



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 14, 2020** which reads as follows:*

**“G.R. No. 248786 –Reynaldo Valdez and Heirs of Rodrigo Valdez namely Oliver Valdez, Emerson Valdez, Romel Valdez, Josie Valdez, Leonides Valdez, and Lilian Valdez Lavarez vs. Hon. Judge Jocelyn Sundiang, Pacifico Perez, Asusina Perez alias Florida Perez-Felipe, Miguel Perez, and Jose Severino, Jr.**

We **DENY** the petition.

It is undisputed that petitioners failed to comply with the three (3)-day notice rule under Section 4, Rule 15, of the 1997 Rules of Court,<sup>1</sup> 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.<sup>2</sup>

Petitioners filed their motion for reconsideration on November 27, 2017 and set the hearing thereof on November 29, 2017 or one (1) day short of the three-day notice rule. Non-compliance with Section 4, Rule 15 of the Rules of Court is a fatal defect rendering the motion *pro forma*, a useless piece of paper that is not entitled to judicial cognizance and does not stop the running of the reglementary period for filing the requisite pleading.<sup>3</sup>

- over – three (3) pages ...

149-A

<sup>1</sup> The Court notes that the three-day notice rule was already removed under the 2020 Revised Rules of Civil Procedure. Be that as it may, petitioners filed their motion for reconsideration prior to the effectivity of the 2020 Revised Rules of Civil Procedure.

<sup>2</sup> Rules of Court, 1997 Rules of Civil Procedure As Amended, April 8, 1997.

<sup>3</sup> See *Cruz v. Court of Appeals*, 436 Phil. 641, 651 (2002).

The trial court's Decision dated November 2, 2017, therefore, had already lapsed into finality and may no longer be assailed by appeal or *certiorari*. Once a judgment attains finality, it becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.<sup>4</sup>

In any event, petitioners should have appealed the trial court's Decision dated November 2, 2017 upon the denial of their motion for reconsideration pursuant to Rule 37, Section 9 of the 1997 Rules of Court, *viz.*:

**SECTION 9. Remedy Against Order Denying a Motion for New Trial or Reconsideration.**— An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order.<sup>5</sup>

Instead, petitioners opted to file a second motion for reconsideration in violation of Section 5 of the same Rule:

**SECTION 5. Second Motion for New Trial.** — x x x x

No party shall be allowed a second motion for reconsideration of a judgment or final order.<sup>6</sup>

More, settled is the rule that *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.<sup>7</sup>

**WHEREFORE**, the petition is **DENIED** and the Decision dated January 31, 2019 and Resolution dated June 18, 2019 of the Court of Appeals in CA-G.R. SP No. 155735, **AFFIRMED**.

The respondents' motion for an extension of fifteen (15) days from December 13, 2019 within which to file a comment on the petition for review on *certiorari*, is **GRANTED**; and the: (a)

- over -

149-A

<sup>4</sup> See *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 708 (2005).

<sup>5</sup> Rules of Court, 1997 Rules of Civil Procedure As Amended, April 8, 1997.

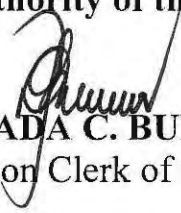
<sup>6</sup> *Id.*

<sup>7</sup> See *Butuan Development Corp. v. Court of Appeals, et al.*, 808 Phil. 443, 451 (2017).

respondents' aforesaid comment thereafter filed; and (b) petitioner's motion to admit proof of service of the petition for review on certiorari on the Court of Appeals, are both **NOTED**.

**SO ORDERED.**” *Lopez, J., took no part; Carandang, J., designated Additional Member per Special Order No. 2788 dated September 23, 2020.*

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**149-A**

F.R.B. UMALI LAW OFFICE  
Counsel for Petitioners  
33 Peneyra Road, Brgy. San Pedro  
Puerto Princesa, 5300 Palawan

Court of Appeals (x)  
Manila  
(CA-G.R. SP No. 155735)

Atty. Zoilo C. Cruzat  
Counsel for Respondents  
26 San Juan Road, San Miguel  
Puerto Princesa, 5300 Palawan

The Hon. Presiding Judge  
Regional Trial Court, Branch 47  
Puerto Princesa, 5300 Palawan  
(Civil Case No. 3654)

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court

UR



149A