

**THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY,
PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE
COURT, HON. JUDGE HERMINIO C. MARIANO, BRANCH IV,
REGIONAL TRIAL COURT OF...**

G.R. No. 64334. May 21, 1987

Ponente: YAP, J.

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YAP, J.:

Under review is the decision of the Intermediate Appellate Court, promulgated on May 4, 1983, refusing to quash the writ of execution issued by the Regional Trial Court of Manila and to compel said court to give due course to petitioner's appeal.

The case stemmed from a complaint filed in March 1979 before the then Court of First Instance of Manila by Indalecio Casasola, the herein private respondent, against Norman Guerrero and the herein petitioner, Philippine American General Insurance Co. (Philamgen for short), as defendants, for the rescission, with damages, of a contract between plaintiff and defendant Guerrero for the construction of a 7-door apartment, in which a performance bond was posted by Philamgen. In his answer, Guerrero set up the defense that the contract was not breached by him, but that Casasola made substantial alterations in the plans, etc. Philamgen, for its part, adopted the defense of Guerrero, and also filed a cross-claim against him on the indemnity bond. After trial, the court a quo, rendered its decision, dated October 16, 1981, disposing:

"WHEREFORE, judgment is hereby rendered in Civil Case No. 122920:

A. Rescinding the Deed of Agreement, dated June 2, 1978, Exhibit A;

B. Ordering the defendant Norman Guerrero and Philamgen to pay plaintiff actual damages in the sum of P129,430.00;

C. Ordering the defendant Norman Guerrero to pay plaintiff liquidated damages of P300.00 per day effective December 15, 1978 and until July 16, 1979, the date when the preliminary injunction was issued;

D. Ordering defendant Phil-amgen to pay plaintiff the amount of the Surety Bond equivalent to P120,000.00;

E. Ordering the defendants Norman Guerrero and Philamgen to pay plaintiff moral damages in the sum of P50,000.00;

F. Ordering the defendants to pay plaintiff exemplary damages in the sum of P40,000.00;

G. Ordering defendants to pay plaintiff the sum of P30,000.00 as and for attorney's fees;

H. On the cross-claim of defendant Philamgen against its co-defendant Guerrero; ordering the latter to pay to the former the amount of the Indemnity Bond, Exh. 1 Philamgen in the sum of P120,000.00, with interest thereon at the rate of 12% per annum, starting from date of demand, until paid; and

I. Dismissing the complaint docketed as civil Case No. 123784, entitled 'Norman Guerrero vs. I. Casasola'.

With costs against the defendants."

A copy of the decision was served on petitioner on October 28, 1981, and on November 25, 1981, or 28 days after, petitioner filed a motion for reconsideration. While said motion was pending resolution, petitioner notified the court on March 31, 1982, of a change of counsel from De Vera, Fernandez, Dino and Cualteros to De Vera and Dino Law Office, whose address was Room 208, CMI Building, Ayala Avenue, Makati, Metro Manila.

On November 4, 1982, the motion for reconsideration was denied, and on November 12, 1982, a copy of the denial order was served on the law office of Fernandez, Cualteros and Associates which continued to hold office at the old address. The said law office transmitted the order to De Vera and Dilno Law Office, which received the same on November 15, 1982. On November 16, 1982, a notice of appeal was filed by De Vera and Dino Law Office. At the same time, a motion for extension of time to file the record of appeal was also filed.

Alleging that the appeal from the trial court's decision was filed out of time, or two days late, the plaintiff filed a motion for the execution of the decision. In its opposition to the motion for execution, the petitioner alleged that a mistake was committed by the typist in copying the date November 12, 1982 which was the date of receipt stamped on the denial order by the law office of Fernandez, Cualteros and Associates, rather than the date of its actual receipt (i.e. November 15, 1982) by De Vera and Dino Law Office. The trial court, finding the petitioner's appeal late by two days, issued the writ of execution.

Petitioner filed a petition with the Intermediate Appellate Court to quash the writ of execution and compel the trial court to certify the appeal to the appellate court. The petition, however, was dismissed by the Intermediate Appellate Court, which relied on the express statement in the notice of appeal that the denial order was received by petitioner on November 12, 1982, which meant that the appeal was filed two days late. Hence, this appeal.

As a threshold issue, private respondent questions the timeliness of the instant petition. He contends that the petition is late by fourteen days. We do not agree. If a motion for reconsideration is filed, the 15-day period within which to appeal the decision of the Intermediate Appellate Court (now Court of Appeals) to the Supreme Court is reckoned from the date the party who intends to appeal receives the order denying the motion for reconsideration.

In assailing the decision of the respondent Intermediate Appellate Court, petitioner maintains that it was error for respondent court to refuse to consider petitioner's evidence that the actual date of receipt by it of the order denying the motion for reconsideration of the lower court's decision was November 15, 1982, not November 12, 1982, as mistakenly stated in the Notice of Appeal. Invoking Section 2 of Rule 129 of the Rules of Court, petitioner contends that a party is allowed to contradict an admission in its pleading if it is shown that the same was made through palpable mistake.

We find merit in the petition. Apart from the showing that notice of the trial court's order denying petitioner's motion for reconsideration was actually received by petitioner on November 15, 1982, the fact that the order was sent to the wrong address was apparently not considered by both the respondent appellate court and the trial court. This controversy would not have arisen had the trial court not been negligent in sending the order denying the motion for reconsideration to the wrong address. We find it inequitable for the court to insist on the strict observance of the rules, when it has itself failed to do so.

In both his comment on the petition and on his brief, private respondent has made much of the fact that petitioner has already admitted the finality of the decision from which it is seeking to appeal, by filing with the Regional Trial Court of Manila on April 13, 1983, a complaint for consignment (Civil Case No. 83-17029) whereby it deposited the amount of P244,715.00 as settlement of its obligations under the decision of the court in Civil Case

No. 122920. In effect, it would appear that petitioner has impliedly abandoned its appeal. We do not however find it necessary or proper to rule on this issue, especially since the records of the consignment case are not before us. It would be more expedient for the matter to be threshed out by the parties and adjudicated by the Court of Appeals when the appeal of petitioner from the decision of the court a quo in Civil Case No. 122920 is given due course.

WHEREFORE, judgment is hereby rendered setting aside the decision of respondent Intermediate Court of Appeals of May 4, 1983, and ordering the Regional Trial Court of Manila to certify the appeal of petitioner from the trial court's decision in Civil Case No. 122920 to the Court of Appeals.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, and Sarmiento, JJ., concur.

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