

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS AND TF KO DEVELOPMENT CORPORATION, RESPONDENTS.*G.R. No. 170625. October 17, 2008*

Ponente: TINGA, J.

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Before the Court is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, which assails the twin resolutions of the Court of Appeals in CA-G.R. SP No. 00082 and the Decision[2] of the Regional Trial Court (RTC), Branch 23, General Santos City in Corporate Case No. 26. The Resolution[3] dated 29 July 2005 dismissed on procedural grounds the petition for review filed by petitioner while the Resolution[4] dated 22 November 2005 denied petitioner's motion for reconsideration of the earlier resolution.

The instant petition originated from a petition filed by TF KO Development Corporation (respondent) on 10 November 2003 before the RTC of General Santos City. The petition, denominated as a petition for declaration in the state of suspension of payments with approval of the proposed rehabilitation plan, was docketed as Corporate Case No. 26 and raffled to Branch 23 of the RTC of General Santos City.[5]

Respondent is a domestic corporation primarily engaged in agricultural commerce. In 1998, it became a full-fledged subdivision developer after being granted by the Housing and Land Use Regulatory Board (HLURB) the necessary licenses which enabled it to construct low-cost housing units and to sell them to prospective buyers. To secure additional working capital for its rice milling/trading and real estate and housing construction projects, respondent obtained various loans and credit accommodations from different commercial banks, including the Far East Bank & Trust Company, petitioner's predecessor-in-interest.

Respondent alleged that as of the filing of the petition, its outstanding loans with the creditor banks were in the following amounts:

- 1) Land Bank of the Philippines (LBP) - P32,000,000.00, more or less, inclusive of interest charges, as of the first quarter of 2003;
- 2) Bank of the Philippine Islands (BPI) - P34,680,298.40, inclusive of interest charges, as of February 2002; and
- 3) Metropolitan Bank & Trust Co. (Metrobank) - P3,500,000.00, inclusive of interest charges, as of August 2003.[6]

The petition also averred that LBP and petitioner BPI had already commenced foreclosure proceedings on the properties mortgaged to these creditor banks and the same remained pending before the RTC of Koronadal, South Cotabato at the time of the filing of the petition for rehabilitation.[7]

Finding the petition to be sufficient in form and substance, the RTC issued a Stay Order[8] on 14 November 2003, prohibiting the enforcement of all claims against respondent, scheduling the initial hearing on 06 January 2004

and appointing Pedro N. Suson as rehabilitation receiver. Forthwith, Suson accepted the appointment,[9] put up a bond[10] and took his oath as rehabilitation receiver.[11]

Upon petitioner's motion, the RTC issued an Order[12] dated 07 January 2004, enjoining creditor LBP and the Office of the Provincial Sheriff of Koronadal, South Cotabato from foreclosing the real estate mortgages constituted as security for respondent's obligation with creditor LBP. The RTC also ordered all three creditor banks to file their respective opposition to the petition for rehabilitation.

In its Verified Comment[13] dated 07 January 2004, petitioner BPI prayed that respondent's petition be denied and the rehabilitation plan disapproved based on the following grounds: (1) the petition was defective in form and substance and lacked a certification against forum shopping; (2) the rehabilitation plan was not viable or realistic and its alleged success was purely conjectural; and (3) the petition was without factual and legal bases.[14]

Creditors LBP[15] and Metrobank[16] likewise filed their respective oppositions to the petition. Thereafter, Mrs. Flora G. Ko, the president of respondent, filed a Motion for Relief of Metrobank, manifesting that she would personally settle the obligations of respondent in Metrobank.[17]

Upon agreement of the parties, the RTC fixed a date for a creditors' meeting.[18] On 22 March 2004, the rehabilitation receiver submitted a proposed Final Mode of Payment in compliance with the RTC's order.[19] The RTC then directed creditors LBP and petitioner to file a comment or opposition thereto.

Creditor LBP denied having acceded to any proposed mode of payment and reiterated its objection to the approval of the rehabilitation plan.[20] For its part, petitioner also denied accepting the mode of payment proposed by the rehabilitation receiver and objected to the discharge of Metrobank from the coverage of the rehabilitation plan. Petitioner also argued that the petition was not within the province of Section 1, Rule 4 of the Interim Rules on Corporate Rehabilitation (Interim Rules).[21]

On 09 November 2004, the RTC granted respondent's prayer for extension of the stay order.[22] On 24 January 2005, the RTC rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered, approving the petitioner's rehabilitation plan submitted by the petitioner. Accordingly, in consonance with the said rehabilitation plan, this Court hereby decrees as follows:

1) Petitioner Corporation shall pursue its housing development project as the main source of payment for its obligation with Creditors-banks;

2) As provided under Supplemental Mode of Payment, submitted by Rehabilitation Receiver Suson, the following schedule of payment for Creditors-BPI and Landbank shall be as follows:

Schedule of payment for Creditors-banks indicating the principal, the interest and the total amount due for every payment which is semi-annual or 6 months for eight (8) periods with an interest rate of 12% per annum compounded annually.

The principal and interest are discharged by a sequence of equal payments due at the ends of equal intervals of time. In such a case, the payments form an annuity whose present value is the original principal of the date.

Thus:

A.) For Creditor-BPI:

Date	principal	interest	total
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6.30.05 Php 3, 503, 957 2, 080, 818 5, 584, 775.00

12.31.05 3, 714, 194 1, 870, 581 5, 584, 775.00

6.30.06 3, 937, 046 1, 647, 729 5, 584, 775.00

12.31.06 4, 173, 268 1, 411, 506 5, 584, 775.00

6.30.07 4, 423, 664 1, 161, 110 5, 584, 775.00

12.31.07 4, 689, 084 895, 690 5, 584, 775.00

6.30.08 4, 970, 429 614, 345 5, 584, 775.00

12.31.08 5, 268, 656 316, 118 5, 584, 775.00

Total Php 34, 680, 298 9, 997, 897 44, 678, 196.00

B.) For Creditor-Landbank:

Date principal interest total

6.30.05 Php 3, 233, 150 1, 920, 000 5, 153, 150.00

12.31.05 3, 427, 139 1, 726, 011 5, 153, 150.00

6.30.06 3, 632, 767 1, 520, 383 5, 153, 150.00

12.31.06 4, 850, 733 1, 302, 417 5, 153, 150.00

6.30.07 4, 081, 777 1, 071, 373 5, 153, 150.00

12.31.07 4, 326, 684 826, 466 5, 153, 150.00

6.30.08 4, 586, 285 566, 865 5, 153, 150.00

12.31.08 4, 861, 465 291, 685 5, 153, 150.00

Total Php 320, 000.0 9, 997, 897 41, 225, 200.00

3.) Creditor-Metrobank is hereby discharged from the Rehabilitation Plan of the Petitioner Corporation. The obligation of the Petitioner Corporation against Creditor-Metrobank shall be settled personally by the President of the Corporation, Mrs. Flora Ko.

4) There shall be no declaration and payment of dividends by the Petitioner Corporation until it has paid in full its loans with creditor banks.

5) The Rehabilitation program for the Petitioner Corporation shall commence this year, 2005.

6) Rehabilitation Receiver Suson is discharged from his duties and responsibilities as receiver for this Petition.

7) The Stay-Order is hereby terminated.

SO ORDERED.[23]

On 26 January 2005, petitioner received a copy of the decision. Forthwith, petitioner filed a motion with the Court of Appeals, asking for an extension of the period within which to file a Rule 43 petition.[24] Considering that the

docket and other legal fees were paid and the motion was filed within the reglementary period, the Court of Appeals allowed petitioner until 25 February 2005 within which to file the petition.[25]

Petitioner filed the petition for review on 28 February 2005.[26] Petitioner argued that the rehabilitation of respondent pursuant to the Interim Rules was no longer feasible considering that its obligations to petitioner BPI had long matured prior to the filing of the petition.

On 29 July 2005, the Court of Appeals issued the first assailed Resolution, dismissing the petition for review based on a number of procedural errors.[27] Petitioner sought reconsideration but was denied in a Resolution issued on 22 November 2005.[28]

Hence, the instant petition, questioning the denial of its petition for review and motion for reconsideration based on procedural grounds. Petitioner also assails the RTC decision which approved the rehabilitation of respondent for the following reasons: (1) its obligations had fallen due long before the filing of the petition for rehabilitation; (2) no factual and legal bases support the approval of the rehabilitation; (3) the petition for rehabilitation was not accompanied by a certification against non-forum shopping; and (4) the filing of the petition for rehabilitation despite the pendency of a civil case for injunction filed by respondent against petitioner constituted forum shopping. [29]

The petition is meritorious.

The Court of Appeals dismissed the petition for review for the following reasons: (1) the verification and certification was not signed by the authorized person; (2) the petition was filed beyond the extended period; (3) the petition was not accompanied by pertinent documents and pleadings, in violation of Section 6(c), Rule 43[30] of the Rules of Court; (4) the date of issue of counsel's Integrated Bar of the Philippines (IBP) O.R. No. was not indicated; and (5) the docket fees for the prayer for temporary restraining order and/or writ of preliminary injunction were not paid. The Court of Appeals held that the inadvertence was too lame an excuse in not complying with the rules of procedure. It also noted that petitioner's motion for reconsideration of the earlier resolution was belatedly filed, which proved fatal to petitioner's cause.

A number of the procedural errors discovered by the Court of Appeals are either not supported by the records of the case or not grounds for the dismissal of the petition. One of them is the supposed late filing of the petition for review. Petitioner filed the petition for review only on 28 February 2005 or after the last day of the extended period which was on 25 February 2005. The latter date fell on a special national holiday declared as such under Proclamation No. 785. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.[31] Ipso jure, the last day for filing the petition for review ran until 28 February 2005, the working day immediately following the last day of the period. Thus, the petition for review was filed on time.

Also, contrary to the finding of the Court of Appeals, petitioner's motion for reconsideration of the Resolution dated 29 July 2005 was timely filed via registered mail and not through a private courier. When a pleading is filed through registered mail, the date of the mailing, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of its filing, payment, or deposit in court.[32] The envelope containing the motion for reconsideration attached to the records of the case has a postage stamp indicating that the same was received by the Philippine Postal Corporation on 30 August 2005, the last day for filing the motion for reconsideration. Although the mail reached the Court of Appeals only on 06 September 2005, petitioner's motion for reconsideration is deemed filed upon its deposit at the post office. Accordingly, petitioner filed the motion for reconsideration on time when it deposited the same with the post office on the last day of the reglementary period.

The failure by petitioner's counsel to indicate in the pleading the date of issue of his IBP receipt is not a ground to dismiss outright the petition for review. The Court of Appeals could have simply directed petitioner's counsel to submit the date of issue of his IBP No. Noteworthy is the fact that in the petition for review, petitioner's counsel did state his IBP No. only that its date of issue was not indicated. Thus, petitioner's counsel appended in the motion for reconsideration a copy of the IBP receipt evidencing its date of issue. Nothing would have prevented the appellate court from considering the eventual submission of the IBP receipt as substantial compliance with the rule. It is well to remember at this point that rules of procedure are but 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.[33]

The claim that petitioner failed to pay the docket fees for its application for temporary restraining order is negated by the records of the case. Together with the filing of the motion for extension (to file the petition for review), petitioner tendered the amount of P6,000.00, which was more than sufficient payment for the docket fees of the petition. The records do not show that the overpayment of P2,470.00 was ordered returned to petitioner. The amount of overpayment was more than enough for the docket fees for the application of temporary restraining order. Instead of dismissing the petition for review, the Court of Appeals could have simply ordered that the same be applied for the docket fees for the application for temporary restraining order.

Another ground for dismissal cited by the Court of Appeals was the failure by petitioner to accompany the petition for review with documents and pleadings relevant to the petition, in violation of Section 6 (c), Rule 43[34] of the Rules of Court.

In the instant case, attached to the petition for review was the certified true copy of the assailed RTC decision. This Court held that Section 6 of Rule 43 does not require that all of the supporting papers or annexes accompanying the petition should be certified true copies or duplicate originals. What is mandatory is the attachment of clearly legible duplicate originals or certified true copies of the judgment or final orders of the lower courts.[35] Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal would be unwarranted because the entire records of the case will eventually be elevated to the appellate court, pursuant to Rule 43, Section 11 of the Rules of Court.[36]

Moreover, petitioner attached to the motion for reconsideration certified true copies of the petition for rehabilitation and the annexes thereto, the verified comment, the omnibus comment and the comment on the receiver's recommendation filed by petitioner before the RTC. The subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance.[37] If the Court of Appeals opts to dismiss the petition outright and the petitioner files a motion for the reconsideration of such dismissal, appending thereto the requisite pleadings, documents or order/resolution with an explanation for the failure to append the required documents to the original petition, this would constitute substantial compliance with the Rules of Court. In that instance, then, the petition should be reinstated.[38]

While petitioner attached to the petition for review the requisite verification and certification against forum shopping, the same did not show that the signatory therein was duly authorized by petitioner. However, the lapse was rectified when petitioner submitted the necessary board resolution and special power of attorney upon the filing of the motion for reconsideration.

The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a

matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.[39]

On the other hand, the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation.[40]

In certain exceptional circumstances,[41] however, the Court has allowed the belated filing of the certification. In all these cases, there were special circumstances or compelling reasons that justified the relaxation of the rule requiring verification and certification on non-forum shopping.[42] In said cases, the Court excused non-compliance with the requirement as to the certificate of non-forum shopping.[43]

With more reason should the instant case be allowed since petitioner did submit a certification against forum shopping, failing only to show proof that the signatory was authorized to do so. In *Shipside Incorporated v. Court of Appeals*,[44] *Ateneo de Naga University v. Manalo*,[45] *Pascual & Santos Inc. v. The Member of the Tramo Wakas Neighborhood Association, Inc.*[46] and *China Banking Corporation v. Mondragon International Philippines, Inc.*,[47] the Court permitted the subsequent submission of proof of authority to sign the certification against forum shopping.

A perusal of the petition for review before the Court of Appeals reveals that the case should have been properly determined on the merits instead of being dismissed outright. As abovementioned, the "procedural lapses" cited by the appellate court were either not supported by the records of the case or would not have warranted the outright dismissal of the case. In denying due course to the petition, the appellate court gave premium to form and failed to consider the important rights of the parties in the case at bar. At the very least, petitioner substantially complied with the procedural requirements for appeal, hence, it is best to give due course to the petition.[48]

WHEREFORE, the instant petition for review on certiorari is **PARTIALLY GRANTED**. The Court of Appeals' resolutions dismissing outright the petition for review in CA-G.R. SP No. 00082 are **SET ASIDE** and the case is **REMANDED** to the Court of Appeals for further proceedings and disposition of the appeal on its merits.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 3-65.

[2] *Id.* at 263-276.

[3] *Id.* at 309-310. Penned by J. Normandie B. Pizarro, and concurred in by JJ. Arturo G. Tayag, Chairperson of the Twenty-Second Division, and Rodrigo F. Lim, Jr.

[4] *Id.* at 331-332.

[5] Records, pp. 2-29.

[6] *Id.* at 7.

[7] Id. at 11.

[8] Id. at 305-307.

[9]Id. at 314.

[10] Id. at 321.

[11]Id. at 370.

[12]Id. at 245.

[13]Id. at 289-302.

[14]Id. at 290.

[15] Id. at 317-326.

[16] Id. at 394-398.

[17]Id. at 6.

[18] Id. at 344.

[19] Id. at 59.

[20] Id. at 64.

[21] Id. at 72.

[22]Id. at 184.

[23] Rollo, p. 256.

[24]CA rollo, pp. 2-6.

[25]Id. at 47.

[26] Id. at 279-308.

[27] Supra note 3.

[28] Supra note 4.

[29] Rollo, pp. 21-23.

[30] SEC. 6. Contents of the petition. â€- The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (Emphasis supplied)

[31]RULES OF COURT, Rule 22, Sec. 1.

[32] RULES OF COURT, Rule 13, Sec. 3. Manner of filing. â€- The filing of pleadings, appearances, motions,

notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

[33] Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, 29 July 2005, 465 SCRA 287, 307.

[34] *Supra*.

[35] Kalayaan Arts and Crafts, Inc. v. Anglo, 454 Phil. 642, 647 (2003).

[36] Diaz v. Mesias, Jr., 468 Phil. 925, 931 (2004).

[37] Jaro v. Court of Appeals, 427 Phil. 532, 547 (2002).

[38] Uy v. Villanueva, G.R. No. 157851, 29 June 2007, 526 SCRA 73, 86.

[39] Shipside Inc. v. Court of Appeals, 404 Phil. 981, 994-995 (2001).

[40] Shipside, Inc. v. Court of Appeals, 404 Phil. 981, 995 (2001)

[41] Uy v. Land Bank of the Philippines, 391 Phil. 303 (2000); Roadway Express Inc. v. Court of Appeals, 264 SCRA 696 (1996); Loyola v. Court of Appeals, G.R. No. 245 SCRA 477 (1995).

[42] Shipside, Inc. v. Court of Appeals, *supra* note 39.

[43] Shipside, Inc. v. Court of Appeals. 404 Phil. 981, 996 (2001).

[44] 404 Phil. 981 (2001).

[45] G.R. No. 160455, 9 May 2005, 458 SCRA 325.

[46] G.R. No. 144880, 17 November 2004, 442 SCRA 439.

[47] G.R. No. 164798, 17 November 2005, 475 SCRA 332.

[48] Active Realty Development Corp. v. Daroya, 431 Phil. 753, 760 (2002).

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