

**HEIRS OF SPOUSES EUGENIO NATONTON AND REGINA ARCILLA,
NAMELY: EMILIANA, EUGENIO, JR., MARIA CORAZON AND
ENRIQUE, ALL SURNAMED NATONTON, PETITIONERS, VS. SPOUSES
EULOGIO MAGAWAY ...**

G.R. NO. 147011. March 31, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Resolutions[1] dated August 3, 2000 and January 31, 2001 of the Court of Appeals in CA-G.R. CV No. 56418, entitled "Heirs of Spouses Eugenio Natonton and Regina Arcilla, et al., plaintiffs-appellees, v. Republic Planters Bank, defendant, Spouses Eulogio Magaway and Lily P. Magaway, defendants-appellants."

Spouses Eugenio and Regina Natonton were the registered owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. 18660 of the Registry of Deeds of Quezon City. On December 23, 1968, Regina died. The property was then transferred and registered in the name of her husband Eugenio under TCT No. 150333.

Subsequently, Eugenio died. Shortly thereafter, herein petitioners Emiliana, Eugenio, Jr., Maria Corazon, and Enrique, all surnamed Natonton, heirs of the deceased couple, found that their father, during his lifetime, sold the property to spouses Eulogio and Lily Magaway, respondents, for a consideration of P230,000.00, as shown by a deed of absolute sale dated July 27, 1979. TCT No. 150333 in the name of Eugenio was then cancelled and in lieu thereof, TCT No. 2839333 was issued in the names of spouses Eulogio and Lily Magaway.

On June 18, 1990, petitioners filed with the Regional Trial Court, Branch 82, Quezon City, a "Complaint for Declaration of the Inexistence of Contract, Cancellation of Title and of Mortgage and Damages" against respondents, docketed as Civil Case No. Q-90-5815. Petitioners alleged therein that the contract of sale is void ab initio, Eugenio's signature being a forgery. In their Answer, respondents denied petitioners' main allegation. They maintained that the contract was executed in accordance with the law and that the parties' signatures thereon are genuine.

Meanwhile, on April 20, 1997, Atty. Victorino S. Alba sent a letter[2] to respondent Eulogio Magaway tendering his irrevocable resignation as legal counsel of respondents, effective April 30, 1997.

After the hearing of the case, or on July 8, 1997, the trial court rendered its Decision[3] in favor of petitioners and against respondents, declaring the deed of absolute sale void.

On July 29, 1997, respondents, through Atty. Alba, interposed an appeal to the Court of Appeals.

On November 4, 1997, the Appellate Court issued a Resolution requiring respondents to remit P5.00 as additional

docket fee. On November 19, 1997, Atty. Alba personally paid this amount to the cashier of the Court of Appeals.

On September 3, 1999, Inocentes Untalan & Untalan Law Office, through Atty. Jonathan R. Amoroso, filed its Formal Entry of Appearance[4] for respondents which was noted by the Court of Appeals on September 14, 1999. Thereafter, respondents, through their new counsel, filed a Motion for Extension of Time to File Appellants' Brief. The Court of Appeals granted this motion, allowing them to file their brief up to January 27, 2000.

On January 27, 2000, respondents, through Atty. Amoroso, submitted their brief.[5]

On April 26, 2000, petitioners filed a Motion to Dismiss Appeal on the ground that (1) respondents failed to file their brief through Atty. Alba, their counsel of record; and (2) the brief filed by Atty. Amoroso is a nullity.

On May 3, 2000, petitioners filed a Supplemental Motion to Dismiss Appeal on the ground that the appealed Decision has become final and that, therefore, the Appellate Court has no more jurisdiction over the case. On May 29, 2000, respondents filed their comment/opposition to the motions.

On August 3, 2000, the Court of Appeals issued the first assailed Resolution,[6] denying petitioners' motions, thus:

The records show that on April 20, 1997, Atty. Alba who handled the case for the defendants-appellants Spouses Eulogio and Lily Magaway in the trial court, wrote a letter to Eulogio Magaway tendering his irrevocable resignation as their legal counsel effective April 30, 1997. (Rollo, p. 76) Whereupon, on September 3, 1999, the law firm of Inocentes Untalan and Untalan entered its appearance as counsel for the appellants-spouses "in view of the resignation of the counsel of record, Atty. Victorino Alba" (Rollo, pp. 74-76), attaching thereto a copy of the letter resignation of the latter. On September 14, 1999, this Court noted the entry of appearance of the said law-firm "in view of the resignation of the former counsel" (Rollo, p. 78). It is not, therefore, true that Atty. Victorino Alba was not properly substituted by the law firm of Inocentes Untalan and Untalan. Hence, the appellants' brief filed by the same law firm, through Atty. Jonathan Amoroso, is valid and it effectively prevented the appealed decision from becoming final and executory.

The appellees surmise that the letter of resignation of Atty. Alba is false because in it, Atty. Alba indicated that he was to retire as counsel effective April 30, 1997, yet on November 7, 1997, it was he who remitted the lacking appellate docket fee in the amount of P5.00 and that, furthermore, on September 3, 1997, he filed the appellants' Opposition to Partial Motion for Reconsideration. Atty. Alba, however, can not be blamed for taking such actions because at that time, no counsel had yet filed an appearance in his stead. The Inocentes Untalan & Untalan Law Office entered its appearance only on September 3, 1999 as aforesated, which was noted by this court on September 14, 1999.

WHEREFORE, for lack of merit, both motions to dismiss appeal are DENIED.

SO ORDERED.[7]

On August 25, 2000, petitioners filed a Motion for Reconsideration but was denied for lack of merit[8] by the Court of Appeals in its second assailed Resolution dated January 31, 2001.

Hence, the present petition.

The issue for our determination is whether the Appellate Court erred in not dismissing the appeal interposed by respondents for their failure to file their brief on time. Petitioners insist that Atty. Alba, respondents' counsel, should have filed their brief seasonably as he did not withdraw as counsel. Hence, the brief filed by their new counsel "is a nullity."

The petition must fail.

It must be stressed that respondents filed their notice of appeal within the reglementary period. Consequently, the Court of Appeals acquired jurisdiction over the case. However, respondents failed to file their appellants' brief on time.

When the Appellate Court has already obtained jurisdiction over the appealed case, this Court has exempted cases (wherein appellants' briefs were not seasonably filed) from the strictures of procedural rules.

In *Carco Motor Sales v. Court of Appeals*,^[9] this Court held:

As held by the Court in *Gregorio v. Court of Appeals* (70 SCRA 546 [1976]), "(T)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced. (Emphasis supplied)

Technically, the Court of Appeals may dismiss an appeal for failure to file appellant's brief on time.^[10] However, the dismissal is directory, not mandatory.^[11] It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically.^[12] The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty.^[13] The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.^[14]

We observe that petitioners' arguments are based on technical grounds. While indeed respondents did not file their brief seasonably, it was not mandatory on the part of the Court of Appeals to dismiss their appeal. As held by this Court in the above-cited cases, late filing of brief may be excused. In other words, the dismissal of respondents' appeal on that ground is discretionary on the part of the Appellate Court.

Significantly, there is no showing that petitioners suffered a material injury or that their cause was prejudiced when respondents failed to submit their brief promptly. What is clear is that the latter incurred delay in the filing of their brief because when the deadline fell due, they were not yet represented by a new counsel.

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice, but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice, have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to the instant case, in the language of then Chief Justice Querube Makalintal, technicalities "should give way to the realities of the situation."^[15]

Lastly, the demands of substantial justice and fair play make it absolutely necessary for the Appellate Court to judiciously resolve the issues before it. Dismissing respondents' appeal might give rise to the impression that it may be fostering injustice should their case turn out to be meritorious. Hence, it is a more prudent course of action for the Appellate Court to excuse a technical lapse and afford respondents herein a review of their case to attain the ends of justice.

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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- [1] Penned by Justice Salvador J. Valdez, Jr. and concurred in by Justice Fermin A. Martin, Jr. (both retired) and Justice Remedios A. Salazar-Fernando.
- [2] Rollo, p. 29.
- [3] Id., pp. 21- 24.
- [4] Id., pp. 27-28.
- [5] Id., p. 82.
- [6]Id., pp. 17-19.
- [7] Id., pp.18-19.
- [8] Id., p. 20.
- [9] No. L-44609, August 31, 1977, 78 SCRA 526.
- [10] Rule 50, Section 1 (e), 1997 Rules of Civil Procedure, as amended.
- [11] Catindig v. Court of Appeals, L-33063, February 28, 1979, 88 SCRA 675, 680; Lopez v. Court of Appeals, L-43767, February 28, 1977, 75 SCRA 401, 406.
- [12] Haberer v. Court of Appeals, Nos. L-42699 & L-41709, May 26, 1981, 104 SCRA 534, 544, citing Ordoveza v. Raymundo, 63 Phil. 275 (1936).
- [13]Catindig v. Court of Appeals, supra.
- [14]Aguam v. Court of Appeals, et al., G.R. No. 137672, May 31, 2000, 332 SCRA 784.
- [15] Ginete, et al. v. Hon. Court of Appeals, et al., G.R. No. 127596, September 24, 1998, 296 SCRA 38.

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