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issued is hereby made permanent. With costs against the respondent Liberation Steamship Co., Inc.

SO ORDERED.

Barredo (Actg. Chairman), Aquino, Santos, and *Abad Santos, JJ.*, concur.

Antonio, J., concurs.

ANTONIO, *J., concurring:*

I concur. In my opinion for the Court in *Lim v. Animas* (63 SCRA 408), We ruled that in pre-trials, the party involved and his counsel must be notified of the date of pre-trial hearings, and before the party is non-suited or considered in default, it must be shown that the party and his counsel were duly served with notice of such pre-trial conference. This was reiterated in *Taroma v. Sayo* (67 SCRA 508) and *Pineda v. Court of Appeals* (67 SCRA 228).

SECOND DIVISION

[G.R. No. L-43372. May 5, 1979]

ALFONSO A. CHAN, *petitioner, vs.* **THE HON. JUDGE OTILLO G. ABAYA, as Presiding Judge of Branch II, Court of First Instance of Surigao del Sur, and SOFRONIA AGAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL CONFERENCE; PREMATURE WHEN HELD BEFORE THE LAST PLEADING HAD BEEN FILED. — Pursuant to Section 1, Rule 20, Revised Rules of Court, the court is directed to

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hold the pre-trial of the case after the last pleading has been filed. Under the rules of pleading and practice, the answer ordinarily is the last pleading. But when the defendant's answer contains a counterclaim plaintiff's answer to it is the last pleading. When no answer to the counterclaim had been filed because of the unresolved motion for a bill of particulars, the calling of a pre-trial conference is premature, since there has yet to be filed the "last pleading."

2. **ID.; ID.; ID.; NOTICE OF PRE-TRIAL CONFERENCE TO BE SERVED SEPARATELY UPON COUNSEL AND PARTY.** — Under the rules, pre-trial is mandatory and notices of pre-trial must be served separately upon the party and his counsel.

3. **ID.; ID.; MOTION; FAILURE OF MOVANT TO APPEAR AND PROSECUTE HIS MOTION NOT SUFFICIENT JUSTIFICATION TO CONSIDER MOTION A MERE SCRAP OF PAPER.** — The failure of a movant to appear on the day of the hearing of his motion is not sufficient reason to discard said motion and treat it as a mere scrap of paper. The better rule is to deny such motion for abandonment or for failure to prosecute.

APPEARANCES OF COUNSEL

Oscar B. Glovasa and *Suceso A. Arcano* for petitioner.

D E C I S I O N

CONCEPCION JR., *J.*:

Petition for *certiorari* to annul and set aside the orders of the respondent judge, dated August 13 and November 3, 1975, in Civil Case No. L-154 of the Court of First Instance of Surigao del Sur, entitled, "*Alfonso A. Chan,* plaintiff, *versus Sofronia Agao,* defendant," requiring the petitioner and/or his counsel to pay damages suffered by the private respondent and her counsel in the amount of ₱100.00, "the same to be paid not later than the next hearing of this case," for the failure of the petitioner and his counsel to appear at the pre-trial conference of the case.

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The record shows that on January 27, 1975, the petitioner, Alfonso A. Chan, filed a complaint against the herein private respondent, Sofronia Agao, with the Court of First Instance of Surigao del Sur, for indemnification, under Articles 20 and 21 of the Civil Code of the Philippines, in relation to Articles 2199, 2208 (par. 3), 2219 (par. 8) and 2229 thereof, for the damages suffered by him and his family as a result of the wilful and malicious prosecution of the petitioner by the private respondent.[1]

The private respondent filed her answer thereto on February 19, 1975, denying the material allegations in the complaint, and interposed a counterclaim for damages, attorney's fees, and costs, as well as the payment of back rentals on a building which the petitioner failed to pay despite demands.[2]

Instead of filing a responsive pleading, the petitioner filed a motion for a bill of particulars, asking for a more definite statement on the alleged lease contract, setting his motion for resolution by the court on March 14, 1975, or on any other date as may be convenient for the court, without further argument by counsel.[3]

The respondent judge, however, did not take action on the motion for a bill of particulars and set the pre-trial conference of the case on August 13 and 14, 1975. On August 11, 1975, counsel for the petitioner sent a telegraphic motion to the court, followed later by a formal written motion, asking that the pre-trial conference be reset to another date until his motion for a bill of particulars shall have been resolved.[4] But, the case was called for a pre-trial conference on August 13, 1975, as scheduled. Noting the absence of the petitioner and his counsel, the attorney for the private respondent asked the court that the petitioner be ordered to pay the private respondent her expenses in coming to court. The respondent judge granted the motion and issued

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[1] *Rollo*, p. 26.

[2] *Id.*, p. 37.

[3] *Id.*, p. 24.

[4] *Id.*, p. 46.

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an order directing the petitioner and/or his counsel to pay damages suffered by the private respondent and her counsel in the amount of ₱200.00, the same to be paid not later than the next hearing of the case. The pre-trial conference was re-set to September 23 and 24, 1975.[5]

The petitioner filed a motion for the reconsideration of said order,[6] and, as a result, the amount was reduced to ₱100.00.[7] Whereupon, the petitioner initiated the present recourse, to annul and set aside the orders of the respondent judge dated August 13 and November 3, 1975.

The petitioner claims that the payment of damages to the private respondent is unjustified because the petitioner was not properly notified of the holding of the pre-trial conference on August 13, 1975, and that the calling of a pre-trial conference on August 13, 1975 was premature since the respondent judge had not yet resolved the petitioner's motion for a bill of particulars.

The private respondent, upon the other hand, maintains that there was substantial compliance with the rules as to notice because the petitioner's counsel was notified of the pre-trial hearing by telegram on August 6, 1975, and the said attorney, in turn, notified the petitioner of such pre-trial hearing by telegram.

The petition is meritorious. To begin with, the calling of a pre-trial conference on August 13, 1975 was untimely. Section 1, Rule 20 of the Revised Rules of Court provides:

"Section 1. *Pre-trial mandatory.* — In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider:

"(a) the possibility of an amicable settlement or of a submission to arbitration;

"(b) the simplification of the issues;

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[5] *Id.*, p. 14.

[6] *Id.*, p. 17.

[7] *Id.*, p. 16.

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"(c) the necessity or desirability of amendments to the pleadings;

'(d) the possibility of obtaining stipulations or admissions of fact and of documents to avoid unnecessary proof;

"(e) the limitation of the number of witnesses;

"(f) the advisability of a preliminary reference of issues to a commissioner;

"(g) such other matters as may aid in the prompt disposition of the action."

As will be seen, the court is directed to hold the pre-trial of the case after the last pleading has been filed. Construing the term "last pleading," the Court held that "under the rules of pleading and practice, the answer ordinarily is the last pleading, but when the defendant's answer contains a counterclaim, plaintiff's answer to it is the last pleading."[8] Following the rule, the "last pleading" in the case would be the answer of the plaintiff to the counterclaim of the defendant. But, no answer to the counterclaim had been filed because of the unresolved motion for a bill of particulars. Obviously, the calling of a pre-trial conference on August 13, 1975 was premature since there has yet to be filed the "last pleading."

In the disputed order of August 13, 1975, the respondent judge stated that he did not act on the motion for a bill of particulars and considered it as "merely a scrap of paper which the court is not duty bound to resolve" for the reasons that "x x x the Clerk of Court informed the court that said motion was received by his office in the afternoon of March 14, 1975 so that although said motion was set for hearing on the said date, the same could not be heard on the specified time it was set for hearing, which was in the morning of March 14, 1975. Moreover, plaintiff's counsel failed to appear on said date to prosecute his motion. Said counsel did not even bother to verify whether or not his

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[8] *Peggy vs. Tapucar*, L-45270, February 28, 1979, citing Francisco, *The Revised Rules of Court*, Vol. II, pp. 2-3 and *Pioneer Insurance & Surety Corp. vs. Hontañosas*, L-35951, August 31, 1977, 78 SCRA 447.

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motion reached the court on time, so that he would have known the status of the same." The failure of a movant to appear on the day of the hearing of his motion, however, is not sufficient reason to discard a motion and treat it as a mere scrap of paper. The better rule is to deny such motion for abandonment or for failure to prosecute.

Under the rules, pre-trial is mandatory and the Court has uniformly held that the parties, as well as their counsel, who are required to appear thereat, must be notified of the same, and the notice of pre-trial must be served upon them separately.[9] While a copy of the notice of the pre-trial conference set for August 13 and 14, 1975[10] may have been sent to the petitioner Alfonso A. Chan separately,[11] by registered mail at his given address of record on August 8, 1975,[12] the petitioner received the notice only on August 18, 1975.[13] His inability to attend and be present at the pre-trial conference on August 13, 1975 is, therefore, justified. The fact that his attorney had sent a telegram of "Escribano" notifying them of the setting of the pre-trial conference on August 13 and 14, 1975 should not militate against the petitioner because the telegram, to him, was vague and ambiguous, prompting the petitioner to send a telegram to his counsel that he "*did not received any court order regarding our motion or defendants amended answer*," and inquiring who "Escribano" is.[14]

Moreover, We find that the award of damages in the amount of ₱100.00 to the private respondent for her expenses in coming to court to attend the pre-trial hearing set for August 13, 1975, the same to be paid not later than the next hearing of the case,

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[9] *Taroma vs. Sayo*, L-37926, October 30, 1975, 67 SCRA 508 and cases cited therein.

[10] *Rollo*, p. 45.

[11] See reverse side of *Rollo*, p. 45.

[12] *Rollo*, p. 44.

[13] *Id.*, p. 43 par. 3 of Affidavit.

[14] *Id.*, p. 42.

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is unfounded and without basis. Such an award cannot be justified under Article 2208 of the Civil Code.

WHEREFORE, the petition is granted and the orders of the respondent judge dated August 13 and November 3, 1975, in Civil Case No. L-154 of the Court of First Instance of Surigao del Sur, entitled, "*Alfonso A. Chan,* plaintiff, *versus Sofronia Agao,* defendant," should be, as they are hereby, annulled and set aside. Costs against the private respondent, Sofronia Agao.

SO ORDERED.

Barredo (Actg. Chairman), Antonio, Aquino, and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-44240. May 5, 1979]

FREDESWINDA R. CASANOVA, *petitioner, vs.* **THE HON. MARIANO A. LACSAMANA, in his capacity as Presiding Judge of Pasay City Court, Branch II, THE SPOUSES JOSE V. OCHOA and ELENA VERGEL, THE SHERIFF OF PASAY CITY and THE ENGINEER OF PASAY CITY,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION; REQUISITES FOR REMOVAL OF IMPROVEMENTS OR PROPERTY SUBJECT OF EXECUTION. — An order of demolition issued without hearing and without granting the defendant a reasonable time within which to remove the improvements he constructed on the property subject of