

ERNESTO OPPEN, INC., PLAINTIFF-APPELLANT, VS. THE COURT OF APPEALS, LUIS SIA REALTY ENTERPRISE AND LUIS SIA SIONG PECK, DEFENDANTS-APPELLEES.

G.R. No. L-29986. April 17, 1984

Ponente: PLANA, J.

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PLANA, J.:

This is a petition for review of the resolutions of the former Court of Appeals in C.A. - G.R. No. 41119-R (Ernesto Oppen, Inc. vs. Luis Sia Realty Enterprise and Luis Sia Siong Peck) dismissing petitioner's appeal from the decision of the Court of First Instance of Manila.

The case originated from a complaint for recovery of a sum of money filed by Ernesto Oppen, Inc. in the Court of First Instance of Manila against Luis Sia Realty Enterprise and Luis Sia Siong Peck. After the issues had been joined by the filing of an answer with counterclaim by the defendants and the reply thereto by the plaintiff, pre-trial was held. For failure to appear at the pre-trial, the plaintiff was declared non-suited.

After presentation of evidence ex-parte by the defendants, the trial court rendered a decision awarding moral damages, attorney's fees and costs to the defendants. Both parties moved for reconsideration of the decision; but the same was denied.

The plaintiff then filed its notice of appeal from the decision simultaneously with a motion for extension of the period within which to file the record on appeal and appeal bond. Within the extension sought, plaintiff filed the record on appeal and appeal bond. Thereafter, the trial court issued an order denying plaintiff's motion for extension and accordingly disapproved the record on appeal and appeal bond for having been filed out of time. The ground for the denial of the motion for extension was, it was filed one day late. Subsequently, however, upon plaintiff's filing a motion for reconsideration showing that the late filing of the motion for extension was caused by the illness of its counsel's filing clerk, the trial court reconsidered its denial of the motion for extension and, in due course, approved the appeal bond and re-amended record on appeal after hearing.

After the appeal had been docketed in the Court of Appeals, the appellees (respondents) moved to dismiss the appeal, invoking once more appellant's (petitioner) failure to file the appeal bond and record on appeal on time. The Court of Appeals granted the motion and affirmed it on motion for reconsideration, from which the present petition has been taken by the petitioner.

There is no question that petitioner incurred delay in filing the motion for extension of time in the lower court. But the delay was only for one day and there was a justifiable reason, duly established, for it. Moreover, no one was prejudiced by the delay; and when the lower court was called upon to act on the motion, the record on appeal and appeal bond had already been filed. The lower court, therefore, acted correctly in reconsidering its denial of the motion for extension of time within which to file the record on appeal and appeal bond, so as to give due course to petitioner's appeal. This action was in line with the oft-stated exhortation of this Court that judges should as much as possible lean in favor of deciding cases on the basis of merits in the interest of substantial

justice rather than through the invocation of technicalities.

Conversely, the defunct Court of Appeals erred when it interfered with the proper exercise of judicial discretion by the trial court in giving due course to the appeal.

WHEREFORE, the assailed resolutions of the Court of Appeals dismissing the appeal in C.A. - G.R. No. 41119-R (Ernesto Oppen, Inc., plaintiff-appellant, vs. Luis Sia Siong Peck, defendants-appellees) are hereby set aside.

SO ORDERED.

Melencio-Herrera, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

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