

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**PHILIPPINE NATIONAL BANK AND
NATIONAL INVESTMENT
DEVELOPMENT CORPORATION,
*Petitioner,***

-versus-

**G.R. No. 108870
March 3, 1994**

**HONORABLE COURT OF APPEALS,
HON. RODOLFO A. ORTIZ, Presiding
Judge of Quezon City, Br. 89, CLARA
REYES PASTOR and OTHER
STOCKHOLDERS OF C & C
COMMERCIAL CORP.,**

Respondents.

X-----X

DECISION

RESOLUTION dated July 14, 1995

NOCON, J.:

The sole issue in the instant case is whether herein petitioners, Philippine National Bank, PNB for brevity, and National Investment Development Corporation, NIDC for brevity, are deemed to have received a copy of the decision of the trial court on January 23, 1992 when the mail containing the decision was received by the PNB mailing clerk from the post office or only on January 28, 1992 when the mail was delivered by said clerk to the Legal Department of the PNB.

On October 16, 1973, private respondents Clara Reyes Pastor and other stockholders of the C & C Commercial Corporation filed a complaint against PNB and NIDC for termination of the Voting Trust Agreement, Accounting and Damages with prayer for injunction and receivership with Branch 31 of the then Court of First Instance of Rizal, Quezon City.

Nineteen years after, judgment was rendered on January 20, 1992 rescinding the voting trust agreement executed between PNB and Clara Reyes Pastor, herein private respondent in her capacity as majority stockholder of C & C Commercial Corporation, the dispositive portion of which reads:

“ACCORDINGLY, judgment is hereby rendered as follows:

1. Rescinding the Voting Trust Agreement executed on March 5, 1969, by plaintiff Clara Reyes Pastor, a majority stockholder of C & C Commercial Corporation, as Trustor, in favor of the defendants, Philippine National Bank and National Investment Development Corporation, as Trustees;
2. Declaring that the secured loans of P490,000.00 and P76,000.00 of the plaintiffs from the Development Bank of the Philippines (DBP), under the promissory notes dated May 16, 1960 and May 8, 1961, secured by real estate mortgages on the same dates, executed by plaintiff Clara Reyes Pastor for herself and as attorney-in-fact of her husband, Antonio C. Pastor, in favor of the DBP, which were assigned by the DBP to

defendant PNB are already considered fully paid by the plaintiffs by reason of set off/compensation with the damages and attorney's fees awarded to the plaintiffs in this judgment, and, the said secured loans are, therefore, no longer payable to defendant PNB from the plaintiffs;

3. Cancelling thereby the aforesaid real estate mortgages covering the mortgaged twenty (20) parcels of land described therein, together with all the buildings and other improvements existing or which may hereafter be created or constructed thereon, situated at Barrio Napindan, Municipality of Taguig, province of Rizal (now Metro Manila), under Original Certificate of Title No. 2224 of the Registry of Deeds of the province of Rizal (now of Pasig, Metro Manila);
4. Making permanent the writ of preliminary injunction issued on March 23, 1990;
5. Ordering, as a consequence, the Register of Deeds of the Province of Rizal (now of Pasig, Metro Manila) to cancel the mortgage annotations, pertaining to the said real estate mortgages, made at the back of Original Certificate of Title No. 2224 of the Registry of the Deeds of the Province of Rizal (now of Pasig, Metro Manila);
6. Ordering, as well, the Registry of Deeds of the Province of Rizal (now of Pasig, Metro Manila) to return and deliver to the plaintiffs the owner's duplicate copy of Original Certificate of Title No. 2224 of the Registry of Deeds of the Province of Rizal (now of Pasig, Metro Manila);
7. Ordering the defendants to pay to plaintiff C & C Commercial Corporation, jointly and severally, actual damages in the amounts of: (a) P4,520,000.00, as business losses; (b) P6,599,224.00, as unrealized profits; (c) P8,084,631.00, as capital deficiency; AND

- (d) P781,993.00, representing decrease in assets, including the sum of P1,000,000.00 as exemplary damages as well as P500,000.00, in reasonable attorney's fees, or for the total net amount of P20,199,848.00, in net amount of P20,199,484, in damages and attorney's fees, after deducting from the gross total of the aforesaid awarded damages and attorney's fees, the total secured loans of P1,286,000.00 by way of set off/compensation;
8. Ordering the defendants to pay the plaintiff C & C Commercial Corporation, also jointly and severally, interests on the total actual damages of P19,985,848.00, at the rate of 6% per annum from the date of this judgment until fully paid;
 9. Dismissing the counterclaim of the defendants for lack of merit; and
 10. With costs against the defendants.”^[1]

Gauged by the rather turtle-like pace of the aforementioned decision, a copy thereof was instantaneously sent by registered mail on January 23, 1992 to the office of Atty. Avamor Perez, PNB's counsel, which was at the 6th Floor of the PNB Building, Escolta, Manila. However, the copy of the decision was received by the Litigation Division of the PNB only on January 28, 1992.

Herein petitioner filed a notice of appeal on February 10, 1992 but the same was denied by respondent judge, Rodolfo A. Ortiz, who issued a writ of execution of his decision on the ground that the appeal was late and that the decision had become final and executory.

On February 18, 1992, Atty. Avamor Perez, counsel for herein petitioners received a copy of the motion seeking the immediate execution of the decision.

On June 11, 1992, the trial court issued an order granting the writ of execution. The order reads:

“The decision dated January 20, 1992 being already final and executory, as the notice of appeal of the defendant PNB was filed only on February 10, 1992 three (3) days beyond the reglementary period of fifteen (15) days from January 23, 1992, the date when defendants’ counsel is considered to have received this court’s decision dated January 20,1992, it is now the ministerial duty of the court to order the issuance of a writ of execution for its enforcement.”^[2]

Consequently, the trial court issued a writ of execution and on the same day served a notice of garnishment on the cashier of the PNB.

A petition for certiorari under Rule 65 of the Rules of Court was filed by herein petitioners PNB and NIDC in the Court of Appeals seeking the nullification of the trial court’s order dated June 11, 1992 denying their notice of appeal dated February 10, 1992 and the issuance of the writ of execution dated June 22, 1992 and the notice of garnishment on the same date.

The Court of Appeals dismissed the petition hence, the present appeal.

Petitioners now contend that respondent judge of the trial court committed a grave abuse of discretion in holding the decision of January 20, 1992 final and executory.

More particularly, the question to be resolved is whether petitioners are deemed to have received a copy of the decision sent to them by registered mail on January 23, 1992 when the mail containing the decision was received by the PNB mailing clerk from the post office or only on January 28, 1992 when the mail was delivered by said clerk to the Legal Department of the PNB.

Petitioners anchor their contention on the case of PLDT vs. NLRC,^[3] where the Court has ruled:

“The bailiff, instead of serving the notice of the decision at the lawyer on the ninth floor which is clearly indicated in the notice of decision, left the notice at the ground floor of the petitioner’s main building. We have held time and again that notices to

counsel should properly be sent to the address of record in the absence of due notice to the court of change of address (Phil. Suburban Dev. Corp. vs. Court of Appeals, 100 SCRA 109). Hence, practical considerations and the realities of the situation dictate that the service made by the bailiff on March 23, 1981 at the ground floor of the petitioner's building and not at the address of record of petitioner's counsel on record at the 9th floor of the PLDT building cannot be considered a valid service. It was only when the Legal Services Division actually received a copy of the decision on March 26, 1981 that a proper and valid service may be deemed to have been made."

The PLDT case has no applicability to the case at bar due to factual differences. In the PLDT case, the notice of the decision was served on a person not an employee of the company. However, in the instant case, a copy of the decision was received by the official and authorized mailing clerk of PNB.

What is revealing is the hearing held on March 17, 1992 in Civil Case No. RQ-18176, where the respondent judge had the opportunity to inquire into the procedure of herein petitioners in receiving their mail matters from petitioners' counsel, thus:

“ATTY. PEREZ:

For the defendant, your Honor. Counsel for the plaintiff is not yet around, your Honor. Anyway, we would like to manifest . . . (interrupted)

COURT:

Where is he?

ATTY. PEREZ:

He is not yet in court, your Honor. Anyway, your Honor, we would like to manifest that we received a reply to our opposition last Friday, your Honor. We would like to respectfully move that in lieu of the oral argument, we will just

submit a rejoinder to the reply within three (3) days from today, your Honor.

COURT:

The bank claims that its mailing section received a copy of the decision of this Court on . . .

ATTY. PEREZ:

January 23, your Honor.

COURT:

January 23. The notice of appeal was filed on February 10, 1992.

ATTY. PEREZ:

Yes, your Honor.

COURT:

In other words, there is a delay of . . .

ATTY. PEREZ:

Three (3) days, your Honor.

COURT:

Three (3) days. This, notwithstanding, counsel for the bank claims that the appeal is still on time.

ATTY. PEREZ:

Yes, your Honor.

COURT:

How do you justify that?

ATTY. PEREZ:

Your Honor please, the receiving clerk of the legal department received the envelope containing the decision of this Honorable Court on January 26, as shown in the logbook, a copy of which was attached to our motion, your Honor. We maintain that the mailing section of the bank which is under the General Services Department is not in any way considered as the authorized representative of the Legal Department to receive such decision, your Honor, It's just the . . . (interrupted)

COURT:

As regards the previous orders of this Court in this case, and its notices to counsel, how did you receive your notices and orders from this Court?

ATTY. PEREZ:

The same, your Honor.

COURT:

The same. The mailing section?

ATTY. PEREZ:

Yes, your Honor.

COURT:

And you honor those orders and notices sent by registered mails and received by the mailing section?

ATTY. PEREZ:

Your Honor please, we are . . .

COURT:

Answer the question please.

ATTY. PEREZ:

Yes, your Honor.

COURT:

In those previous orders and notices, you never claimed that the registered mails were not validly sent because it was not in the first instance received by the litigation division of the PNB, is that not correct?

ATTY. PEREZ:

Yes, your Honor.

COURT:

Go ahead.

ATTY. PEREZ:

Now, your Honor . . . (interrupted)

COURT:

In other words, the usual way of receiving mails at PNB is thru the mailing section. All offices received their mails thru the mailing section.

ATTY. PEREZ:

Yes, your Honor.

COURT:

That's the usual way of receiving mails at the PNB?

ATTY. PEREZ:

Yes, your Honor.

COURT:

Go ahead.

ATTY. PEREZ:

The employee of the bank detailed at its mailing section has a daily routine to pick-up the mails everyday, your Honor, from the main post office. And, thus, he is made to bring those mails, to the mailing section which sorts out and enters to its logbook mail matter for the different departments as well as the employees, your Honor.

COURT:

In other words, that employee is duly authorized to receive the mails.

ATTY. PEREZ:

Your Honor . . .

COURT:

Duly authorized or not?

ATTY. PEREZ:

They are authorized to receive.

COURT:

He was duly authorized to get the mails for the PNB?

ATTY. PEREZ:

Yes, your Honor.

COURT:

Alright.

ATTY. PEREZ:

Just mail matters. But the fact that he received the registry return receipt of that decision he was not authorized to do so. He should have received, just receive, your Honor, the registry return card of that decision inasmuch as he does not understand the import of such a thing.

COURT:

He was not authorized to receive the what?

ATTY. PEREZ:

Your Honor, he was authorized . . . (interrupted)

COURT:

He was authorized to receive mails for the PNB . . .

ATTY. PEREZ:

Yes.

COURT:

. . . but he was not authorized to what?

ATTY. PEREZ:

He was not authorized to sign in behalf of the Legal Department, your Honor, especially with that registry return card which contains the decision.

COURT:

Is there such a directive that he was not authorized?

ATTY. PEREZ:

None that I know, your Honor. Perhaps.

COURT:

As regards the other orders of this Court and notices where he signed also . . .

ATTY. PEREZ:

Yes, your Honor.

COURT:

. . . he signed also the return cards?

ATTY. PEREZ:

Yes, your Honor.

COURT:

And the Legal Department did not complain why he was signing without authority, is that not so?

ATTY. PEREZ:

Yes, your Honor. Now, your Honor, we maintain that the employee of the bank could not have understood the import of receiving the decision. In other words, he would not have known what that envelope contains considering that he is just a mere employee.

COURT:

In other words, you are now pleading ignorance on the part of that employee?

ATTY. PEREZ:

Not only that, your Honor. The mere fact that he was not allowed to open that envelope.”^[4]

It is crystal clear that Mr. Catalino M. Sandoval, the PNB employee permanently assigned with petitioner PNB’s Mailing Division, General Services Department is in charge of collecting all PNB mailing matters, correspondence, pouches, printed matters, letters, notices, etc. for PNB.

Although not detailed with PNB Legal Department, Mr. Sandoval had nonetheless and for years been receiving orders and notices for petitioners and signing all the corresponding registry return cards without any complaint or protest from petitioners, including the registry return card of the envelope containing the copy of the Decision of the respondent judge dated January 20, 1992.

As the trial court correctly observed:

“For, during the oral arguments pertaining to this incident on March 17,1992, defendants’ counsel admitted that all the previous orders of this Court in this case and all notices to him were also received by him through defendant PNB’s Mailing Division and all these orders and notices were honored by him.

“Defendants’ counsel also admitted in open court that he never questioned before the validity of the service of these previous orders and notices in this case, to him, as defendants’ counsel, although not received in the first instance by the litigation division of defendant PNB, since it is through the Mailing Division that all officials in defendant PNB receive their mails.

“He likewise admitted that the PNB employee detailed at its Mailing Division who received the mails for the different departments and employees of defendant PNB, that day, January 23, 1992, was duly authorized to do so. In fact, according to him, this PNB employee detailed at the Mailing Division had been signing registry return receipts for orders and notices sent to defendants’ counsel, without any complaint from the litigation division.

“Under these circumstances, this Court holds defendants’ counsel cannot now be validly heard to complain, apparently for the first time, against the regularity of the service on him of the decision of this Court dated January 20, 1992, be registered letter, received and signed for by the PNB employee of its Mailing Division, since he is already estopped from questioning the validity of the service of the decision to him, thru the Mailing Division, not having questioned before the validity and efficacy of the service to him of the prior orders and notices of this Court in this case all of which he had honored without any complaint whatever, especially, as it appears, that the litigation and Collection Division of the Legal Department of defendant PNB and its mailing Division of its General Services Department, are housed and located at the same PNB Building at Escolta, Manila.

“Verily, since, obviously, the PNB employee at the Mailing Division, being admittedly, authorized to receive all PNB mails, it follows that he had also the authority to sign registry return receipts for registered letters he had received.

“What is more, to subject the efficacy of the service to him of the decision dated January 20, 1992, to the internal procedure defendant PNB made and devised as to how and when the mails

for its different offices and employees shall be delivered to them, would be an uncalled for and unwarranted encroachment upon the provisions of the rules of court pertaining to service of notices, orders and judgments, which should not be countenanced, since, if allowed, it will unduly placed upon the whims and caprices of a party litigant as to when an order or a decision shall become effective which will certainly cause havoc to, and will endanger the administration of justice.

“Indeed, it is incumbent upon the Litigation and Collection Division of defendant PNB, of which defendants’ counsel is a part, to provide and adopt a system in their office that efficiently takes into account all Court notices, orders and decisions received by its Mailing Division, and for want of diligent supervision, the inexcusable negligence of the sorting clerk of the Mailing division is attributable to the Litigation and Collection Division including defendants’ counsel.

“This negligence of defendant’s counsel, which can only be characterized as gross, was made even more manifest by his unexplained failure to appeal within the period of fifteen (15) days from January 23, 1992, the date of receipt by the mailing Division of defendant PNB, which he could not have missed to see and notice by the exercise of ordinary diligence as it is plainly stamp marked on the face of the registered letter containing the decision addressed to him. Verily, since there was plenty of time from January 28, 1992, the date when the registered letter was turned over to the Litigation and Collection Division, until February 7, 1992, the expiry date of reglementary period of fifteen (15) days from January 23, 1992, within which defendants’ counsel could have, by ordinary diligence, easily made and filed his one-paragraph notice of appeal but which he failed to do, obviously, because of gross negligence, for which his clients are bound.”^[5]

The Court in the case of Pacific Timber Export Corporation vs. NLRC^[6] had the occasion to say:

“The Court is not unaware of the practice of some lawyers who, lacking plausible support for their position, simply claim a

denial of due process as if it were a universal absolution. The ground will prove unavailing, and not surprisingly since it is virtually only a pro forma argument. Due process is not to be bandied like a slogan. It is not a mere catch-phrase. As the highest hallmark of the free society, its name should not be invoked in vain but only when justices has not been truly served.”

WHEREFORE, there being no reversible error in the appealed decision, the same is hereby **AFFIRMED**.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado and Puno, JJ., concur.

[1] Rollo, pp. 28-30.

[2] Rollo, p. 100.

[3] No. L-60050, 128 SCRA 402 (1984).

[4] T.S.N., March 17, 1993, Rollo, pp. 72-83.

[5] Rollo, pp. 98-100.

[6] G.R. No. 106170, July 30, 1993.