

ABS-CBN BROADCASTING CORPORATION, PETITIONER, VS. HON. CHARITO B. GONZALES IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 80, QUEZON CITY, AND AGB NIELSE...

Ponente: LOPEZ, J.

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LOPEZ, J.:

This Petition for Certiorari under Rule 65 of the Rules of Court assails the October 27, 2010 Order of the Regional Trial Court of Quezon City, Branch 80 (RTC), that dismissed ABS-CBN Broadcasting Corporation's petition for relief from judgment; and the March 21, 2011 Order that denied its motion for reconsideration.

The facts are culled from the records.

ABS-CBN is a corporation engaged in the broadcasting of television programs and the selling of advertising spots in their various television programs. AGB Nielsen Media Research (Philippines), Inc. is a research company that provides the media industry with Television Audience Measurement (TAM) Data, commonly known as “TV ratings data”, used in determining TV programming and advertising placements. AGB Nielsen forms “panel homes”, a representative sample of households that mirror the TV population's viewing habits, when gathering TAM Data. In 2007, ABS-CBN and AGB Nielsen executed a “Service Contract for TV Audience Measurement Mega Manila and National Urban Service” (TAM Service Contract for brevity).[1]

On December 14, 2007, ABS-CBN filed a complaint for specific performance and damages against AGB Nielsen before the RTC. ABS-CBN alleged that AGB Nielsen failed to keep the identity of the panel homes confidential; hence, it should be enjoined from releasing the TAM Data gathered from the corrupted panel homes.[2] AGB Nielsen filed a motion to dismiss the complaint for prematurity citing Section 5 of the TAM Service Contract[3].

On January 7, 2008, the RTC issued a Decision granting the motion to dismiss.[4] ABS-CBN filed a motion for reconsideration, but it was denied in the June 8, 2009 Order.[5]

On January 5, 2010, the RTC issued a Certificate of Finality stating that ABS-CBN's counsel received a copy of the June 8, 2009 Order on June 23, 2009 and that “no notice of appeal or any other petition has been filed with or received by the [RTC]”. [6]

On May 14, 2010, ABS-CBN filed a petition for relief from judgment claiming that it was prevented from appealing because of accident. According to ABS-CBN, it did not receive a copy of the June 8, 2009 Order. It only learned about the Order on March 17, 2010 when ABS-CBN's counsel checked the status of the case with the RTC. Counsel investigated the matter and confirmed that the June 8, 2009 Order was not listed among the law firm's “Incoming Pleadings” – a computer-generated document prepared and emailed to all lawyers that contains a list of all orders and pleadings received on June 23, 2009 by the firm.[7] Furthermore, during the period when the Order was allegedly received, a fire in the basement of the Philippine Stock Exchange Centre (PSEC), where the law firm is located[8], caused numerous power interruptions that may have been a contributing factor why the

Order was not properly received or logged in the firm's "Incoming Pleadings". The power interruptions are evidenced by the memoranda issued by the PSEC Building Administrator.[9] ABS-CBN also insisted that its right to due process must be preserved.[10]

AGB Nielsen countered that ABS-CBN cannot restore its lost right to appeal by filing the petition for relief. AGB Nielsen stressed that the June 8, 2009 Order of the RTC was received by ABS-CBN on June 23, 2009 as evidenced by the Certification issued by the Postmaster for Ortigas Center[11]. The "Incoming Pleadings" cannot prevail over the Postmaster's Certificate which is a public document entitled to full faith and credit. Furthermore, the power interruptions do not constitute an "accident" within the meaning of Rule 38 of the Rules of Court. The memoranda issued by the PSEC Building Administrator implies that the power interruptions were not unforeseen and in fact known to ABS-CBN's counsel. Also, the petition for relief was filed more than six months from entry of the July 8, 2009 Order; hence, filed out of time.[12]

The RTC dismissed the petition for relief from judgment,[13] ratiocinating thus:

Anent the substantive ground, the records of the case clearly reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009, as evidenced by the return card attached to the records of this case, which date is the basis for the Certificate of Finality dated January 5, 2010 issued by the Court through its Branch Clerk of Court.

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xxx The "Incoming Pleadings" document presented by petitioner's counsel to prove that it did not receive a copy of the Order dated June 8, 2009, besides being self-serving, cannot be said to faithfully reflect all the pleadings received by petitioner's counsel on June 23, 2009. As admitted by petitioner itself, the numerous power interruptions prompting a suspension of the firm's work during the subject date may have contributed to why the Order was not properly received or logged in the firm's "Incoming Pleadings."

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In the case at bar, records reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009. Petitioner then had fifteen (15 days therefrom or until July 8, 2009 to file an appeal which it did not. As such, the Orders dated January 7, 2008 and June 8, 2009 became final and executory after the lapsed (sic) of such 15-day period or on July 9, 2009. Thus, petitioner had six months therefrom or only until January 5, 2010 to file the petition for relief therefrom or only until January 5, 2010 to file the petition for relief from judgment. Petitioner filed the instant Petition only on May 14, 2010, clearly beyond the 6-month period from entry of the assailed orders.

Indeed, a petition for relief from judgment cannot be granted to revive the lost right to appeal.

WHEREFORE, in view of the foregoing, the Petition for Relief from Judgment is hereby DISMISSED.

SO ORDERED.[14]

ABS-CBN moved for reconsideration but it was denied.[15] Hence this petition for certiorari.

Petitioner insists that the circumstances of this case merit the equitable remedy of relief from judgment. Respondent judge erroneously relied on the registry return card in ruling that petitioner received the June 8, 2009 Order on June 23, 2009. Also, petitioner's counsel was prevented from taking notice of the June 8, 2009 Order by the numerous power interruptions caused by fire in the basement of the PSEC building, as evidenced by the memoranda issued by the Building Administrator. The fire and power interruptions were unforeseen events and constitute accident under Rule 38 of the Rules of Court. Moreover, petitioner was denied due process from the beginning when the complaint for specific performance was dismissed for prematurity and is now being deprived

of its right to appeal.

The petition lacks merit.

It is of record that the petitioner received the June 8, 2009 Order on June 23, 2009. This was confirmed by the Certification issued by the Postmaster of Ortigas Center that the Order was received by a certain Allan S. Bustamante, an authorized representative of petitioner's counsel.[16] Petitioner cannot deny receipt of the Order by claiming that it was not listed among the "Incoming Pleadings" on June 23, 2009. The "Incoming Pleadings" cannot prevail over the Postmaster's Certification which enjoys the presumption that duty was regularly performed, and that he has acted in good faith.[17] It is petitioner's burden to overcome the presumptions by clear and convincing evidence.[18] The "Incoming Pleadings" is a computer-generated document, prepared and emailed to all lawyers, that contains a list of all orders and pleadings received on June 23, 2009 by the firm.[19] The entries in this document are wholly dependent on what was encoded or logged by the law firm's personnel. Hence, it is a self-serving document that cannot be given weight or credence.

Considering that ABS-CBN received the June 8, 2009 Order on June 23, 2009, its remedy was to file an appeal within fifteen days from notice[20], but it failed to do so. We cannot agree that the failure to log the June 8, 2009 Order among the "Incoming Pleadings" due to power interruptions in the PSEC building is an "accident" within Section 1, Rule 38[21] of the Rules of Court.

An accident pertains to an unforeseen event in which no fault or negligence attaches to the defendant.[22] It is an event happening without any human agency, or if happening wholly or partly through human agency, one which is unusual or unexpected by the person to whom it happens.[23] Here, petitioner submitted the memoranda issued by the PSEC Building Administrator on June 23, 2009 to prove that a fire in the basement indeed caused power interruptions, to wit:

Annex C of the Petition for Relief from Judgment:

The power capacitor bank at the sub-station in Basement 1 overheated due to a short circuit. As circularized last June 4 and 18, 2009. Preventive maintenance on the equipment was scheduled on June 27, 2009 where a total power shutdown is necessary for the risky procedure. Unfortunately[,] this power outage happened before the scheduled maintenance work could be performed.

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Annex D of the Petition for Relief from Judgment:

Our engineering team has restored the power for the whole West Tower and East Tower 17th floor up to the 33rd floor only. The power for the 16th floor down to the ground floor is still running on generator set. Repairs for the circuit breakers are still on-going.

We are hoping that normal power will be restored today.[24] [Emphasis Ours.]

From the foregoing, the fire clearly occurred before June 4, 2009 and the building was plagued with power interruptions since then. Thus, the power outages cannot be considered as unforeseen events at the time the June 8, 2009 Order was received. Petitioner's counsel should have ensured that documents and court processes are accurately recorded despite the power interruptions. Also, it was doubtful that a power interruption prevented the recording of the June 8, 2009 Order in the "Incoming Pleadings" since one of the memoranda also stated that power in the East Tower, where the law firm is located, was restored on June 23, 2009.

Petitioner's claim that it was deprived of due process is specious. It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[25] "To be heard" does not only mean verbal arguments in

court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[26] Records show that petitioner was able to file an Opposition[27] and Rejoinder[28] to the private respondent's motion to dismiss the complaint for specific performance. Subsequently, petitioner filed a Motion for Reconsideration[29] and a Memorandum[30] on the Order granting the motion to dismiss. Clearly, petitioner was given ample opportunities to be heard and present its case.

More importantly, the petition for relief from judgment was filed out of time. Section 3, Rule 38 of the Rules of Court provides:

Sec. 3. Time for filing petitions; contents and verification. - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. [Emphasis Ours.]

The party filing a petition for relief from judgment must strictly comply with the two (2) reglementary periods, i.e. the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put at last an end to litigation. Failure to file the petition within the period set by the Rules of Court is fatal.[31]

As previously discussed, the June 8, 2009 Order was received by petitioner's counsel on June 23, 2009. The sixty (60) days are reckoned from that day, when petitioner is deemed to have knowledge of the Order.[32] Petitioner then had until August 24, 2009[33] to file the petition for relief but it failed to do so. Petitioner likewise failed to comply with the six-month reglementary period. Petitioner had fifteen days from June 23, 2009, or until July 8, 2009 to file its appeal. Since petitioner did not file an appeal, judgment was entered on that day and the six-month period began. Petitioner then had until January 4, 2010 to file the petition for relief. However, it filed the petition only on May 14, 2010 or four months beyond the reglementary period.

Finally, petitioner is reminded that in certiorari proceedings under Rule 65 of the Rules of Court, the inquiry is limited essentially to whether or not the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[34] By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[35] Mere abuse of discretion is not enough – it must be grave.[36] This is not the case here.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Reyes, JR., J.C., (Chairperson) and Inting, JJ., concur

[1] Rollo, pp. 155-170. See Complaint for Specific Performance and Damages filed by ABS-CBN Broadcasting Corporation.

[2] Ibid.

[3] Section 5. Summary Contract Details

Other Agreements

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2. In the event that ABS-CBN Broadcasting Corporation (“Client” or “Subscriber”) submits in writing any question, issue or concerns regarding data quality and validity, AGB Nielsen Media Research shall have a reasonable period not exceeding one (1) month upon receipt of letter with which to submit its written explanation. The parties shall have a period of three (3) months from AGB Nielsen Media Research's explanation to discuss in good faith, with full confidentiality, with neither party resorting to disclosure of the matter to the public or media. [Id., p. 243.]

[4] The RTC held:

ABS-CBN insists that Section 5 of the service contract is inapplicable in this case. It posits that the subject provision applies only to minor or clerical errors and not to AGB Nielsen's substantial breach of its obligation under the service contract to deliver accurate and reliable data. The subject provision, however, provided no such distinction. It is settled that if the terms of the contract clearly express the intention of the contracting parties, the literal meaning of the stipulations would be controlling. Ultimately, their intention is to be deciphered not from the unilateral post facto assertions of one of the parties, but from the language used in the contract. And when the terms of the agreement, as expressed in such language, are clear, they are to be understood literally, just as they appear on the face of the contract. A posteriori, since Section 5 of the service contract enunciates a clear and unambiguous condition and made no distinction in its applicability to minor or substantial breach in the contract, ABS-CBN's interpretation thereof is uncalled for and unacceptable.

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WHEREFORE, for failure to comply with the condition precedent to the filing of the instant complaint, this Court has to, regrettably, DISMISS the instant case for being prematurely filed.

With the dismissal, the hearing and resolution on all other pending incidents in this instant case (Injunction and Motion dated December 27, 2007 filed by AGB Nielsen (Re: Protective Order) are considered moot.

SO ORDERED. [Id., pp. 33-34, 36.]

[5] Id., pp. 37-39.

[6] Id., p. 40.

N.B. The June 8, 2009 Order was delivered to ABS-CBN through its counsel on June 23, 2009, evidenced by the Certification of the Philippine Postal Corporation's postmaster for Ortigas Center, stating thus:

TO WHOM IT MAY CONCERN:

This is to certify that as per record, Registered Letter No. 2878 sent by Regional Trial Court, Branch 80, Quezon City on June 11, 2009 and addressed to Atty. Helena Rosales Calo at 12/F East Tower, PSEC, Exchange Road, Ortigas Center, Pasig City was delivered to (Window delivery) and received by ALLAN S. BUSTAMANTE, authorized representative, on June 23, 2009.

This certification is given this 9th day of June 2010, for whatever legal intent it may serve.

(signed)

LEOPOLDO E. PAGARAN, JR.

Postmaster

Ortigas Center, Q.C. [Id., p. 511.]

[7] Id., pp. 45-46. See Petition for Relief from Judgment.

[8] The law firm is located at the 12th Floor, East Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.

[9] The Building Administrator of PSEC issued two Memoranda on June 23, 2009 attached as Annexes C and D of the Petition for Relief from Judgment, stating as follows:

Annex C:

The power capacitor bank at the sub-station in Basement 1 overheated due to a short circuit. As circularized last June 4 and 18, 2009. Preventive maintenance on the equipment was scheduled on June 27, 2009 where a total power shutdown is necessary for the risky procedure. Unfortunately[,] this power outage happened before the scheduled maintenance work could be performed.

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Annex D:

Our engineering team has restored the power for the whole West Tower and East Tower 17th floor up to the 33rd floor only. The power for the 16th floor down to the ground floor is still running on generator set. Repairs for the circuit breakers are still on-going.

We are hoping that normal power will be restored today.

xxx [Id., pp. 56-57.]

[10] Petition for Relief, id., pp. 41-48. Memorandum, id., pp. 74-82.

[11] Id., p. 511.

[12] Answer, id., pp. 65-72. Memorandum, id., pp. 85-99.

[13] Id., p. 24. October 27, 2009 of the Regional Trial Court.

[14] Id., pp. 27-28. Annotations, underscoring and emphasis omitted.

[15] Id., p. 29. March 21, 2011 Order of the Regional Trial Court of Quezon City, Branch 80.

[16] Supra at note 6.

[17] See Gold Line Transit, Inc. v. Luisa Ramos, G.R. No. 144813, August 15, 2001 citing Grafil v. Feliciano, G.R. No. 27156, 30 June 1967, 20 SCRA 616.

[18] Ibid.

[19] Supra at note 7.

[20] Rule 41. Appeal from the Regional Trial Court.

Sec. 2. Modes of Appeal. -

(a) Ordinary appeal. - The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal in the court which rendered the

judgment or final order appealed from and serving a copy thereof upon the adverse party. xxx

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Sec. 3. Period of ordinary appeal. - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. xxx

[21] Section 1. Petition for relief from judgment, order or other proceedings. - When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

[22] cf. Jarco Marketing Corporation, et al. v. Court of Appeals, G.R. No. 129792, December 21, 1999 citing Novo & Co. v. Ainsworth, 26 Phil. 380, 387 [1913].

[23] Id., citing Black's Law Dictionary, 5th ed. 1979, 14.

[24] Rollo, pp. 56-57.

[25] cf. Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006.

[26] Id., quoting Batongbakal v. Zafra, G.R. No. 141806, January 17, 2005, 448 SCRA 399, 410.

[27] Rollo, p. 281.

[28] Id., p. 304.

[29] Id., p. 315.

[30] Id., p. 471.

[31] See Gold Line Transit, Inc. v. Luisa Ramos, supra, citing Gesulgon v. National Labor Relations Commission, G.R. No. 90349, 5 March 1993, 219 SCRA 561, 567-568.

[32] See Andy Quelnan v. VHF Philippines, G.R. No. 138500, September 16, 2005.

[33] The 60th day, which is August 22, 2009, fell on a Saturday.

[34] Dr. Ulysses A. Brito v. Office of the Deputy Ombudsman For Luzon, et al., G.R. Nos. 167335 & 167337 and 173152, July 10, 2007.

[35] Jeffrey O. Torreda v. Toshiba Information Equipment (Phils.), Inc, G.R. No. 165960, February 8, 2007 citing Rodson Philippines, Inc. v. Court of Appeals, G.R. No. 141857, June 9, 2004, 431 SCRA 469, 480.

[36] Rebecca Ala-Martin v. Hon. Justo M. Sultan, 366 SCRA 317 citing Tañada v. Angara, 272 SCRA 18 (1997).

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