

**BERNIE G. MIAQUE, PETITIONER, VS. HON. LUCIA P. PURUGGANAN,
IN HER CAPACITY AS PRESIDING JUDGE OF RTC, BRANCH 30,
MANILA, AND SPS. HUAI SHENG HSIAO & CHIN LI HUNG,
RESPONDENTS.**

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

In this Petition for Certiorari[1] filed under Rule 65 of the Rules of Court, petitioner Bernie G. Mique (‘‘Mique’’) seeks the nullification of the:

(1) Decision dated June 21, 2013[2] of the Regional Trial Court of Manila[3] (‘‘RTC’’) in Civil Case No. 04-110984 entitled ‘‘Sps. Huai Sheng Hsiao & Chin Li Hung, Plaintiffs/Respondents, versus Bernie Mique, Defendant/Petitioner,’’ the dispositive portion of which reads:

‘‘WHEREFORE, for the reasons mentioned and discussed above, the Petition for Relief is DENIED for lack of merit.

SO ORDERED.’’[4]

(2) Order, dated September 18, 2013,[5] denying Mique’s Motion for Reconsideration dated July 20, 2013,[6] for lack of basis.

The Facts

This case stems from a Complaint for Rescission of Contract, Specific Performance and Damages[7] filed by Sps. Huai Sheng Hsiao and Chin Li Hung (‘‘Sps. Huai’’) against Mique relating to the sale of a condominium unit at No. 2512, Paragon Plaza, EDSA corner Reliance Street, Mandaluyong City for a consideration of Php4,125,000.00. Allegedly, Mique was able to pay only eleven post dated checks each amounting to P25,000.00, or a total of P275,000.00, and despite demands, he still failed to comply with the terms of their contract. Hence, the filing of the complaint.

In his Answer, Mique admitted that he and Sps. Huai entered into a contract of conditional sale for the subject condominium unit. He however averred that said agreement has already been novated and pursuant to their new agreement, he issued seven (7) new checks which, to date, are still in the possession of Sps. Huai.[8]

On August 13, 2012, the RTC rendered a Decision[9] declaring the Deed of Conditional Sale between the parties as rescinded, viz.:

‘‘WHEREFORE, premises considered, the Deed of Conditional Sale between the parties herein is hereby RESCINDED. Defendant is ordered to:

- Turnover the peaceful possession of the subject condominium unit;

- Pay plaintiffs P25,000.00 a month from May, 2003 until he has vacated the premises;
- Pay the condominium association dues and property taxes from June 25, 2003 until possession of the unit has been relinquished;
- Pay the amount of P100,000.00 as attorney's fees, and
- Pay the cost of this suit.

SO ORDERED.”[10]

Aggrieved, Mique filed, on September 13, 2012, a Motion for Reconsideration (of the Decision dated 13 August 2012).[11]

However, on September 20, 2012, Mique filed a Manifestation and Motion to Admit[12] disclosing that “(w)hen the undersigned counsel checked the files of the case, she discovered that the Notice of Hearing of the Motion for Reconsideration was inadvertently omitted to be attached to the motion”[13] and thus prayed that his “Notice of Hearing on the Motion for Reconsideration, set on 24 September 2012 at 8:30 o'clock in the morning, be admitted.”[14]

Meanwhile, on September 17, 2012, the RTC already issued an Order[15] declaring that Mique failed to comply with Sections 4 and 5, Rule 15 of the Rules of Court, hence, his Motion for Reconsideration was deemed a mere scrap of paper. The order was received by Mique's counsel on September 24, 2012.[16]

Again, on October 2, 2012, Mique moved for reconsideration of the September 17, 2012 Order.[17] However, it appears from the record of this case that even before the filing of the aforesaid motion, i.e., on September 25, 2012, the RTC already issued another Order[18] declaring its August 13, 2012 Decision to be final and executory, viz.:

“The filing by the defendant on September 20, 2012 of a Manifestation and Motion to Admit proffering inadvertence as his excuse for not complying with the Rule did not cure the fatally defective Motion for Reconsideration. Moreover, the Manifestation and Motion to Admit was filed after the expiration of the period to appeal.

Considering that plaintiffs received a copy of the Decision on August 31, 2012 without any motion for reconsideration or notice of appeal filed by them, the Decision became final and executory on September 16, 2012.

Accordingly, let a Certificate of Finality be issued.

SO ORDERED.”[19]

On September 27, 2012, the RTC, through its Branch Clerk of Court, issued a Certificate of Finality[20] declaring that the above-mentioned August 13, 2012 Decision had become final and executory.

On November 23, 2012, Mique filed a Petition for Relief (from Order dated 17 September 2012)[21] averring that the omission of the notice of hearing in the motion for reconsideration was totally due to excusable oversight and inadvertence.[22]

On June 21, 2013, the RTC rendered the herein assailed Decision, denying Mique's Petition for relief. It explained:

“In justifying the petition at bar, defendant-petitioner avers that his failure to include a notice of hearing in the motion for reconsideration on the August 13, 2012 Decision was due to excusable oversight and inadvertence. The blame is being made on an alleged computer glitch or error that occurred as a result of the several

corrections or revisions that were made on the draft of the motion in question. All the while, it was thought that the final draft and from already contained the required notice of hearing on the last page.

While the error is indeed lamentable, the same is not excusable. Even a nonchalant and cursory review of the motion in its final and printed form would have easily and glaringly revealed the omission. Attys. Rex G. Rico and May R. Pandoy placed their signatures on the last page of the motion. Simple prudence would and should have already prompted and alerted them that the page on which they signed should not have been the last page of the motion, it being a litigated one. Such backdrop makes the omission or negligence inexcusable. Negligence, to be 'excusable', must be such that ordinary diligence and prudence could not have guarded against it.

Relief from judgment under Rule 38 of the Rules of Court is a remedy provided by law to any person against whom a decision or order is entered into through fraud, accident, mistake, or excusable negligence. The relief provided for is of equitable character, allowed only in exceptional cases as where there is no other available or adequate remedy. Relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or a mistaken mode of procedure; otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to mistaken mode of procedure by counsel.

Thus, failing to show and prove that excusable negligence attended defendant-petitioner's failure to observe the pertinent rules on notice and hearing on their motion for reconsideration, relief under Rule 38 cannot be had. His insistence that the motion in question presents substantial defense and arguments which may sway the mind of the court does not constitute a valid and sufficient ground to erase the consequence of his negligence and reopen the case. The emphasis is made that fraud, accident, mistake, or excusable negligence should first be established before relief from judgment can be granted." [23] (emphasis Ours)

Miaque moved for reconsideration [24] of the aforequoted Decision, but the same was denied by the RTC in its other assailed September 18, 2013 Order. [25]

Hence, this petition.

Issue:

In his Petition, Miaque (now "petitioner") avers:

"26. Miaque respectfully submits, the trial court committed grave abuse of discretion amounting to lack/excess of jurisdiction when (a) he was not accorded relief from its 17 September 2012 Order in the interest of substantial justice and due process; and (b) it did not admit and grant the verified Manifestation and Motion to Admit of petitioner, which has cured the deficiency and omission, i.e., notice of hearing, in the motion for reconsideration over the 13 August 2012 Decision, when he has succinctly shown, the omission was owing to excusable omission or oversight." [26]

In fine, what We shall resolve is the question of:

WHETHER OR NOT THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED DECISION DATED JUNE 21, 2013 AS WELL AS ITS ORDER DATED SEPTEMBER 18, 2013 WHICH DENIED THE RELIEF SOUGHT FOR.

OUR RULING

At issue is whether petitioner's failure to include a notice of hearing in his motion for reconsideration constitutes excusable negligence entitling him to a relief from judgment.

Section 1, Rule 38 of the 1997 Rules of Civil Procedure provides:

“Sec. 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.”

As can be clearly gleaned from the foregoing provision, the remedy of relief from judgment can only be resorted to on grounds of fraud, accident, mistake or excusable negligence.[27] Negligence to be excusable must be one which ordinary diligence and prudence could not have guarded against.[28]

In this case, petitioner admittedly committed a procedural lapse in failing to include a notice of hearing in his September 13, 2012 Motion for Reconsideration that was filed one (1) day before the very last day of the fifteen-day reglementary period for filing the motion. He avers, however, that said omission was due to an excusable oversight and inadvertence caused by an unexplained computer glitch or error which escaped the attention of his counsels;[29] that his subsequent filing of a Manifestation and Motion to Admit[30] [the notice of hearing] on September 20, 2012 has effectively cured said deficiency and omission;[31] and that the adverse party suffered no substantial prejudice by such inadvertent omission or oversight.[32]

A notice of hearing is an integral component of procedural due process to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is given time to study and answer the arguments in the motion.[33] Pertinently, Section 4, Rule 15 of the Rules of Court reads:

“Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to insure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.” (emphasis Ours)

Indeed, the law is clear that its intention is to allow the other party to receive a copy of the written motion at least three days before the date set for its hearing.[34] The three (3)-day notice requirement was established not for the benefit of the movant but rather for the adverse party, so as to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.[35] In *Preysler, Jr. v. Manila Southcoast Development Corporation*,[36] the Court restated the ruling that “the date of the hearing should be at least three days after receipt of the notice of hearing by the other parties.”[37]

But such is not a hard and fast rule.[38] In a number of cases,[39] the Supreme Court had the occasion to rule that where a party has been given the opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule. In *Jehan Shipping Corporation v. National Food Authority*,[40] it was aptly explained, viz.:

“This Court has indeed held time and time again that, under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.

As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. Considering the circumstances of the present case, we believe that the requirements of procedural due process were substantially complied with, and that the compliance justified a departure from a literal application of the rule on notice of hearing.” (emphasis Ours)

It bears stressing, therefore, that the requirement of notice of time and hearing in the pleading filed by a party (which is the motion for reconsideration in this case) is necessary only to apprise the other of the actions being taken by the former.[41]

Here, records show that the subject Motion for Reconsideration (Of the Decision dated 13 August 2012) was filed by petitioner’s counsel on September 13, 2012, and such is well within the fifteen-day reglementary period, albeit without the requisite notice of hearing. A copy thereof was sent to Sps. Huai’s counsel on the same day, via registered mail.[42] Only four (4) days thereafter, however, or on September 17, 2012, respondent Judge already issued an Order declaring the subject motion as a mere scrap of paper, without even waiting for the responsive pleading of the other party. Neither did it verify if the other party was properly apprised of petitioner’s motion.

Notably, petitioner’s counsel filed his Manifestation and Motion to Admit [notice of hearing on the Motion for Reconsideration] on September 20, 2012, upon discovering that the purported notice of hearing was inadvertently omitted from the subject motion[43] and even before his receipt of a copy of the RTC’s September 17, 2012 Order.[44] With the view of rectifying an otherwise inadvertent omission, petitioner prayed that the hearing on the aforesaid motion be set on September 24, 2012.[45]

To Our mind, therefore, the failure of petitioner to comply with the three-day notice required by the Rules is an “excusable negligence” worthy of reconsideration. Such omission had been sufficiently remedied by petitioner’s subsequent filing of his Manifestation and Motion to Admit [a notice of hearing] for the purpose of giving the other party time to study and meet the arguments in the motion before resolution thereof could be made by the trial court. Such gave the adverse party a chance to study the motion and oppose it, in compliance with the Rules.

Verily, the notice requirement is not a ritual to be followed blindly.[46] Procedural due process is not based solely on a mechanical and literal application that renders any deviation from it inexorably fatal.[47] Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding.[48] In any case, it is settled that procedural rules may be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[49]

WHEREFORE, the petition is GRANTED. The assailed Decision dated June 21, 2013 of the Regional Trial Court of Manila, Branch 30, as well as its Order dated September 18, 2013 are REVERSED and SET ASIDE.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Rollo, pages 3-16.

[2] Ibid., pages 17-20.

[3] Branch 30.

[4] Rollo, page 19.

- [5] Rollo, pages 21-22.
- [6] Ibid., pages 79-83.
- [7] Ibid., pages 24-29.
- [8] Ibid., page 31.
- [9] Ibid., pages 30-36.
- [10] Rollo, page 35.
- [11] Ibid., pages 37-40.
- [12] Ibid., pages 41-42.
- [13] Ibid., page 41.
- [14] Ibid.
- [15] Ibid., page 43.
- [16] Ibid., page 44.
- [17] Ibid., pages 44-47.
- [18] Ibid., pages 48-49.
- [19] Note 18, *supra*.
- [20] Rollo, page 50.
- [21] Ibid., pages 51-61.
- [22] Ibid., page 56.
- [23] Rollo, pages 18-19.
- [24] See Note 6, *supra*.
- [25] See Note 5, *supra*.
- [26] Rollo, page 7.
- [27] Land Bank of the Philippines vs. Natividad, G.R. No. 127198, May 16, 2005.
- [28] Ibid., citing Gold Line Transit, Inc. v. Ramos, 415 Phil. 492 (2001).
- [29] Rollo, page 8.
- [30] Note 12, *supra*.
- [31] Ibid.
- [32] Ibid., page 9.
- [33] KKK Foundation, Inc. vs. Calderon-Bargas, et al., G.R. No. 163785, December 27, 2007, citing Vlasov Enterprises Corporation v. Court of Appeals, G.R. Nos. 121662-64, July 6, 1999, 310 SCRA 26, 54.
- [34] United Pulp & Paper Co., Inc. vs. Acropolis Central Guarantee Corp., G.R. No. 171750, January 25, 2012.

[35] Note 34, *supra.*, citing *Sembrano v. Ramirez*, 248 Phil. 260, 266 (1988), citing *E & L Mercantile, Inc. v. Intermediate Appellate Court*, 226 Phil. 299, 305 (1986).

[36] G.R. No. 171872, June 28, 2010, 621 SCRA 636, 645, cited in *United Pulp & Paper Co., Inc. vs. Acropolis Central Guarantee Corp.*, *supra.*

[37] *United Pulp & Paper Co., Inc. vs. Acropolis Central Guarantee Corp.*, *supra.*

[38] *Ibid.*

[39] *United Pulp & Paper Co., Inc. vs. Acropolis Central Guarantee Corp.*, *supra.*; *Jehan Shipping Corporation vs. National Food Authority*, G.R. No. 159750, December 14, 2005; *Preysler, Jr. vs. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010; *City of Dagupan vs. Ester F. Maramba*, G.R. No. 174411, July 2, 2014.

[40] G.R. No. 159750, December 14, 2005.

[41] *Jehan Shipping Corporation vs. National Food Authority*, *supra.*

[42] *Rollo*, page 40.

[43] *Ibid.*, page 41.

[44] The Order dated September 17, 2012 was received by petitioner's counsel on September 24, 2012; see *Rollo*, page 44.

[45] *Rollo*, page 41.

[46] *KKK Foundation, Inc. vs. Calderon-Bargas*, *supra.*

[47] *Ibid.* at 55.

[48] *Ibid.*

[49] *Sy vs. Local Government of Quezon City*, G.R. No. 202690, June 5, 2013, citing *Lazaro v. CA*, 386 Phil. 412, 417 (2000).

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