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FIRST DIVISION

[G.R. No. L-42141. April 30, 1979]

ALBERTO R. SALANGA, LUCIANO SALANGA and RODOLFO CHUA, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, PROGRESSIVE COMMERCIAL BANK, and THE HONORABLE ONOFRE A. VILLALUZ in his capacity as Presiding Judge of the Court of First Instance of Rizal** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; AMBIGUITY IN THE NOTICE OF HEARING; EFFECT.** — Where the notice of hearing is ambiguous that counsel for defendants had good reason to believe that the hearing was only on the incidents and motions, and not on the merits of the case it is a grave abuse of discretion for the trial judge to proceed with the hearing on the merits.

2. **ID.; ID.; RULES OF COURT; LIBERAL INTERPRETATION.** — Where the rules which are merely secondary in importance are made to override the ends of justice and the technical rules had been misapplied to the prejudice of the substantial rights of a party, said application cannot be countenanced. Technicalities should give way to the realities of the situation.

3. **ID.; ID.; MOTION FOR RECONSIDERATION; EFFECT IF SUPPORTED BY AFFIDAVIT OF MERIT.** — Where the second motion for reconsideration was supported by an affidavit of merit, although the first motion was not, the movant should be entitled to due process of law and given an opportunity to prove his defense, even if the allegations in the affidavit are not considered as sufficient compliance with the rule on affidavit of merits.

APPEARANCES OF COUNSEL

Mariano P. Marcos for petitioners.
Vicente F. Forteza for respondents.

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DECISION

FERNANDEZ, *J.*:

This is a petition to review on *certiorari* the decision of the Court of Appeals in CA-G. R. No. SP-04564 entitled "*Alberto R. Salanga, et al., Petitioners, versus, Hon. Onofre A. Villaluz, etc., et al.*, Respondents" dismissing the case without pronouncements as to cost.[1]

On September 3, 1975, Alberto R. Salanga, Luciano Salanga and Rodolfo Chua filed in the Court of Appeals against Progressive Commercial Bank and the Hon. Onofre A. Villaluz, in his capacity as Presiding Judge of the Court of First Instance of Rizal, a petition for *certiorari* to annul the respondent judge's order of July 21, 1976 issued in Civil Case No. Q-19158 of the Court of First Instance of Rizal allowing the plaintiffs in said case to present its evidence *ex-parte*.[2]

The facts, as found by the Court of Appeals, are:

"IT RESULTING: That the antecedents are quite simple; Civil Q-19158 was filed on 9 August, 1974 for sum of money against three (3) defendants, the herein petitioners, by Progressive Commercial Bank, herein private respondent; cause was failure to pay promissory note attached to complaint, and supported by chattel mortgage over motor car of petitioner Salanga; upon filing of complaint, Progressive prayed for and secured attachment on car not of Salanga but of petitioner, Chua; defendant Chua moved to dissolve attachment because of alleged lack of good grounds as well upon filing counterbound, and he also moved to cite counsel for plaintiff for contempt for having allegedly used the car while in custody of Sheriff; and Judge Lustre, formerly presiding Branch VII, permitted lifting of attachment on Chua's car upon the filing of the ₱45,000.00 counterbond which was done, page 71, original expediente; in due time, defendants answered, page 90, raising principal defense that promissory note had been

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[1] Annex "V" to Petition, Decision of the Court of Appeals written by Associate Justice Magno S. Gatmaitan and concurred in by Associate Justice Crisolito Pascual and Associate Justice Mama Busran, *Rollo*, pp. 132-141.

[2] Annex "S" to Petition, *Rollo*, pp. 101-115.

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subject to collateral understanding that consideration thereof would be

'payable out of the proceeds'

of a certain television program being conducted by Salanga, but by the imposition of Martial Law, continuation of said television program became impossible, therefore, they asked restructuring the liquidation of loan but the proposal was summarily rejected by Progressive, page 92; therefore, they took it that payment should be suspended in the meantime; expediente shows that pre-trial together with pending incidents was set for 11 November, 1974, but was postponed upon agreement of the parties, page 111; then it was re-scheduled for 13 May, 1975, but reset for 30 May, 1975, page 115; then reset for 9 June, 1975, page 117; but neither did this go thru; then on back of page 117 appears a handwritten notice of hearing already on the merits for 1 July, 1975 at 8:00 A.M., signed by both counsel; going to show that apparently pre-trial was already waived by both; but again hearing did not go through on 8 July, 1975; what then appears is that on this 8 July, 1975, respondent Judge, who had taken over from Judge Lustre who had already retired, caused issuance of a new notice, for 21 and 28 July, 1975, at 8:00 A.M. of a notice, captioned,

'Notice of Hearing'

which was mimeographed, but below it immediately, the letters,

'Hearing of Incidents & Motions'

typewritten; and it is here where complications set in. —

Because while this notice was received by defendant's counsel, Atty. Mariano P. Marcos, on 17 July, 1975, he did not appear on scheduled date, 21 July, 1975 at 8:00 A.M., instead, he sent his own client, Salanga to plead verbally for postponement, because he, Atty. Marcos, had to attend to a hearing in Civil 19051, *Philippine Public Affairs Consultants vs. Fernando Pedrosa, et al.*, Court of First Instance, Pasig, Rizal, on same date and hour; page 169, *rollo*, therefore, instant case was called in his absence, and because of that, His Honor, now respondent Judge, issued his order in open court reading,

'ORDER

When this case was called for trial this morning, the defendants and their counsel failed to appear notwithstanding

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due notice. In view thereof, the plaintiff was allowed to present its evidence *ex-parte*, in support of its complaint, its opposition to the motion to lift attachment, and its opposition to the motion for contempt, after which plaintiff rested its case and submitted all the pending incidents for resolution.

The Court however orders the plaintiff to submit a memorandum within ten (*10*) days from today, after which the case shall be deemed submitted.

SO ORDERED.

In open Court, July 21, 1975.' p. 119, Original Expediente,

and plaintiff Progressive, presented its evidence, and closed, but immediately also, the very next day, page 58, defendants thru counsel moved to reconsider, on the position that he has as expounded, the obligation to appear, and he did appear, in Pasig Branch in connection with Civil 19051, that was why he had instructed his client to come to court in present case and orally plead postponement, not only this, but that the notice of hearing he had received had by him been understood to mean notice only of the hearing on the 'Incidents and Motion,' not of the Notice of Hearing on the merits; but His Honor denied, and as well a second motion; the last order being dated 13 August, 1975, page 200 expediente; it is because of this that petitioners defendants in the court below, have come here on certiorari on 3 September, 1975, on the thesis that His Honor's actuations constituted grave abuse, but required to answer. respondents contend the contrary";[3]

The Court of Appeals found that the notice of hearing was ambiguous because:

"I. CONSIDERING: That the notice on page 118 expediente reads,

'Notice of Hearing'
'Hearing on Incidents & Motions'

setting these for 21 and 28 July, 1975 at 8:00 A.M., perhaps, it can be understood to mean that not only was case set for hearing on the merits but also that said hearing also was for hearing of pending incidents and pending motion, but perhaps also, the fact that the words,

[3] Annex "V" to Petition, *Rollo*, pp. 133-136.

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'Notice of Hearing'

was in the formal mimeographed form us were also all the other parts of the notice except the dates and the name of the Judge and the name of the Deputy Clerk of Court, while the words,

'HEARING ON INCIDENTS & MOTION'

were in typewritten form, — really, one who reads might be confused, he could have taken this notice to mean notice for hearing on the incidents and motion, not for hearing on the merits, for after the words,

'NOTICE OF HEARING,'

there was not added the word, 'and'; if this word 'and' had only been added there could have been no more ambiguity; as it is, this Court must concede for defendants-petitioners that-there really was that ambiguity in the notice.";[4]

The Court of Appeals said that although counsel for the defendants was impolite in not filing a written motion for postponement, perhaps the "impoliteness of counsel should not prejudice his client." The pertinent portion of the decision for the Court of Appeals reads:

" It is true, however, that counsel for defendants having received the notice of hearing in present case on 17 July, 1975, it had behooved him, because of his predicament, to have immediately moved for postponement, it was impoliteness for him to have failed to do so, and to just have instructed his client to appear in Court on 21 July, 1975 and to move orally for that; but perhaps, impoliteness of counsel should not prejudice his client, it is the client who has a litigation, not his counsel; here, client himself went to Court, see page 120 expediente, and informed trial Judge, herein respondent, about the situation, — unfortunately, — trial Judge did not even in his order of 21 July, 1975, state that His Honor was denying that verbal plea of litigant himself; His Honor totally ignored client's verbal plea, which was not very correct, in fact in the mind of this Court, rather gravely wrong, the private citizen who knocks at the portals of Justice does not deserve to be ignored';[5]

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[4] *Idem., Rollo*, pp. 136-137.

[5] *Idem., Rollo*, pp. 138-139.

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However, the Court of Appeals dismissed the case for the following reason:

"2. CONSIDERING: That if foregoing were to be the only basis to resolve this *certiorari*, perhaps it would only be correct to grant, and give defendant a clear day in Court, — but there is the other line of resistance relied upon by plaintiff Bank, which is that motion for reconsideration to be given a chance to prove the defense is not supported by an affidavit of merits; and here, this Court after some reflection, must concede unto Progressive Bank that where a litigant seeks another chance, it behooves him really to show good cause, to demonstrate that if he were to be given that, he would in all probability, be able to prove his defense; and here, it is true that defendants admit that promissory note, what they only allege is that it had been written subject to an alleged collateral condition that payment thereon was to be made out of the proceeds of their television program, — which disappeared because of the proclamation of Martial Law; — now as to this, under Rule 130, Sec. 7, par. a, defendants do have the right to prove that defense, — but one thing is their right to do so, and another, to present a probable showing of the truth thereof in an affidavit of merits; which they have not done; they should have presented memoranda, notes, signed by Bank's representatives, or failing that, in the very least, affidavit of witnesses or even themselves, that at the signing of the promissory note, there was that clear collateral understanding, — to convince the trial Judge that another chance might destroy plaintiff Bank's case and the reason for the jurisprudence requiring such affidavit is because otherwise, the grant of another chance would only prolong a litigation without a useful purpose; nor should it be argued as defendants do that, an affidavit of merits is needed only if there is already a decision, not when there is none yet for the reason for the affidavit is there just the same, even where no decision has not as yet been promulgated; the net result of all these is to justify that after all there has not been shown such a grave abuse of authority as to warrant *certiorari*.";[6]

It appears, however, that an affidavit of merit was attached to the second motion for reconsideration. The said affidavit alleges the defendants' good defense. Thus paragraph 7 of said affidavit reads:

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[6] *Idem., Rollo*, pp. 139-141.

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"7. The defendants' good defense consists of the fact, as alleged in their answer, that the promissory note (printed at that and therefore a contract of adhesion under the Civil Code) does not reflect the true agreement of the parties since the loan was extended to defendants on the understanding that repayment thereof shall be in kind through the Telebingo T.V. program which defendant Alberto R. Salanga was then conducting and financing through the proceeds of said loan; the declaration of martial law and circumstances thereafter rendered the continuation of said program impossible which is a valid excuse for nonpayment of the loan subject of the said case within the period stipulated.[7]

Even if the allegations in said paragraph are not considered as sufficient compliance with the rule on affidavits of merit, the petitioners are entitled to due process of law.

The ambiguity is the notice of hearing is such that the counsel for the defendants, petitioners herein, had good reason to believe that the hearing was only on the incidents and motion and not the merits of the case. In view of such ambiguity, the petitioners are deemed to have been denied their day in court. The respondent trial judge certainly acted with grave abuse of discretion in proceeding with the hearing on the merits and in denying the motions for reconsideration of the defendants, petitioners herein.

Where the rules which are merely secondary in importance are made to override the ends of justice and the technical rules had been misapplied to the prejudice of the substantial rights of a party, said rigid application cannot be countenanced.[8]

In the interest of justice, the petitioners should be given an opportunity to prove their defense. Technicalities should give way to the realities of the situation.[9]

WHEREFORE, the decision of the Court of Appeals in CA-G. R. No. SP-04564 sought to be reviewed is hereby set aside and the order of the respondent judge, Hon. Onofre A.

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[7] *Rollo,* pp. 94-95.

[8] *Udan vs. Hon. Amon, et al., 23 SCRA 837.*

[9] *Economic Insurance Co., Inc. versus Uy Realty Company,* 34 SCRA 744.

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Villaluz, dated July 21, 1975 in Civil Case No. Q-19158 is declared void. Civil Case No. Q-19158 is remanded to the court of origin for further proceedings at which the petitioners should be given an opportunity to present their evidence, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-42260. April 30, 1979]

JOVENCIA DE GUZMAN and FEDERICO RECARIO, *petitioner, vs.* **JUDGE MELENCIO A. GENATO of the Court of First Instance of Misamis Occidental, Branch I, Oroquieta City and AURELIO EN. JUTBA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ALLEGATIONS; TERMS OF STATUTE NEED NOT BE USED.** — Petitioners' contention that there is no cause of action against them because the action is a suit between a husband and his wife and there is no allegation in the complaint that earnest efforts towards a compromise has been made, but that the same have failed, pursuant to Article 222 of the Civil Code, without merit, where it is apparent from the complaint that the husband had exerted efforts to meet his wife and even enlisted the help of the Philippine Constabulary who summoned his wife "for confrontation and arrangement," but the wife refused to see him. *It is not necessary that plaintiff should expressly use the* terms of the statute, *i.e.*, "that earnest efforts towards a