MEGA-LAND RESOURCES AND DEVELOPMENT CORPORATION, REPRESENTED BY ITS PRESIDENT AND GENERAL MANAGER, SY SIONG LATO, PETITIONER, VS. C-E CONSTRUCTION CORPORATION AND CONSTRUCTION I...

G.R. No. 156211. July 31, 2007

Ponente: TINGA, J.

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TINGA, J.:

Rarely would affixing the correct docket number to the pleading spell the difference between a live and an extinct petition. This is one such rare instance.

This unusual case involved a set of facts that are ultimately simpler than meets the eye. Petitioner Mega-Land Resources and Development Corporation and private respondent C-E Construction Corporation were the disputants in a matter submitted for arbitration to public respondent Construction Industry Arbitration Commission (CIAC). The subject and cause of the dispute is of no relevance to this petition.

On 19 June 2002, the CIAC rendered a decision[1] ordering petitioner to pay private respondent the sum of around P18.6 Million, plus interest.

Petitioner received a copy of the adverse CIAC decision on 20 June 2002. Following Section 4, Rule 43 of the 1997 Rules of Civil Procedure, petitioner had 15 days from notice of the decision, or until 5 July 2002, to appeal the same to the Court of Appeals.[2] Before the CIAC, petitioner was represented by the Fajardo Law Offices. On 4 July 2002, petitioner, through Fajardo Law Offices, filed a Motion for Extension of Time to file a Petition for Review Under Rule 43.[3] The motion was docketed as CA-G.R. No. 71485 (hereinafter, the "first case"), and it sought an extension until 20 July 2002 to file the petition for review. The reason offered in the motion was "the voluminous records, the complexity of the legal and factual issues, and generally, the difficulty on the part of petitioner's counsel due to its other professional obligations to timely file the petition."[4]

However, on 5 July 2002, petitioner, this time through its President and General Manager Sy Siong Lato (Sy), filed a Motion for Extension of Time to File Petition for Review on Certiorari Under Rule 43.[5] Unsurprisingly, this new motion for extension was assigned its own docket number, CA-G.R. SP No. 71504 (hereinafter, the "second case") and also sought an extension until 20 July 2002 to file the petition for review. The reason offered in this second motion was it was mutually agreed between petitioner and its counsel, the Fajardo Law Offices, that petitioner should secure another counsel due to "the disagreements and/or differences of opinion in the handling of the case" as a consequence of which it went into the process of retaining the services of another lawyer for the case.[6]

Petitioner would later claim that the filing made by Fajardo Law Offices in the first case was without its prior knowledge.[7]

The first case was raffled to the Court of Appeals Sixteenth Division. Despite the apparent termination of services

of the Fajardo Law Offices, no move was undertaken to withdraw or otherwise disavow the motion earlier filed by that counsel. On the other hand, the second case was raffled to the Court of Appeals Fifth Division. Both divisions of the Court of Appeals granted both motions for extension, similarly prolonging the period to appeal until 20 July 2002, in separate resolutions rendered just one day apart. The Resolution[8] in the first case was penned by Associate Justice Marina L. Buzon, while the Resolution in the second case was authored by Associate Justice Teodoro P. Regino.[9]

In the meantime, petitioner secured the services of Atty. Richard S. Flores to represent it before the Court of Appeals. Atty. Flores duly filed in behalf of petitioner a Motion for Second Extension of Time to File Petition for Review with Formal Entry of Appearance,[10] offering as reason the fact that his services were contracted only on 15 July 2002, or five (5) days before the expiration of the extended reglementary period. Petitioner sought a new period of 15 days, or until 4 August 2002, through the motion filed by Atty. Flores.

The caption used in the new motion for extension, as prepared and filed by Atty. Flores is that of the second case which was initiated by the motion filed by Sy in behalf of petitioner. By this time, the former Fifth Division hearing that case had been reorganized, and the second motion for extension of time was assigned to the Special Third Division. In a Resolution dated 16 September 2002, the Special Third Division granted the second motion for extension, again through a Resolution penned by Justice Regino as the assigned ponente of the second case.[11]

It is useful at this point to recount the status then of the two pending cases before the Court of Appeals, involving the same set of petitioners and respondents, and assailing the same decision of the CIAC. In the first case, no further pleading was filed by petitioner or the Fajardo Law Offices after the granting of the initial motion for extension therein. Thus, the period within which to file the petition in the first case elapsed on 20 July 2002. On the other hand, in the second case, two separate motions for extension had been filed, the first by Sy in petitioner's behalf and the second by Atty. Flores. Since both motions were granted by the Court of Appeals, through Justice Regino, petitioner had until 4 August 2002 to file its petition in the second case.

The act that animates this present case is the filing on 1 August 2002, by Atty. Flores in behalf of petitioner, of a Petition for Review[12] assailing the 19 June 2002 Decision of the CIAC. The caption of the petition clearly states the docket number as "CA-G.R. SP No. 71485,"[13] that of the first case, or the same docket number under which the earlier motion for extension filed by Fajardo Law Offices was docketed.

Unfortunately for petitioner, its right to file the Petition on 1 August 2002 arose by virtue of the granting of the second motion for extension in the second case. In contrast, petitioner's right to file a petition in the first case had expired on 20 July 2002, or 12 days before the actual filing of the petition under the docket number of the first case. As such, the seemingly innocuous typographical error resulted in multiple deleterious consequences.

Owing to the stated docket number in the caption of the Petition for Review being that of the first case, the same was submitted for deliberation to the Sixteenth Division to which the first case had been assigned. On 12 September 2002, the Sixteenth Division issued a Resolution in the first case penned by Justice Buzon,[14] which noted that the petitioner had been granted an extension until 20 July 2002 to file the petition, but that the petition had actually been filed only on 2 August 2002. The Sixteenth Division likewise noted that while the Petition for Review alleged that a motion for second extension of time had been filed, the Judicial Records Division of the appellate court verified that no such motion had been filed. As such, the 12 September 2002 Resolution in the first case declared that "[i]nasmuch as no motion for second extension of time to file petition for review was received by this Court, the petition for review was, therefore, filed beyond the prescribed period."[15] Further, the Resolution also noted that the petition itself was defective, as the verification and certification against forum

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shopping executed by Sy was not accompanied by any board resolution authorizing him to execute the same.[16]

In the meantime, the second case had since been reassigned to the reconstituted Third Division of the Court of Appeals. On 8 October 2002, the Third Division issued a Resolution in the second case penned by Justice Regino, which simply held that "[f]or failure of the petitioner to file the petition for review within the extended period granted under Resolution dated July 11, 2002, the Court Resolved to DISMISS the appeal."[17]

The 8 October 2002 Resolution in the second case failed to mention that a second motion for extension had actually been granted in that case, specifically in the Resolution dated 16 September 2002.[18] Still, no Petition for Review was actually ever filed in the second case. In fact, after filing the second motion for extension in the second case which also merited favorable action, petitioner did not file any subsequent pleading in the same case, not even any motion for reconsideration of the 8 October 2002 Resolution dismissing the appeal in that case.

Instead, petitioner turned its sole focus to the first case. On 2 October 2002, it filed a Motion for Reconsideration[19] of the 12 September 2002 Resolution of the Sixteenth Division. This Motion for Reconsideration was signed in behalf of petitioner by Atty. Flores, who explained that the board resolution granting authority to Sy had been inadvertently misplaced and detached from the copy of the petition "submitted before the Honorable Justices of the Sixteenth Division, Court of Appeals."[20]

Atty. Flores also gave the following explanation relating the second motion for extension of time:

> [W]ith regards to the filing of a second extension of time to file petition for review, the same was filed on July 18, 2002[.] [H]owever, undersigned counsel was confused with the case number since petitioner corporation did not informed [sic] the undersigned that the corporation likewise filed a Motion for [E]xtension of time to file Petition for Review before the Court of Appeals and paid the necessary docket fees which was also filed by the previous handling counsel, the Law firm of FAJARDO LAW OFFICES, thus, there are two docket number[s] in the instant case, namely, CA-G.R. SP No. 71485 and CA-G.R. SP No. 71504; x x x [T]he Motion for Second Extension of Time to file Petition for Review with Formal Entry of Appearance was filed under CA-G.R. SP No. 71504 and was raffled to the Special Third Division and the same was given due course x x x.[21]

The explanation was capped with an acknowledgment of "the fiasco created," with Atty. Flores "profusely beg[ging] the indulgence of the Honorable Sixteenth Division."[22]

All for naught. In a Resolution dated 21 November 2002,[23] the Former Sixteenth Division of the Court of Appeals issued a Resolution in the first case, again penned by Justice Buzon, denying the Motion for Reconsideration. The Resolution recounted all the facts surrounding the filing of the pleadings in both the first and second cases, as well as the resolutions rendered by the two different divisions of the Court of Appeals in the respective cases. In the end, the 21 November 2002 Resolution arrived at the following conclusion:

> Inasmuch as the second motion for extension of time to file petition for review was filed in CA-G.R. SP No. 71504, the petition for review should thus have been filed in said case. Consequently, it should have been the Resolution dated October 8, 2002 dismissing CA-G.R. SP No. 71504 for failure to file the petition for review within the extended period which should have been the subject of petitioner's motion for reconsideration.[24]

Hence the present petition before us, which relevantly assails only the rulings penned by Justice Buzon for the Sixteenth Division and Special Sixteenth Division of the Court of Appeals in the first case. Since no motion for reconsideration was filed as regards the Resolution of the Third Division in the second case dismissing the petition, such ruling should be deemed as having lapsed into finality.

The issues raised in the petition are arcane, pertaining as they do to the internal processes of the Court of Appeals. Particularly, petitioner argues that the Sixteenth Division should have forwarded the Petition for Review filed

before it to the Third Division, instead of dismissing the same;[25] and that the second motion for extension of time to file the petition for review should have bound the Sixteenth Division.[26] Still, we do have to consider the ultimate broad question of whether the consequent extinction of petitioner's right to appeal the adverse decision of the CIAC occurred in accord with our established rules of procedure, or with procedural due process for that matter.

Private respondents, in their Comment,[27] dwell on the fact that petitioner's predicament arose due to the negligence of its counsels in tandem with the general principle that the simple negligence of counsel binds the clients. Such negligence which is inescapably obvious in this instance is determinative of this petition. It was Atty. Flores himself who drafted and filed the second Motion for Extension in the second case; thus, it should have been a simple matter of writing in the petition he eventually filed, the same and only docket number he had used earlier when he filed the motion. But he did not do so. Settled is the rule that the negligence of counsel binds the client.[28]

Still, there is another principle that warrants appreciation in this case – the proscription against forum-shopping.

Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment.[29] It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.[30] There certainly is all the opportunity to accomplish the wrong intended by forum-shopping through the filing of two petitions for review with a collegiate court such as the Court of Appeals, as each petition would be docketed separately and assigned to a division of that court, thus allowing two different divisions to act independently as each considers and treats the petition. Thus, no petition for review on certiorari may be filed in the Court of Appeals if there is already a similar petition already filed or pending with that same court.[31]

There is no requirement that motions for extension of time be accompanied by a certification against forum-shopping.[32] At the same time, our Rules of Civil Procedure specifically provide that if the petitioner/appellant were to file the said motion for extension of time, they were obligated as well to make a payment of the full amount of the docket fee before the expiration of the original reglementary

period. In effect, the payment of the full docket fees must be made simultaneously with the filing of the motion for extension. This holds true whether the extension is sought to undertake an appeal under Rule 43[33] (as in this case), or whether the extension is sought to file a petition for review with the Court of Appeals under Rule 42.[34]

Thus, the filing of each motion for extension along with the corresponding full docket fees gives rise to a separate case before the Court of Appeals or Supreme Court that is accordingly docketed and raffled for evaluation and eventual deliberation. If each of the cases involve the same petitioner, the same respondents, and seek the extension of time to file a petition or appeal concerning the same decision of the lower court or tribunal, then all the opportunity and dangers of forum shopping are imminent. The evil itself would finally be actualized once a separate appeal or petition for each case is actually filed.

Thus, even if forum-shopping had not yet been consummated, the steps undertaken by petitioner herein may give rise to a prima facie indication that it was about to commit forum-shopping. Neither would there have been any rational or legal justification for having filed two separate motions for extension, as such steps are not oriented towards any valid legal outcome. Accordingly, a party who commits such error in good faith has the obligation to correct the same upon becoming aware of the anomaly.

That petitioner was under such an obligation in this case is inescapably evident. The fact that the petition for review intended for filing in the second case bore instead the docket number of the first case indicates that petitioner and its new counsel, Atty. Flores, knew of the first case earlier initiated by Fajardo Law Offices. In short, at the time the petition was filed with the Court of Appeals, petitioner had known that there were two similar cases involving the same parties and causes of action.

There were a variety of options petitioner could have resorted to in order to rectify the anomaly. Upon learning that there were actually two different cases pending before the Court of Appeals, petitioner could have moved to withdraw either any of the motions for extension of time, so that there would be only one case pending with the appellate court. It really would not matter if it were the first case or the second case which was withdrawn, since either case was a viable vehicle for petitioner's intended appeal. Had petitioner done this at the onset, even if later the filed petition itself stated the wrong docket number, the Court of Appeals could have easily recorded the pleading under the case that remained in existence since it would anyway be incapable of filing the same under the records of a case that had already been withdrawn. Our procedural rules were not crafted with the intent of unilaterally conferring fatal consequences on simple typographical errors.

But because petitioner was delinquent in ensuring that only one of the two cases remained extant, as properly should be, the "fiasco"

ensued merely from applying the correct legal procedures. Even as no petition was timely filed in the first case after no second motion for extension was sought therein, said case had not yet been closed and terminated upon the belated filing of the appeal. Since the appeal was filed beyond the reglementary period, its dismissal was in accord with the rules of procedure. At the same time, since no petition was filed at all in the second case despite the providential granting of two successive motions for extension, the appeal was correctly dismissed. Had petitioner been diligent enough to correct from the onset the anomalous circumstances, the twin embarrassments would not have occurred.

Thus, petitioner is left to raising extremely weak and wholly unsupported arguments before us to allow its cause of action a ghost of a chance. Contrary to petitioner's claim, there was no obligation on the part of the Sixteenth Division to forward the petition filed to the Third Division instead of dismissing the same. The docket number indicated in the caption of that petition made it clear that the same was addressed to the Sixteenth Division instead of the Third. Since both cases involved the same parties and were pivoted on the same ruling of the CIAC, it could not have been indubitably obvious that the "misfiled" petition actually pertained to a different case.

The only indication in the petition that it was intended for filing in a different case was the statement therein that a second motion for extension had been previously filed, as it had been in the second case, but not the first case. Yet even such fact would not have elicited the

ineluctable conclusion on the part of the Sixteenth Division that the petition had been misfiled under a wrong docket number. The more plausible assumption for the appellate court, in fact, would be that petitioner was lying in order to make it appear that the petition had been timely filed. After all, the Sixteenth Division at that point would not have had basis to know of the existence of the second case, their information being limited to the averments made by petitioner before the Sixteenth Division through its pleadings. And it was only in the Motion for Reconsideration that the Sixteenth Division was first alerted to the existence of the second case.

Petitioner now suggests that the duty to rectify the anomaly fell with the Sixteenth Division. The notion is balderdash. The duty falls solely on the party-litigants, especially on the party whose fault caused the anomaly. It should be remembered that there is no inherent right of appeal, as appeals are purely statutory.[35] Since the right to appeal is neither a natural right nor a part of due process, it may be exercised only in the manner and in

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accordance with the provisions of law.[36] In the matter of perfection of appeals in accordance with substantive and procedural law, the function of appellate courts is not to act as nannies to the appellants, clearing the pitfalls that impede the perfected appeal. The responsibility is petitioner's alone as appellant, and petitioner's theory wrongly implies that the appellate courts also share that burden.

The other argument raised by petitioner is that its second motion for extension filed in the second case should have bound the Sixteenth Division hearing the first case. Suffice it to say, a pleading filed in one case does not bind the proceedings in another case, even if both cases are heard by just one court. A contrary rule would simply lead to chaos.

We have duly considered that perhaps this entire untidiness could have been avoided had the Court of Appeals at the outset consolidated the two cases. Yet such consideration is ultimately of no moment to petitioner. For one, under the 2002 Internal Rules of the Court of Appeals (RIRCA), there is no mandatory obligation to consolidate related cases. The language utilized in Rule 3, Section 3 of the RIRCA, which authorizes consolidation is cases, is merely directory in character, providing as it does: "[w]hen related cases are assigned to different Justices, they may be consolidated and assigned to one Justice."[37] More importantly perhaps, the consolidation of cases was never intended to cure the defect of forum-shopping. If one litigant has filed multiple suits involving the same parties for the same cause of action, the consolidation of these suits is not the correct palliative. These suits should instead be dismissed on the ground of forum-shopping.

Petitioner lastly invokes the liberal construction of the rules to effect substantial justice, in order that the case may be set aside on the merits and not mere technicalities. However, petitioner through its negligence failed to perfect the appeal under Rule 43 in accord with the jurisdictional requirements. It would have been a different story if petitioner had from the beginning acted within the boundaries of our procedural rules, by properly withdrawing any one of the two cases it knew had been filed in its behalf. But since it failed to do so, it should bear the consequences of its own neglect. Equitable relief is not the supremacy of pity but the entitlement of due process previously denied the litigant.[38] There was no denial of due process in this case that would warrant us to restore jurisdiction lost upon the initiative and fault of petitioner.

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 76-95.

[2] See 1997 RULES OF CIVIL PROCEDURE, Rule 43, Sec. 4 in relation to Rule 43, Sec. 1.

[3] Rollo, pp. 28-31.

[4] Id. at 29.

[5] Id. at 34-36.

[6] Id. at 35.

[7] Id. at 12.

[8] Id. at 33. Resolution was concurred in by then Acting Presiding Justice Cancio C. Garcia (now Supreme Court Associate Justice) and Associate Justice Eliezer R. de los Santos.

[9] Id. at 38. Resolution was concurred in by Associate Justices Eugenio S. Labitoria and Juan Q. Enriquez, Jr.

[10] Id. at 39-41.

[11] See id. at 44. Resolution was concurred in by Associate Justices Eloy R. Bello, Jr. and Sergio L. Pestaño.

[12] Id. at 45-62.

[13] Id. at 45.

[14] Id. at 65-66. The Resolution was also concurred in by Associate Justices Perlita J. Tria Tirona and Regalado E. Maambong.

[15] Id. at 66.

[16] Id.

[17] Id. at 64. Resolution concurred in by the late Associate Justice Eubulo G. Verzola and Associate Justice Pestaño.

[18] See note 11.

[19] Id. at 68-71.

[20] Id. at 69.

[21] Id. at 69-70.

[22] Id. at 70.

[23] Id. at 72-74.

[24] Id. at 73. This Resolution was concurred in by Associate Justices Perlita J. Tria Tirona and Regalado E. Maambong.

[25] Id. at 19-21.

[26] Id. at 21-22.

[27] Id. at 104-112.

[28] Boaz International Trading Corp. v. Woodward Japan, Inc., 463 Phil. 676, 687 (2003), citing Greenhills Airconditioning and Services, Inc. v. NLRC, 315 Phil. 409, 417, 27 June 1995, per Padilla, J.

[29] See Tolentino v. Natanauan, 461 Phil. 775, 787 (2003).

[30] Municipality of Taguig v. Court of Appeals, G.R. No. 142619, 13 September 2005, 469 SCRA 588, 594-595.

[31] See Municipality of Taguig v. Court of Appeals, G.R. No. 142619, 13 September 2005, 469 SCRA 588.

[32] See De Dios v. Court of Appeals, G.R. No. 127623, 19 June 1997, 274 SCRA 520.

[33] See 1997 RULES OF CIVIL PROCEDURE, Rule 43, Sec. 4.

[34] See 1997 RULES OF CIVIL PROCEDURE, Rule 42, Sec. 1.

[35] See Yao v. Court of Appeals, 398 Phil. 86, 100 (2000), citing Aris (Phil)., Inc. v. NLRC, 200 SCRA 246, 253 [1991].

[36] Id., citing Pedrosa v. Hill, 257 SCRA 373, 378 (1996), citing in turn Bello v. Fernandez, 4 SCRA 138; Ortiz v. Court of Appeals, 299 SCRA 708 (1998).

[37] 2002 Internal Rules of the Court of Appeals , Rule III, Sec. 3.

[38] Reliance Surety & Insurance Co., Inc. v. Amante, Jr., G.R. No. 150994, 30 June 2005, 462 SCRA 399, 418.

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