

SIMPLICIO A. PALANCA, PLAINTIFF-APPELLEE, VS. PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, AS ADMINISTRATOR OF THE TESTATE ESTATE OF C.N. HODGES, DEFENDANT-APPELLANT.*G.R. No. L-28713. May 31, 1972*

Ponente: REYES, J.B.L., J.

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Direct appeal interposed by the defendant-appellant Philippine Commercial & Industrial Bank, as administrator of the testate estate of C. N. Hodges, against an order of the Court of First Instance of Rizal, in its Civil Case No. Q-10275. The said order denied appellant Bank's petition for preliminary attachment and, at the same time, dismissed, upon motion of the plaintiff-appellee Simplicio A. Palanca, two hundred and one (201) counterclaims of the administrator bank against said plaintiff-appellee.

Simplicio Palanca had filed a complaint on 27 July 1966 against the defendant Philippine Commercial & Industrial Bank, as administrator of the aforesaid testate estate of Hodges, (1) to declare the nullity of the extrajudicial rescission by said bank of a contract to sell real estate situated in Bacolod City, entered into on 27 July 1961, by and between plaintiff Palanca and the late Charles N. Hodges (Complaint, Annex A) and another contract to sell a certain portion of Bata Subdivision, in the same city, entered into on 13 June 1962, by and between the said Hodges and the Marapara Golf and Country Club, and confirmed by a contract of 13 July 1962, by and between said Club and plaintiff Palanca (do., Annexes B and C); (2) to order the defendant Bank to render an accounting of sums of money it had collected from different parties and to apply said collected amounts to the obligations of the plaintiff to the estate; (3) to pay actual damages and attorneys' fees; and (4) to set-off such damages due to the plaintiff against whatever balance he might still owe to the estate.

The defendant administrator bank answered the complaint on 29 August 1966, admitting some allegations thereof and denying others; alleging a special defense of lack of cause of action; and alleging, furthermore, two hundred and one (201) counterclaims against plaintiff Palanca, to recover amounts received by him from the sale of lots after rescission of his power to sell, damages and attorneys' fees.

Palanca filed his answer to the counterclaims on 29 September 1966, admitting some, but denying most of the allegations in the counterclaims. He alleged, likewise, the defense of no cause of action on the first to the twentieth counterclaims; and the affirmative defense, common to all the counterclaims, that the administrator bank had split its cause of action by filing its counterclaims, because it had already filed a cross-claim therefor against Palanca (allegedly arising from the rescission of the contracts to sell, heretofore mentioned) in Civil Case No. 7932 of the Court of First Instance of Negros Occidental, entitled "Gorgonio P. Garingalao vs. Simplicio Palanca and Philippine Commercial & Industrial Bank."

On 9 November 1966, plaintiff-appellee filed a motion to dismiss the administrator bank's counterclaims on the grounds of no cause of action and splitting of its cause of action. On 18 November 1966, the defendant-appellant filed its opposition to the motion, to which Palanca filed a reply on 1 December 1966.

On 14 April 1967, the court a quo, in a single brief order, denied the issuance of a writ of preliminary attachment and dismissed the counterclaims interposed by the defendant bank (Rec. on App., pp. 160-161), merely saying that "the dismissal of the counterclaim of the defendant should be sustained."

The bank moved to clarify and reconsider the order but its motion was denied on 4 October 1967.

On 22 November 1967, defendant-appellant bank filed its notice of appeal and paid its appeal bond; and, on 10 December 1967, prayed for the approval of the record on appeal. The court a quo, on 15 January 1968, ordered the transmittal of the record on appeal to this Supreme Court.

Defendant-appellant assigns the following errors allegedly committed by the court below in its order of 14 April 1967, namely:

"1. The lower court erred in entertaining and in granting, the plaintiff-appellee's motion to dismiss counterclaims after he has already filed his answer to the same.

"2. The lower court erred in dismissing the 201 counterclaims of the defendant-appellant in a blanket order, without distinguishing and individualizing them.

"3. The lower court erred in ruling, in effect, that the defendant-appellant split its cause of action by filing, in Civil Case No. 7932 of the Court of First Instance of Negros Occidental, a cross-claim against the plaintiff-appellee."

In his brief, plaintiff-appellee Simplicio A. Palanca prayed for the dismissal of the appeal on the ground that the record on appeal does not contain such data as will show that the appeal was perfected on time. We sustain.

The lower Court's order of dismissal was received by the defendant-appellant administrator bank on 8 May 1967; twenty-nine days later, it filed a motion for "reconsideration/clarification" on 6 June 1967 (Rec. on Appeal, p. 161); the motion for "reconsideration/clarification" was denied in an order dated 4 October 1967 (do., p. 180), but the Record on Appeal does not show when this order was received by said appellant. It filed its notice of appeal and paid its appeal bond on 22 November 1967, which it submitted for approval on 10 December 1967; the lower Court ordered the transmittal of the record on 15 January 1968.

Since the record on appeal does not show when the order denying the motion for reconsideration/clarification was received by appellant administrator bank, it cannot be determined, on the face of the record, if the appeal was timely perfected or not.

As far back as 19 October 1965, this Court had ruled that the requirements of Section 6, Rule 41 of the Rules of Court that the record on appeal should include such data as will show that the appeal was perfected on time is mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case.[1] This ruling was reiterated in numerous cases,[2] notably in the 1971 joint decision involving eleven proceedings,[3] that the doctrine should by now be deemed settled. Certainly, the Revised Rules of Court having been effective since 1964, non-compliance therewith by appellant in December 1967 is not excusable.

Appellant argues in its reply brief that the aforesaid doctrine was abandoned in *Dequito vs. Lopez*, L-27757, 28 March 1968,[4] where the merits of the motion to dismiss the appeal were not inquired into for its having been filed much too late: the record on appeal was received by this Court on 16 August 1967; the appellant's brief was filed on 8 December 1967; the appellees' brief was filed on 24 January 1968; and the motion to dismiss appeal, on the ground that the record on appeal did not disclose on its face that the appeal was perfected on time was filed on 15 January 1968. A similar ruling was made in *Carillo vs. Allied Workers' Association of the Philippines*,

L-23689, 31 July 1968.[5] The Dequito and Carillo cases may not, however, be considered controlling in the case at bar, because they were both labor cases and the rulings therein made were only meant to translate the protection-to-labor clause of the Constitution[6] into a living reality.

That appellee raised no objection in the court below when defendant-appellant sought approval of the record on appeal, and for the first time in this Court has raised the issue of the non-compliance in the record on appeal with the requirements of Section 6, Rule 41 of the Rules of Court, does not place appellant in estoppel, for it has been repeatedly decided that non-compliance with said requirements is a jurisdictional defect that may be raised at any stage of the proceedings.[7]

In view of the conclusions thus reached, it becomes unnecessary to resolve appellant's assignments of error.

WHEREFORE, the appeal is hereby dismissed. Let the case be remanded to the court below for further proceedings. No costs.

Makalintal, Zaldivar, Fernando, Barredo, Makasiar, and Antonio, JJ., concur.

Concepcion, C.J. and Ruiz Castro, J., did not take part.

Teehankee, J., adds brief remarks in a separate concurrence.

[1] Government of the Philippines vs. Antonio, L-23736, 19 Oct. 1965, 15 SCRA 119.

[2] Collated and affirmed in Marsman vs. Syquia, L-28027, 29 March 1972.

[3] Reyes vs. Carrasco, L-28783, 31 March 1971, 38 SCRA 296.

[4] 22 SCRA 1352.

[5] 24 SCRA 566.

[6] Article XIV, Section 5, Constitution of the Philippines.

[7] Valera vs. CA, L-29416, 28 Jan. 1971, 37 SCRA 80; Imperial Insurance, Inc. vs. CA, L-28722, 29 Oct. 1971, 42 SCRA 97; Marsman vs. Syquia, supra.

CONCURRING

TEEHANKEE, J.,

I concur in the dismissal of the appeal as ordered in the main opinion, it being evident therefrom that defendant-appellant whose counterclaims were ordered dismissed in the appealed order apparently because the same had already been filed and were pending against plaintiff-appellee in a prior case, has not shown "strong compelling reasons such as serving the ends of justice and preventing a grave miscarriage thereof that would justify it "to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal." (Workmen's Insurance Co., Inc. vs. Augusto, L-31060, 40 SCRA 123, July 29, 1971.)

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