Supreme Court E-Library

FIRST DIVISION

[A.M. No. RTJ-11-2272. February 16, 2011]
(Formerly A.M. OCA IPI No. 07-2559-RTJ)

MARCIANO ALCARAZ, *complainant, vs.* **JUDGE FATIMA GONZALES-ASDALA**, **REGIONAL TRIAL COURT, BRANCH 87, QUEZON CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; EVERY WRITTEN MOTION SHOULD GENERALLY BE SET FOR HEARING BY ITS PROPONENT.— The Rules of Court require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent. When a motion ought to be heard, the same rules prescribe that it must be served to the adverse party with a **notice of hearing**.

2. ID.; ID.; ID.; ID.; SHALL BE ADDRESSED TO ALL THE PARTIES CONCERNED AND SHALL SPECIFY THE TIME AND DATE OF THE HEARING.— The substance of a notice of hearing is, in turn, laid out in Section 5 of Rule 15 of the Rules of Court. The provision states: "Section 5. *Notice of hearing*. — The notice of hearing shall be **addressed to all the 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." In the case at bench, it is clear that the notice of hearing in Emelita's motion for execution pending appeal did not comply with the foregoing standards. *First*. Rather than being addressed to the adverse party, the notice of hearing in Emelita's motion was directed to the Branch Clerk of Court. Such gaffe actually contradicts a basic purpose of the notice requirement—*i.e.,* to inform an adverse party of the date and time of the proposed hearing. *Second*. The notice of hearing did not specify a date and time of hearing. In fact, there was nothing in the notice that even suggests that the proponent intended to set a hearing with the trial court in the first place. As may be observed, the notice is merely an instruction for the clerk of court to submit

Supreme Court E-Library

the motion "*for the consideration and approval*" of the trial court "*immediately upon receipt*" or "*at any time convenient*" with the said court. The notice of hearing in Emelita's motion does not, in reality, give any kind of notice.

3. ID.; ID.; ID.; A LITIGIOUS MOTION WITHOUT A VALID NOTICE OF HEARING IS A MERE SCRAP OF PAPER NOT DESERVING OF ANY JUDICIAL ACKNOWLEDGMENT.— Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. x x x An important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. After all, the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion and to give a proper notice thereof on the other party. It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a "mere scrap of paper" not deserving of any judicial acknowledgment.

4. JUDICIAL ETHICS; JUDGES; MAY NOT BE HELD ADMINISTRATIVELY ACCOUNTABLE FOR NOT ACTING UPON MOTIONS WITH DEFECTIVE NOTICES OF HEARING.— [A] judge may not be held administratively accountable for not acting upon a "mere scrap of paper." To impose upon judges a positive duty to recognize and resolve motions with defective notices of hearing would encourage litigants to an unbridled disregard of a simple but necessary rule of a fair judicial proceeding. x x x Verily, We find the respondent free from any administrative liability in not taking action on Emelita's motion for execution pending appeal. The motion itself is not entitled to judicial cognizance—the reason for which is imputable to the fault of the movant herself and not to an apparent breach of the respondent of her duties as a member of the bench. Notably, the respondent did act on the matter of the execution of the MeTC judgment pending appeal when the issue was properly scheduled for hearing in the 8 February 2006 Urgent Motion.

Supreme Court E-Library

D E C I S I O N

PEREZ, *J.*:

The present administrative matter is based on the following facts:

Prelude

Civil Case No. 32771, entitled "*Emelita L. Mariano represented by Marciano Alcaraz, plaintiff, v. Alfredo M. Dualan*, *defendant*," is an ejectment case originally filed with the Metropolitan Trial Court (MeTC), Branch 35 of Quezon City.[1]

On 28 September 2004, the MeTC rendered judgment in the said case in favor of the plaintiff Emelita Mariano (Emelita).[2] The *fallo* reads:[3]

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter and all persons claiming rights under him to vacate the premises located at 340 Roosevelt Ave., Quezon City and to peacefully turn-over possession thereof to the plaintiff.
>
> Defendant is likewise ordered to pay the following to the plaintiff, to wit:
>
> 1. the amount of Seventy Six Thousand (Php 76,000.00) Pesos per month, reckoned from September 2000 until defendant and all persons claiming rights under him shall finally vacate the premises representing compensation for the reasonable use and occupation thereof;
> 2. the amount of Eight Thousand (Php 8,000.00) Pesos as and by way of attorney's fee; and
> 3. cost of suit.

---

[1] *Rollo*, p. 7.

[2] *Id.*

[3] *Id* at 7-8.

Supreme Court E-Library

On 23 November 2004, Emelita filed a Motion for Execution before the MeTC.[4]

On 3 January 2005, the losing defendant, Alfredo M. Dualan (Alfredo), filed his Notice of Appeal.[5]

In an Order dated 19 January 2005, the MeTC granted Emelita's Motion for Execution and, at the same time, gave due course to Alfredo's appeal.[6] On 17 February 2005, a writ of execution was issued in favor of Emelita.[7]

In the meantime or on 14 February 2005, however, Alfredo filed a Motion for Partial Reconsideration of the 19 January 2005 Order of the MeTC.[8] In it, Alfredo asked for the suspension of the execution of judgment in favor of Emelita, in view of the *supersedeas* bond the former posted on 25 January 2005.[9] Emelita, for her part, manifested through her counsel that she has no objection to the posting of the said *supersedeas* bond and is withdrawing her Motion for Execution.[10]

On 29 July 2005, the MeTC issued an Order granting Alfredo's Motion for Partial Reconsideration.[11] The Order provides:[12]

> x x x [t]aking into consideration the explanation put forth by defendant and with the manifestation of plaintiff's counsel that they are withdrawing their motion for execution and that they have no objection to the approval of the *supersedeas* bond, in the interest of substantial justice, the Motion for Partial Consideration is hereby GRANTED. Defendant's Notice of Appeal having been granted by this Court in

---

[4] *Id.* at 8.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.* at 15.

[10] *Id.*

[11] *Id.* at 8.

[12] *Id.* at 8-9.

Supreme Court E-Library

the Order dated January 19, 2005, let the entire records of this case be forwarded to the Regional Trial Court for further proceedings.

Consistent with the manifestation of plaintiff's counsel, the motion for execution dated 28 October 2004 is hereby considered withdrawn and the writ of execution dated 17 February 2005 issued by this court is hereby set aside. (Emphasis supplied)

On 2 August 2005, the records of the case were received, on appeal, by the Regional Trial Court (RTC) of Quezon City.[13] Accordingly, the case was re-docketed as Civil Case No. Q-05-56029.[14] On 9 August 2005, the case was raffled to Branch 87—then presided by the respondent, Judge Fatima Gonzales-Asdala.[15]

In the Sala of the Respondent Judge

On 12 November 2005, Emelita filed with the RTC a **Motion for Execution Pending Appeal**,[16] asking for the immediate execution of the MeTC judgment. She pointed out that Alfredo, during the pendency of the appeal, has not made any rental deposits with the RTC as required by Section 19 of Rule 70 of the Rules of Court.[17] This omission, Emelita argued, entitles her to an immediate execution of the MeTC ruling in her favor.[18]

About three months after, complainant Marciano Alcaraz—as representative of Emelita in the pending case—inquired with the RTC about the status of the motion for execution pending appeal.[19] There, the complainant was informed that the appeal was already deemed submitted for decision but the respondent

---

[13] *Id.* at 9.

[14] *Id.*

[15] In *Edaño v. Gonzales-Asdala* (A.M. No. RTJ-06-1974, 26 July 2007, 528 SCRA 212), the respondent was dismissed from service due to gross insubordination and gross misconduct.

[16] *Rollo*, pp. 38-40.

[17] *Id.*

[18] *Id.* at 38-39.

[19] *Id.* at 36.

Supreme Court E-Library

had not taken any action, much less issued any order or resolution, regarding the motion for execution pending appeal.[20]

Distraught about the respondent's apparent inaction, Emelita filed with the RTC an **Urgent Motion to Order Defendant-Appellant to Deposit the Amount of Rent Due to Plaintiff-Appellee Under the Contract, and to Resolve Plaintiff's November 12, 2005 Motion for Execution Pending Appeal**[21] (Urgent Motion) on 8 February 2006. Unlike the previous motion, Emelita's Urgent Motion was actually scheduled for hearing on 17 February 2006.[22]

During the day the Urgent Motion was set for hearing, however, Alfredo failed to appear.[23] The respondent, thus, issued an order of even date requiring Alfredo to file his Comment on the Urgent Motion within ten (10) days from its receipt.[24] But still, no Comment was filed.[25]

On 25 April 2006, the respondent finally resolved the Urgent Motion and ordered the issuance of a writ of execution in favor of Emelita.[26]

The Charge and the Recommendation

On 8 May 2006, the complainant filed with the Office of the Ombudsman a Complaint-Affidavit[27] charging the respondent of neglect or refusal to act on matters pending before her *sala*, in violation of Section 3(f) of Republic Act No. 3019.[28] As chief basis of the charge, the complainant cited the respondent's

---

[20] *Id.*

[21] *Id.* at 41-45.

[22] *Id.* at 10.

[23] *Id.* at 19.

[24] *Id.*

[25] *Id.* at 21.

[26] *Id.* at 20-21.

[27] *Id.* at 36-37.

[28] *Id.*

inexcusable failure to act on Emelita's motions immediately or, at the very least, within a reasonable time.

On 13 June 2006, the Ombudsman issued an Order[29] deferring action on the charge against the respondent, pursuant to the pronouncements of this Court in *Maceda v. Vasquez*[30] and *Judge Caoibes, Jr. v. Hon. Ombudsman*.[31] The complaint-affidavit was thus referred to the Office of the Court Administrator (OCA) for the conduct of an appropriate investigation as to the possible administrative liability of the respondent.

After receiving the respondent's comment[32] to the complaint-affidavit and evaluating the established facts, the OCA submitted its Report[33] to this Court on 23 March 2007. In essence, the OCA found the respondent administratively liable for unjust delay in the dispatch of her official duties and recommended the sanction of reprimand.[34]

Our Ruling

We disagree with the finding and recommendation of the OCA.

At first glance, it would seem that the respondent was guilty of undue delay, if not, absolute neglect in resolving Emelita's motion for execution pending appeal. The respondent had not taken any action on the said motion and, in fact, came to consider Emelita's plea for an execution pending appeal only after the latter had filed an Urgent Motion. From the filing of the motion for execution pending appeal, a period of more than five (5) months had to pass before the respondent finally directed a writ of execution to be issued. Under these circumstances, it

---

[29] *Id.* at 28-31.

[30] G.R. No. 102781, 22 April 1993, 221 SCRA 464.

[31] 413 Phil. 717 (2001).

[32] *Rollo*, pp. 7-11.

[33] *Id.* at 1-5.

[34] *Id.*

Supreme Court E-Library

was understandable why the complainant cried out against the inaction.

A deeper look at the records of the case, however, reveals that no administrative fault may be attributed on the part of the respondent.

An inspection of Emelita's motion for execution pending appeal discloses a defective notice of hearing. Thus:[35]

NOTICE OF HEARING

The BRANCH CLERK OF COURT
RTC QUEZON CITY
BRANCH 87

Greetings:

Kindly submit the foregoing MOTION for the consideration and approval of the Honorable Court immediately upon receipt hereof, or at any time convenient to the Honorable Court.

Paranaque City for Quezon City
November 12, 2005

Atty. Nelson B. Bayot (Sgd.)
(Emphasis supplied).

The Rules of Court require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent.[36] When a motion ought to be heard, the same rules prescribe that it must be served to the adverse party with a **notice of hearing**.[37]

The substance of a notice of hearing is, in turn, laid out in Section 5 of Rule 15 of the Rules of Court. The provision states:[38]

---

[35] *Id.* at 39-40.

[36] Section 4, Rule 15 of the Rules of Court.

[37] *Id.*

[38] Section 5, Rule 15 of the Rules of Court.

Supreme Court E-Library

Section 5. *Notice of hearing*. — The notice of hearing shall be **addressed to all the 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. (Emphasis supplied)

In the case at bench, it is clear that the notice of hearing in Emelita's motion for execution pending appeal did not comply with the foregoing standards.

First. Rather than being addressed to the adverse party, the notice of hearing in Emelita's motion was directed to the Branch Clerk of Court. Such gaffe actually contradicts a basic purpose of the notice requirement—*i.e.,* to inform an adverse party of the date and time of the proposed hearing.

Second. The notice of hearing did not specify a date and time of hearing. In fact, there was nothing in the notice that even suggests that the proponent intended to set a hearing with the trial court in the first place. As may be observed, the notice is merely an instruction for the clerk of court to submit the motion "*for the consideration and approval*" of the trial court "*immediately upon receipt*" or "*at any time convenient*" with the said court. The notice of hearing in Emelita's motion does not, in reality, give any kind of notice.

Jurisprudence had been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper.[39] In the classic formulation of *Manakil v. Revilla,*[40] such a motion was condemned as:

x x x [n]othing but a piece of paper filed with the court. It presented no question which the court could decide. **The court had no right to consider it, nor had the clerk any right to receive it without a compliance with Rule 10** [now Sections 4 and 5 of Rule 15]. **It was not, in fact, a motion.** It did not comply with the

[39] *Sebastian v. Cabal*, 143 Phil. 364, 366 (1970); *Manila Surety and Fidelity Co., Inc. v. Batu Construction Company*, 121 Phil. 1221, 1224 (1965); *Philippine National Bank v. Donasco*, 117 Phil. 429, 433 (1963); *Director of Lands v. Sanz*, 45 Phil. 117, 121 (1923); *The Roman Catholic Bishop of Lipa v. The Municipality of Unisan*, 44 Phil. 866, 871 (1920).

[40] 42 Phil. 81, 82 (1921).

Supreme Court E-Library

rules of the court. It did not become a motion until x x x the petitioners herein fixed a time for hearing of said alleged motion. (Emphasis supplied).

An important aspect of the above judicial pronouncement is the absence of any duty on the part of the court to take action on a motion wanting a valid notice of hearing. After all, the Rules of Court places upon the movant, and not with the court, the obligations both to secure a particular date and time for the hearing of his motion[41] and to give a proper notice thereof on the other party.[42] It is precisely the failure of the movant to comply with these obligations, which reduces an otherwise actionable motion to a "mere scrap of paper" not deserving of any judicial acknowledgment.

Accordingly, a judge may not be held administratively accountable for not acting upon a "mere scrap of paper." To impose upon judges a positive duty to recognize and resolve motions with defective notices of hearing would encourage litigants to an unbridled disregard of a simple but necessary rule of a fair judicial proceeding. In *Hon. Cledera v. Hon. Sarmiento*,[43] this Court aptly observed:

The rules commanding the movant to serve of the adverse party a written notice of the motion (Section 2, Rule 37) and that the notice of hearing "shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion" (Section 5, Rule 15), do not provide for any qualifications, much less exceptions. **To deviate from the peremptory principle x x x would be one step in the emasculation of the revised rules and would be subversive of the stability of the rules and jurisprudence thereon — all to the consternation of the Bench and Bar and other interested persons as well as the general public who would thereby be subjected to such an irritating uncertainty as to when to render obedience to the rules and when their requirements may be**

[41] Section 4 of Rule 15 of the Rules of Court.

[42] *Id. See* also *Magno v. Ortiz*, G.R. No. L-22670, 31 January 1969, 26 SCRA 692, 695; *Fulton Insurance Company v. Manila Railroad Co*., 129 Phil. 195, 203-204 (1967).

[43] 148-A Phil. 468 (1971).

Supreme Court E-Library

ignored. We had to draw a line somewhere and WE did when we promulgated on January 1, 1964 the Revised Rules of Court, wherein WE delineated in a language matchless in simplicity and clarity the essential requirements for a valid notice of hearing on any motion, to eliminate all possibilities of equivocation or misunderstanding.[44] (Emphasis supplied)

Verily, We find the respondent free from any administrative liability in not taking action on Emelita's motion for execution pending appeal. The motion itself is not entitled to judicial cognizance—the reason for which is imputable to the fault of the movant herself and not to an apparent breach of the respondent of her duties as a member of the bench. Notably, the respondent did act on the matter of the execution of the MeTC judgment pending appeal when the issue was properly scheduled for hearing in the 8 February 2006 Urgent Motion.

WHEREFORE, the complaint dated 8 May 2006 against the respondent, as then presiding judge of Regional Trial Court, Branch 87 of Quezon City, is hereby *DISMISSED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *del Castillo, JJ.,* concur.

---

[44] *Id.* at 491.