

**ALFREDO B. GRAFIL AND LRM MINING COMPANY,
PETITIONERS-APPELLANTS, VS. THE HON. JOSE Y. FELICIANO, AS
SEC-RETARY OF AGRICULTURE AND NATURAL RESOURCES; THE
HON. FERNANDO S. BUSUEG...**

G.R. No. L-27156. June 30, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

In a protest filed with the Bureau of Mines on July 9, 1959, the Manila Mining Corporation charged that the mining claims of Alfredo B. Grafil were made to overlap 26 of its 147 claims in barrio Del Pilar in Cabadbaran, Agusan, in order to create a conflict, contrary to section 57 of the Mining Act, Com. Act 137. Manila Mining asked that Grafil and his men be restrained from invading its property.

Grafil denied the charge and contended that if there was an overlapping of claims the situation was brought about by Manila Mining which had moved its claims from their original location to where his claims were. The LRM Mining Company later intervened to assert common interest in the claims in dispute.

The Bureau of Mines found no overlapping and upheld Grafil and LRM Mining's right to preference in the lease of the area covered by the claims. On appeal, however, the Secretary of Agriculture and Natural Resources reversed the decision of the Bureau after finding that 72 of Grafil's claims did in fact overlap those of Manila Mining. It was held that while Grafil had earlier located his claims, he had not made a valid location for the reason that the claims were at the time held by another party, and that on the other hand the location of the same mining claims by Manila Mining, while subsequent to that of Grafil, was made after the right of the former owner had expired.

Failing to secure a reconsideration of the decision of the Secretary, Grafil and LRM Mining filed in the Court of First Instance of Agusan a petition for review, naming the Secretary of Agriculture and Natural Resources, the Director of Mines and Manila Mining as respondents. But on motion of Manila Mining the case was dismissed by the court on the ground that it had no jurisdiction to review the decision of the Secretary of Agriculture.[1]

A copy of the order of dismissal dated May 8, 1965, was received by Attorney Jose G. Montilla, counsel for Grafil and LRM Mining, on May 28. On June 9 Atty. Montilla filed a motion for reconsideration which the court denied in its order of July 10. A copy of this order was sent by registered mail to Atty. Montilla at his given address at 204 Cinerama Building, Claro M. Recto Avenue, Manila, but despite three notices given him by the Manila Post Office on July 27, August 9 and August 17, counsel failed to claim the mail with the result that it was returned to the court on September 10. In the meantime, Atty. Montilla notified the Agusan court that he had moved office to 304 AIU Building, Juan Luna, Manila. The notice was dated August 30, and was received by the court on September 2.

It was only on February 25, 1966 that the mail containing a copy of the order of July 10, 1965 was finally

claimed by Atty. Montilla who personally went to Butuan City. On February 28 he appealed the orders of May 8 and July 10, 1965.

Manila Mining asked for the dismissal of the appeal on the ground that the appeal was late and that the orders sought to be appealed had become final, but the court denied the motion and instead directed the clerk to forward the records to this Court.

Manila Mining now reiterates its motion to dismiss the appeal.

The motion is well taken. The thirty-day period^[2] for appealing from the order of May 8, 1965 began to run on May 29, a day after Grafil and LRM Mining received through counsel a copy of the order. The filing of a motion for reconsideration on June 9 suspended the running of the period until August 2 (i.e., five days after the first notice sent by the post office on July 27) when, pursuant to section 8 of Rule 13,^[3] Grafil and LRM Mining must be deemed to have been served a copy of the July 10, 1965 order denying their motion for reconsideration. Since the parties had only eighteen more days left, the period of appeal expired on August 20. The result is that on February 28, 1966, when Grafil and LRM Mining tried to perfect their appeal, the order from which they were appealing had already become final.

The claim that Atty. Montilla did not receive any of the notices sent to him on July 27, August 9 and August 17, 1965 does not inspire belief. We cannot see how he could have missed any of the three notices which, according to the Chief of the Registry Division of the Manila Post Office, had been sent to him. Between the denial of a party and the assertion of an artificial whose duty it is to send notices, the choice should not be difficult to make. As this Court said in disposing of a similar contention:^[4]

"The allegation that petitioners' former counsel never received the postal notices cannot prevail over the positive statement of the superintendent of the Manila Post Office to the effect that three notices were sent to him, and such statement is fortified by the legal presumption that official duty was regularly performed."

The claim should be rejected for being unworthy of belief, let alone for being contrary to the statement of postal officials who have in their favor the presumption that they have performed their duties regularly. Indeed, the rule in section 8 of Rule 13 is a rule of convenience. Nothing much would be left of this rule if, even in the face of official certification to the contrary, parties were permitted to deny the central idea around which it is built, namely, receipt of the postmaster's notice.

Nor may the transfer of counsel's office be used as excuse for failing to claim the mail considering that the transfer, by counsel's own admission, did not take place until the last week of August, 1965 whereas the third and notice was sent to him on August 17.

ACCORDINGLY, the instant appeal is dismissed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

[1] Section 61 of the Mining Act, as amended by section 3 of Republic Act No. 746, 7 Laws & Res. 151 (1952), provides:

"Conflicts and disputes arising out of mining locations shall be submitted to the Director of Mines for decisions. Provided, That the decision or order of the Director of Mines may be appealed to the Secretary of Agriculture and Natural Resources within thirty days from the date of its receipt in case any one of the parties should disagree from the decision or order of the Director of Mines or of the Secretary of Agriculture and Natural Resources, the matter may be taken to the court of competent jurisdiction within thirty days from the receipt of such decision or

order; otherwise the same decision or order shall be final and binding upon the parties concerned."

The trial court ruled that it had no jurisdiction of the ap-peal because the phrase "court of competent jurisdiction" meant either the Court of Appeals or the Supreme Court.

[2] Rule 41, sec. 3.

[3] "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 (5) days from the date of first notice of the postmaster service shall take effect at the expiration of such time."

[4] Enriquez vs. Bautista, 79 Phil. 220, 222 (1947); accord, Islas vs. Platon, 47 Phil. 162 (1924).

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