

## THIRD DIVISION

[ G.R. No. 124267, January 28, 2003 ]

**NATIONAL COMMERCIAL BANK OF SAUDI ARABIA, PETITIONER,  
VS. COURT OF APPEALS AND PHILIPPINE BANKING  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

May the unripped doctrine that a motion filed without the requisite notice of hearing is a useless piece of paper with no legal effect<sup>[1]</sup> be, under the facts of the case, relaxed?

Petitioner National Commercial Bank of Saudi Arabia (NCBSA) filed a case against respondent Philippine Banking Corporation (PBC) in the Regional Trial Court (RTC) of Makati on December 4, 1985 to recover "the duplication in the payment of the proceeds of a letter of credit [NCBSA] has issued ... brought about by the fact that both the head office and the Makati branch of [PBC, the negotiating bank,] collected the proceeds of the letter of credit."<sup>[2]</sup>

On August 24, 1993, the RTC of Makati rendered a decision in favor of NCBSA.<sup>[3]</sup> PBC received a copy of the decision on September 3, 1993<sup>[4]</sup> and on the 12th day of the period of appeal or on September 15, 1993, it filed a Motion for Reconsideration.<sup>[5]</sup> The motion, however, did not contain a notice of hearing.<sup>[6]</sup>

On September 21, 1993, NCBSA filed a Manifestation pointing out that PBC's Motion for Reconsideration did not contain any notice of hearing.<sup>[7]</sup>

On September 27, 1993, NCBSA filed a Motion for Writ of Execution of the decision of the trial court.<sup>[8]</sup> On even date, PBC filed a Motion to Set "Motion for Reconsideration" for Hearing<sup>[9]</sup> alleging as follows:

x x x

2. The Motion for Reconsideration raised both questions of facts and law arising from the erroneous findings made by the Honorable Court in the said Decision;
3. In order that defendant can fully amplify and expound on the issues raised on the said motions, there is a need to set the Motion for Hearing.

x x x <sup>[10]</sup>

NCBSA opposed this motion vigorously, it praying that it be stricken off the records.  
[11]

By Order of February 1, 1994, the trial court struck from the records of the case PBC's Motion for Reconsideration of its decision and granted NCBSA's Motion for Writ of Execution.<sup>[12]</sup>

PBC filed a Motion for Reconsideration of said Order of February 1, 1994, this time alleging that PBC's failure to comply with the 3-day notice rule "was essentially an honest mistake or oversight of counsel."<sup>[13]</sup> This motion was just as vigorously opposed by NCBSA.<sup>[14]</sup>

By Order of March 2, 1994, the trial court denied PBC's Motion for Reconsideration of its Order of February 1, 1994, finding that "[t]here are no compelling reasons to warrant a liberal construction of the rules on Motions."<sup>[15]</sup>

PBC assailed before the Court of Appeals via Petition for Certiorari the trial court's March 2, 1994 Order.<sup>[16]</sup>

By Decision of February 27, 1995, the Court of Appeals dismissed PBC's Petition for Certiorari.<sup>[17]</sup> On PBC's Motion for Reconsideration, however, the Court of Appeals, by Amended Decision of March 8, 1996, set aside its February 27, 1995 Decision and granted PBC's Petition for Certiorari and directed the trial court to resolve PBC's Motion for Reconsideration (of the trial court's August 24, 1993 Decision).<sup>[18]</sup>

Justifying its setting aside of its February 27, 1995 Decision, the Court of Appeals held in its Amended Decision:

...[T]o deny petitioner's motion for reconsideration on the ground of failure to contain a notice of hearing is too harsh an application of procedural rules especially so when petitioner has filed a motion to set the motion for reconsideration for hearing and had furnished private respondent a copy of the motion, a fact which is not denied by the latter.  
[19]

NCBSA thus comes to this Court assailing the Court of Appeals' Amended Decision.

The petition is impressed with merit.

The requirement of notice under Sections 4 and 5, Rule 15 in connection with Section 2, Rule 37 of the Revised Rules of Court<sup>[20]</sup> is mandatory. The absence of a notice of hearing is fatal and, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.<sup>[21]</sup> In the case at bar, it is not disputed that PBC's Motion for Reconsideration of the August 24, 1993 decision of the trial court did not contain the requisite notice of hearing.

In an attempt to cure the defect, PBC filed a Motion to Set the "Motion for Reconsideration" for Hearing on September 27, 1993, or 9 days after the period for filing the Notice of Appeal had expired.

The motion for reconsideration, however, being fatally defective for lack of notice of

hearing, cannot be cured by a belated filing of a notice of hearing.<sup>[22]</sup> More so in the case at bar where the Motion to Set the “Motion for Reconsideration” was filed **after** the expiration of the period for filing an appeal.

NCBSA thus calls for the strict application of our rules of procedure to avoid further delays in the disposition of the case,<sup>[23]</sup> which has remained pending for more than 17 years.

PBC, on the other hand, invokes a just and fair determination of the case.<sup>[24]</sup>

PBC’s appeal for justice and fairness does not lie, however, there being nothing on record to show that it has been a victim of injustice or unfairness. On the contrary, as found by the Court of Appeals in its original decision, PBC had the opportunity to participate in the trial and present its defense and had actually made full use of the remedies under our rules of procedure.<sup>[25]</sup> More importantly, there was no oppressive exercise of judicial authority that would call for the annulment of the trial court’s resolutions.<sup>[26]</sup>

The finality of the decision of the trial court cannot be set aside purely on the basis of liberality for while it is true that a litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random. Only for the most persuasive of reasons should the court allow a relaxation of its procedural rules.<sup>[27]</sup>

PBC, however, has not advanced any persuasive or exceptional reason in failing to set its Motion for Reconsideration of the trial court’s decision for hearing. In fact, in its Motion to Set “Motion for Reconsideration” for Hearing, PBC was completely silent on why it did not set the Motion for Reconsideration for hearing. It just alleged that, as earlier quoted, “[i]n order that defendant can fully amplify and expound on the issues raised on said motion, there is a need to set the Motion [for Reconsideration] for Hearing.”<sup>[28]</sup> This allegation conveys that, if there was no need for PBC to “fully amplify and expound on the issues raised” in the Motion for Reconsideration, no setting for hearing of said motion was needed. But as earlier stated, the requirement of notice in this kind of motion is mandatory. The Motion for Reconsideration thus remained a mere scrap of paper which deserved no consideration.

But assuming that PBC had presented exceptional reason or excuse for its failure to comply with the notice requirement, the Motion for Reconsideration would be denied on the ground that it is *pro forma*.

In its Rejoinder<sup>[29]</sup> to NCBSA’s Reply to Comment to the petition at bar, PBC alleged that it was, in its Motion for Reconsideration of the trial court’s decision, raising “serious questions involving findings of fact and conclusions of law by the trial court,” thus “questioning the decision as being contrary to law and the evidence on record.”<sup>[30]</sup> A reading of the records will show, however, that the **same** three issues raised by PBC **during the trial** – prescription, laches and lack of double payment – are what are being **raised in its Motion for Reconsideration** of the decision of the trial court.