

**GERMAN MANAGEMENT & SERVICES, INC., PETITIONER, VS.
HON. COURT OF APPEALS, HON. ARTEMON D. LUNA, RTC JUDGE,
MANILA, BRANCH XXXII, HON. BENJAMIN C. TIONGSON, MTC
JUDGE, MANILA, B...**

G.R. No. 77671. July 17, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision of respondent Court of Appeals dated February 27, 1987, which dismissed the appeal by petitioner therein on the ground of tardy filing.

Originally, the case arose from an unlawful detainer suit twice filed by petitioner German Management and Services, Inc. (GERMAN, for short) against private respondent Lessee Ruperto Eltanal. The first one was filed before the then City Court of Manila on February 21, 1972 docketed as Civil Case No. 209946 which was eventually dismissed. On appeal to the then Court of First Instance of Manila, the lower court's decision was affirmed. Said decision became final and executory. However, on February 9, 1984 or almost nine (9) years later, petitioner filed the second unlawful detainer case against private respondent invoking the very grounds relied upon in the previous case. The Metropolitan Trial Court, on January 9, 1986 dismissed the case holding that Batas Pambansa Blg. 877 prohibits the ejectment of lessee at the end of each month; the case is barred by prior judgment; lessee did not sub-lease the leased premises; and that the findings of the then City Court of Manila in Civil Case No. 209946 apply to the present case. On appeal to the Regional Trial Court, it affirmed the appealed decision in toto.

Petitioner received copy of the aforementioned decision on April 26, 1986 and filed a motion for reconsideration thereof on April 30, 1986, theorizing that the case is not within the ambit of Batas Pambansa Blg. 877 because a month-to-month lease is considered to be for a definite or fixed period. But, the respondent court disagreed. On May 7, 1986, it came out with its order denying subject motion for reconsideration. Copy of the order of denial was received for petitioner on May 19, 1986. So, what counsel for petitioner did next was to go before the then Intermediate Appellate court on a petition for review. Records show that the petition under consideration was filed and docketed on June 3, 1986.

Petitioner maintains that the law relied upon by respondent lessee, Batas Pambansa Blg. 877, is inapplicable to the lease sued upon which is on a "month to month basis terminable at the end of every month"; and, therefore, it can eject under Article 1673(1), New Civil Code on the ground of expiration of the lease.

Petitioner submits that

"1. RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE PETITION FOR REVIEW WAS TARDILY FILED; and

"2. RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT A LEASE CONTRACT ON

A MONTH TO MONTH BASIS IS FOR A DEFINITE PERIOD.”

(p. 11, Rollo)

The petition is devoid of merit.

As had already been held in the case of *Lacsamana vs. IAC*, 143 SCRA 643:

“The final judgment or order of a regional trial court in an appeal from the final judgment or order of a metropolitan trial court, municipal trial court and municipal circuit trial court, may be appealed to the Court of Appeals through a petition for review in accordance with Section 22 of BP No. 129 and Section 22 (b) of the Interim Rules, or to this Court through a petition for review on certiorari in accordance with Rule 45 of the Rules of Court and Section 25 of the Interim Rules. The reason for extending the period for the filing of a record on appeal is also applicable to the filing of a petition for review with the Court of Appeals. The period for filing a petition for review is fifteen days. If a motion for reconsideration is filed with and denied by a regional trial court, the movant has only remaining period within which to file a petition for review. Hence, it may be necessary to file a motion with the Court of Appeals for extension of time to file such petition for review.”

(pp. 5-6 Decision; pp. 22-23, Rollo)

The respondent court correctly ruled when it said that:

“xxx the petition was tardily presented. It was filed beyond the fifteen-day period to appeal, within which a petition for review is to be brought, pursuant to CA en banc Resolution of August 12, 1971, the prevailing rule at the time of the filing of the instant petition on June 3, 1986. As aptly pointed out by respondents, from April 26, 1986, when petitioner moved to reconsider said decision, four (4) days had run; leaving only eleven (11) days of the reglementary period for appealing or filing a petition for review. In accordance with Section 3, Rule 41, Revised Rules of Court, such motion for reconsideration interrupted the running of the period to appeal but the same resumed to run on May 19, 1986, the date of receipt for petitioner of the Order of May 7, 1986 denying its aforesaid motion for reconsideration, so that petitioner had only until May 30, 1986 to bring its petition for review before the then Intermediate Appellate Court. Unfortunately, as earlier stated, the petition under scrutiny was filed only on June 3, 1986, at a time when subject decision of the respondent court had already become final and executory.”

(p. 5, Decision; p. 22, Rollo)

It appears that petitioner never asked for an extension of time to file the petition in the Court of Appeals. Consequently, it was no longer within the jurisdiction of the respondent court to review the final and executory decision in question and to pass upon the merits of the petition. (*Garcia vs. Echiverri*, G.R. No. 44455, October 23, 1984).

PREMISES CONSIDERED, the petition is hereby DENIED for utter lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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