

**ASIAN SPIRIT AIRLINES (AIRLINE EMPLOYEES COOPERATIVE),
PETITIONER, VS. SPOUSES BENJAMIN AND ANNE MARIE BAUTISTA,
KARL BAUTISTA AND GLORIA POMERA, RESPONDENTS.**

G.R. No. 164668. February 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Resolution[1] of the Court of Appeals (CA) dismissing the appeal of the petitioner herein in CA-G.R. CV No. 79317 and its resolution in the same case denying the petitioner's motion for reconsideration of its first resolution.

The Antecedents

The Spouses Benjamin and Anna Marie Bautista filed a complaint, in behalf of their son Karl Bautista and Gloria Pomera, against the Asian Spirit Airlines in the Regional Trial Court of Pasig City for breach of contract and damages. After trial, the court rendered a decision on March 24, 2003 in favor of the plaintiffs and against the defendant. The fallo of the decision reads:

WHEREFORE, judgment is hereby rendered IN FAVOR OF THE PLAINTIFFS and AGAINST THE DEFENDANT ordering the latter to pay the former:

- P5,000.00 as temperate damages;
- P200,000.00 as moral damages;
- P150,000.00 as exemplary damages;
- P50,000.00 as attorney's fees;
- P18,371.25 as litigation expenses.

Defendant's counterclaim is DISMISSED.[2]

Its motion for the reconsideration of the decision having been denied by the trial court,[3] the defendant appealed. The appeal was docketed as CA-G.R. CV No. 79317. On December 10, 2003, the appellate court directed the defendant-appellant to file its brief as appellant within forty-five (45) days from notice thereof.[4] The defendant-appellant received its copy of the resolution on December 17, 2003. Thus, it had until January 31, 2004 within which to file its brief. However, the defendant-appellant failed to file its appellant's brief. On March 3, 2004, the plaintiffs-appellees filed a Manifestation and Motion[5] for the dismissal of the appeal of the defendant-appellant for its failure to file its brief.

On March 10, 2004, the defendant-appellant filed an unverified Motion to Admit Attached Appellant's Brief.[6] The plaintiffs-appellees opposed the motion.[7] On April 23, 2004, the CA issued a Resolution[8] denying the

motion of the defendant-appellant and granting the motion of the plaintiffs-appellees, and ordered the appeal of the defendant-appellant dismissed. The defendant-appellant filed a motion for the reconsideration of the said resolution but on July 16, 2004, the appellate court denied the said motion for lack of merit.[9]

The defendant-appellant, now the petitioner, filed a petition for review on certiorari with this Court assailing the resolutions of the CA and asserting that:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STRICTLY APPLYING THE PROVISIONS OF THE RULES OF COURT ON DISMISSAL OF APPEAL TO HEREIN PETITIONER'S APPEAL WHICH IS CONTRARY TO THE MANDATED PRECEPT OF LIBERAL CONSTRUCTION EXPLICITLY PROVIDED FOR IN THE RULES AND SANCTIONED BY JURISPRUDENTIAL PRONOUNCEMENTS OF THIS HONORABLE SUPREME COURT, AND CONSIDERING THAT PETITIONER'S APPEAL BELOW IS BASED AND FOUNDED ON VERY MERITORIOUS GROUNDS THE DENIAL OF WHICH WILL DEFINITELY RESULT TO PREJUDICE TO PETITIONER'S SUBSTANTIAL RIGHTS AND DENIAL TO IT OF ITS RIGHT TO DUE PROCESS.[10]

The petitioner avers that the late filing of its brief did not cause material injury or prejudice to the respondents and the issues raised by it in its brief require an examination of the evidence on record.

The petitioner prays that we set aside the assailed resolution of the CA and order the appellate court to reinstate its appeal for further proceedings. In their comment on the petition, the respondents submit that:

The Court of Appeals was evidently not satisfied with the explanation by the petitioner. Its action in this regard is not subject to review, for the Supreme Court cannot interfere with the discretion of the Court of Appeals.

It is necessary to impress upon litigants and their lawyers the necessity of a strict compliance with the periods for performing certain acts incident to the appeal and the transgressions thereof, as a rule, would not be tolerated; otherwise, those periods could be evaded by subterfuges and manufactured excuses and would ultimately become inutile. (*Don Lino Gutierrez & Sons, Inc. vs. CA*, G.R. No. L-39124, Nov. 15, 1974).

This Honorable Court will be setting a bad example if it accepts the excuse of the Petitioner's counsel that he instructed his secretary to file the motion for extension who, in turn, forgot to file it. Logic dictates that the Secretary cannot release the request without the lawyer's signature but still the basic and simple prudence to follow it up by counsel leaves much to be desired. Every lawyer may soon adopt this reasoning to justify non-filing of the brief on time.[11]

The petition has no merit.

Under Section 1(e), Rule 50 of the Rules of Court, as amended, an appeal may be dismissed by the CA on its own motion or that of the appellee for failure of the appellant to file its brief within the time provided by Section 7, Rule 44 of the said Rules. The petitioner had until January 31, 2004 within which to file its brief but failed to do so. It was only on March 10, 2004, after receipt of respondents' motion filed on March 3, 2004, praying for the dismissal of the petitioner's appeal for its failure to file its brief, that the petitioner filed its brief appended to an unverified motion to admit the said brief. The only excuse of the petitioner for its failure to file its brief was the claim of its counsel in the said Motion for Leave to Admit, thus:

- The filing of the Appellant's Brief is due on January 31, 2004. The notice from the Honorable Court was received on December 17, 2003 and because of the holiday season at that time, the undersigned counsel gave instruction to his Secretary to file the usual Motion for Time asking for forty-five (45) days from January 31, 2004 or until March 16, 2004.

- The undersigned started to prepare the Appellant's Brief bearing in mind the new deadline.

- It was only when the undersigned received the Manifestation of plaintiffs on March 5, 2004 that he inquired with his secretary if the Manifestation of counsel is true and she readily admitted that she failed to prepare and file the Motion for Time.[12]

The excuse contrived by the petitioner's counsel is totally unacceptable. We note that the motion of the petitioner is unverified. Neither did the petitioner bother appending to its motion an affidavit of its counsel's secretary containing his/her explanation why he/she failed to file the said motion for extension if there was such a motion in the first place. The petitioner did not even bother appending to its Motion to Admit its motion for extension to file brief which its counsel's secretary allegedly failed to file in the CA. Blaming its counsel's unidentified secretary for its abject failure to file its brief is a common practice for negligent lawyers to cover up for their own negligence, incompetence, indolence, and ineptitude. Such excuse is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court.[13] It bears stressing that it is the duty of counsel to adopt and strictly maintain a system that insures that all pleadings should be filed and duly served within the period therefor and, if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.[14]

We agree with the petitioner's contention that the rules of procedure may be relaxed for the most persuasive reasons. But as this Court held in *Galang v. Court of Appeals*: [15]

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[16]

In an avuncular case,[17] we emphasized that:

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are, thus, enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. The instant case is no exception to this rule.

In the present case, we find no cogent reason to exempt the petitioner from the effects of its failure to comply with the Rules of Court.

The right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost. More so, as in this case, where petitioner not only neglected to file its brief within the stipulated time but also failed to seek an extension of time for a cogent ground before the expiration of the time sought to be extended.[18]

In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served.[19] For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the

administration of justice.[20] In this case, however, such liberality in the application of rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. It is equally settled that, save for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.[21]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Eliezer R. de los Santos and Rosalinda Asuncion-Vicente, concurring.

[2] Rollo, p. 52.

[3] Id. at 71-73.

[4] Id. at 77.

[5] Id. at 78-79.

[6] Id. at 80-105.

[7] Id. at 106-107.

[8] Id. at 33-35.

[9] Id. at 37-38.

[10] Id. at 19-20.

[11] Id. at 124-125.

[12] Id. at 80.

[13] Rivera v. Vda. de Cruz, 26 SCRA 58 (1968).

[14] Baring v. Cabahug, 20 SCRA 696 (1967).

[15] 199 SCRA 683 (1991).

[16] Id. at 689.

[17] Garbo v. Court of Appeals, 258 SCRA 159 (1996).

[18] Ozaeta v. Court of Appeals, 179 SCRA 800 (1989).

[19] El Reyno Homes, Inc. v. Ong, 397 SCRA 563 (2003), citing Republic v. Court of Appeals, 292 SCRA 243 (1998).

[20] Ibid., citing Udan v. Amon, 23 SCRA 837 (1968).

[21] Id., citing Ortiz v. Court of Appeals, 299 SCRA 708 (1998).

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