NOV 26 2015

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ETHEL, EMMIE, ELVIE, EARLYN, EVELYN, all surnamed ACAMPADO, AND KATIPUNAN M. DE LOS REYES and THE REGIONAL TRIAL COURT, KALIBO, AKLAN, BRANCH 6.
Petitioners,

- versus -

SPOUSES LOURDES R. COSMILLA AND FELIMON COSMILLA, AND LORELIE COSMILLA, for herself and as Attorney-in-Fact of LOURDES R. COSMILLA,
Respondents.

G.R. No. 198531

SERENO, *C.J.*,
Chairperson,
LEONARDO DE-CASTRO,
BERSAMIN,
PEREZ, and
JARDELEZA,* *JJ.*

Promulgated:

SEP 28 2015

x -- x

DECISION

PEREZ, *J.*:

For resolution of the Court is the instant Petition for Review on *Certiorari*[1] filed by petitioners Ethel Acampado, Emmie Acampado, Elvie Acampado, Earlyn Acampado and Evelyn Acampado seeking to reverse and

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* Acting Member per Special Order No. 2188 dated 16 September 2015.
1 *Rollo*, pp. 12-44.

set aside the Resolutions dated 28 June 2007[2] and 19 August 2011[3] of the Court of Appeals, Cebu City in CA-G.R. SP. No. 00805. The assailed resolutions reversed the Order[4] dated 16 May 2005 of the Regional Trial Court (RTC) of Aklan, Branch 6 which denied the Motion for Reconsideration filed by respondents Spouses Lourdes and Felimon Cosmilla for being *pro forma*. The dispositive portion of the Court of Appeals Decision reads:

> "WHEREFORE, petitioner's motion for reconsideration is hereby GRANTED and the Order of the Court *a quo* dated May 16, 2005, declaring the Motion for Reconsideration *pro forma* is hereby ANNULLED and SET ASIDE and the court a quo is hereby directed to forthwith resolve petitioners' motion for reconsideration of its Decision dated March 31, 2005."[5]

The Antecedents

The present petition stems from the Petition for the Declaration of the Nullity of Document filed by respondents against petitioners before the RTC of Kalibo, Aklan, Branch 6. In their Amended Complaint[6] docketed as SPL. Civil Case No. 6644, respondents Spouses Cosmilla alleged that the sale of their share on the subject property was effected thru a forged Special Power of Attorney (SPA) and is therefore null and void.[7]

After trial on the merits, the RTC rendered a Decision[8] dated 31 March 2005 dismissing the complaint of the respondents for failure to prove by preponderance of evidence that the signatures of the respondents in the SPA were forged. The RTC disposed in this wise:

> "WHEREFORE, in view of the foregoing considerations, [respondents'] complaint is hereby DISMISSED. [Respondents] are also ordered to jointly and severally pay [petitioner Katipunan de los Reyes] the sum of ₱25,000.00 for transportation expenses and attorney's fees as well as [petitioner Acampados] ₱21,772.50 for attorney's fees and litigation expenses.
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> Costs against the [respondents]."[9]

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2 Id. at 46-51; penned by Associate Justice Stephen C. Cruz with Associate Justices Pampio A. Abarintos and Antonio L. Villamor, concurring.
3 Id. at 53-56; penned by Associate Justice Eduardo B. Peralta , Jr., with Associate Justices Pampio A. Abarintos and Gabriel T. Ingles, concurring.
4 Id. at 120-121; penned by Judge Niovady M. Marin.
5 Id. at 50.
6 Id. at 142-146.
7 Id. at 144-145.
8 Id. at 75-88.
9 Id. at 88.

Aggrieved, respondents filed a Motion for Reconsideration[10] on 6 May 2005 seeking for the reversal of the earlier RTC Decision.

For failure of the respondents, however, to comply with the requirement of notice of hearing as required under Sections 4 and 5 of Rule 15 of the Revised Rules of Court, the court *a quo* denied the Motion for Reconsideration in Order[11] dated 16 May 2005, *viz:*

> "WHEREFORE, in view of the foregoing considerations, the Motion for Reconsideration is declared *pro forma* and the decision sought to be reconsidered is declared final and executory as the period of appeal has already expired.
>
> SO ORDERED."

Ascribing grave abuse of discretion, respondents elevated the matter to the Court of Appeals by filing a Petition for Certiorari, Prohibition and Mandamus[12] with prayer for Preliminary Injunction and TRO seeking to annul and set aside the RTC Order dated 16 May 2005.

For lack of merit, the Court of Appeals dismissed the petition filed by the respondents in a Decision dated 27 October 2006.[13] The appellate court held that there is no showing that lower court committed grave abuse of discretion amounting to lack or excess in jurisdiction in denying the Motion for Reconsideration of the respondents. Resonating the disquisition of the lower court, the Court of Appeals declared that a motion which fails to comply with Sections 4, 5 and 6 of the Rules of Court is nothing but a useless piece of paper and does not stall the running of the reglementary period.[14]

On Motion for Reconsideration by Respondents,[15] however, the Court of Appeals reversed its earlier Resolution and allowed the relaxation of the procedural in a Resolution[16] dated 28 June 2007. Hence, the appellate court vacated the 16 May 2005 Order of the RTC directed the court *a quo* to thresh out the Motion for Reconsideration filed by the respondents on the merits.

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10 Id. at 89-112.
11 Supra note 4.
12 Id. at 121-134.
13 Id. at 197-205; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Arsenio J. Magpale and Antonio L. Villamor, concurring.
14 Id. at 200-204.
15 Id. at 206-207.
16 Id. at 46-51.

In a Resolution[17] dated 19 August 2011, the Court of Appeals denied the Motion for Reconsideration filed by petitioners.

Issue

Petitioners are now before this Court *via* this instant Petition for Review on *Certiorari*[18] praying that the Court of Appeals Resolution be reversed and set aside on the ground that:

> THE COURT OF APPEALS GRAVELY ERRED AND COMMITTED REVERSIBLE ERROR IN ISSUING RESOLUTION DATED 28 JUNE 2007 AND RESOLUTION DATED 19 AUGUST 2011 WHICH, IN EFFECT RECONSIDERED ITS OWN DECISION DATED 27 OCTOBER 2006 DISMISSING THE PETITION FOR CERTIORARI, PROHIBITION, MANDAMUS WITH PRAYER FOR PRELIMINARY INJUNCTION AND TRO OF RESPONDENTS.[19]

The Court's Ruling

We resolve to grant the petition.

The Motion for Reconsideration is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of the Revised Rules of Court:

> RULE 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.
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> 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.

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17 Id. at 53-56.
18 Supra note 1.
19 Id. at 24.

> 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.
>
> SEC. 6. *Proof of service necessary*. No written motion set for hearing shall be acted upon by the court without proof of service thereof.

The foregoing requirements -- 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, and if not religiously complied with, the motion becomes *pro forma*.[20] A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.[21] The logic for such requirement is simple: a motion invariably contains a prayer which the movant makes to the court which is usually in the interest of the adverse party to oppose.[22] The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant.[23] In keeping with the principles of due process, therefore, a motion which dees not afford the adverse party a chance to oppose should simply be disregarded.[24] Principles of natural justice demand that a right of a party should not be affected without giving it an opportunity to be heard.[25]

Harsh as they may seem, these rules were introduced to avoid capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.[26]

It is important, however, to note that these doctrines refer exclusively to a motion, since a motion invariably contains a prayer, which the movant makes to the court, which is to repeat usually in the interest of the adverse party to oppose and in the observance of due process, the other party must be given the opportunity to oppose the motion.[27] **In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.[28]**

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20 *Solar Resources, Inc. v. Inland Trailways, Inc.* 579 Phil. 548, 563 (2008).
21 Id.
22 *Neri v. Dela Peña,* 497 Phil. 73, 81 (2005).
23 Id.
24 Id.
25 *Sarmiento v. Zaratan,* 543 Phil. 232, 243 (2007).
26 *Solar Resources, Inc. v. Inland Trailways, Inc.,* supra note 13.
27 Id.
28 Id.

Failure to comply with the required notice and hearing is a fatal defect that is deleterious to respondents cause.[29]

In *New Japan Motors, Inc. v. Perucho,*[30] the Court dismissed the motion for reconsideration that was unaccompanied by a notice of hearing as a piece of paper unworthy of judicial cognizance:

> "Under Sections 4 and 5 of Rule 15 of the Rules of Court, x x x 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 x x x.' **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 Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause."** (Emphasis supplied)

Nevertheless, the three-day requirement is not a hard and fast rule.[31] Where a party has been given an opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule.[32] The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[33]

We here follow the rule and so pronounce that contrary to the findings of the appellate court, petitioners were not given ample opportunity to vent their side on the issue since they were not able to promptly receive a copy of the notice of hearing impinging the latter's right to due process. We consulted the records and we found that no notice of hearing was appended to the Motion for Reconsideration[34] of the respondent. As discussed above, a motion for reconsideration is a litigated motion where the right of the adverse party will be affected by its admission. The adverse party in this case had the right to resist the motion because it may result to the reversal of a prior favorable decision. The proof of service was therefore indispensable in order to avoid surprises on the opposite party. The absence thereof is fatal to the motion.

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29 Id. at 564.

30 165 Phil. 636 (1976) as cited in *Solar Resources, Inc. v. Inland Trailways, Inc.*, supra note 20 at 564.

31 *United Pulp and Paper Co., Inc. v. Acropolis Central Guaranty Corporation*, 680 Phil. 64, 79 (2012).

32 Id. at 79-80.

33 *Sarmiento v. Zaratan,* supra note 25.

34 Supra note 10.

It bears stressing that a motion without notice and hearing, is *pro forma*, a mere scrap of paper that cannot be acted by the court.[35] It presents no question that the court can decide.[36] The court has no reason to consider it and the clerk has no right to receive it.[37] Indisputably, any motion that does not contain proof of service and notice to the adverse party is not entitled to judicial cognizance.[38]

Considering that the running of the period towards the finality of the judgment was not stopped, the RTC Decision dated 31 March 2005 became final and executory. Every litigation must come to an end once a judgment becomes final, executory and unappealable.[39] For just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment, which is the life of the law.[40] To frustrate it by dilatory schemes on the part of the losing party is to frustrate all the efforts, time and expenditure of the courts. It is in the interest of justice that we should write *finis* to this litigation.[41] Consequently, we find no reversible error when the RTC denied respondents' motion for reconsideration.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The assailed Resolutions of the Court of Appeals are hereby **REVERSED and SET ASIDE.** The Decision of the Regional Trial Court dismissing the complaint of the respondents and its Order declaring their Motion for Reconsideration as *pro forma* are hereby **REINSTATED.**

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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35 *Solar Resources, Inc. v. Inland Trailways, Inc.*, supra note 20 at 562.
36 Id.
37 Id.
38 Id.
39 *Bongcac v. Sandiganbayan, et al.*, 606 Phil. 48, 56 (2009).
40 Id.
41 Id.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO DE-CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice