

## PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND CRAIG L. FORD, RESPONDENTS.

*G.R. No. 106956. January 27, 1994*

Ponente: PUNO, J.

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### PUNO, J.:

In this petition for review on certiorari, we are asked to reverse the decision of the respondent Court of Appeals, dated April 30, 1992,[1] insofar as it affirmed the decision of the Regional Trial Court, Cebu City, Branch XV, in an action for damages against petitioner Philippine Commercial International Bank (PCIB), finding the latter guilty of negligence in its commercial transactions with private respondent Craig L. Ford, and awarding the latter actual, moral and exemplary damages, including attorney's fees.

Petitioner alleged that:

"Sometime in 10 September 1986, the petitioner's Juan Luna, Cebu City branch office (hereinafter referred to as PCIB Juan Luna) received a telex advise from its Head Office in Makati, Metro Manila, directing the execution of payment in favor of the "Bank of the Philippine Islands - Account No. 5-806 Craig Lynn Ford", in the amount of P7,482.89. The payee, Craig Lynn Ford, is the private respondent in the instant case.

"Pursuant to the telex advise, PCIB Juan Luna issued a cashier's check for P7,482.89. Unfortunately, by reason mainly of the volume of telegraphic transfers and other papers processed for the day, the bank clerk who prepared the telegraphic transfer committed a typographical error such that the payee on the bank's payment form and on the corresponding cashier's check appeared as "Bank of the Philippine Islands - Account No. 5-806 Craig Lynn Form" instead of "Bank of the Philippine Islands Account No. 5-806 Craig Lynn Ford".

"The following day, 11 September 1986, the said check was delivered by PCIBank Juan Luna to the Bank of the Philippine Islands (hereinafter referred to as BPI), Cebu main office at Magallanes Street, but the latter refused acceptance thereof for the reason that the payee had no account with it. Redelivery of the same check the succeeding day, 12 September 1986, yielded the same results. For this reason, PCIB Juan Luna was constrained to keep the check and wait for someone to claim the same prior to its return to PCIB Makati in the event that it would go on (sic) unclaimed.

"On 26 September 1986, a representative from BPI Jones Avenue Branch, for the first time came to claim the check. The check was then released on that same day without further delay.

"A few days after payment thereof, the petitioner received a demand letter from private respondent's counsel demanding for damages in the sum of US\$1,000.00. In response thereto, the petitioner offered to reimburse the private respondent for his alleged telephone bills which he claimed x x x resulted from his "follow-ups", together with interest on his check at the legal rate. This offer was, however, ignored by the private respondent who opted to instead file his complaint for damages." (Rollo, pp. 12-14)

Trial on the merits ensued. The court a quo found for private respondent and directed petitioner bank to pay the former actual, exemplary and moral damages, including attorney's fees and cost of litigation.

Unsatisfied with the decision, petitioner brought the case on appeal to the Court of Appeals which affirmed in toto the assailed decision.[2] Motion for reconsideration thereof was denied after finding that it raised the same arguments already passed upon by said court.[3]

Petitioner elevated the case to this Court by way of petition for review on certiorari.

Required to Comment, private respondent called the attention of this Court to the alleged fact that petitioner bank received a copy of the April 30, 1992 decision of the Court of Appeals on May 15, 1992, not on May 18, 1992 as alleged by herein petitioner.

Private respondent posits that having received the impugned decision on May 15, 1992, petitioner had only until May 30, 1992 within which to seek a reconsideration thereof. Hence, it was alleged that petitioner's belated filing of its motion for reconsideration on June 2, 1992, rendered the decision sought to be reconsidered final and executory.

In its Reply,[4] petitioner insists that it did in fact receive a copy of the Court of Appeals' decision only on May 18, 1992. As evidence thereof, petitioner submitted to this Court a photocopy of the Notice of Judgments[5] sent to it by the Court of Appeals where it was stamped therein that the notice was received by petitioner's Legal Department on May 18, 1992. Petitioner adds that, granting that its motion for reconsideration was filed out of time, private respondent should be deemed estopped from raising said defect for the first time in this petition for review on certiorari.

We find for the private respondent.

Section 39 of B.P. 129 provides that the period of appeal from a final judgment or decision of any court shall be fifteen (15) days from receipt of the notice thereof. The period provided therein is mandatory and jurisdictional.

An examination of the records reveals that the assailed decision of the Court of Appeals was indeed received by petitioner bank on May 15, 1992, as per registry receipt no. 37427. Two (2) certificates to this effect, one issued by Atty. Tessie L. Gatmaitan, Clerk of Court of the Court of Appeals[6] and another issued by Cebu City Postmaster Miguel G. Escoton,[7] were submitted by private respondent to this Court. Clearly, then, the motion for reconsideration filed by petitioner bank on June 2, 1992, was filed out of time. Apparently, the appellate court itself failed to verify whether petitioner's motion was filed within the reglementary period. Neither did it require private respondent to comment on petitioner's motion. The appellate court instead proceeded to rule on it. It in fact denied the motion on yet another ground, i.e., that no new issue/argument was raised therein which would warrant a reversal of the decision sought to be reconsidered.

Insofar as the Notice of Judgment is concerned, the alleged date of receipt thereof, i.e., May 18, 1992, stamped thereon merely by petitioner's Legal Department, cannot prevail over the date indicated on the registry receipt and the Certification issued by the Postmaster of Cebu City that petitioner received a copy of the assailed decision on May 15, 1992.

We find no basis to rule that private respondent should be deemed estopped to assert before this Court that the assailed decision has acquired finality. Indeed, as noted earlier, the Court of Appeals omitted to check on the timeliness of the filing of petitioner's motion for reconsideration and, in fact, proceeded to rule thereon. Not having been required to comment on the motion, it was only before this Court that private respondent had its first opportunity to raise this issue.

The right to appeal, being merely a statutory privilege, should be exercised only in the manner and in accordance with the provision of the law.[8] It is well-settled that failure to perfect an appeal within the period provided for

by law has the effect of rendering the decision or judgment final and executory. Thus, after the expiration of the period to appeal, with no appeal having been perfected, the judgment is beyond the power of review by any court.[9] Hence, in the case at bar, we rule that with the failure of petitioner to move for a reconsideration of the Court of Appeals decision, dated April 30, 1992, the same has become final and executory and has deprived the appellate court of jurisdiction to rule on petitioner's motion for reconsideration.

IN VIEW WHEREOF, the petition is hereby DISMISSED, the appealed decision having acquired finality. No cost. SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.  
Nocon, J., on leave.

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[1] Penned by Associate Justice Cancio C. Garcia and concurred in by Associate Justice Serafin E. Camilon and Artemon D. Luna.

[2] Rollo, pp. 32-46.

[3] Resolution, dated September 2, 1992, Rollo, p. 48.

[4] Rollo, pp. 69-75.

[5] Annex "A", Reply to Opposition, Rollo, p. 76.

[6] see Annex "2", Comment, Rollo, p. 62.

[7] Rollo, p. 80.

[8] Tiatco v. Civil Service Commission, G.R. No. 100294, December 21, 1992, 216 SCRA 749.

[9] Borillo v. Court of Appeals, G.R. No. 55691, May 21, 1992, 209 SCRA 130.

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