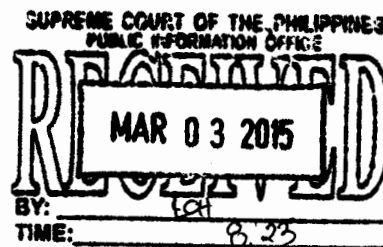




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 21, 2015 which reads as follows:

**“G.R. No. 161398 - AMA COMPUTER COLLEGE, INC.,
Petitioner, v. IMMACULATE CONCEPTION ACADEMY and DR.
PAULO C. CAMPOS,¹ Respondents.**

This review focuses on the decision promulgated on September 19, 2003,² whereby the Court of Appeals (CA) granted the respondents’ petition for *certiorari* and prohibition, and nullified, recalled and set aside the order issued on May 21, 2003 by the Regional Trial Court, Branch 90, in Imus, Cavite (RTC) granting the petitioner’s motion for execution pending appeal, as well as the writ of execution issued on May 29, 2003 pursuant to the assailed order.

The background follows.

On August 27, 1997, AMA Computer College, Inc. (AMACC) entered into a contract of lease with the Immaculate Conception Academy (ICA), represented by Dr. Paulo C. Campos, its Chief Operating Officer, regarding the latter’s three-storey building to be used by AMACC as a school building.

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¹ *Rollo*, p. 276 (Substituted by Dr. Jose Paulo E. Campos, Atty. Paulo E. Campos, Jr. and Dr. Enrique E. Campos, pursuant to the Resolution promulgated on November 14, 2007).

² *Id.* at 42-51; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, but already retired), with the concurrence of Associate Justice Bienvenido L. Reyes (now a Member of the Court) and Associate Justice Hakim S. Abdulwahid.

AMACC paid to ICA the total sum of P4,072,150.00 representing the security deposit equivalent to five months rental less earnest money, and the advance deposit equivalent to three months rental less 5% Expanded Withholding Tax. After signing the contract of lease, AMACC's construction team inspected the building in order to measure it in preparation for the plans and architectural design of the building, and noted cracks on the second floor. AMACC thus expressed its apprehension to the person in charge of the building, and the latter claimed that the cracks were only superficial, and assured AMACC that ICA had been issued the certificate of occupancy by the City Engineer's Office of Dasmariñas, Cavite.³ However, ICA did not present the certificate of occupancy despite several demands, forcing AMACC to order Architect Racquelito Talastas, its Construction Division Head, to have the building inspected. Arch. Talastas later opined that the building was not structurally sound. With this, AMACC formally requested the City Engineer's Office of Dasmariñas, Cavite to inspect the property, which inspection resulted in the finding that the building was unsafe for human occupancy. Thus, AMACC was prompted to withdraw from the contract of lease and to demand damages.

On January 14, 1998, AMACC sued ICA and Dr. Campos in the Regional Trial Court in Dasmariñas (RTC) for breach of contract and damages (with prayer for preliminary attachment), alleging that ICA and Dr. Campos had been guilty of fraud by leasing the property to AMACC despite knowing its condition of being unsafe for human occupancy, and of its being unsound for use as a school building. The RTC granted the application for preliminary attachment.

After trial, the RTC rendered its judgment on April 8, 2003 in favor of AMACC, ruling that the contract of lease was not on a "where-is-as-is-basis" because such condition was not stipulated in the contract of lease, and because ICA and Dr. Campos did not present any document to that effect;⁴ that AMACC established its payment of P4,072,150.00 to ICA and Dr. Campos, which the latter admitted; and that there was reasonable and just basis to uphold the right of AMACC to the restitution of its unlawfully withheld payment to ICA and Dr. Campos, including legal interests⁵ and damages. The judgment then disposed as follows:

WHEREFORE, premises considered, defendants are bound, under the law and jurisprudence cited above, to the plaintiff for the following:

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³ Id. at 94.

⁴ Id. at 95.

⁵ Id. at 100, citing the case of *National Steel Corporation vs. Regional Trial Court of Lanao del Norte, Branch 2, Iligan City*, G.R. No. 127004, March 11, 1999, 304 SCRA 595, 610.

1. Restitution of the amount of ₱4,072,150.00 which defendants received from the plaintiff as actual and compensatory damages representing five (5) months security deposit and three (3) months advance rental plus an interest at the rate of 6% per annum, from January 19, 1998, the date when the Complaint was filed until full payment of said amount to the plaintiff, AMA Computer College, Inc.;
2. Payment of the amount of ₱300,000.00 is likewise awarded to the plaintiff as exemplary damages; and
3. Payment of the amount of ₱200,000.00 as attorney's fees.

SO ORDERED.⁶

It was at this juncture that this legal battle ensued. Upon the rendition of the RTC's judgment, AMACC filed through registered mail a motion for execution pending appeal. In the meantime, on April 28, 2003, the latter appealed the judgment by notice of appeal.

In its assailed order of May 21, 2003, the RTC granted AMACC's motion for execution pending appeal, and the writ of execution issued on May 29, 2003.

On June 5, 2003, ICA and Dr. Campos commenced a special civil action for *certiorari* and prohibition in the CA, praying that the order of May 21, 2003 and the writ of execution issued on May 29, 2003 be declared as without force and effect for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. They argued that the perfection of their appeal had divested the RTC of its jurisdiction over the case, and of the authority to issue the writ of execution; and that they had not been properly notified of the hearing of the motion for execution pending appeal, thereby depriving them of their right to contest the propriety of the issuance of the writ for execution.

AMACC countered that its motion could have been properly served upon ICA and Dr. Campos had their counsel not refused to receive a copy of its motion when they were personally served therewith; that their counsel had merely read a copy of its motion, and then refused to acknowledge the copy for no apparent reason; and that such actuation of the counsel had forced AMACC to serve the motion by registered mail.

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⁶ Id.

Nonetheless, ICA and Dr. Campos' counsel refuted AMACC's allegation of their counsel's refusal to receive a copy of the motion for execution pending appeal when they were personally served with it, insisting that they had received the copy of the motion at 3 o'clock in the afternoon of May 5, 2003, which was an hour after the scheduled hearing of the motion; and that the belated service had left them unable to attend the hearing of the motion.

In its assailed decision promulgated on September 19, 2003,⁷ the CA ruled in favor of ICA and Dr. Campos, holding that AMACC had not complied with one of the three mandatory requirements for the issuance of an execution pending appeal, namely: (1) there must be a motion by the prevailing party with notice to the adverse party; (2) there must be a good reason for issuing execution; and (3) that the good reason be stated in a special order; that AMACC did not satisfy the indispensable requirement that a motion be filed in the court and that a proper notice of the motion be served on the adverse party, observing thuswise:

x x x Just like any ordinary motion, the 3-day notice rule strictly required in Section 4 of Rule 15, 1997 Rules, must be complied with. x x x The purpose of this requirement is to provide, appraise and afford the party a chance to be heard before the motion is resolved. Incidentally, the duty to give such notice devolves upon the movant in the court. The notice sent by the court after the period is expired will not cure the defect of lack of notice.

that the RTC had thereby gravely abused its discretion in failing to take cognizance of the defective service of notice, and in favorably acting on the motion for execution pending appeal without the compliance with the 3-day mandatory requirements under the *Rules of Court*; that AMACC did not also prove that ICA and Dr. Campos had received a copy of the motion for execution prior to the scheduled hearing, thereby belying AMACC's assertion that the counsel of ICA and Dr. Campos had read the motion but had refused to receive it; that the "good reason" contained in the RTC's order granting the issuance of the motion for execution pending appeal had dwelt on the fact that their appeal would serve no other purpose but to delay the case, and the lapse of time would make the judgment illusory and ineffective considering the urgency of the need of AMACC for the premises to use as a school; and that such reason could not justify the execution pending appeal because the judgment involved controversial issues based on findings of fact that should be left to the appellate court to determine, and should not be the sole basis for the immediate execution of judgment. The CA then disposed as follows:

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⁷ Supra note 2.

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **GRANTED**, and the assailed Order of May 21, 2003 and the Writ of Execution dated May 29, 2003 are hereby **NULLIFIED, RECALLED and SET ASIDE**. No cost.

SO ORDERED.

AMACC now appeals, assigning the lone error of the CA committing serious error of law in nullifying the order of the RTC granting its motion for execution pending appeal.

Ruling

The appeal is without merit.

We reiterate that AMACC as the movant for the issuance of the writ of execution pending appeal should comply with the mandatory requirements in order for the RTC to validly take cognizance of and act on its motion. The requirements are stated in Rule 15 of the *Rules of Court*, viz:

Section 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 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.

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

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

The notice of hearing, which is one of the requirements under the *Rules of Court*, must be directed to the adverse parties concerned and must state the time and place for the hearing of the motion. Compliance with the

requirements is mandatory; otherwise, the motion is rendered fatally defective,⁸ and will be treated as a useless piece of scrap paper that will not be legitimately acted upon.⁹ Verily, the three-day notice required by the *Rules of Court*, being an integral component of procedural due process, is not intended for the benefit of the movant. The requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given the time to study and meet the arguments in the motion before its resolution by the court. This is consonant with the principles of natural justice that ensures the right of a party not to be affected without giving it an opportunity to be heard. Hence, the test is the presence of the opportunity to be heard, as well as the granting of the time to study the motion and meaningfully oppose or controvert its grounds upon which it is based.¹⁰

Moreover, the *Rules of Court* provides that whenever practicable, the service and filing of pleadings and other papers shall be done personally, and a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally.¹¹ Accordingly, personal service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof.¹² Yet, although the counsels of the petitioner and of the respondents had their respective office addresses in Quezon City not too distant from each other – petitioner’s counsel being at No. 59 Panay Avenue, Quezon City and respondents’ counsel at Metrobank Building, 22 Kamuning Road, Quezon City – the service of the motion for execution pending appeal was not done personally, but by registered mail. Under the circumstances, the service by registered mail was unjustified, especially as it was not shown that the distance between the offices of the counsels did not render personal service of the motion and the notice of hearing impracticable.

The petitioner insisted that its counsel had exerted effort to personally serve to the respondents a copy of its motion for execution pending appeal (with the notice of hearing), except that the person

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⁸ *Tan v. Court of Appeals*, G.R. No. 130314, September 22, 1998, 295 SCRA 755, 762.

⁹ *Cruz v. Court of Appeals*, G.R. No. 123340, August 29, 2002, 388 SCRA 72, 80; *Cledera v. Sarmiento*, L-32450-51, June 10, 1971, 39 SCRA 552, 575; *PNB v. Donasco*, L-18638, February 28, 1963, 7 SCRA 409, 413; *Manakil v. Revilla*, No. 17852, 42 Phil. 81, 84 (1921); *Roman Catholic Bishop of Lipa v. Municipality of Unisan*, 44 Phil. 866; *Director of Lands v. Sanz*, No. 21183, 45 Phil. 117 (1923).

¹⁰ *Jehan Shipping Corp. v. National Food Authority*, G.R. No. 159750, December 14, 2005, 477 SCRA 781, 788-789.

¹¹ Section 11, Rule 13, *Rules of Court*.

¹² Section 6, Rule 13, *Rules of Court*.

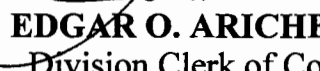
receiving the same had then merely read the contents thereof and then refused to receive the copy. This insistence cannot be accepted, however, because it presents a question of fact that this Court does not take cognizance of in this appeal by petition for review on *certiorari*. Consequently, the CA's conclusion that the petitioner's assertion about the respondents' refusal to receive the copy of the motion was an afterthought remained undisputed.

IN VIEW OF THE FOREGOING, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on September 19, 2003; and **ORDERS** the petitioner to pay the costs of suit.

Considering that the appeal of the decision on the merits rendered on April 8, 2003 by the Regional Trial Court has been held in abeyance pending the resolution of this case pursuant to the Resolution promulgated on June 2, 2004 by the Court of Appeals, the Court **FURTHER ORDERS** the Court of Appeals to resolve the appeal with dispatch.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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