

PRUDENTIAL BANK (FORMERLY PILIPINAS BANK), PETITIONER, VS. BUSINESS ASSISTANCE GROUP, INC. (NOW KNOWN AS BUSINESS ASSISTANCE CREDIT CORPORATION), AND RODOLFO L. VEGA, RESPONDENTS.

G.R. No. 158806. December 16, 2004

Ponente: DAVIDE JR., CJ.

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DAVIDE JR., CJ.:

In this petition for review on certiorari under Rule 45 of the Rules of Civil Procedure, petitioner Prudential Bank (formerly Pilipinas Bank) seeks a reversal of the Resolutions dated 10 July 2002[1] and 18 June 2003[2] of the Court of Appeals in CA-G.R. CV No. 67699 dismissing its appeal and denying its motion for reconsideration, respectively. The petitioner also prays for a reversal of the 2 August 1999 Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 13, in Civil Case No. 90-53636.

On 5 May 1981, Pilipinas Bank (hereafter the bank) entered into a Collection Agreement[4] with respondent Business Assistance Group, Inc. (BAGCO) whereby, for and in consideration of service fees, the bank would endorse to BAGCO, for collection, several accounts involving debts or obligations of third persons in favor of the former.

Consequently, on or about September 1983, the bank endorsed to BAGCO the unpaid account of Rustica Tan for collection. BAGCO, through one of its retained counsel respondent Atty. Rodolfo L. Vega (now deceased), instituted extrajudicial foreclosure proceedings against Tan's property in Parañaque. Tan retaliated by filing Civil Case No. 5260,[5] an action for damages with injunction against the bank, which was assigned to the RTC of Makati City, Branch 143. The bank was represented by Atty. Vega.

Despite the preliminary injunction[6] issued by the trial court restraining the extrajudicial foreclosure sale of Tan's property, Atty. Vega still proceeded with the auction sale.[7] Eventually on 21 September 1989, the trial court rendered a decision in Civil Case No. 5260 making the injunction permanent and declaring the foreclosure and resultant sale of Tan's property null and void. The trial court also ordered the bank to pay P13,574,554 as actual damages; P500,000 as moral damages; P300,000 as exemplary damages; and P100,000 as attorney's fees.[8] This decision was, however, set aside and annulled by the Court of Appeals in CA-G.R. SP No. 19149 on 9 July 1990.

Believing that BAGCO rendered inadequate service and was negligent in handling Civil Case No. 5260 and in other referred accounts, the bank terminated the Collection Agreement and obtained the services of another collection agency. It likewise instituted an action for damages docketed as Civil Case No. 90-53636[9] against BAGCO and Atty. Vega. On 2 August 1999, the RTC of Manila, Branch 13, to which the case was raffled, rendered a decision[10] (1) dismissing the complaint for damages; and (2) ordering the bank to pay BAGCO "the sum of P3,513,912.83, with legal interest of six percent per annum from the date of the filing of the complaint until payment, plus reasonable attorney's fees of ten percent of the principal amount due, and costs."

Its motion for reconsideration[11] having been denied, the bank appealed to the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 67699. On 20 September 2000, the Court of Appeals issued a notice directing the bank to file appellant's brief.[12] On 27 September 2000, the notice was sent through registered mail to the bank's counsel Gella, Danguilan, Nabaza & Associates, 5/F 111 Paseo de Roxas corner Legaspi Streets, Makati.

On 1 March 2001, BAGCO filed a motion to dismiss the appeal[13] on the ground of non-filing of an appellant's brief. The petitioner filed an opposition to the motion[14] and attached thereto the appellant's brief.[15]

On 10 July 2002, the Court of Appeals dismissed the appeal for failure of the bank to file appellant's brief within the reglementary period.[16] The appellate court held:

As borne by the record, the clerk of court of this Court sent notice to file appellant's brief (p. 81, rollo) to plaintiff-appellant's counsel on September 27, 2000 (ibid.). The same was received by the latter thru his authorized representative, Arlan P. Cayno, on October 4, 2000 (see Certification of Cipriano C. Pagaduan, Postmaster, Makati Central Post Office; p. 137, rollo). On March 1, 2001, defendants-appellees filed their "Motion to Dismiss Appeal" (p. 83, rollo).

Counting the forty-five (45) day period within which to file the required appellant's brief, plaintiff-appellant only had until November 18, 2000 within which to file the same. Clearly, therefore, the filing of the appellant's brief on March 8, 2001 (see upper right hand corner of "Plaintiff-Appellant's Brief"; p. 93, rollo) was way beyond the prescriptive period. Relative thereto, § 1(e) of Rule 50 of the same Rules provide that: "An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x

"(e) Failure of the appellant to serve and file the required number of copies of hi[s] brief or memorandum within the time provided by these Rules;"

Accordingly, on motion by the defendants-appellees, the instant appeal is hereby DISMISSED. Plaintiff-appellant's Brief (supra) is hereby ordered EXPUNGED from the records.

SO ORDERED.[17]

On 4 December 2002, the bank filed a motion for reconsideration, which was, however, denied by the Court of Appeals in its Resolution of 18 June 2003.[18] Hence, this petition for review on certiorari on the following grounds:

I

THE COURT OF APPEALS' DISMISSAL OF PETITIONER'S APPEAL IS CONTRARY TO LAW AND EXISTING JURISPRUDENCE ON PROPER RECEIPT OF NOTICES BY A PARTY REPRESENTED BY COUNSEL

II

BAGCO AND ITS RETAINED COUNSEL, BY THE TERMS OF THE COLLECTION AGREEMENT AND UNDER EXISTING LAW AND JURISPRUDENCE, ARE LIABLE FOR DAMAGES FOR THE NEGLIGENT HANDLING OF THE RUSTICA TAN ACCOUNT AND CIVIL CASE NO. 5260

III

BAGCO IS NOT ENTITLED TO THE SERVICE CHARGES AND ATTORNEY'S FEES IT CLAIMS FROM PETITIONER.[19]

In support of its first argument, the bank maintains that the notice dated 20 September 2000 directing it to file appellant's brief was never properly served on its then counsel of record, the Gella, Danguilan, Nabaza & Associates law firm. The notice, which was allegedly sent by registered mail, was never received by its counsel as shown by the absence in the records of the registry return card pertaining to its copy of the notice. The alleged receipt by Arlan Cayno of the notice cannot be considered as proper service because he was not an authorized representative of the bank's then counsel, but was only an employee of the bank assigned to the General Services Department as Maintenance Clerk. The authorized person at the time was Ms. Dolores Zaraspe, as reflected in previous court notices and registry return cards attached to the records.

Since its counsel was not served with a copy of the notice to file the appellant's brief, the running of the period of forty-five days under Section 7, Rule 44, Rules of Civil Procedure, within which to file the said brief did not begin to run. It was therefore never in delay, and the Court of Appeals' dismissal of the appeal on the basis of Section 1(e), Rule 50, Rules of Civil Procedure, was erroneous.

For its part, the respondents insist that there was proper service of the notice to the bank's then counsel. For fourteen years now, respondents' pleadings, as well as court processes, have all been mailed to the bank's counsel at its usual given address and have all been received by the bank personnel; for that length of time, there was never a complaint of non-receipt of mails coming from the respondents. The affidavit of Arlan Cayno stating that he was not authorized to receive the notice is a gratuitous assertion concocted by the bank's lawyers to save the day for all of them.

Petitioner's first argument deserves merit.

Section 2, Rule 13 of the Rules of Civil Procedure provides that "if a party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." Thus, even if a party represented by counsel has been actually notified, said notice is not considered notice in law.[20]

As to proof of service, Section 13, Rule 13 of the Rules of Civil Procedure states:

SEC. 13. Proof 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.

In the case at bar, the registry return card pertaining to petitioner's copy of the notice is not extant in the records of the Court of Appeals. This absence is even admitted by the respondents in their Motion to Dismiss Appeal[21] and Motion to Admit Reply to Opposition.[22] The Court of Appeals, however, concluded that the notice was received by the bank's counsel as evidenced by the certification of Mr. Cipriano C. Pagaduan, Postmaster, Makati Central Post Office, that a certain Mr. Arlan Cayno received the notice on 4 October 2000.[23] But, in his affidavit, Mr. Cayno denied that he was an employee of Gella, Danguilan, Nabaza & Associates law firm authorized to receive legal or judicial processes; he disclaimed knowledge of the whereabouts of the notice. The respondents themselves admit that Mr. Cayno was an employee of the bank.[24] Since Mr. Cayno was not an employee of the said law firm authorized to receive notices in its behalf, his alleged receipt of the 20 September 2000 notice is without any effect in law.

Moreover, we held in *Philippine Long Distance Telephone Co. v. NLRC*[25] that service must be effected at the exact given address of the lawyer, and not in the vicinity or at a general receiving section for an entire multi-storied building with many offices. Thus:

The bailiff, instead of serving the notice of the decision at the lawyer on the ninth floor which is clearly indicated in the notice of decision, left the notice at the ground floor of the PRUDENTIAL BANK's main building. We have held time and again that notices to counsel should properly be sent to the address of record in the absence of due notice to the court of change of address (Phil. Suburban Dev. Corp. v. Court of Appeals, 100 SCRA 109). Hence, practical considerations and the realities of the situation dictate that the service made by the bailiff on March 23, 1981 at the ground floor of the PRUDENTIAL BANK's building and not at the address of record of PRUDENTIAL BANK's counsel on record at the 9[th] floor of the PLDT building cannot be considered a valid service. It was only when the Legal Services Division actually received a copy of the decision on March 26, 1981 that a proper and valid service may be deemed to have been made.

...

The purpose of the rule is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case.

...

In modern multi-storied buildings, there may several hundred rooms with hundreds of different employees discharging different functions. A receiving clerk in a given mailing section may not know the difference between a notice to a lawyer and the thousands of other communications received by her either by mail or through personal or commercial messengers and may not act accordingly. Service upon a lawyer must be effected at the exact given address of the lawyer and not in the vicinity or at a general receiving section for an entire multi-storied building with many offices. (Emphasis supplied).

Hence, this Court entertains serious doubt that a copy of the notice was indeed received by the bank's counsel, considering the absence in the records of the registry receipt, coupled with (1) Mr. Cayno's claim that he was not an employee of Gella, Danguilan, Nabaza & Associates law firm; (2) respondents' admission that Mr. Cayno was an employee of the petitioner bank, and not of the bank's counsel; and (3) the denial of the bank's counsel of having received the 20 September 2000 notice. This doubt shall be resolved in favor of the bank, which had no part in the improper service of the said notice and which stands to lose the sum of P3,513,912.83 (the amount it was ordered to pay BAGCO, with legal interest plus attorney's fees and costs) should its appeal from the RTC decision in Civil Case No. 90-53636 be not given due course.

Since the service of the notice on petitioner's then counsel of record was invalid, the 45-day period within which to file appellant's brief has not commenced to run yet at the time the bank filed its brief. Consequently, the dismissal of the bank's appeal for late filing of appellant's brief was erroneous.

Further, this Court has consistently frowned upon the dismissal of an appeal on purely technical grounds.[26] While the right to appeal is a statutory, not a natural right, it is, nonetheless, an essential part of our judicial system. Courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure amplest opportunity for the proper and just disposition of a cause, free from the constraints of technicalities.[27]

Anent the second and third issues, the petitioner invokes *Pilipinas Bank v. Tirona-Liwag*,[28] which allegedly established Atty. Vega's alleged negligent handling of the Rustica Tan account and of Civil Case No. 5260. And to show that it was not through the efforts of BAGCO that the petitioner was able to recover or collect unpaid accounts and that BAGCO is not therefore entitled to its claims for service charges and attorney's fees, the petitioner brings to the attention of this Court several documents which it attached to its petition and marked as Exhibits "P," "Q," "R," "S," "T," "U," "V," "V-1" to "V-3" "X," "Y," "Z," "BB," "CC," "DD," "EE," and "EE-1."

On the other hand, the respondents assert that these issues concern the merits of Civil Cases Nos. 90-53636 and 5260. Being irrelevant, impertinent, and extraneous matters, they have no room for discussion in this petition

because this Court is not a trier of facts.

Verily, a review of the records reveals that the bank raised these issues in the appellant's brief filed before the Court of Appeals. Unfortunately, these issues were not passed upon by the Court of Appeals in view of the dismissal of the appeal for late filing of appellant's brief. Regrettably, this Court cannot resolve these matters in this petition, as they are factual issues.

To clarify, a question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation. [29]

Be that as it may, this Court took a careful review of *Pilipinas Bank v. Tirona-Liwag*. True, it relates to Civil Case No. 5260, but it is principally an administrative case filed against the former Presiding Judge Socorro Tirona-Liwag of Branch 143 of the RTC of Makati City for gross ignorance of the law, partiality, serious misconduct, and knowingly rendering unjust orders or decisions in said case.

Necessarily, the narration of facts in *Pilipinas Bank v. Tirona-Liwag* tended to establish the merit of the charges against the respondent judge. Hence, that part of the decision's narration stating that Atty. Vega, as counsel for the bank (then defendant in Civil Case No. 5260), was often absent in the hearings and frequently asked for resittings is merely incidental to the discussion. The same cannot be deemed conclusive or binding on the trial court in Civil Case No. 90-53636 or on this Court for purposes of determining whether Atty. Vega was indeed negligent.

It must also be emphasized that it was Judge Tirona-Liwag who was the respondent in that administrative case, and not Atty. Vega. The latter was not made a party thereto and was not, therefore, given his day in court. Moreover, nowhere in the said decision did the Court hold that Atty. Vega was negligent in the handling of the Rustica Tan account and of Civil Case No. 5260, and rightly so because Atty. Vega's alleged negligence was not the issue in the said administrative case.

In any event, the issues of (1) whether Atty. Vega was negligent in handling the Rustica account and Civil Case No. 5260, and (2) whether BAGCO had a part in the collection of some unpaid accounts and is entitled to service charges are factual and are, therefore, precluded review by this Court. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[30] Well-settled is the rule that the jurisdiction of this Court in cases brought before it from the Court of Appeals via Rule 45 of the Rules of Civil Procedure is limited to reviewing errors of law and not questions of facts.[31]

WHEREFORE, the Resolutions of the Court of Appeals dated 10 July 2002 and 18 June 2003 in CA-G.R. CV No. 67699 dismissing the appeal of petitioner PRUDENTIAL BANK and denying the motion for reconsideration, respectively, are hereby SET ASIDE. The appeal is REINSTATED, and the instant case is REMANDED to the Court of Appeals for further proceedings.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, 69-71.

[2] Id., 73.

[3] Id., 75-80.

[4] Rollo, 81-92.

[5] Id., 93-97.

[6] Id., 108-109.

[7] Id., 110-111.

[8] Id., 113-123.

[9] Id., 303-310.

[10] Rollo, 75-80.

[11] Id., 379-393.

[12] CA Rollo, 81; Rollo, 70.

[13] Rollo, 396-402.

[14] Id., 403-405.

[15] Id., 406-433.

[16] Id., 69-71.

[17] Rollo, 70-71.

[18] Id., 73.

[19] Id. 14-15.

[20] See *Cabili v. Badelles*, 116 Phil. 494, 497 (1962); *Martinez v. Martinez*, 90 Phil. 697, 700 (1952); *Vivero v. Santos*, 98 Phil. 500, 504 (1956); *Perez v. Araneta*, 103 Phil 1141 (1958); *Visayan Surety and Insurance Corp. v. Central Bank of the Philippines*, 104 Phil. 562, 569 (1958).

[21] Rollo, 397-398.

[22] Id., 446.

[23] CA Rollo, 137.

[24] Memorandum (for the Respondents), 9-10, 27; Rollo, 673-674, 691.

[25] No. L-60050, 26 March 1984, 128 SCRA 402, 408-409.

[26] *Sarraga v. Banco Filipino Savings and Mortgage Bank*, G.R. No. 143783, 9 December 2002, 393 SCRA 566, citing *Salazar v. Court of Appeals*, 426 Phil. 866, 877 (2002); *Abrajano v. Court of Appeals*, G.R. No. 120797, 13 October 2000, 343 SCRA 68, 86.

[27] *Salazar v. Court of Appeals*, 426 Phil. 866, 877 (2002), citing *Labad v. University of Southeastern Philippines*, 414 Phil. 815, 826 (2001).

[28] A.M. No. CA-90-11, 18 October 1990, 190 SCRA 834.

[29] Republic v. Sandiganbayan, 425 Phil. 752, 765-766 (2002).

[30] Id., citing Trade Unions of the Philippines v. Laguesma, G.R. No. 95013, 21 September 1994, 236 SCRA 586, 591; Navarro v. Court of Appeals, G.R. No. 100257, 8 June 1992, 209 SCRA 612, 623 . See also Langkaan Realty Development, Inc. v. United Coconut Planters Bank, G.R. No. 139437, 8 December 2000, 347 SCRA 542, 549.

[31] Siguan v. Lim, 376 Phil. 840, 849 (1999). See also Sec. 1 of Rule 45 of the 1997 Rules of Civil Procedure.

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