977; Patalinjug vs. Peralta, et al., L-43324, May 5, 1979). It is the duty of counsel upon whom such notice is served, to see to it that his client receives such notice and attends the pre-trial, otherwise he will be liable for grave administrative disciplinary action (Taroma, et al. vs. Sayo, et al., L-37296, October 30, 1975)."[9]

Lawyers, as officers of the court, should not encourage groundless administrative cases against court officers and employees. The time of the latter should not be wasted in answering or defending groundless complaints; every minute of it is precious and must be reserved for the enhancement of public service.

WHEREFORE, for lack of merit, the instant complaint is DISMISSED.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Photocopy is attached as Annex "1."

[2] Annex "2" of Answer.

[3] Annex "3," Id.

[4] Annex "4" of Comment.

[5] Annex "5," Id.

[6] Rollo, 55.

[7] Annex "4" of Comment; Rollo, 20.

[8] Annex "5" of Comment; Rollo, 23.

[9] 1 FLORENZ D. REGALADO, Remedial Law Compendium 144 (3d. rev. ed.).

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