SUPREME COURT
FIRST DIVISION

ANNIE TAN,
***Petitioner*,**

-versus-

G.R. No. 130314
September 22, 1998

COURT OF APPEALS and BLOOMBERRY EXPORT MANUFACTURING, INC.,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Before a trial court, a Motion for Reconsideration that does not contain the requisite notice of hearing does not toll the running of the period of appeal. It is a mere scrap of paper which the trial court and the opposite party may ignore.

The Case

Petitioner seeks to set aside the August 22, 1997 Decision of the Court of Appeals[1] in CA-GR SP No. 43293, the dispositive portion of which reads:[2]

> "WHEREFORE, [i]n view of all the foregoing considerations, the petition for certiorari and prohibition is granted. The Order dated October 4, 1996, of public respondent is hereby SET ASIDE and public respondent is ordered to desist from further proceeding with the hearing of the Motion for Reconsideration. The Decision dated July 18, 1996, of public respondent is declared final and executory."

The Facts

Petitioner Annie Tan, doing business under the name and style "AJ & T Trading," leased a portion of the ground floor of her building, more specifically described as Stall No. 623, Carvajal Street, Binondo, Manila, in favor of Bloomberry Export Manufacturing, Inc. The lease was for a period of five years starting on February 17, 1995 and ending on February 17, 2000, at a monthly rental of P20,000 for the first three years.[3] For several alleged violations of the lease contract, petitioner filed against private respondent a complaint for ejectment, docketed as Civil Case No. 148798-CV.[4] As its rental payment was refused by petitioner, private respondent instituted on July 13, 1995 a case for consignation, docketed as Civil Case No. 148814-CV.[5]

The two cases were consolidated. In due course, the Metropolitan Trial Court (MTC) of Manila, Branch I, rendered on February 1, 1996 a Decision[6] which disposed as follows:[7]

> "WHEREFORE, in Civil Case No. 148798-CV for [b]reach of [c]ontract, failure to pay rentals on time, encroachment on the adjacent premises without the consent of [petitioner], [she] failed to substantiate her case with that degree of proof required by law. For this reason, except for the costs of suit, this Court hereby orders the dismissal of the complaint of [petitioner]. The counterclaim and damages sought by [private respondent are] likewise ordered dismissed. The case for consignation in Civil Case No. 148814-CV has become moot and academic for failure of [petitioner] to appeal the decision of the Metropolitan [Trial] Court, Branch 15, Manila, allowing the [private respondent] to consign rental payments to the Court of Manila. Besides, the [c]omplaint for consignation being in conformity with law,

> [private respondent] is allowed to continue consigning with this Court all rentals that [may be] due."

On appeal, the Regional Trial Court (RTC) of Manila, Branch 2, in its Decision dated July 18, 1996, affirmed the aforementioned MTC Decision thus:

> "WHEREFORE, finding no cogent reasons to disturb the joint decision dated February 1, 1996 of the Metropolitan Trial Court of Manila, Branch 1, the Court sustains and affirms in toto the said decision."

Respondent Court related the incidents that ensued, as follows:[8]

> "From the Decision of the [RTC] dated July 18, 1996, [petitioner] filed a Motion for Reconsideration of the aforesaid decision. The Motion for Reconsideration did not contain any notice of hearing as required under Section 5, Rule 15 of the Revised Rules of Court.
>
> "On August 23, 1996, [private respondent] filed an ex-parte Motion for Entry of Judgment upon the ground that said motion for reconsideration is a mere scrap of paper which should not merit the attention of the [RTC] and in support thereof, cited the case of Traders Royal Bank vs. Court of Appeals, 208 SCRA 199. [Private respondent] contends that since the Motion for Reconsideration is a mere scrap of paper aside from being pro forma, said Motion for Reconsideration did not toll the period of appeal[;] hence, the Decision dated July 18, 1996, had become final and executory.
>
> "On September 3, 1996, [petitioner] filed a Motion to Set for Hearing the Motion for Reconsideration which was vehemently opposed by [private respondent] on September 23, 1996.
>
> "On October 4, 1996, [the RTC] issued an Order granting the motion to set for hearing [petitioner's] Motion for Reconsideration and set[ting] the hearing [for] October 21, 1996, at 8:30 o'clock in the morning. On October 20, 1996, [private respondent] filed a Motion for Reconsideration of the

> Order dated October 4, 1996, which was set for hearing on October 25, 1996.
>
> "On November 11, 1996, [the RTC] issued an Order denying [private respondent's] Motion for Reconsideration. Hence, the Petition for Certiorari and Prohibition."

In the assailed Decision, Respondent Court of Appeals reversed the trial court's Order setting for hearing petitioner's Motion for Reconsideration.

The Ruling of the Court of Appeals

Respondent Court held that the trial court acted with grave abuse of discretion in setting for hearing petitioner's Motion for Reconsideration, notwithstanding the fact that said Motion contained no notice of hearing.

Citing a litany of cases, it ruled that petitioner's failure to comply with the mandatory provisions of Sections 4 and 5, Rule 15 of the Rules of Court, reduced her motion to a mere scrap of paper which did not merit the attention of the court. Respondent Court also held that those cases in which the Court allowed a motion for reconsideration that had not been set for hearing — Galvez vs. Court of Appeals,[9] Tamargo vs. Court of Appeals[10] and Que vs. Intermediate Appellate Court[11] — were inapplicable.

Respondent Court held that the facts in Galvez drastically differ from those in the present case. Galvez involved a motion to withdraw the information — not a motion for reconsideration — that was filed ex parte before the arraignment of the accused. In that case, the Court held that there was no imperative need of notice and hearing because, first, the withdrawal of an information rests on the discretion of the trial court; and, second, the accused was not placed in jeopardy. On the other hand, the subject of the present controversy is a motion for reconsideration directed against the Decision of the RTC; thus, the motion affects the period to perfect an appeal.

Que is not applicable either. In said case, the trial court set the Motion for Reconsideration (MR) for hearing, which was actually

attended by the counsel for the adverse party. This was not so in the case at bar; petitioner's MR was set for hearing, because she belatedly moved for it upon the filing of private respondent's Motion for Entry of Judgment. Likewise, the present case differs from Tamargo, wherein the application of the aforesaid mandatory provisions was suspended. The Court did so in order to give substantial justice to the petitioner and in view of the nature of the issues raised which were found to be highly meritorious.

Hence, this petition.[12]

The Issue

In her Memorandum,[13] petitioner presents a fairly accurate statement of the main issue to be resolved:[14]

> "Whether the omission [through] inadvertence of a notice of hearing of a motion for reconsideration filed with the trial court is a fatal defect which did not stop the running of the period to appeal, thus rendering the assailed decision final [and] executory."

The Court's Ruling

The petition is devoid of merit.

Sole Issue: Omission of Notice of Hearing Fatal

Petitioner admits the categorical and mandatory character of the directives in Sections 4 and 5 of Rule 15 of the Rules of Court, which read:[15]

> "SEC. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> "Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days

before the date of hearing, unless the court for good cause sets the hearing on shorter notice.(4a)

"SEC. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.(5a)"

In De la Peña vs. De la Peña,[16] the Court presented a resume of earlier decisions regarding the necessity of the notice of hearing in motions for reconsideration:

"In Pojas vs. Gozo-Dadole,[17] we had occasion to rule on the issue of whether a motion for reconsideration without any notice of hearing tolls the running of the prescriptive period. In Pojas, petitioner received copy of the decision in Civil Case No. 3430 of the Regional Trial Court of Tagbilaran on 15 April 1986. The decision being adverse to him petitioner filed a motion for reconsideration. For failing to mention the date when the motion was to be resolved as required in Sec. 5, Rule 15, of the Rules of Court, the motion for reconsideration was denied. A second motion for reconsideration met the same fate. On 2 July 1986 petitioner filed a notice of appeal but the same was denied for being filed out of time as 'the motion for reconsideration which the Court ruled as pro forma did not stop the running of the 15-day period to appeal.'[18]

"In resolving the issue of whether there was grave abuse of discretion in denying petitioner's notice of appeal, this Court ruled —

'Section 4 of Rule 15 of the Rules of Court requires that notice of motion be served by the movant on all parties concerned at least three (3) days before its hearing. Section 5 of the same Rule provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion. A motion which does not meet the requirements of Section 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper which the clerk has no right to receive and

> the court has no authority to act upon. Service of copy of a motion containing notice of the time and place of hearing of said motion is a mandatory requirement and the failure of the movant to comply with said requirements renders his motion fatally defective.'[19]

"In New Japan Motors, Inc. vs. Perucho,[20] defendant filed a motion for reconsideration which did not contain any notice of hearing. In a petition for certiorari, we affirmed the lower court in ruling that a motion for reconsideration that did not contain a notice of hearing was a useless scrap of paper. We held further —

> 'Under Sections 4 and 5 of Rule 15 of the Rules of Court, a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that "(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof." It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rules 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.[21]

"In Sembrano vs. Ramirez,[22] we declared that —

> '(A) motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for reconsideration. Without such notice, the motion is pro forma. And a pro forma motion for reconsideration does not suspend the running of the period to appeal.'

"In In Re: Almacen,[23] defendant lost his case in the lower court. His counsel then filed a motion for reconsideration but

did not notify the adverse counsel of the time and place of hearing of said motion. The Court of Appeals dismissed the motion for the reason that 'the motion for reconsideration dated July 5, 1966 does not contain a notice of time and place of hearing thereof and is, therefore a useless piece of paper which did not interrupt the running of the period to appeal, and, consequently, the appeal was perfected out of time.' When the case was brought to us, we reminded counsel for the defendant that —

> 'As a law practitioner who was admitted to the bar as far back as 1941, Atty. Almacen knew — or ought to have known — that [for] a motion for reconsideration to stay the running of the period of appeal, the movant must not only serve a copy of the motion upon the adverse party but also notify the adverse party of the time and place of hearing.'

"Also, in Manila Surety and Fidelity Co., Inc. vs. Bath Construction and Company,[24] we ruled —

> 'The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to Section 6 of the same Rule no motion shall be acted upon by the court without proof of such notice. Indeed, it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious; unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within [which] he may file his reply or opposition.'[25]

"In fine, the abovecited cases confirm that the requirements laid down in Sec. 5 of Rule 15 of the Rules of Court that the notice shall be directed to the parties concerned, and shall state the

> time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion pro forma. As such the motion is a useless piece of paper that will not toll the running of the prescriptive period."

For failing to attach a notice of hearing to the Motion for Reconsideration, petitioner proffers the following excuses: (1) her former counsel's messenger, due to an honest mistake, inadvertently omitted the fourth page of the motion containing the crucial Notice of Hearing; and (2) because of the pressure of work, her former counsel was unable to follow up such motion until the day said counsel requested the setting of a hearing.[26]

We are not in the least convinced. First, it is unfair to place the blame for such omission on the messenger. The burden of preparing a complete pleading falls on counsel's shoulders, not on the messenger's. The counsel is ultimately responsible for the acts or omissions of his agents. Hence, the messenger's conduct can neither justify the counsel's mistake nor warrant a departure from the mandate of the aforesaid procedural rules.

Second, it is incredible that the fourth page containing the Notice of Hearing was left behind due to honest mistake. In fact, there was no such page. Petitioner's claim is belied by the following pertinent portions of the subject Motion for Reconsideration:[27]

> "WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court cause a further REVIEW and RECONSIDERATION of its decision on the above-captioned consolidated cases.
>
> Quezon City for Manila, August 12, 1996.
>
> *(Sgd.)*
> ANGELINA ARANDIA-VILLANUEVA
> *Counsel for Plaintiff-Appellant*
> 39-LT. Morato Avenue, Quezon City
> IBP No. 407450 6-26-96
> PTR No. 227013 1-5-96 Manila

Copy furnished:

Atty. Arnel Zaragoza Dolendo
Counsel for Defendant
Rm. 408, 413 First United Bldg.
Escolta, Manila"

The normal practice is to note, at the end of the pleading, that a copy was furnished to the adverse party. Thus, petitioner's motion ended exactly at the bottom of the third page as evidenced by the "copy-furnished" notation. It is safe to conclude that there was no accidental or excusable neglect in not including a fourth page in this case. In other words, petitioner's counsel simply failed to include a notice of hearing.

Finally, the fact that petitioner's former counsel calendared the motion for hearing for August 23, 1996[28] belies the excuse that an alleged fourth page had been left behind. In the first place, if a notice of hearing had been included in the Motion for Reconsideration, there would have been no need for petitioner to file the Motion to set the time and date of hearing. What is clear is that said counsel filed the latter Motion, only after private respondent had submitted its Motion for Entry of Judgment[29] — with copy furnished petitioner's counsel[30] — on the ground that petitioner's Motion for Reconsideration was a mere scrap of paper that did not stop the period for appeal.

Petitioner pleads for liberal construction of the rule on notice of hearing, citing Tamargo, Galvez and Que. In rebuttal, we adopt by reference the CA's excellent disquisition, cited earlier, on why these cases are inapplicable.

Petitioner further alleges that, first, the non-admission of her Motion for Reconsideration would result in a miscarriage of justice, as the main case (ejectment), which was tried under summary procedure, had been unnecessarily prolonged; and, second, the tenant lessee would be occupying the premises without paying rentals. She also relies on People vs. Leviste,[31] in which the Court held:

> "While it is true that any motion that does not comply with the requirements of Rule 15, Rules of Court should not be accepted for filing and, if filed, is not entitled to judicial cognizance, the Supreme Court has likewise held that where rigid application of the rule will result in manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case."

Liberal construction of this rule has been allowed by this Court in the following cases: (1) where a rigid application will result in a manifest failure or miscarriage of justice,[32] especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein;[33] (2) where the interest of substantial justice will be served;[34] (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court;[35] and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[36] Petitioner has failed to demonstrate that the case at bar falls under any of these exceptions.

Finally, petitioner claims that she will be deprived of property without due process, as private respondent has accumulated P348,800 in unpaid rentals and accrued interests.

We disagree. Petitioner can obtain proper payment of rentals through a motion for execution in the case below. The MTC may have dismissed her ejectment case, but it did not exculpate private respondent from its liabilities. Petitioner is, therefore, not being deprived of her property without due process.

Indeed, there is no miscarriage of justice to speak of. Having failed to observe very elementary rules of procedure which are mandatory, petitioner caused her own predicament. To exculpate her from the compulsory coverage of such rules is to undermine the stability of the judicial process, as the bench and bar will be confounded by such irritating uncertainties as when to obey and when to ignore the Rules. We have to draw the line somewhere.[37]

WHEREFORE, the petition is hereby **DENIED** and the assailed Decision is **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Davide, Jr., Bellosillo, Vitug and Quisumbing, *JJ*., concur.

---

[1] Special Tenth Division, composed of JJ . Demetrio G. Demetria, ponente; Hector L. Hofileña, acting chairman; and Romeo J. Callejo, concurring.
[2] CA Decision, p. 10; rollo, p. 49.
[3] MTC Decision, pp. 1-2; CA rollo, pp. 17-18.
[4] CA rollo, p. 4.
[5] Ibid.
[6] Penned by Judge Ma. Ruby B. Camarista.
[7] MTC Decision, p. 23; CA records, p. 38.
[8] CA Decision, pp. 2-3; rollo, pp. 41-42.
[9] 237 SCRA 685, 697, October 24, 1994.
[10] 209 SCRA 518, 522, June 3, 1992.
[11] 169 SCRA 137, 145, January 13, 1989.
[12] The case was deemed submitted for resolution upon the Court's receipt of the Memorandum for the Private Respondent on May 22, 1998.
[13] Submitted by Atty. Angelina Arandia-Villanueva as counsel for petitioner who replaced Atty. Vicente H. Reyes. Atty. Arnel Zaragoza Dolendo represented private respondent.
[14] Rollo, p. 141.
[15] Memorandum for Petitioner, pp. 5-6; rollo, pp. 141-142.
[16] 258 SCRA 298, 301-304, July 5, 1996, per Bellosillo, J.
[17] 192 SCRA 575, December 21, 1990.
[18] Id., p. 577.
[19] Id., pp. 577-578, citing Fecundo vs. Bermajen, 180 SCRA 235, December 18, 1989; New Japan Motors, Inc. vs. Perucho, 74 SCRA 14, November 5, 1976; Filipinas Factors & Sales, Inc. vs. Magsino, 157 SCRA 469, January 29, 1988.
[20] Supra.
[21] Id., p. 19, citing Omico Mining Industrial Corp. vs. Vallejos, 63 SCRA 285, March 25, 1975; Andrada vs. Court of Appeals 60 SCRA 379, October 30, 1974; Sacdalan vs. Bautista, 56 SCRA 175, March 27, 1974; Cledera vs. Sarmiento, 39 SCRA 552, June 10, 1971.
[22] 166 SCRA 30, September 28, 1988.
[23] 31 SCRA 562, February 18, 1970.
[24] 14 SCRA 435, June 24, 1965.
[25] Id., pp. 437-438.
[26] Memorandum for Petitioner, p. 2; rollo, p. 138.
[27] CA rollo, p. 54.
[28] Ibid., pp. 59-61.
[29] Id., pp. 55-58.
[30] Id., p. 58.

[31] 255 SCRA 238, 247, March 28, 1996, per Panganiban, J.
[32] Goldloop Properties, Inc. vs. Court of Appeals, 212 SCRA 498, 504-505, August 11, 1992; Legarda vs. Court of Appeals, 195 SCRA 418, 426-427, March 18, 1991.
[33] Balangcad vs. Justices Court of Appeals, February 12, 1992.
[34] Tamargo vs. CA, supra, p. 522.
[35] Galvez vs. CA, supra, pp. 696-702.
[36] Galang vs. Court of Appeals, 199 SCRA 683, 689, July 29, 1991.
[37] Cf. Cledera vs. Sarmiento, 39 SCRA 552, June 30, 1971.