BACHRACH CORPORATION, PETITIONER, VS. PHILIPPINE PORTS AUTHORITY, RESPONDENT.

G.R. NO. 159915. March 12, 2009

Ponente: BRION, J.

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BRION, J.:

We have before us the Petition for Review on Certiorari [1]filed by the petitioner, Bachrach Corporation (petitioner), that seeks to reverse the Court of Appeal (CA) rulings dismissing the petitioner's appeal for failure to file an appeal brief.[2]

ANTECEDENTS

The respondent Philippine Ports Authority (respondent), as lessor, entered into a 99-year contract of lease with the petitioner over its properties denominated as Blocks 180 and 185. The lease will expire in the years 2017 and 2018, respectively. Since the rentals for these properties were based on the rates prevailing in the previous decades, the respondent imposed rate increases. Separately from these properties, the respondent owned another property - Lot 8, Block 101 - covered by its own lease contract that expired in 1992. This lease has not been renewed, but the petitioner refused to vacate the premises. The respondent thus filed, and prevailed in, an ejectment case involving this property against the petitioner.

The parties tried to extrajudicially settle their differences. A Compromise Agreement was drafted in 1994, but was not fully executed by the parties.[3] Only the petitioner, its counsel, and the respondent's counsel signed; the respondent's Board of Directors was not satisfied with the terms and refused to sign the agreement.

To compel the respondent to implement the terms of the Compromise Agreement, the petitioner filed a complaint for specific performance with the Regional Trial Court (RTC) of Manila, Branch 42. The case was docketed as Civil Case No. 95-73399 and covered only the subjects of the Compromise Agreement - Blocks 180 and 185.[4] Seeking to include Lot 8, Block 101 in the complaint, the petitioner filed a Motion for Leave to File and for Admission of Attached Supplemental and/or Amended Complaint. In an Order dated June 26, 2000,[5] the trial court denied this motion, stating that:

> The amendment/supplement sought in the instant motion seeks the inclusion of Lot 8, Block 101 as one of the real properties subject matter of this case.
>
> Granting for the sake of argument, but not in any way insinuating that plaintiff has a right to demand performance of the "Compromise Agreement," this Court can only mandate performance of its provisions. And considering that the "Compromise Agreement" speaks only of Block Nos. 185 and 180, this Court can only direct actual performance by defendant Philippine Ports Authority of its terms and conditions, and that is with respect to the lease of these blocks (185 and 180) and no other. It would therefore be a mistake for this court to grant the motion and allow inclusion of Lot 8, Block 101, as one of the subject matters of the "compromise agreement." If ever the plaintiff has any legal right over Lot 8, Block 101 as one of the subject matters of the "compromise agreement," it has to be a subject matter of another case but certainly not in this case.[6]

On December 5, 2000, the petitioner filed a complaint for Specific Performance against the same respondent, Philippine Ports Authority, this time involving Lot 8, Block 101. This case was docketed as Civil Case No. 00-99431.[7] The petitioner also sought the consolidation of this case with the earlier Civil Case No. 95-73399.[8]

On September 26, 2001, the RTC of Manila, Branch 42 dismissed the Civil Case No. 00-99431 complaint on the grounds of res judicata, forum shopping, and failure of the complaint to state a cause of action. [9]

The petitioner elevated the dismissal to the CA. On February 20, 2002, the petitioner received the February 13, 2002 notice of the court requiring it to file its Brief within a period of 45 days from receipt of the Order, which was to expire on April 6, 2002. Two days prior to the expiration of this period, the petitioner filed a motion for a 45-day extension of time to file the brief. No brief was filed within the extended period. On November 11, 2002, the CA dismissed the appeal via a resolution whose pertinent portion reads:

> For failure of the plaintiff-appellant, Bachrach Corporation to file the required brief, the appeal is hereby considered DISMISSED pursuant to Section 1 (e), Rule 50 of the 1997 Rules of Civil Procedure, as amended.
>
> The Motion for Extension of Time to File Appellant's Brief is NOTED.
>
> SO ORDERED.[10]

On December 11, 2002, the petitioner filed a Motion for Reconsideration (with Motion to Admit Attached Brief).[11] The CA denied the motion in its September 8, 2003 resolution, paving the way for the filing of the present petition.

THE PETITION

The petition asks the Court to liberally apply the rules of procedure, grant its appeal, and thereby require the CA to entertain the appeal it dismissed. The petitioner raises the following issues:

> I.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT GIVING A LIBERAL APPLICATION OF SECTION 1(E) RULE 50 OF THE RULES OF COURT TO THE PRESENT CASE CONSISTENT WITH SECTION 6, RULE 1 OF THE SAME RULES[;]
>
> II.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT REVERSING THE RULING OF THE TRIAL COURT THAT RES JUDICATA BARS THE FILING OF CIVIL CASE NO. 00-99431[;]
>
> III.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT REVERSING THE RULING OF THE TRIAL COURT DISMISSING CIVIL CASE NO. 00-99431.

The threshold issue the case presents is whether the CA erred in dismissing the petitioner's appeal on the ground that no brief was timely filed.

OUR RULING
The petition is devoid of merit.

Rule 50, Section 1 of the Rules of Court enumerates the grounds for the dismissal of appeals; paragraph (e) thereof provides that an appeal shall be dismissed upon -

> [f]ailure of the appellant to serve and file the required number of copies of his brief or memorandum within the

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time provided by these Rules.

In a long line of cases, this Court has held that the CA's authority to dismiss an appeal for failure to file the appellant's brief is a matter of judicial discretion.[12] Thus, a dismissal based on this ground is neither mandatory nor ministerial; the fundamentals of justice and fairness must be observed, bearing in mind the background and web of circumstances surrounding the case.[13]

In the present case, the petitioner blames its former handling lawyer for failing to file the appellant's brief on time. This lawyer was allegedly transferring to another law office at the time the appellant's brief was due to be filed.[14] In his excitement to transfer to his new firm, he forgot about the appeal and the scheduled deadline; he likewise forgot his responsibility to endorse the case to another lawyer in the law office.[15]

Under the circumstances of this case, we find the failure to file the appeal brief inexcusable; thus, we uphold the CA's ruling.

The handling lawyer was undoubtedly at fault. The records show that even the filing of a motion for reconsideration from the Regional Trial Court's ruling was late. In this case, he even had the benefit of an extended period for the filing of the brief, but nevertheless failed to comply with the requirements. If the present counsel were to be believed, the former counsel did not even make a proper turnover of his cases - a basic matter for a lawyer and his law office to attend to before a lawyer leaves.

But while fault can be attributed to the handling lawyer, we find that the law firm was no less at fault. The departure of a lawyer actively handling cases for a law firm is a major concern; the impact of a departure, in terms of the assignment of cases to new lawyers alone, is obvious. Incidents of mishandled cases due to failures in the turnover of files are well-known within professional circles. For some reason, the law firm merely attributes the failure to file the appeal brief to the handling lawyer. This is not true and is a buck-passing that we cannot accept. The law firm itself was grossly remiss in its duties to care for the interests of its client.

We note as a last point that the original 45-day period for the appellant to submit its brief expired on April 6, 2002. Petitioner seasonably filed its motion for extension on April 4, 2002. It was only on November 11, 2002, about seven (7) months later, that the CA dismissed the appeal. Absolutely nothing appeared to have been done in the interim, not even in terms of noting that no appeal brief had been filed. Thus, the petitioner simply took too long to rectify its mistake; by the time that it acted, it was simply too late.

From these perspectives, the CA cannot in any way be said to have erred in dismissing the appeal.

WHEREFORE, we DENY the petition for review and, consequently, AFFIRM the Court of Appeals' Resolutions dated November 11, 2002 and September 8, 2003.

SO ORDERED.

Quisumbing,* Acting C.J., (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

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[*] Acting Chief Justice per Special Order No. 581 dated March 3, 2009.

[1] Under Rule 45 of the Rules of Court.

[2] Resolution of November 11, 2002 dismissing the appeal, penned by Associate Justice Andres B. Reyes, with Associate Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, concurring; rollo, p. 36; Resolution of September 8, 2003 denying the petitioner's motion for reconsideration; rollo, p. 38.

[3] Rollo, pp. 96-100.

[4] See pp. 1 and 2 of the Compromise Agreement, rollo, pp. 96-97.

[5] Rollo, p. 43.

[6] Id.

[7] Rollo, p. 14.

[8] Ibid.

[9] Rollo, pp. 40-41.

[10] Supra note 1, p. 1.

[11] Rollo, pp. 44-53.

[12] Philippine Merchant Marine School, Inc. v. Court of Appeals, G.R. No. 137771, June 6, 2002, 383 SCRA 175; Aguam v. Court of Appeals, G.R. No. 137672, May 31, 2000, 332 SCRA 784; Catindig v. Court of Appeals, G.R. Nos. 33063, February 28, 1979, 88 SCRA 675.

[13] Ibid.

[14] Rollo, p. 17.

[15] Id. , p. 18.

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