

WILLIAM C. PELEIDER, PLAINTIFF-APPELLANT VS. C. N. HODGES, DEFENDANT-APPELLEE. MOTION TO DISMISS AN APPEAL.

G.R. No. 17683. September 26, 1962

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SUMMARY

This concerns a motion requesting the Supreme Court to decide a motion to dismiss the appeal on this case on the ground that the order denying a petition for relief is not appealable. The defendant-appellee claim that the order denying a motion for relief is not appealable because the period for appeal has already expired.

Judgment appealed from is set aside and the case remanded for further proceedings.

RULING

The judgment rendered by the court upon default had already become final because the 30-day period for the appeal had already expired. However, Rule 38 allows the filing of a motion for relief, and the denial of such motion is appealable because it is a final order. (Rule 41, Sec. 2). As the order denying the motion for relief has been set aside, the judgment becomes open to review. Under the Rules, the original judgment has become unappealable by the expiration of the 30-day period: nevertheless the final judgment was subject to the motion for relief, and if granted, necessarily the judgment has to be set aside.

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