

EDUARDO P. ABELLAR, PETITIONER, V. EMPLOYEES' COMPENSATION COMMISSION, RESPONDENT.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Before Us is the Petition for Review[1] ("Petition" for brevity) filed by petitioner Eduardo Abellar ("petitioner" for brevity) under Rule 43 of the Rules of Court. The Petition[2] assails the "Decision of the Honorable Employees' Compensation Commission (or ECC) [which] denied disability benefits against herein petitioner"[3].

To begin with, a perusal of the Petition[4] at bench reveals that it suffers from the following infirmities:

First, petitioner failed to pay the docket and other lawful fees[5], in violation of Section 5, Rule 43 of the Rule of Court. This failure in turn, is a sufficient ground for the dismissal of the Petition[6] under Section 7, Rule 43 of the Rules of Court. Sections 5 and 7 of Rule 43 provide:

"Sec. 5. How Appeal Taken. - xxx

Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial.

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Sec. 7. Effect of failure to comply with requirements.

The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof." (Emphasis supplied)

Moreover, the rule is well settled that the full payment of docket fees "is not only mandatory, but also jurisdictional"[7]. Thus, "[w]ithout such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision or final order sought to be appealed from becomes final and executory"[8]. That this is the consequence is in accordance with the following pronouncement of the Supreme Court in *Saint Louis University, Inc., vs. Evangeline C. Cobarrubias*, G.R. No. 187104, August 3, 2010:

"xxx Rule 43 of the Rules of Court provides that appeals from the judgment of the VA shall be taken to the CA, by filing a petition for review within fifteen (15) days from the receipt of the notice of judgment. Furthermore, upon the filing of the petition, the petitioner shall pay to the CA clerk of court the docketing and other lawful fees; noncompliance with the procedural requirements shall be a sufficient ground for the petition's dismissal. Thus, payment in full of docket fees within the prescribed period is not only mandatory, but also jurisdictional. It is an essential requirement, without which, the decision appealed from would become

final and executory as if no appeal has been filed.

As early as the 1932 case of *Lazaro v. Endencia and Andres*, we stressed that the payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In *Lee v. Republic*, we decided that even though half of the appellate court docket fee was deposited, no appeal was deemed perfected where the other half was tendered after the period within which payment should have been made. xxx

The rulings in these cases have been consistently reiterated in subsequent cases: *Guevarra v. Court of Appeals*, *Pedrosa v. Spouses Hill*, *Gegare v. Court of Appeals*, *Lazaro v. Court of Appeals*, *Sps. Manalili v. Sps. de Leon*, *La Salette College v. Pilotin*, *Saint Louis University v. Spouses Cordero*, *M.A. Santander Construction, Inc. v. Villanueva*, *Far Corporation v. Magdaluyo*, *Meatmasters Int'l. Corp. v. Lelis Integrated Dev't. Corp.*, *Tamayo v. Tamayo, Jr.*, *Enriquez v. Enriquez*, *KLT Fruits, Inc. v. WSR Fruits, Inc.*, *Tan v. Link*, *Ilusorio v. Ilusorio-Yap*, and most recently in *Tabigue v. International Copra Export Corporation (INTERCO)*, and continues to be the controlling doctrine." (Emphasis supplied)

Second, petitioner failed to comply with the requirement of submitting an Affidavit of Service under Section 13, Rule 13 of the Rules of Court, which states:

"Section 13. Proof of Service. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee." (Emphasis supplied)

Petitioner's obligation to comply with the requirement of submitting an Affidavit of Service is in accordance with the following pronouncement of the Supreme Court in *Ang Biat Huan Sons Industries, Inc.*, represented by *Eduardo Ang Gobonseng, Sr.*, vs. *Court of Appeals, Social Security System and Mauro Tinaytina*, substituted by his wife *Gloria Tinaytina*, G.R. No. 154837, March 22, 2007:

"xxx The CA correctly dismissed petitioner's appeal on the grounds of improper verification and certification of non-forum shopping, and non-attachment of the affidavit of service to its petition, as required by Rule 13, Section 13 of the Rules of Court. The rule obliges litigants to attach an affidavit of service to their petitions/appeals. While this is required merely as proof that service has been made on the other party, it is nonetheless essential to due process and the orderly administration of justice.

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Petitioner's contention that technicality must give way to substantial justice is without merit. We set aside technicality only when it is necessary to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the Rules or when the punctilious application of the Rules will deny rather than serve justice. Neither situation exists here. (Emphasis supplied)

Petitioner's failure to comply with the requirements of filing a Petition for Review under Rule 43 of the Rules of Court renders his Petition dismissible, as is in accordance with the following declaration of the Supreme Court in *Marison C. Basuel v. Fact-Finding and Intelligence Bureau (FFIB)* represented by *Director, Agapito B. Rosales*, G.R. No. 143664, June 30, 2006:

"At the outset, it must be emphasized that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the

Rules. Failure to do so often leads to the loss of the right to appeal.

The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. To be sure, the Court will not countenance deviations from the rules. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with greater fidelity in order to facilitate the orderly and expeditious disposition of cases.

xxx [I]n Section 6, Rule 43 of the Rules of Court. The consequence of this failure is outlined under Sections 7 and 8 of Rule 43, to wit:

SEC. 7. Effect of failure to comply with requirements. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

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xxx Save for the most persuasive of reasons, strict compliance with the rules is enjoined to facilitate the orderly administration of justice. xxx In addition, to grant petitioner's request would be to fault the CA for acting in faithful compliance with the rules of procedure which that court has been mandated to observe. Viewed in this light, it cannot be said that the CA committed an error in denying the petition for being procedurally defective." (Emphasis supplied)

The right to appeal by Petition for Review under Rule 43 of the Rules of Court "is not a matter of right but a mere statutory privilege [and] [t]he party who seeks to exercise the right to appeal must comply with the requirements of the rules"[9].

IN VIEW OF ALL THESE, the Petition for Review is DISMISSED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-8

[2] Rollo, pp. 3-8

[3] Rollo, pp. 3 and 10-15

[4] Rollo, pp. 3-8

[5] Rollo, p. 1

[6] Rollo, pp. 3-8

[7] Ruby Shelter Builders and Realty Development Corporation, vs. Hon. Pablo C. Formaran III, Presiding Judge of Regional Trial Court Branch 21, Naga City, as Pairing Judge for Regional Trial Court Branch 22, Formerly Presided By Hon. Novelita Villegas-Llaguno (Retired 01 May 2006), Romeo Y. Tan, Roberto L. Obiedo and Atty. Tomas A. Reyes, G.R. No. 175914, February 10, 2009

[8] Noli Lim vs. Angelito Delos Santos (deceased) now his Heirs, represented by Belen Delos Santos Respondents, Denia R. Adoyo, et al., Intervenors, Gloria Murillo, et al., Protestants, G.R. No. 172574, July 31, 2009

[9] BPI Family Savings Bank, Inc., PETITIONER, vs. Pryce Gases, Inc., International Finance Corporation, et. al, G.R. No. 188365, June 29, 2011

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