

ATTY. ERLANDO A. ABRENICA, PETITIONER, VS. LAW FIRM OF ABRENICA, TUNGOL AND TIBAYAN, DANILO N. TUNGOL AND ABELARDO M. TIBAYAN, RESPONDENTS.

G.R. NO. 169420. September 22, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court seeks to set aside the Court of Appeals' Resolution[1] dated June 29, 2005 in CA- G.R. SP No. 90076, denying petitioner's Motion for Leave of Court to Admit Attached Petition for Review, and the Resolution[2] dated August 23, 2005 denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

Petitioner Atty. Erlando A. Abrenica was a partner of individual respondents, Attys. Danilo N. Tungol and Abelardo M. Tibayan, in the Law Firm of Abrenica, Tungol and Tibayan ("the firm").

In 1998, respondents filed with the Securities and Exchange Commission (SEC) two cases against petitioner. The first was SEC Case No. 05-98-5959, for Accounting and Return and Transfer of Partnership Funds With Damages and Application for Issuance of Preliminary Attachment,[3] where they alleged that petitioner refused to return partnership funds representing profits from the sale of a parcel of land in Lemery, Batangas. The second was SEC Case No. 10-98-6123,[4] also for Accounting and Return and Transfer of Partnership Funds where respondents sought to recover from petitioner retainer fees that he received from two clients of the firm and the balance of the cash advance that he obtained in 1997.

The SEC initially heard the cases but they were later transferred to the Regional Trial Court of Quezon City pursuant to Republic Act No. 8799,[5] which transferred jurisdiction over intra-corporate controversies from the SEC to the courts. In a Consolidated Decision[6] dated November 23, 2004, the Regional Trial Court of Quezon City, Branch 226, held that:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

CIVIL CASE NO. Q01-4294

- Ordering the respondent Atty. Erlando Abrenica to render full accounting of the amounts he received as profits from the sale and resale of the Lemery property in the amount of P4,524,000.00;
- Ordering the respondent Atty. Erlando Abrenica to remit to the law firm the said amount of P4,524,000.00 plus interest of 12% per annum from the time he received the same and converted the same to his own personal use or from September 1997 until fully paid; and
- To pay the costs of suit.

CIVIL CASE NO. Q01-42959

- Ordering Atty. Erlando Abrenica to render a full accounting of the amounts he received under the retainer agreement between the law firm and Atlanta Industries Inc. and Atlanta Land Corporation in the amount of P320,000.00.
- Ordering Atty. Erlando Abrenica to remit to the law firm the amount received by him under the Retainer Agreement with Atlanta Industries, Inc. and Atlanta Land Corporation in the amount of P320,000.00 plus interests of 12% per annum from June 1998 until fully paid;
- Ordering Atty. Erlando Abrenica to pay the law firm his balance on his cash advance in the amount of P25,000.00 with interest of 12% per annum from the date this decision becomes final; and
- To pay the costs of suit.

SO ORDERED.[7]

Petitioner received a copy of the decision on December 17, 2004. On December 21, 2004, he filed a notice of appeal under Rule 41 and paid the required appeal fees.[8]

Two days later, respondents filed a Motion for Issuance of Writ of Execution[9] pursuant to A.M. 01-2-04-SC,[10] which provides that decisions in intra-corporate disputes are immediately executory and not subject to appeal unless stayed by an appellate court.

On January 7, 2005, respondents filed an Opposition (To Defendant's Notice of Appeal)[11] on the ground that it violated A.M. No. 04-9-07-SC[12] prescribing appeal by certiorari under Rule 43 as the correct mode of appeal from the trial court's decisions on intra-corporate disputes.

Petitioner thereafter filed a Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal)[13] and an Opposition[14] to respondents' motion for execution.

On May 11, 2005, the trial court issued an Order[15] requiring petitioner to show cause why it should take cognizance of the notice of appeal in view of A.M. No. 04-9-07-SC. Petitioner did not comply with the said Order. Instead, on June 10, 2005, he filed with the Court of Appeals a Motion for Leave of Court to Admit Attached Petition for Review Under Rule 43 of the Revised Rules of Court.[16] Respondents opposed the motion.[17]

The Court of Appeals denied petitioner's motion in its assailed Resolution dated June 29, 2005 and held:

In this case, when the lower court rendered its decision and when the petitioner erroneously filed his notice of appeal, the aforesaid Resolution of the Supreme Court was already in full force and effect. Petitioner's counsel could not validly invoke his previous resort to the remedy of notice of appeal in a case, which was allegedly of similar nature as this instant case, before the same branch of the lower court, which was allegedly given due course by this Court, because when petitioner's counsel filed an appellee's brief before this Court on September 6, 2004 in CA-G.R. CV No. 78179, the aforesaid Supreme Court Resolution was not yet promulgated and effective. Worse, the petition for review was filed beyond the reglementary period.

Moreover, paragraph 3 of said resolution applies to pending appeals, which were taken prior to the effectivity of the said resolution.

It is incumbent upon counsel to familiarize himself with the procedural rules designed to settle pending legal disputes and controversies in an orderly and expeditious manner.

This Court is not unaware that "excusable negligence" and "oversight" have become an all too familiar and ready excuse on the part of the counsels remiss in their bounden duty to comply with established rules.

Besides, the order of the lower court to show cause why the notice of appeal should be given due course has

not been complied with. Hence, there is still a pending issue with the lower court.

WHEREFORE, in view of the foregoing, the motion is DENIED, the attached petition for review is DENIED ADMISSION, and this case is hereby ordered DISMISSED.

SO ORDERED.[18]

The Court of Appeals also denied petitioner's motion for reconsideration in its August 23, 2005 Resolution.

Hence, this petition,[19] raising the following issues:

A

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED IN THE APPRECIATION OF THE LAW AND APPLICABLE JURISPRUDENCE IN ITS ASSAILED RESOLUTION (ANNEX "B" AND "C") DENYING ADMISSION OF PETITIONER'S PETITION FOR REVIEW AND DISMISSING COMPLETELY THE CASE.

B

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT TOTALLY DISREGARDED THE EVENTS OR FACTS AND CIRCUMSTANCES THAT TRANSPIRED BEFORE THE TRIAL COURT, PRIOR TO THE FILING OF THE MOTION FOR LEAVE OF COURT TO ADMIT PETITION FOR REVIEW WHICH WOULD JUSTIFY ITS ADMISSION BASED ON LAW AND APPLICABLE JURISPRUDENCE.

C

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT TOTALLY IGNORED AND DISREGARDED THE VERY MERITORIOUS, VALID AND LEGAL GROUNDS RAISED IN THE PETITION FOR REVIEW ASSAILING THE CONSOLIDATED DECISION OF THE LOWER COURT.[20]

In their comment,[21] respondents insist that the trial court's consolidated decision had already become final and executory and no longer subject to appellate review; and that having been guilty of gross neglect, petitioner cannot invoke liberal construction of the rules for to do so would subvert the proceedings below.

The only issue in this case is whether the Court of Appeals erred in refusing to admit petitioner's petition for review.

The petition lacks merit.

Petitioner invokes liberal construction of the rules in seeking reversal of the assailed resolutions. He alleges that his appeal was not filed late but that he only resorted to the wrong mode of appeal; that realizing his error, he immediately filed the Motion For Leave to Admit Petition for Review; that his notice of appeal had the effect of tolling the period of perfecting his appeal under Rule 43 of the Rules of Court; that although unaware of A.M. No. 04-9-07-SC, he appealed four days after receiving the consolidated decision through a notice of appeal, thus showing his "sincerity" in appealing the decision.

We find no compelling reasons to relax the stringent application of the rules in this case. The following circumstances militate against petitioner's position:

First, when petitioner received the trial court's consolidated decision on December 16, 2004, A.M. No. 04-9-07-SC was already in effect for more than two months.

Second, petitioner had known about the new rules on the second week of January, 2005 when he received a copy of respondents' Opposition (To Defendant's Notice of Appeal) dated January 6, 2005. In their opposition, respondents specifically pointed to the applicability of A.M. No. 04-9-07-SC to the instant case.

Third, petitioner originally insisted in his Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal) that the correct mode of appeal was a "notice of appeal." [22]

Petitioner reiterated in his Opposition [23] to respondents' motion for execution dated January 14, 2005 that a notice of appeal was the correct remedy.

Finally, petitioner filed his Motion to Admit Attached Petition for Review only on June 10, 2005, or almost eight months from the effectivity of A.M. No. 04-9-07-SC on October 15, 2004, after he received the trial court's Order of May 11, 2005.

As held in *Sebastian v. Morales*: [24]

Under Rule 1, Section 6 of the 1997 Rules of Civil Procedure, liberal construction of the rules is the controlling principle to effect substantial justice. Thus, litigations should, as much as possible, be decided on their merits and not on technicalities. This does not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain his failure to abide by the rules.

In the instant case, petitioners failed to show any compelling reason for not resorting to the proper remedy. Instead, we find from our perusal of their pleadings before the appellate court that they stoutly and persistently insisted that the extraordinary remedy of certiorari was their correct remedy. First, in instituting CA-G.R. SP No. 51288, petitioners categorically invoked the jurisdiction of the Court of Appeals to have the questioned orders of the DAR Secretary declared null and void for having "been issued and promulgated with grave abuse of discretion . . . a mounting to lack of jurisdiction." Note that it is precisely the office of an action for certiorari under Rule 65 to correct errors of jurisdiction. Second, after the appellate court dismissed their petition on the ground that the proper remedy was a petition for review, petitioners continued to insist in their motion for reconsideration that under Section 54 of R.A. No. 6657, a petition for certiorari is both adequate and proper in CA-G.R. SP No. 51288. It was only as an afterthought that they asked the appellate court to treat their special civil action for certiorari as a petition for review, after a belated and grudging admission that their reliance on Section 54 of R.A. No. 6657 was an honest mistake or excusable error. (Emphasis supplied)

Time and again, this Court has upheld dismissals of incorrect appeals, even if these were timely filed. In *Lanzaderas v. Amethyst Security and General Services, Inc.*, [25] this Court affirmed the dismissal by the Court of Appeals of a petition for review under Rule 43 to question a decision because the proper mode of appeal should have been a petition for certiorari under Rule 65. We refused to ignore the procedural requirements and brush aside technicalities, thus -

[I]t appears that there was a serious procedural lapse when petitioners filed an appeal with the Court of Appeals. Section 2 of Rule 43 of the 1997 Rules of Civil Procedure expressly provides that it shall not apply to judgments or final orders issued under the Labor Code of the Philippines. A cursory look at Rule 43 could have averted this lapse. To our mind, an appeal from a decision of the NLRC to the Court of Appeals may be done only by way of special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Having opted for the wrong mode, petitioners' appeal was properly denied.

Petitioners now urge this Court to ignore technicalities and brush aside the procedural requirements so this case may be decided "on the merits." Although technical rules of procedure are not ends in themselves, they are necessary, however, for an effective and expeditious administration of justice. It is settled that a party who seeks to avail of certiorari must observe the rules thereon and non-observance of said rules may not be brushed aside as "mere technicality." While litigation is not a game of technicalities, and that the rules of procedure should not be enforced strictly at the cost of substantial justice, still it does not follow that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation, assessment and just resolution of the issues. Procedural rules should not be belittled or dismissed simply because they may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for compelling reasons.[26] (Emphasis added)

In *United Overseas Bank Philippines, Inc. v. Ching*,^[27] this Court upheld the dismissal of an appeal to the Office of the President for being 14 days late. There is no reason why we should be lenient this time, especially because petitioner filed the petition for review with the Court of Appeals after almost eight months from effectivity of A.M. No. 04-9-07-SC. This is consistent with our ruling in *Manila Hotel Corporation v. Court of Appeals*^[28] that:

Liberal construction of the rule has been allowed by this Court in the following cases: (1) where a rigid application will result in manifest failure or miscarriage of justice, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein; (2) where the interest of substantial justice will be served; (3) where the resolution of the motion is addressed solely to the sound and judicious discretion of the court; and (4) where the injustice to the adverse party is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.

Petitioner contends that the omission of the required documents is due to "oversight" or "inadvertence." In *Sea Power Shipping Enterprises, Inc. v. Court of Appeals, et al.*, however, the Court held that "oversight" and "excusable negligence" have become an all too familiar and ready excuse on the part of lawyers remiss in their bounden duty to comply with established rules. Rules of procedure are tools designed to promote efficiency and orderliness as well as to facilitate attainment of justice, such that strict adherence thereto is required. The application of the Rules may be relaxed only when rigidity would result in a defeat of equity and substantial justice.

In the case at bar, petitioner has not shown any cogent reason for the Court to be liberal in the application of the rules. Hence, the dismissal of its petition by the Court of Appeals on technical grounds must be sustained.

Indeed, litigations should, and do, come to an end. "Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice."^[29] In the instant case, the trial court's decision became final and executory on January 3, 2005.^[30] Respondents had already acquired a vested right in the effects of the finality of the decision, which should not be disturbed any longer.

WHEREFORE, the petition is DENIED. The Court of Appeals Resolutions dated June 29, 2005 and August 23, 2005 in CA-G.R. SP No. 90076 denying admission of petitioner's Petition for Review are AFFIRMED.

SO ORDERED.

Panganiban, C. J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 116-121. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa.

[2] Id. at 112-114.

[3] Id. at 286-309.

[4] Id. at 329-337.

[5] The Securities Regulation Code.

[6] Civil Case Nos. Q01-42948 and Q01-42959; rollo, pp. 201-266.

[7] Rollo, pp. 265-266; penned by Judge Leah S. Domingo Regala.

[8] Id. at 135-136.

[9] Id. at 667-672.

[10] Re: Proposed Interim Rules of Procedure Governing Intra- Corporate Controversies Under R.A. No. 8799.

[11] Rollo, pp. 673-677.

[12] Entitled "RE: MODE OF APPEAL IN CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION," which was issued on September 14, 2004 and became effective on October 15, 2004. Pertinent portions thereof read:

x x x x

- All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.

- The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141 as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days.

[13] Rollo, pp. 678-684.

[14] Id. at 695-702.

[15] Id. at 493.

[16] Id. at 122-134.

[17] Id. at 685-702.

[18] Id. at 119-121.

[19] Id. at 14-101. The petition was originally denied but was later reinstated in our Resolution dated February 6, 2006 upon petitioner's motion for reconsideration; id. at 494, 625.

[20] Id. at 40-41.

[21] Id. at 637-666.

[22] 10.) As intelligently discussed above, an ORDINARY APPEAL pursuant to Sec. 2 (a) Rule 41 of the Revised Rules of Court, as amended, as what Defendant did when it filed his NOTICE OF APPEAL on December 21, 2004 together with full payment of the required DOCKET and APPELLATE FEES, is the CORRECT, APPROPRIATE and LEGAL mode of appeal applicable to the JUDGMENT or DECISION rendered by this Honorable Court in the two (2) cases at bench x x x. Rollo, p. 682.

[23] Id. at 685-694.

[24] G.R. No. 141116, February 17, 2003, 397 SCRA 549, 558-559.

[25] G.R. No. 143604, June 20, 2003, 404 SCRA 505.

[26] Id. at 512-513.

[27] G.R. No. 170695, April 7, 2006, SC e-Library.

[28] G.R. No. 143574, July 11, 2002, 384 SCRA 520, 524.

[29] Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue, G.R. No. 168498, June 16, 2006, SC e-Library.

[30] Petitioner's last day to file his petition for review with the Court of Appeals fell on January 1, 2005, New Year's Day, so effectively, he had only until January 3, 2005 within which to do so.

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