

VICENTE PARADO, PETITIONER, VS. NORTH SUSANA HOMEOWNERS' ASSOCIATION, INC., RESPONDENT.

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is a petition for review[1] filed under Rule 43 of the 1997 Rules of Civil Procedure by petitioner Vicente Parado, seeking to review the following decision and resolution rendered by the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. NCR-HOA-070110-1351, to wit: (1) Decision[2] promulgated on March 14, 2013, ordering petitioner to pay respondent the unpaid monthly dues as of February 28, 2010; and (2) Resolution[3] promulgated on April 22, 2014, dismissing outright petitioner's appeal thereof for failure to file the required appeal bond.

Respondent North Susana Homeowners Association, Inc. (NSHAI) is a domestic, non-stock, non-profit corporation composed of homeowners of North Susana Executive Village (NSEV), existing under Philippine laws and duly registered with the HLURB and represented by its president Mr. Roberto S. Montellano. It was organized to manage the affairs of NSEV homeowners and to provide basic community services and facilities such as security, maintenance of subdivision roads and open spaces, drainage and sewerage system, lighting facilities, garbage collection, and sports and health campaigns. In turn, its members are obligated to pay annual and monthly membership dues.

However, petitioner, as member of respondent NSHAI, failed to pay his annual and monthly membership dues plus interest of twelve percent (12%) compounded annually, which, as of February 28, 2010, totaled to One Hundred Ten Thousand Five Hundred Seventy Five Pesos and 11/100 Centavos (Php110,575.11), despite verbal and written demands to pay. Thus, on July 1, 2010, respondent filed with the HLURB a complaint against petitioner for the collection of membership fee and unpaid monthly dues.[4]

On March 14, 2013, the HLURB rendered the assailed Decision,[5] ordering petitioner to pay respondent Php110,575.11, representing his unpaid monthly dues as of February 28, 2010. The HLURB declared that the benefits received and the enjoyment of the services rendered by the homeowners' association carries with it the correlative obligation to pay the monthly dues regardless of whether the authority of officers sitting as Board of Directors is questionable.

Petitioner appealed the decision, but the HLURB, in the assailed Resolution[6] promulgated on April 22, 2014, dismissed the appeal outright for petitioner's failure to post the required appeal bond. The HLURB declared that there is no compelling ground to relax the application of the Rules as to reverse or modify the decision appealed from.

Aggrieved, petitioner filed the instant petition for review, raising the following issues, to wit:[7]

- I. WHETHER THE HLURB BOARD OF COMMISSIONERS ERRED IN DISMISSING PETITIONER'S APPEAL FOR FAILURE TO POST APPEAL BOND;

II. WHETHER THE HLURB BOARD OF COMMISSIONERS GRAVELY ERRED IN FINDING PETITIONER LIABLE TO PAY RESPONDENT THE AMOUNT OF ONE HUNDRED TEN THOUSAND FIVE HUNDRED SEVENTY FIVE PESOS AND 11/100 CENTAVOS (Php110,575.11) AS UNPAID MONTHLY DUES AS OF 28 FEBRUARY 2010; and

III. WHETHER THE HLURB BOARD OF COMMISSIONERS ERRED GRAVELY IN FINDING PETITIONER TO PAY THE RESPONDENT ATTORNEY'S FEES AND COST OF SUIT. (Emphasis ours)

Petitioner claims that the HLURB Rules of Procedure on the posting of an appeal bond should be relaxed on the ground of substantial justice.[8] Further, petitioner maintains that the computation of the subject association dues is erroneous because the assessment was pegged at Six Hundred Pesos (Php600.00) per month, contrary to the HLURB Order[9] dated September 9, 2009, which ruled that only Three Hundred Fifty Pesos (Php350.00) should be collected as association dues, pending appeal on the propriety of the increase of the said dues. Moreover, the authority of the NSHAI Board of Directors to collect the monthly and annual association dues is questionable on the ground of the cease and desist order, declaring that the latter's authority is limited to day-to-day ministerial and administrative functions only. Consequently, the assessment and collection of the said dues are beyond the authority of respondent, hence, should be declared ultra vires.[10]

The petition is partly meritorious.

With respect to the first issue, we find that the HLURB did not err in dismissing petitioner's appeal for his failure to post an appeal bond, as required by Section 51 (i), Rule 14 of the 2011 Revised Rules of Procedure of the HLURB. Neither did petitioner advanced any compelling ground to relax the application of the said Rule. It should be noted that petitioner raised his alleged serious financial distress and urgent need of funds only at the time he filed this petition with this Court.

Anent the second issue, we rule that the assessment of Six Hundred Pesos (Php600.00) cannot yet be implemented, pending resolution of the issue on the propriety of the increase in the association dues. As a general rule, only final judgment may be executed. An exception to this rule is an execution of a judgment pending appeal, which must be founded on "good reason." [11] In this case, it appears that this Court's Decision dated April 4, 2014 in CA-G.R. SP No. 124805, upholding the validity of the Php600.00 monthly dues effective July 2005 has not yet attained finality nor was ordered executed pending appeal. Hence, the computation of the subject association dues must be based only on the Three Hundred Fifty Pesos (Php350.00) per month, in accordance with the HLURB Order dated September 9, 2009.

As regards the award of attorney's fees, it should be emphasized that such award is the exception rather than the rule and the court must state explicitly the legal reason therefore.[12] Thus, the Supreme Court, in ABS-CBN Broadcasting Corporation vs. Court of Appeals,[13] made the following pronouncements, to wit:

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

In this case, a perusal of the assailed March 14, 2013 Decision shows that HLURB failed to indicate any factual or legal justification for the award of attorney's fees. Further, we find that petitioner did not exhibit bad faith in filing the instant case, but honest belief that he has a meritorious defense.

Anent the Motion to Disqualify the Public Attorney's Office from representing petitioner, records show that in

order to prove his indigency, petitioner submitted the following documents, to wit: (1) Certificate of Indigency[14] dated August 5, 2014 issued by the Barangay Chairman of Barangay Balara; (2) Affidavit of Unemployment[15] dated August 5, 2014, attesting that petitioner is unemployed, thus, has no monthly salary or income; and (3) Certification of No Record of Real Property under petitioner's name and that of his wife[16] dated August 6, 2014, issued by the City Assessor's Office of Quezon City.

When an application to litigate as an indigent litigant is filed, the court shall scrutinize the affidavits and supporting documents submitted by the applicant to determine if he complies with the (1) income and (2) property standards prescribed in the present Section 19 of Rule 141—that is, the applicant's gross income and that of the applicant's immediate family do not exceed an amount double the monthly minimum wage of an employee; and the applicant does not own real property with a fair market value of more than Three Hundred Thousand Pesos (Php 300,000.00).[17]

Thus, if the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of the application is mandatory. On the other hand, when the application does not satisfy one or both requirements, then the application should not be denied outright; instead, the court should apply the "indigency test" under Section 21 of Rule 3[18] and use its sound discretion in determining the merits of the prayer for exemption.[19]

Clearly, petitioner was able to submit a certification, showing that he and his wife does not own any real property, and a certificate of indigency, showing that the income of his family is barely enough to meet their day-to-day needs.

WHEREFORE, the petition for review is PARTIALLY GRANTED. The Desision dated March 14, 2013 is MODIFIED, as follows: (1) petitioner is ORDERED to pay respondent the unpaid monthly association dues as of February 28, 2010 in the amount of Php350.00 per month; and (2) the award of attorney's fees is DELETED.

Meanwhile, the Motion to Disqualify the Public Attorney's Office is DENIED for lack of merit.

SO ORDERED.

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[*] Acting Senior Member, vice J. P.J. Baltazar-Padilla, per Office Order No. 135-15-ABR dated April 17, 2015.

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[1] Rollo, pp. 3-19.

[2] Id. at 87-90.

[3] Id. at 103-104.

[4] Id. at 14.

[5] See Note 2.

[6] See Note 3.

[7] Id. at 16-17.

[8] Id. at 18.

[9] Id. at 83-85.

[10] Id. at 19.

[11] See Diesel Construction Company, Inc. vs. Jollibee Foods Corporation, 323 SCRA 844, 848 (2000).

[12] See Development Bank of the Philippines vs. Traverse Development Corporation, 658 SCRA 614, 624 (2011).

[13] 301 SCRA 572, 601 (1999).

[14] Id. at 190.

[15] Id. at 191.

[16] Id. at 192.

[17] See Algura vs. The Local Government Unit of the City of Naga, 506 SCRA 81, 98 (2006).

[18] Sec. 21. Indigent party.

A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an ex parte application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

[19] See Note 17, supra at 100.

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