

**PAN-ASIATIC TRAVEL CORP., PETITIONER, VS. COURT OF APPEALS,
HON. AMANTE S. PURISIMA, AS PRESIDING JUDGE, COURT OF FIRST
INSTANCE OF MANILA, BRANCH VII, CITY SHERIFF OF MANILA, A...**

G.R. No. 62781. August 19, 1988

Ponente: CORTES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-62781/>

CORTES, J.:

On March 21, 1980, Destinations Travel Phil., Inc. (hereafter, DESTINATIONS) filed a complaint against Pan-Asiatic Travel Corp. (hereafter, PAN-ASIATIC) for the refund of the price of alleged unutilized airplane tickets issued by the latter for passengers recruited by the former, which refund allegedly totalled P48,742.33.

On June 4, 1980, DESTINATIONS filed a Motion to Declare Defendant in Default. After receipt of said Motion, PAN-ASIATIC, by way of special appearance, filed a Motion to Dismiss for the sole purpose of objecting to the trial court's jurisdiction over its person on the ground that it was not properly served with summons. Two days after the filing of the Motion to Dismiss, DESTINATIONS filed on June 25, 1980 an amended complaint increasing its claim for reimbursement of refunds to P103,866.35. At the hearing of said Motion to Dismiss, PAN-ASIATIC was informed of the filing of the amended complaint; hence, it withdrew its Motion to Dismiss.

Subsequently, a copy of the amended complaint and summons were served on PAN-ASIATIC. PAN-ASIATIC filed several motions for extension of time within which to file its answer. However, instead of filing an Answer, it filed a Motion for Bill of Particulars which was granted by the trial court.

DESTINATIONS did not file a Bill of Particulars. Instead, on May 9, 1981, it served and filed a Motion to Admit Attached "Second Amended Complaint" which Second Amended Complaint detailed the causes of action, to wit:

a.

Claim for reimbursement of refunds for unutilized tickets (Paragraphs 5 and 6 of the Complaint)

P 86,459.85

b.

Claim for commissions (Paragraphs 7 and 8 of the Complaint)

2,077.33

c.

Claim for incentives (Paragraphs 9 and 10 of the Complaint)

5,868.57

d.

Claim for reimbursement (Paragraphs 11-17 of the Complaint)

5,868.57

Total Claims (Paragraph 18)

P103,866.35

(Should be

P100,274.32)

Said Second Amended Complaint was admitted by the trial judge in an Order dated May 28, 1981, which Order was served on petitioner on June 9, 1981. However, no new summons was served on petitioner. On July 15, 1981, DESTINATIONS filed a Motion to Declare Defendant in Default which was granted. Then, trial was held ex parte. On January 4, 1982 the trial court rendered judgment by default against PAN-ASIATIC, which received a copy of the decision on January 25, 1982.

On February 24, 1982, petitioner filed its Omnibus Motion to Lift Order of Default and to Vacate Judgment by Default, alleging that the trial court's decision was rendered without jurisdiction because petitioner was never served with summons on the Second Amended Complaint, and that it was deprived of its day in court on account of fraud, accident, mistake and/or excusable negligence. The motion was denied by the trial judge in an Order dated March 31, 1982. A copy of the Order was served on petitioner on April 2, 1982. On the same date, April 2, 1982, PAN-ASIATIC filed a Motion for Reconsideration of the Order of March 31. While the Motion for Reconsideration was pending, petitioner filed on April 30, 1982 its notice of appeal, appeal bond and record on appeal, and at the same time withdrew its Motion for Reconsideration which withdrawal was granted by the trial court.

On May 19, 1982, DESTINATIONS filed a Motion for Execution which the trial court granted on June 15, 1982. Meanwhile, the appeal of PAN-ASIATIC was dismissed on the ground that the Decision of January 4, 1982 had become final and executory and that the appeal was filed beyond the reglementary period.

On July 7, 1982, PAN-ASIATIC filed a petition for certiorari and mandamus before the Court of Appeals, alleging that the trial court acted without jurisdiction in dismissing the appeal and in issuing the writ of execution. The appellate tribunal dismissed the petition. Hence, this present action to which this Court gave due course on November 23, 1983.

The parties present the following issues for resolution by the Court:

I

WHETHER OR NOT THE TRIAL COURT HAD JURISDICTION OVER THE PERSON OF PETITIONER WHEN IT RENDERED THE DECISION OF JANUARY 4, 1982

II

WHETHER OR NOT PETITIONER'S APPEAL IN CIVIL CASE NO. 130608 WAS FILED WITHIN THE REGLEMENTARY PERIOD

- Petitioner contends that the Second Amended Complaint introduced new causes of action not alleged in the original nor in the first amended complaint. Hence, it is argued that new summons had to be served on petitioner, for the court to acquire jurisdiction over its (petitioner's) person.

The Second Amended Complaint does introduce new causes of action. For while in the first amended complaint, DESTINATIONS prayed for reimbursement of refunds for unutilized airplane tickets only, in the Second Amended Complaint, there were claims for commissions and incentives, although the total amount of the claims was the same as the amount claimed in the first amended complaint.

But was there need to serve new summons on PAN-ASIATIC?

In the 1923 case of *Atkins, Kroll and Co. v. Domingo*, [44 Phil. 681 (1924)], this Court had occasion to lay down the rule that if the defendant had appeared in the action, service of an amended complaint (which introduces a new cause of action) in the same manner as any pleading or motion is sufficient, even if no new summons is served. This ruling was reiterated in the case of *Ong Peng v. Custodio* [G.R. No. L-14911, March 25, 1961, 1 SCRA 780] in more categorical terms:

If he (defendant) had not yet appeared, a new summons must be served upon him as regards the amended complaint, otherwise the court would have no power to try the new causes of action alleged therein, unless he had lodged an answer thereto. Simply sending a copy of the amended complaint to the defendant by registered mail is not equivalent to service of summons in such case. However, if the defendant had already appeared in response to the first summons, so that he was already in court when the amended complaint was filed, then ordinary service of that pleading upon him, personally or by mail, would be sufficient, and no new summons need be served upon him.

In the instant case, summons on the first amended complaint was properly served on PAN-ASIATIC. After which, the company filed several motions for extension of time within which to file responsive pleading, and then a Motion for Bill of Particulars, all of which motions were granted by the trial court. With the filing of these motions, PAN-ASIATIC had effectively appeared in the case and voluntarily submitted itself to the jurisdiction of the court. Hence, no new summons on the Second Amended Complaint was necessary, ordinary service being sufficient.

In cases where a complaint is amended, the Rules of Court provide for the period within which the defendant must answer thus:

SEC. 3. Answer to amended complaint. - If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from notice of the order admitting the amended complaint. An answer filed before the amendment shall stand as an answer to the amended complaint, unless a new answer is filed within ten (10) days from notice of service as herein provided.

There is no question that PAN-ASIATIC was properly served with a copy of the Second Amended Complaint and that on June 9, 1981, it received a copy of the Order admitting said Second Amended Complaint. Since it failed to serve and file its Answer within fifteen (15) days from June 9, 1981, the trial court was correct in declaring the company in default, in holding trial ex parte, and in eventually rendering judgment by default.

- Anent the second issue, petitioner contends that its Omnibus Motion to Lift Order of Default and to Vacate Judgment by Default is in the nature of a Petition for Relief under Rule 38. Hence, the Order denying the Omnibus Motion which was received by petitioner on April 2, 1982, is itself appealable. PAN-ASIATIC thus argues that it had thirty (30) days from April 2, 1982 within which to appeal said Order. Since it filed its notice

of appeal, appeal bond and record on appeal on April 30, 1982, then, it is claimed, the appeal was perfected on time.

Petitioner's premise is incorrect. The Omnibus Motion to Lift Order of Default and to Vacate Judgment is in the nature of a Motion for New Trial under Rule 37, and not a Petition for Relief under Rule 38.

Be it recalled that a copy of the Judgment by Default was received by PAN-ASIATIC on January 25, 1982. The Omnibus Motion was filed on February 24, 1982, which was within the period to appeal. Since the motion was filed before the decision became final, it could not be a Petition for Relief under Rule 38, but a Motion for New Trial.

. . . It is a well-known rule that (a petition for relief under Rule 38) may be filed only when the order or judgment from which it is sought has already become final and executory (*Veluz vs. J.P. of Sariaya*, 42 Phil 557; *Anuran vs. Aquino*, 38 Phil. 29; *Quirino vs. PNB*, 101 Phil. 705; 54 Off. Gaz. [14] 4248), so that as long as the judgment against which relief is sought has not yet become final, the petition aforesaid is not available as a remedy. Instead, the aggrieved party may file a motion for new trial, under Rule 37 in courts of first instance, and under section 16, Rule 4, in inferior courts, in order that the court may correct any errors, mistakes or injustices committed in its judgment. [*Punzalan v. Papica, et al.*, 107 Phil 246 (1960).]

Since the Omnibus Motion is in the nature of a Motion for New Trial, the Order denying said motion is NOT itself appealable. However, the time during which the motion was pending must be deducted from the thirty-day appeal period, pursuant to section 3, Rule 41 which reads:

SEC. 3. How appeal is taken. - Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal. The time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, unless such motion fails to satisfy the requirements of Rule 37.

But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion.

From January 25, 1982 (the date when PAN-ASIATIC received a copy of the Judgment by Default) to February 24, 1982 (the date when the Omnibus Motion was filed) is twenty-nine days. Petitioner therefore had one more day from April 2, 1982 (the day when PAN-ASIATIC received a copy of the Order denying the Omnibus Motion), within which to appeal. Instead of appealing, however, petitioner filed on the same day, April 2, 1982 a motion for reconsideration of the Order, only to withdraw it on April 30, 1982, as it filed its notice of appeal, appeal bond and record on appeal.

Since the motion for reconsideration was withdrawn, then it is as if no motion for reconsideration was ever filed. Thus, the one day remaining period remained unchanged. Clearly, therefore, the appeal interposed on April 30, 1982 was filed out of time.

WHEREFORE, the petition is hereby DISMISSED. Costs against the petitioner.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.