

VETTE INDUSTRIAL SALES CO., INC., KENNETH TAN, ESTRELLA CHENG, LUISITO RAMOS, YVETTE TAN, KESSENTH CHENG, VEVETTE CHENG AND FELESAVETTE CHENG, PETITIONERS, VS. SUI SOAN S. CHENG...*G.R. NO. 170232. December 05, 2006*

Ponente: YNARES-SANTIAGO, J.

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These consolidated Petitions for Review on Certiorari[1] assail the Decision[2] dated September 22, 2005 of the Court of Appeals in CA-G.R. SP No. 88863 entitled, "Vette Industrial Sales, Company, Inc., Kenneth Tan, Estrella Cheng, Luisito Ramos, Yvette Tan, Kessenth Cheng, Vevette Cheng, and Felesavette Cheng, Petitioners versus Hon. Regional Trial Court of Manila, Branch 173, and Sui Soan S. Cheng a.k.a. Cheng Sui Soan, Respondents." Also assailed is the Resolution[3] dated October 27, 2005 denying petitioners' motion for partial reconsideration and respondent Sui's motion for reconsideration.

In his Complaint[4] for specific performance and damages filed against Vette Industrial Sales Company, Inc., Kenneth Tan, Estrella Cheng, Luisito Ramos, Yvette Tan, Kessenth Cheng, Vevette Cheng, and Felesavette Cheng (petitioners) and docketed as Civil Case No. 03-105691, Sui Soan S. Cheng a.k.a. Cheng Sui Soan (Sui) alleged that on October 24, 2001, he executed a Deed of Assignment,[5] where he transferred his 40,000 shares in the company in favor of Kenneth Tan, Vevette Cheng, Felesavette Cheng, and Yvette Tan (Petitioners-Assignees). To implement the Deed of Assignment, the company acknowledged in a Memorandum of Agreement (MOA),[6] that it owed him P6.8 million pesos, plus insurance proceeds amounting to P760,000.00 and a signing bonus of P300,000.00. Thereafter, he was issued 48 postdated checks but after the 11th check, the remaining checks were dishonored by the bank. Sui also claimed that petitioners did not remit to him the insurance proceeds, thus breaching their obligation under the MOA which entitled him to moral and exemplary damages, and attorney's fees.

In their Answer With Compulsory Counterclaim,[7] petitioners alleged that Sui sold his shares for only P1.00 per share which they already paid; that the MOA was unenforceable because it was executed without authorization from the board of directors; that the MOA was void for want of consideration; and that petitioner Kenneth Tan executed the MOA after Sui issued threats and refused to sign the waiver and quitclaim.

After the issues were joined, pre-trial was set on July 3, 2003.[8] However, the case was first submitted for mediation but it was referred back to the court for continuation of the proceedings when no settlement was arrived at during mediation.

Sui thereafter filed a Motion to Set Pre-trial[9] on December 16, 2003. Petitioners received the motion but they did not attend because there was no notice from the Court setting the pre-trial date. On December 29, 2003, petitioners received two orders from the trial court. The first Order[10] allowed Sui to present evidence ex-parte, while the second Order[11] revoked the first order after the trial court noted that "what was set for consideration

on December 16, 2003 was merely a motion to set pre-trial." Thus, the trial court reset the pre-trial on January 15, 2004 but it was postponed and moved to May 21, 2004. On said date, Sui and his counsel, Atty. Pedro M. Ferrer (Atty. Ferrer), failed to appear. Consequently, the trial court ordered the dismissal of the case without prejudice on the part of petitioners to present and prove their counterclaim and set the hearing for reception of evidence on June 22, 2004.[12]

Atty. Ferrer filed a Manifestation and Motion for Reconsideration[13] of the order of dismissal, explaining that he arrived late for the hearing because he had to drop by his office to get the case folder because he had just arrived from South Cotabato where he served as Chief Counsel in the Provincial Board of Canvassers for Governor Datu Pax Mangudadatu and Congressman Suharto Mangudadatu.

The trial court required petitioners to file their Comment on the Manifestation and Motion for Reconsideration. In their Opposition,[14] petitioners asserted that the motion for reconsideration be denied outright because (1) Sui did not comply with the three-day notice rule which is mandatory under Section 4, Rule 15 of the Rules of Court considering that petitioners received the manifestation and motion for reconsideration only one day prior to the date of hearing of the motion for resolution, thus the same must be treated as a mere scrap of paper; (2) the trial court did not comply with Section 6 of Rule 15 of the Rules[15] when it acted on the manifestation and motion of Sui despite the latter's failure to submit proof of receipt by petitioners of the manifestation and motion; (3) the negligence of counsel binds the client, thus, when Atty. Ferrer arrived late for the hearing, the trial court correctly dismissed the complaint; and (4) the explanation of Atty. Ferrer is unacceptable because traffic gridlocks are daily events in the metropolis, thus, Atty. Ferrer should have left his place early.

In his Reply,[16] Sui averred that the motion complied with Section 5 of Rule 15 of the Rules[17] and that the setting of the hearing of the motion on May 28, 2004 was within the three day period for it was filed on May 25, 2004. He added that the same was not heard because the trial court allowed petitioners to file a comment on the manifestation and motion for reconsideration, which was received by the latter prior to the said setting.

In an Order dated December 16, 2004,[18] the trial court granted Sui's motion for reconsideration and set aside the dismissal of the complaint, the dispositive portion of which provides:

WHEREFORE, prescinding with such ruling and in the interest of substantial justice, plaintiff's motion is GRANTED and the order dated May 21, 2004 is hereby lifted and set aside with the warning that any delay in this proceedings will not be countenanced by the Court.

Set pre-trial anew on February 15, 2005.

Notify the parties.

SO ORDERED.[19]

The trial court cited *Ace Navigation Co., Inc. v. Court of Appeals*,[20] which held that since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided – the dismissal of an appeal on purely technical ground is frowned upon especially if it will result to unfairness.

The Motion for Reconsideration[21] filed by petitioners was denied by the trial court[22] hence they filed a Petition for Certiorari[23] with the Court of Appeals which granted the petition, thus:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the writ applied for is partly GRANTED. The assailed orders must be, as they hereby are, VACATED and SET ASIDE, and another hereby issued dismissing the instant complaint, but "without prejudice." This means that the complaint can be REINSTATED. On the other hand, petitioners are hereby given leave to present before the Trial Court evidence of their counterclaim.

Without costs in this instance.

SO ORDERED.[24]

The Court of Appeals noted that both Atty. Ferrer and Sui were not in attendance at the pre-trial conference; that Section 5 of Rule 18 mentions only the effect of the failure to appear on the part of "the plaintiff" but is silent on the effect of failure of the party's counsel to appear at the pre-trial; that the Manifestation and Motion for Reconsideration[25] mentioned only the reasons why Atty. Ferrer was absent without stating that he was fully authorized in writing to enter into an amicable settlement, or to submit to alternative modes of dispute resolution, or to enter into stipulations or admissions of facts and of documents; and that there was no explanation for Sui's nonappearance. Thus, based on these circumstances, the Court of Appeals held that dismissal of the case is proper but without prejudice to the filing of a new action.[26]

Both parties moved for reconsideration but the same were jointly denied in a Resolution dated October 27, 2005.

Hence, these consolidated Petitions.

In G.R. No. 170232, petitioners raise the following errors:

I.

THE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT OF RESPONDENT CHENG IN CIVIL CASE NO. 03-105691 WITH PREJUDICE.

II.

THE COURT OF APPEALS ERRED IN CONCLUDING THAT RESPONDENT'S COUNSEL FAILED TO APPRECIATE THE BASIC RULES ON PRE-TRIAL.

III.

THE COURT OF APPEALS ERRED IN NOT CONSIDERING THE MISTAKE OR NEGLIGENCE OF RESPONDENT'S COUNSEL AS BINDING ON THE RESPONDENT HIMSELF.

IV.

THE COURT OF APPEALS ERRED IN APPLYING THE RULINGS OF THE HONORABLE COURT IN THE DE LOS REYES VS. CAPULE (102 PHIL. 464) AND SUAREZ VS. COURT OF APPEALS (220 SCRA 274) CASES.

V.

THE COURT OF APPEALS ERRED IN NOT CONSIDERING RESPONDENT'S MANIFESTATION AND MOTION FOR RECONSIDERATION DATED MAY 21, 2004 FILED BEFORE THE TRIAL COURT AS A MERE SCRAP, AND A USELESS PIECE, OF PAPER AND IN NOT CONSIDERING THE ORDER DATED MAY 21, 2004 OF THE TRIAL COURT AS ALREADY FINAL IN VIEW OF THE PROCEDURAL INVALIDITY/DEFECTIVENESS (I.E. IT FAILED TO COMPLY WITH SECTIONS 4 AND 6 OF THE RULES) OF RESPONDENT'S MANIFESTATION AND MOTION FOR RECONSIDERATION DATED MAY 21, 2004.

In G.R. No. 170301, Sui raises the following issues, thus:

- THE COURT OF APPEALS ERRED IN NOT RULING THAT THE NON-APPEARANCE OF PETITIONER IN THE PRE-TRIAL MAY BE EXCUSED FOR A VALID CAUSE.
- THE COURT OF APPEALS ERRED IN NOT RULING THAT THE CASE OF ACE NAVIGATION CO. INC.

VS. COURT OF APPEALS IS SQUARELY APPLICABLE TO THE INSTANT CASE.

The core issue for resolution is whether the Court of Appeals erred in dismissing without prejudice Civil Case No. 03-105691 and in ruling that the trial court committed grave abuse of discretion when it granted Sui's motion for reconsideration to set aside the order of dismissal of the complaint.

The judge has the discretion whether or not to declare a party non-suited.[27] It is, likewise, settled that the determination of whether or not an order of dismissal issued under such conditions should be maintained or reconsidered rests upon the sound discretion of the trial judge.[28] The next question to be resolved is whether there was grave abuse of discretion of the trial judge. We hold that there was none.

The case of *Estate of Salud Jimenez v. Philippine Export Processing Zone*[29] discussed the propriety of filing a Petition for Certiorari under Section 1 of Rule 65 of the Rules of Court, thus:

A petition for certiorari is the proper remedy when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy, and adequate remedy at law. Grave abuse of discretion is defined as the capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari. The abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily and despotically.

As a general rule, a petition for certiorari will not lie if an appeal is the proper remedy thereto such as when an error of judgment as well as of procedure are involved. As long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of certiorari. However, in certain exceptional cases, where the rigid application of such rule will result in a manifest failure or miscarriage of justice, the provisions of the Rules of Court which are technical rules may be relaxed. Certiorari has been deemed to be justified, for instance, in order to prevent irreparable damage and injury to a party where the trial judge has capriciously and whimsically exercised his judgment, or where there may be danger of clear failure of justice, or where an ordinary appeal would simply be inadequate to relieve a party from the injurious effects of the judgment complained of.[30] (Emphasis supplied)

Lack of jurisdiction and excess of jurisdiction are distinguished thus: the respondent acts without jurisdiction if he does not have the legal power to determine the case; where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law, he is performing a function in excess of his jurisdiction.[31] Thus, we now discuss whether the trial court granted the motion for reconsideration of Sui and reinstated the complaint without basis in law. Citing the case of *Ace Navigation Co., Inc. v. Court of Appeals*,[32] the trial court held that rules of procedures are mere tools designed to facilitate the attainment of justice and must be relaxed if its strict and rigid application would frustrate rather than promote substantial justice. Thus, it lifted and set aside its order of dismissal in the interest of substantial justice, which is the legal basis for the trial court to grant the motion for reconsideration of Sui.

We have repeatedly warned against the injudicious and often impetuous issuance of default orders.[33] While it is desirable that the Rules of Court be faithfully observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the proper and orderly conduct of litigation, it is because of the higher objective they seek which is the attainment of justice and the protection of substantive rights of the parties. Thus, the relaxation of procedural rules, or saving a particular case from the operation of technicalities when substantial justice requires it, as in the instant case, should no longer be

subject to cavil.[34]

When the Court of Appeals held that the case is dismissible because Sui did not attend the pre-trial conference, it failed to consider the explanation of Atty. Ferrer that Sui executed a "Special Power of Attorney" in his behalf and that he was not absent on the scheduled pre-trial but was only late.

Under Section 4 of Rule 18 of the Rules,[35] the non-appearance of a party at the pre-trial may be excused when there is a valid cause shown or when a representative shall appear in his behalf, and is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. Although Sui was absent during the pre-trial, Atty. Ferrer alleged that he was fully authorized to represent Sui. Moreover, it is not entirely accurate to state that Atty. Ferrer was absent during the pre-trial because he was only late, the reasons for which he explained in his Manifestation and Motion for Reconsideration. The circumstances attendant in the instant case compel this Court to relax the rules of procedure in the interest of substantial justice.

Petitioners claim that the motion for reconsideration of Sui was procedurally defective because it was not served three days before the date of the hearing and no proof of service was given to the court, in violation of Sections 4 and 6 of Rule 15. Petitioners also aver that they received the Manifestation and Motion for Reconsideration of Sui on May 27, 2004 but the hearing was scheduled on May 28, 2004. Thus, it is nothing but a scrap of paper because it violated the three-day notice rule.

We are not persuaded.

In the instant case, we find that the purpose of a notice of hearing had been served. In *Vlason Enterprises Corporation v. Court of Appeals*,[36] we enumerated the exceptions to the rule on notice of hearing, to wit:

The Court has consistently held that a motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is considered a worthless piece of paper, which the clerk of court has no right to receive and the trial court has no authority to act upon. Service of a copy of a motion containing a notice of the time and the place of hearing of that motion is a mandatory requirement, and the failure of movants to comply with these requirements renders their motions fatally defective. However, there are exceptions to the strict application of this rule. These exceptions are as follows:

"x x x Liberal construction of this rule has been allowed by this Court in cases (1) where a rigid application will result in a 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 [to] the degree of his thoughtlessness in not complying with the procedure prescribed."

The present case falls under the first exception. Petitioner was not informed of any cause of action or claim against it. All of a sudden, the vessels which petitioner used in its salvaging business were levied upon and sold in execution to satisfy a supposed judgment against it. To allow this to happen simply because of a lapse in fulfilling the notice requirement – which, as already said, was satisfactorily explained – would be a manifest failure or miscarriage of justice.

A notice of hearing is conceptualized as an integral component of procedural due process intended to afford the adverse parties a chance to be heard before a motion is resolved by the court. Through such notice, the adverse party is permitted time to study and answer the arguments in the motion.

Circumstances in the case at bar show that private respondent was not denied procedural due process, and that the

very purpose of a notice of hearing had been served. On the day of the hearing, Atty. Desierto did not object to the said Motion for lack of notice to him; in fact, he was furnished in open court with a copy of the motion and was granted by the trial court thirty days to file his opposition to it. These circumstances clearly justify a departure from the literal application of the notice of hearing rule. In other cases, after the trial court learns that a motion lacks such notice, the prompt resetting of the hearing with due notice to all the parties is held to have cured the defect.

Verily, the notice requirement is not a ritual to be followed blindly. Procedural due process is not based solely on a mechanistic and literal application that renders any deviation inexorably fatal. Instead, procedural rules are liberally construed to promote their objective and to assist in obtaining a just, speedy and inexpensive determination of any action and proceeding. For the foregoing reasons, we believe that Respondent Court committed reversible error in holding that the Motion for Reconsideration was a mere scrap of paper.[37] (Emphasis supplied)

When the trial court received Sui's Manifestation and Motion for Reconsideration, it did not immediately resolve the motion. Instead, it allowed petitioners to file their comment and also leave to file a rejoinder if Sui files a reply.[38] These circumstances justify a departure from the literal application of the rule because petitioners were given the opportunity to study and answer the arguments in the motion.

Petitioners' claim that Sui failed to attach proof of service in violation of Section 6, Rule 15 of the Rule, must fail. In *Republic of the Philippines v. Court of Appeals*,[39] we held, thus:

Nonetheless, considering the question raised in the appeal of the government and the amount involved in this case, we think the Court of Appeals should have considered the subsequent service of the motion for reconsideration to be a substantial compliance with the requirement in Rule 15, §6. In *De Rapisura v. Nicolas*, the movant also failed to attach to his motion for reconsideration proof of service of a copy thereof to the other party. Nonetheless, this Court held the failure not fatal as the adverse party had actually received a copy of the motion and was in fact present in court when the motion was heard. It was held that the demands of substantial justice were satisfied by the actual receipt of said motion under those conditions.[40]

Petitioners admitted that they received a copy of Sui's Manifestation and Motion for Reconsideration. In fact, they had the opportunity to oppose the same. Under these circumstances, we find that the demands of substantial justice and due process were satisfied.

It is the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their cases justly determined, free from the constraints of technicalities.[41] It should be remembered that rules of procedure are but tools designed to facilitate the attainment of justice, such that when rigid application of the rules tend to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.[42]

WHEREFORE, in view of the foregoing, the Decision dated September 22, 2005 and the Resolution dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 88863 is REVERSED and SET ASIDE. The Order of the Regional Trial Court in Civil Case No. 03-105691, lifting its previous order of dismissal is REINSTATED and AFFIRMED.

SO ORDERED.

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

[1] Rollo of G.R. No. 170301, pp. 3-12 and Rollo of G.R. No. 170232, pp. 8-46.

[2] Rollo of G.R. No. 170232, pp. 54-66; penned by Associate Justice Renato C. Dacudao, with Associate Justices

Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring.

[3] Id. at 68-69.

[4] Id. at 109-117.

[5] Id. at 118-120.

[6] Id. at 121-123.

[7] Id. at 135-160.

[8] Id. at 171.

[9] Id. at 191.

[10] Id. at 194.

[11] Id. at 193.

[12] Id. at 215.

[13] Id. at 216-218.

[14] Id. at 219-227.

[15] SEC. 6. Proof of service necessary. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

[16] CA Rollo, pp. 228-229.

[17] SEC. 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[18] Rollo of G.R. No. 170232, pp. 104-105; penned by Judge Rosario C. Cruz.

[19] Id. at 105.

[20] 392 Phil. 606 (2000).

[21] Rollo of G.R. No. 170232, pp. 238-244.

[22] Id. at 106-107.

[23] Id. at 70-103

[24] Id. at 66.

[25] Id. at 216-218.

[26] Id. at 66.

[27] American Insurance Company v. Republic, 128 Phil. 490, 491 (1967).

[28] Arcuino v. Aparis, 130 Phil. 471, 475 (1968).

[29] 402 Phil. 271 (2001).

[30] Id. at 283-284.

[31] Punzalan v. Dela Peña, G.R. No. 158543, July 21, 2004, 434 SCRA 601, 609.

[32] Supra note 21.

[33] *Africa v. Intermediate Appellate Court*, G.R. No. 76372, August 14, 1990, 188 SCRA 586, 590.

[34] *Nazareno v. Court of Appeals*, 428 Phil. 32, 42-43 (2002).

[35] SEC. 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefore or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[36] 369 Phil. 269 (1999).

[37] *Id.* at 298-300.

[38] CA Rollo, p. 198.

[39] 354 Phil. 252 (1998).

[40] *Id.* at 259.

[41] *Metro Rail Transit Corporation v. Court of Tax Appeals*, G.R. No. 166273, September 21, 2005, 470 SCRA 562, 566.

[42] *Ramos v. Court of Appeals*, 336 Phil. 33, 48 (1997).

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