

JESUS G. SANTOS, PETITIONER, VS. COURT OF APPEALS, REGIONAL, TRIAL COURT OF BULACAN, BRANCH 9 AND OMAR H. YAPCHIONGCO, RESPONDENTS.

G.R. No. 128061. September 03, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

JESUS G. SANTOS, petitioner, together with four (4) other Santoses, was sued for damages on 23 May 1979 by Omar H. Yapchiongco before the then Court of First Instance of Malolos, Bulacan, alleging petitioner unlawfully took possession of five (5) parcels of land a piggery farm which were the subject of an agreement to buy and sell between respondent Yapchiongco on one hand and the Santoses on the other, namely, petitioner Jesus G. Santos, Ciriaco C. Santos, Belen G. Santos, Apolonio G. Santos and Alfredo G. Santos.

On 20 June 1991 the trial court dismissed the complaint for lack of merit.[1]

On 6 June 1995 respondent Court of Appeals reversed the trial court and declared petitioner liable for actual damages of P192,260.00, moral damages of P40,000.00, and attorney's fees and litigation expenses of P25,000.00.[2] On 15 June 1995 the decision of the appellate court was sent by registered mail to petitioner's counsel, Atty. Anacleto S. Magno. On the same day, the corresponding notice of registered mail was sent to him. Two (2) other notices were sent to the same addressee on 19 and 21 June 1995. But these circumstances notwithstanding, the mail remained unclaimed and consequently returned to the sender.[3]

On 27 July 1995 respondent court again sent its decision to the same addressee by the same mode but after three (3) notices the decision was returned to the sender for the same reason.[4]

On 27 September 1995 a notice of change of name and address of law firm was sent by petitioner's counsel to respondent court.[5]

On 28 March 1996 the same decision of respondent court was sent anew by registered mail to petitioner's counsel at his present address[6] which he finally received on 3 April 1996.[7] On 17 April 1996 he withdrew his appearance as counsel for petitioners.[8]

On 18 April 1996 petitioner's new counsel, Atty. Lemuel M. Santos, entered his appearance[9] and moved for reconsideration of respondent court's decision of 6 June 1995. Respondent Yapchiongco opposed the motion on the ground that the period for its filing had already expired. He insisted that on the basis of the dates of the notices and the notation "Unclaimed: Return to Sender" stamped on the envelope containing the decision of respondent court,[10] service by registered mail was complete five (5) days from 15 June 1995, and thus commenced the running of the period for reconsideration, the last day being 5 July 1995. Respondent court sustained the opposition and denied the motion on 29 November 1996[11] holding that -

x x x x Section 8, Rule 13 of the Rules of Court which provides that service by registered mail is deemed complete if the addressee fails to claim his mail from the post office within five (5) days from the date of first

notice of the postmaster x x x appellees (were) considered to have received a copy of (its) decision on June 20, 1995 (and) had (only) until July 5, 1995 within which to file a motion for reconsideration x x x [12]

On 21 December 1996 petitioner moved for leave to admit his motion for reconsideration raising the argument that it was filed on the fifteenth (15th) day from actual receipt of the decision. On 30 January 1997 respondent court likewise denied reconsideration based on the finding that the motion was in reality a second motion for reconsideration which was prohibited under Sec. 6, Rule 9, of its Revised Internal Rules.[13]

Did respondent court commit grave abuse of discretion in denying both motions?

Petitioner asseverates that there is no proof that his former counsel was ever notified of the registered mails. Since a copy of respondent court's decision was actually received by his former counsel only on 3 April 1996 the filing of the motion for reconsideration on 18 April 1996 was certainly within the fifteen (15)-day reglementary period. What is applicable, petitioner advances, is the general rule in Sec. 8, Rule 13, that "service by registered mail is complete upon actual receipt by the addressee." Furthermore, he points out that his first motion for reconsideration deals with the merits of the appeal while his second motion for reconsideration concerns the technical issue of timeliness of seeking reconsideration and therefore the latter is not strictly a prohibited pleading.

Aside from maintaining his opposition to the motion for reconsideration, respondent disputes petitioner's claim of lack of notice by relying on the certification issued by Postmaster Renato N. Endaya of the Manila Central Post Office declaring that notices of the registered letter were duly issued to petitioner's former counsel on 15, 19 and 21 June 1995.[14]

Respondent Court-'of Appeals, indeed, committed grave abuse of discretion. Section 8, Rule 13, of the Rules of Court provides -

Sec. 8. Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. 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 (underscoring supplied).

It may, be observed that the rule on service by registered mail contemplates two (2) situations: first, actual service the completeness of which is determined upon receipt by the addressee of the registered mail and, second, constructive service the completeness of which is determined, upon the expiration of five (5) days from the date of first notice of the postmaster without the addressee having claimed the registered mail. The second circumstance was appreciated by respondent court to obtain in the present case. Yet for completeness of constructive service there must be conclusive proof that petitioner's former counsel or somebody acting on his behalf was duly notified or had actually received the notice, referring to the postmaster's certification to that effect[15] Here, private respondent failed to present such proof before respondent court but only did so in the present proceedings. Let us analyze the postmaster's certification -

This is to certify that according to the record(s) of this Office Registered Letter No. 71154 (with Delivery No. 30175) sent by (the) Court of Appeals, Manila on June 15, 1995 addressed to Atty. Anacieto S. Magno of 208 Associated Bank Bldg., Ermita, Manila was returned to sender as unclaimed mail on July 4, 1995 after the lapse of reglementary period provided for under postal regulations following the issuance of notices on the dates hereunder indicated (underscoring supplied):

First Notice - June 15, 1995

Second Notice - June 19, 1995

Third Notice - June 21, 1995[16]

Obviously, the certification was procured only during the pendency of this petition or specifically on 29 January 1998. This act amounts to piece-meal introduction of evidence which is not allowed.[17] Even if we tolerate the procedural misstep, the certification accomplishes nothing because as early as 24 November 1972, in *Hernandez v. Navarro*,^[18] we already considered this kind of certification as insufficient. Thus -

x x x x it is but proper to take judicial notice of the fact that the Postal Manual of the Philippines sets out in unmistakable terms the procedure that the post office is supposed to observe not only in the delivery of notices of registered mail but also in providing proof of such delivery x x x x

Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and whom the delivery thereof was made. Accordingly, the certification in the case at bar that the first and second notices addressed to Atty. Narvasa had been "issued" can hardly suffice the requirements of equity and justice. It was incumbent upon the post office to further certify that said notices were reportedly received. When there are several related acts supposed to be performed by a public officer or employee in regard to a particular matter, the presumption of regularity in the performance of official functions arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them performed is available under the office regulations to the officer making the certification. In other words, the omission of some of the acts in the certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed x x x x^[19] (underscoring supplied).

As between the claim of non-receipt of notices of registered mail by a party and the assertion of an official whose duty is to send notices, which assertion is fortified by the presumption that official duty has been regularly performed,^[20] the choice is not difficult to make. But then the contents of the official's certification may spell the difference. For, it was not enough for Postmaster Endaya to have certified that the notices were issued because this is just a prelude to service by registered mail. And definitely, it would not be in consonance with the demands of due process and equity for us to automatically conclude that from the word "issued" alone, the notice was in fact received by the addressee or somebody acting on his behalf and on the same date of the notice. The postmaster should have included in his certification the manner, date and the recipient of the delivery. *Hernandez* need not overemphasize the point.

The finding of respondent court that petitioner and his coappellees were considered to have received a copy of the decision on 20 June 1995 or five (5) days from the date of first notice of the postmaster, in the absence of conclusive proof as it merely relied on the dates of the notices and the notation "Unclaimed: Return to Sender" stamped on the envelope containing its decision, was clearly arrived at arbitrarily. Consequently, certiorari lies.

With this conclusion, it is no longer necessary to dwell on the other issue raised.

WHEREFORE, the petition is GRANTED. The resolutions of respondent Court of Appeals dated 29 November 1996 denying petitioner Jesus G. Santos' motion for reconsideration and 30 January 1997 also denying his motion for leave to admit motion for reconsideration, are SET ASIDE. Respondent court is directed to act accordingly on petitioner's motion for reconsideration on the merits and to proceed in the disposition thereof with dispatch.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Panganiban and Quisumbing, JJ., concur.

[1] Decision penned by Judge D. Roy A. Masadao Jr., RTC-Br. 9, Malolos, Bulacan, p. 8; CA Rollo, p. 27.

[2] Decision penned by Justice Consuelo Ynares-Santiago, concurred in by Justices Antonio M. Martinez and Ruben T. -Reyes; CA Rollo, p. 42.

[3] Annex "C-1," Petition; Rollo, p. 24.

[4] Annex "D-1," Petition; id., p. 26.

[5] Annex "E," Petition; id., p. 27.

[6] Annex "H," Petition; id., P. 32.

[7] Annex "K," Petition; id., p. 37.

[8] Annex "I," Petition; id., pp. 33-34.

[9] Annex "J", Petition; id., pp. 35-36.

[10] See Note 3.

[11] Rollo, p. 18.

[12] Id., p. 106.

[13] Id., p. 21.

[14] Id., p. 131.

[15] See *Barrameda v. Castillo*, No. L-27211, 6 July 1977, 78 SCRA 1.

[16] See Note 14.

[17] *Garrido v. Court of Appeals*, G. R. No. 101262, 14 September 1994, 236 SCRA 450.

[18] No. L-28296, 48 SCRA 44, 62-65, cited in *Johnson & Johnson (Phils.), Inc. v. Court Appeals*, G. R. No. 99434, 24 September 1991, 201 SCRA 768.

[19] Id., pp. 64-65.

[20] Section 3 (m), Rule 131, of the Revised Rules on Evidence.

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