

**PACIFIC BANKING CORPORATION EMPLOYEES ORGANIZATION,
PAULA S. PAUG, AND ITS OFFICERS AND MEMBERS, PETITIONERS,
VS. THE HONORABLE COURT OF APPEALS AND VITALIANO N.
NAÑAGAS II...**

G.R. No. 109373. March 27, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

For consideration are (1) petitioner's Omnibus Motion in G.R. No. 112991 seeking reconsideration of the Court's resolution dated October 9, 1995, which denied the reconsideration of the decision in this case promulgated on March 20, 1995, and the resolution of October 13, 1995 which absolved the branch clerk of court of the RTC of Manila, Branch 31, of charges of wrongdoing; and (2) the manifestation and motions for clarification filed by the Land Bank of the Philippines (LBP) concerning the request of petitioner in G.R. No. 112991 for the transfer of the funds of the Pacific Banking Corporation (PaBC) to its other account in another branch of LBP and the alleged garnishment of the funds of PaBC deposited in LBP in favor of the Bureau of Internal Revenue.

The antecedent facts are as follows:

On March 20, 1995, the Court rendered a decision holding that a petition for liquidation under Sec. 29 of the Central Bank Act, R.A.No. 265[1] is a special proceeding and , therefore, the rules prescribing a period of 30 days for appealing and requiring a record on appeal apply. Accordingly, the appeal in G.R. No. 109373 was held to have been duly perfected but the appeal in G.R. No. 112991 had not been perfected because of petitioner's failure to file a record on appeal.

Petitioner in G.R. No. 112991 moved for a reconsideration of the aforesaid decision but the Court denied his motion in its resolution of October 9, 1995 on the following grounds (1) the clerks of the RTC and the Court of Appeals certified that no record on appeal had been filed; (2) the branch clerk denied that the signature on the alleged copy of the record on appeal was his; (3) counsel for private respondents and his clerk denied in their respective affidavits that they had been served a copy of the record on appeal; (4) the identity of the person who allegedly received the record on appeal filed in the trial court and whose initials appear on the first page of the alleged copy of the said record had never been established; and (5) the copy of the record on appeal allegedly filed did not bear the stamp of the RTC showing due receipt thereof.

In the resolution of October 13, 1995, the Court held Judge Regino Veridiano II, Deputy Sheriff Carmelo Cachero and private respondent's counsel, Atty. Marino Eslao, guilty of indirect contempt for executing the decision of the trial court despite the temporary restraining order issued by this Court. The Court, however, found no basis of holding branch clerk Antonio Valencia Jr. guilty of any wrongdoing in certifying that petitioner failed to file a record on appeal.

On November 6, 1995, petitioner then filed the Omnibus Motion in question seeking to (1) reopen the case and/or consider the resolution of October 9, 1995 which denied his motion for reconsideration, and (2) reconsider the October 13, 1995 resolution absolving the branch clerk of the trial court from contempt charges.

In his omnibus motion, petitioner insists that he filed a record on appeal. As proof, he presents a photocopy of the record on appeal allegedly received by the branch clerk of the trial court bearing the handwritten notation "Received, 10-15-92, 3:45 PM" and the alleged initials of the said clerk. Petitioner explains that the record on appeal does not have the RTC stamp "Received" because the trial court does not use a stamp but receipt of pleadings is acknowledged simply by nothing this fact by hand. Petitioner submitted certain pleadings filed in the trial court which were acknowledged by the branch clerk in the same way he allegedly acknowledged by the branch clerk in the same way he allegedly acknowledged receipt of petitioner's record on appeal. These are the notice of appeal filed by petitioner on October 14, 1992 (Annex E, Omnibus Motion), Motion to Strike Out the Notice of Appeal with Motion for Issuance of Writ of Execution filed by the private respondents (Annex G) and Comment filed by another claimant (Solid Bank) dated May 26, 1995 (Annex H).

In addition, petitioner claims that the certifications by the clerks of the RTC and the Court of Appeals that no record on appeal was filed are unreliable, that his record on appeal was suppressed from the records of the case, and that the certification of the Court of Appeals that no record on appeal was filed therein was to be expected because the record on appeal was filed with the RTC and not with the Court of Appeals.

Commenting, private respondents contend that the Omnibus Motion is actually a second motion for reconsideration which is not allowed by the rules since the issues raised therein had been fully considered and passed upon by the Court and that there is no compelling reason to grant the motion. They maintain that petitioner's appeal was not perfected because of the non-filing of a record on appeal. Branch Clerk of court Antonio Valencia, on the other hand, maintains that "no record on appeal was filed and therefore none could be found in the expediente (records of the case)." He claims that the record on appeal allegedly filed in the trial court could not have been unlawfully removed from the records because all pleadings received by the court are immediately attached to the records. He denies that the signature appearing on the alleged record on appeal was his.

Because of the seriousness of the petitioner's allegation that its record on appeal had been suppressed, the Court on December 11, 1996, referred the question to the Office of the Court Administrator (OCA) for investigation, report and recommendation.

On June 18, 1997, the OCA submitted its report and recommendation, the pertinent portions of which state:[2]

In the formal investigation conducted (please see attached transcript) it was disclosed that Atty. Antonio Valencia Jr. was appointed as the Clerk of Court V on June 18, 1992 and officially assumed office on July 1, 1992.

As the Clerk of Court of RTC, Branch 31, it is his duty to exercise control and supervision over the personnel of the said court; examines records of all cases filed and calendared; issues court processes, prepares drafts of orders and other matters which are assigned by the Judge Regino Verediano.

In their sala each personnel have their respective duties, from receipt of pleadings that are being filed to their safekeeping. In no case is anyone allowed to interfere with the duties of each personnel except under extreme urgency. Thus, receiving of pleadings is normally entrusted to the receiving clerk and no one else. It is, as claimed by Atty. Valencia, only in the absence of the said receiving clerk that other employees are authorized to receive pleadings.

For his part, Atty. Valencia claims that he rarely receives pleadings since before it reaches his table, the same are already duly received. Besides, it is not one of his duties to receive pleadings.

With respect to the alleged receipt of the record on appeal by their office, specifically to him, Atty. Valencia vehemently denied having received the same. First, because the stroke of the alphabet indicating his initials is very different and so with the dates, secondly, if it was actually received it could have been brought to attention of the late Judge Verediano who thereafter would have made a notation of the same, like all other

pleadings received in their office or simply instruct the preparation of an order if necessary and lastly, it would have been included in their court calendar as there was a notice of hearing attached thereto.

In the court's calendar dated October 23, 1992, Sp. Proc. No. 35313 was never scheduled for hearing. Under normal circumstances, if there was notice of hearing it would be outrightly included in the court's calendar for October 23, 1992 as requested.

To substantiate the aforesaid allegations Atty. Valencia submitted copies of pleadings filed relative to the subject case bearing the notation of then Judge Verediano and the Court's calendar for October 22 and 23, 1992.

In addition, he pointed out that if the Notice of Appeal (Record on Appeal) was actually filed in their sala, why was it raised for the first time only in PDIC's Motion for Reconsideration. This according to him is suspicious. He even insinuated that nobody could have done this (meaning inserted the notice of appeal [record on appeal] in their pleadings) except the interested lawyer/s.

Moreover, Atty. Valencia vouches for the honesty and integrity of his staff, and if there be a need for the examination of their signatures they would be very willing to go for a specimen signature examination only to clear his/their names.

The office of the undersigned believes the claim of Atty. Valencia that no Notice of Appeal [Record on Appeal] was filed at RTC Branch 31, Manila. As a CPA/lawyer, he was very well aware of his duties and responsibilities as a Branch Clerk of Court. This is evidenced by the fact that in his more than five (5) years stay as a Branch Clerk of Court, no single administrative complaint has ever been lodged against him, be it a harassment suit or otherwise.

Moreover, if it has been actually filed it would not have passed unnoticed by then Judge Verediano who had to approve the same.

The undersigned is in accord with the claim of Atty. Valencia as presented by him to Atty. Cunanan of this Office that indeed no record on appeal was filed by the counsels of PDIC in the subject case, thus no administrative action should be taken against him. (Memorandum dated June 5, 1997, pp. 1-2; Rollo, p. 538-539)

On July 23, 1997, after considering the report and it appearing that the investigation conducted by the OCA was limited to hearing the evidence of the branch clerk of court and his witnesses, the required the OCA to hear the evidence of petitioner that he had filed a record on appeal but it was suppressed and, after considering that totality of the evidence presented, to determine liability for any wrongful act committed, and to submit its findings and recommendations.

On January 27, 1998, the OCA submitted its report and recommendation on the additional investigation it conducted from which it appears that hearings were held on three dates; the parties, through their counsel, were duly notified of the same; and that at the first scheduled hearing on October 7, 1997, only Atty. Marino E. Eslao, counsel for private respondent, appeared. In order to expedite the proceedings, he was allowed to present documentary evidence without prejudice to the right of the petitioner to comment thereon. During the hearing on November 5, 1997, the parties agreed to file position papers after the testimony of branch clerk Atty. Valencia. On November 6, 1997, the respective testimonies of Atty. Valencia and Atty. Pablo Romero, the sole witness for petitioner, were taken. In his report dated December 1, 1997,[3] Senior Deputy Court Administrator Reynaldo L. Suarez summarized the evidence presented by the parties and his findings on the same, to wit:

Atty. Pablo Romero, Manager of R&L Litigation Center, PDIC testifies that he was the one who prepared the subject Record on Appeal. He likewise confirmed the fact that the President of the PDIC, Mr. Ernest Leung, Atty. Rosalinda Casiguran and he then went to see Judge Veridiano and was informed by Atty. Valencia that

he cannot find a copy of the Record on Appeal which was allegedly filed. He cannot recall if Atty. Valencia ever demanded from him a copy of said record (pp. 28-29, TSN dated November 6, 1997). No other relevant information were given by Atty. Romero.

Atty. Antonio Valencia, Branch Clerk of Court, RTC, Branch 31, Manila, was invited to testify as to whether a Record on Appeal was actually filed before their court and the same was duly received by him. He was examined by the parties, principally the counsel for PDIC.

In his testimony, Atty. Valencia, reiterated his previous stand that he never saw a copy of the Record on Appeal and he was positive that indeed there was no Record on Appeal having been filed in his court. Counsel of PDIC however insinuated that record on appeal might have been filed but the same was misplaced. Atty. Valencia assured that "this is very remote". (TSN, p. 8, November 6, 1997).

He even stressed that when he was made earlier to comment on whether or not a record on appeal was actually filed, he checked and double checked the original records, inquired from the employees of RTC, Manila including the Judge whether they have knowledge of any record on appeal which was filed in their sala but all answered in the negative. (pp. 21 & 22, TSN, Nov. 6, 1997).

Moreover, he also firmly denied having received the alleged copy of the record on appeal which was presented to him for identification during his direct testimony since the signatures appearing therein are totally different from his actual signature (pp. 23, TSN, November 6, 1997).

It is to be noted that the alleged duplicate original copy of the Notice of Appeal [Record on Appeal] which is supposed to be with the counsels of PDIC was not presented as evidence. In fact when the counsel of PDIC Atty. Romero was asked if the PDIC employee who allegedly filed the Record on Appeal could testify he answered in the negative and claimed that the said employee is already in Riyadh, Saudi Arabia. No evidence was likewise presented to prove the same. No effort was exerted by PDIC to prove the authenticity of the signature of Clerk of Court Valencia appearing in PDIC's copy of the Record on Appeal.

It is also worthy to note that other than the bare testimony of Atty. Romero, no other evidence were presented by petitioner PDIC to substantiate their claim that a Record on Appeal was filed at the RTC of Manila and the same was duly received by Atty. Valencia. The testimony was not even corroborated.

Be that as it may this Office still has to determine as to whether a Record on Appeal was actually filed at the court a quo.

A review of the record impels a rejection of the petitioner's claim that a Record on Appeal was filed.

The private respondent was able to present proof which are affirmative, unequivocal convincing, and consistent. In fact the testimony alone of Atty. Valencia which was a reiteration of his previous testimonies were very clear, concise, and moreover consistent. For the record Atty. Valencia is viewed by the undersigned who personally conducted the investigation as a plain, sincere and honest man who, not having been shown of any reason to be bias or to favor any party, had no reason to deliberately tell a falsehood relative to his official functions. The fact therefore that he submitted himself to an investigation twice and in different occasions shows his determination to vindicate his honor by proving the integrity of the records of his office.

From all indications and as the records of the case will show NO RECORD ON APPEAL was actually filed in the court a quo.

Apparently, RTC, Branch 31, Manila has an effective records management (system) and it is improbable to have missed one important document (RECORD ON APPEAL). In the absence of any convincing proof to the contrary, the regularity of official function must be upheld.

Far from the assertions of the petitioner we conclude that there was no Record on Appeal actually filed. (Memorandum dated December 11, 1997, pp. 3-5; Rollo, pp. 557-559)

The findings of the OCA are well taken.

In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on the either side. Plaintiff must therefore establish his case by a preponderance of evidence, i.e. evidence as a whole which is superior to that of the defendant.[4] In other words, the party who alleges a fact has the burden of proving it.[5] In this case, petitioner, as the party claiming affirmative relief from this Court by contending that he had filed a record on appeal in the trial court, must discharge the burden of convincingly proving his claim.[6] As found by the OCA, however, the evidence of the respondents even outweighs that of petitioner. Private respondents presented proof which are affirmative, unequivocal, convincing, and consistent that no record on appeal had been filed. As the OCA noted, petitioner not only failed to present the PDIC employee who allegedly filed on the record appeal in the trial court but more importantly, he failed to prove the authenticity of the alleged signature of Branch Clerk Antonio Valencia appearing in his copy of the record on appeal.

The firm and consistent denial of the branch clerk that he was the one who received the record on appeal and acknowledged its filing was disputed by petitioner. But petitioner's witness, Atty. Romero, who allegedly prepared the said record did not file it in the trial court. Nor did he have any personal knowledge of the actual filing of the record on appeal in the trial court. According to Atty. Romero, the PDIC employee who allegedly filed the record on appeal in the trial court could not testify because the said employee was already in Riyadh, Saudi Arabia. This allegation is not persuasive since no evidence was presented to prove the same.[7]

Even the documentary evidence submitted by petitioner to prove the authenticity of the signature of the branch clerk on the alleged duplicate original copy of the record on appeal[8] is not convincing. The signature and notation on the alleged duplicate original copy of the record on appeal do not match the actual signature and handwriting of the branch clerk as shown in the pleadings submitted by petitioner himself, namely, the notice of appeal filed by petitioner (Annex E, Omnibus Motion), motion to strike out notice of appeal filed by private respondents (Annex G) and comment filed by another claimant (Annex H). The branch clerk's alleged signature and notation are markedly different from his signature and handwriting appearing in the submitted documentary evidence.[9] For one, the branch clerk's initial "AV" appear "HV" in the alleged duplicate original copy of the record. In addition, numeral "5" was written with a rounded stroke instead of a sharp one. Clearly, petitioner failed to discharge the required burden of proof. Hence, petitioner's assertion that he had filed a record on appeal is not worthy of belief.

As regards petitioner's prayer that the Court reconsider its resolution of October 13, 1995 absolving the branch clerk of court of charges of wrongdoing, suffice it to state here that no ground exists to impute bad faith on the part of the branch clerk. Good faith is presumed and the complainant has the burden of proving any wrongdoing.[10] Petitioner simply failed to prove that the branch clerk either suppressed the record on appeal allegedly filed by petitioner did not file the said record. The Court cannot find the branch clerk guilty of any wrongdoing in certifying that petitioner failed to file a record on appeal in the trial court in the face of petitioner's failure to adduce convincing proof that such a record was in fact filed therein.

Also for consideration are two (2) manifestations and motions for clarification filed by the Land Bank of the Philippines (LBP). In its Manifestation/Motion dated May 20, 1996, LBP alleges that on or about March 24, 1995, petitioner's deposit accounts in LBP were garnished by Sheriff Carmelo Cachero in favor of private respondents pursuant to the writ of execution issued by RTC Branch 31, Manila acting as the liquidation court; that on April 10, 1995, it received from petitioner a copy of the April 7, 1995 order of this Court directing the parties to maintain the status quo in the case; that on November 20, 1995, the Court issued another resolution directing the parties to maintain the status quo until further orders; and that on April 1, 1996, it received as request from the petitioner to transfer the garnished funds to a different account maintained by petitioner in another branch of LBP.

LBP seeks clarification whether or not the garnishment of petitioner's deposit accounts on March 24, 1995 is null and void considering the status quo orders issued by the Court. It further inquires whether or not it may acquiesce to petitioner's request to transfer the garnished funds to petitioner's other account in another branch of LBP.[11] In its Manifestation dated October 7, 1996, on the other hand, LBP alleges that on September 9, 1996, it received from Sheriff Adolfo Garcia a notice of garnishment over the same deposit accounts of petitioner implementing the writ of execution issued also by the RTC, Branch 31, Manila, but for another claimant, the Bureau of Internal Revenue (BIR); that on September 25, 1996, it wrote Sheriff Garcia informing him that the accounts sought to be garnished were already garnished pursuant to the processes of the same court for another claimant (herein private respondents); that on September 27, 1996, it received a letter from petitioner urging it to effect the immediate release of the garnished funds to the BIR and that on October 2, 1996, it received from Sheriff Garcia the order to deliver to him the garnished amount of P179,971,860.13. LBP manifests that it is holding in abeyance action on the order to Sheriff Garcia and the letter of petitioner until the incidents in this case are finally resolved by this Court.[12]

These are matters largely relating to the execution of the decision of the trial court. As far as this Court is concerned, its decision is now final and it no longer has any jurisdiction to pass upon these incidents, not to mention the fact that the manifestation filed by LBP are in the nature of consultation by one not a party to this case.

WHEREFORE, the Court RESOLVED to DENY petitioner's Omnibus Motion for lack of merit. The manifestations and motions dated May 20, 1996 and October 7, 1996 by the Land Bank of the Philippines are NOTED.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] As amended by E.O. No. 289, July 25, 1987; now, Sec. 30 of the New Central Bank Act, R.A. No. 7653, June 14, 1993.

[2] Rollo, pp. 538-540.

[3] Id., pp. 555-559.

[4] Summa Insurance Corp. v. Court of Appeals, 253 SCRA 641 (1996).

[5] Trans-Pacific Supplies, Inc. v. Court of Appeals, 235 SCRA 494 (1994).

[6] Sadhwani v. Court of appeals, G.R. No. 128119, October 17, 1997; Javier v. Court of Appeals, 231 SCRA 498 (1994).

[7] Rollo, p. 558.

[8] Id., p. 502; Cover Page of the alleged duplicate original of the record on appeal, Annex E, Reply.

[9] Id, p. 539.

[10] Bernardino v. Ignacio, 253 SCRA 641 (1996); Santiago v. Court of Appeals, 248 SCRA 336 (1995).

[11] G.R. No. 109373, Rollo, p. 534.

[12] G.R. No. 112991, Rollo, pp. 475-477.

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