

MANILA SURETY AND FIDELITY CO., INC., PLAINTIFF AND APPELLEE, VS. BATŪ CONSTRUCTION AND COMPANY, ETC., ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-16636. June 24, 1965*

Ponente: MAKALINTAL, J.

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On April 27, 1959 the Court of First Instance of Manila rendered its decision in Civil Case No. 15518 in favor of plaintiff Manila Surety & Fidelity Co., Inc. Defendants received copy thereof on May 2, 1959. On May 12 they filed a motion for reconsideration. On May 21 the court issued an order stating that since the said motion contained no notice of the time and place of hearing, "the same cannot even be considered as a motion; it presents no question which the Court could decide and the latter acquires no jurisdiction to consider it."

On May 30 defendants filed what they called a supplement to their motion for reconsideration. This had the requisite notice of hearing. On June 6, 1959 the court denied the motion for reconsideration and its supplement. Copy of the order of denial was received by defendants on June 13. They submitted their notice of appeal and appeal bond on June 18, 1959 and their record on appeal on June 25. Plaintiff then moved to dismiss the appeal on the ground that it had been filed out of time, alleging that the motion for reconsideration of May 12 was pro forma and therefore did not interrupt the period for appeal. On July 15, 1959 the court sustained plaintiff's motion, stating that such period had expired on June 15. A motion for reconsideration was filed by defendants but was denied in an order dated August 1. On August 26, defendants filed a petition for relief from the order of July 15 on the ground of excusable negligence, stating that their counsel inadvertently forgot to put the notice of hearing in their motion for reconsideration and realized the omission only when he received a copy of the court's order of May 21, whereupon he immediately filed the supplement of May 30; and that since the court in its order of June 6 acted on the merits of both their motion for reconsideration and its supplement, counsel was led to believe in good faith that the said motion interrupted the period for appeal. On August 29 the petition for relief was dismissed. This case is now before us on appeal by defendants from that order of dismissal.

Neither the motion for reconsideration nor the so-called supplement thereto appears in the record. What does appear in reference to the said motion is that the court declined to act thereon because it could not even be considered as a motion for lack of notice of the time and place of hearing and because it presented no question which the court could decide.

Appellants maintain that the motion was in reality one new trial under Rule 37, Section 1, paragraph (c), that pursuant to Section 2 of the same Rule they specifically pointed out the findings of the court which they honestly believed to be contrary to law, making express reference to the pertinent documentary evidence and legal provisions. The suggestion is that when the motion is upon that ground the court may act upon it even if the movant has not set the same for hearing. The Rules, however, are quite clear on the matter. Section 2 of Rule 37, regarding motion for new trial, requires that a written notice thereof be served by the movant on the adverse party,

and this requirement applies whichever of the grounds allowed for such motion under the preceding section of the same Rule be relied upon.

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 (*Philippine National Bank vs. Donasco*, L-18638, February 28, 1963, citing *Manakil vs. Revilla*, 42 Phil. 81; *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866; and *Director of Lands vs. Sanz*, 45 Phil. 117). The reason is obvious: unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.

We are not impressed by the argument that the "supplement" filed by appellants on May 30 should be deemed retroactive as of the date the motion for reconsideration was filed and therefore cured the defect therein. To so consider it would be to put a premium on negligence and subject the finality of judgments to the forgetfulness or whims of parties-litigant and their lawyers. This of course would be intolerable in a well-ordered judicial system.

Furthermore, in this particular case appellants were or should have been alerted to the fact that their motion for reconsideration of May 12 did not interrupt the period for appeal when they received the court's order of May 21, 1959, wherein it was stated that what appellants had filed was not even a motion and "presented no question which the court could decide."The order appealed from is affirmed, with costs.

Bengzon, C.J., Concepción, Reyes, J.B.L., Paredes, Dizon, Regala, Bengzon, J.P., and Zaldivar, JJ., concur.

Order affirmed.

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