

AMERICAN EXPRESS INTERNATIONAL, INC., PETITIONER, VS. HON. JUDGE MARLENE GONZALES SISON, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 85 OF THE QUEZON CITY REGIONAL TRIAL COURT,...

G.R. No. 172901. October 29, 2008

Ponente: TINGA, J.

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TINGA, J.:

American Express International, Inc. (Amex) questions the Decision[1] of the Court of Appeals in CA-G.R. SP No. 71987, dated December 19, 2005, insofar as it ruled that Amex was not able to prove that it had paid the appeal docket fees within the reglementary period thereby warranting the trial court's denial of its notice of appeal, and the appellate court's Resolution,[2] dated June 1, 2006, denying its motion for partial reconsideration.

The records disclose the following antecedent facts:

Celia A. Silang-Cruz (Cruz) filed a complaint for Collection of Sum of Money and Damages against Ma. Teresa S. Fernando (Fernando) and Enrico Pineda (Pineda) arising from Fernando's use of an Amex supplementary credit card to obtain accommodations for a certain Alejandra Rodriguez (Rodriguez) at the Mandarin Oriental Hotel (Mandarin). Cruz alleged that Fernando did not seek her prior authority for the use of the Amex card, of which Cruz was the principal cardholder, before charging Rodriguez's bill, which amounted to \$17,318.94, to her account. Fernando allegedly admitted having incurred the charges and even issued a check to answer for the account which, however, was dishonored by the drawee bank.

As a consequence of the foregoing, Cruz's Amex card was cancelled, prompting her to file suit against Fernando and Pineda before the Regional Trial Court (RTC) of Quezon City, Branch 85, docketed as Civil Case No. Q-93-16680.

Pineda and Fernando were initially declared in default but the trial court ultimately admitted their answers.

Fernando claimed that she and Cruz were business partners engaged in the supply of construction materials. In one of their business transactions, Fernando and Cruz earned an aggregate net income of P1,878,221.00 which they were supposed to divide equally, with each of them receiving P939,110.50. Cruz allegedly refused to give Fernando her share in the income of their venture and even filed the collection case against her in order to evade having to pay the sum.

Fernando professed that she had not authorized the use of her supplementary credit card to pay for Rodriguez's accommodations at the Mandarin and even filed a third party complaint against the hotel, Amex and Rodriguez. Mandarin was allegedly grossly negligent in charging Rodriguez's bill to Fernando's supplementary card without authority from the latter and without asking Fernando to sign the required credit card stencil or credit authorization form as is the standard practice in such transactions. Amex was also allegedly grossly negligent when it settled the account amounting to P438,169.18 and charged the same against Cruz's credit.

In answer to the third party complaint, Mandarin insisted that the supplementary card was charged for Rodriguez's accommodations with Fernando's knowledge and authorization.

Amex, for its part, claimed that its responsibility in the questioned transaction was limited to verifying whether the card was valid and had not exceeded its charging limit. It had allegedly performed its responsibility in this case.

After due proceedings, the trial court rendered judgment[3] in favor of Fernando. The dispositive portion of the trial court's decision states:

WHEREFORE, for and in consideration of the foregoing premises, judgment is hereby rendered in favor of Defendant-Third Party Plaintiff MA. TERESA FERNANDO and against CELIA SILANG CRUZ, Third Party Defendants MANDARIN, AMEX and RODRIGUEZ, as follows:

- Ordering plaintiff to pay defendant MA. TERESA FERNANDO the amount of P1,000,000.00 as moral damages, P500,000.00 as exemplary damages and attorney's fees equivalent to 20% of the foregoing amount;
- Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of ONE MILLION (P1,000,000.00) PESOS each as moral damages;
- Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS each as and for exemplary damages;
- Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ jointly and severally to pay attorney's fees in the amount of thirty per cent (30%) of the foregoing amount;
- Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ similarly to pay the costs of the suit.

SO ORDERED.[4]

The motions for reconsideration filed by Amex[5] and Mandarin were denied by the RTC in its Order[6] dated January 15, 2001.

Amex filed its Notice of Appeal[7] on January 29, 2001, which was promptly opposed by Fernando on the ground of non-payment of the appeal, docket and other legal fees within the reglementary period. In an Order[8] dated March 4, 2002, the trial court denied the Notice of Appeal and declared its decision dated December 1, 2000 final and executory with respect to Amex. It denied reconsideration in its Order[9] dated June 27, 2002.

Amex assailed the March 4, 2002 and June 27, 2002 Orders as having been issued with grave abuse of discretion. It claimed that it had paid the prescribed docket fee twice; the first time by registered mail within the reglementary appeal period. The trial court allegedly ignored the well-entrenched principle of subserving technicalities in the interest of substantial justice. Amex further averred that the trial court should not have denied its appeal in view of the fact that the appeal filed by Mandarin, its co-judgment debtor, had been duly perfected and given due course.

Ruling on the issues raised by Amex, the Court of Appeals, in its assailed Decision dated December 19, 2005, declared that the non-receipt by the Office of the Clerk of Court (OCC) of the letter in which Amex supposedly enclosed payment of the appeal docket fees produced the effect of non-payment thereof. The appellate court noted that Amex failed to discharge its burden to prove that the letter was mailed and received by the OCC as it did not present any certification from the postmaster as to how, when and to whom delivery of the registry notice of the subject mail was made; whether said notice was received by the OCC; or whether the letter was in fact received

by the OCC.

However, the Court of Appeals ruled that the trial court can not yet execute its decision with respect to the judgment against Amex pending Mandarin's appeal.

The appellate court denied reconsideration in its Resolution[10] dated June 1, 2006.

Insisting that it actually sent the payment for docket fees by registered mail on January 29, 2001, Amex argues in its Petition for Review on Certiorari[11] dated July 17, 2006, that the non-receipt by the OCC of its letter dated January 29, 2001 with the enclosed payment of docket fees does not produce the effect of non-payment of such fees. Amex also avers that the Court of Appeals should have liberally construed the rules in the interest of substantial justice.

In her Comment[12] dated October 4, 2006, Fernando contends that the petition should be denied because it erroneously impleads Hon. Marlene Gonzales Sison[13] (Judge Sison) in her capacity as Presiding Judge of Branch 85 of the RTC in contravention of Sec. 4, Rule 45 of the 1997 Rules of Civil Procedure (Rules of Court). The petition also raises factual issues which have already been passed upon by the appellate court.

Fernando suggests that if the Notice of Appeal and the letter in which the payment of docket fee was supposedly enclosed were mailed simultaneously as Amex claims, the registry receipts of these mail matters would have been consecutively numbered.

Amex filed a Reply[14] dated November 3, 2006, insisting that Judge Sison was properly impleaded because the petition is an appeal from the decision of the Court of Appeals ruling on Amex's petition for certiorari where Judge Sison was required to be joined as a respondent under Rule 65 of the Rules of Court. Amex further argues that the question to be resolved in this case is not whether it had sent the payment of the docket fees within the reglementary period, but whether the non-receipt of the OCC of Amex's payment produced the effect of non-payment of docket fees.

As regards the purported irregularity in the mailing of the docket fee payment, Amex contends that it has no control over the numbering of registry receipts and no conclusion adverse to it can be gathered merely from the fact that the mail matters were not receipted consecutively.

Amex filed a Motion for Leave to File Memorandum[15] dated August 21, 2007, attaching therewith its Memorandum[16] of even date. However, Amex filed, on February 7, 2008, a Motion to Defer Resolution and/or Suspend Proceedings[17] dated February 5, 2008, based on information that Mandarin's appeal is now pending resolution before the Court of Appeals.

Fernando promptly opposed Amex's motion in its Comment[18] dated April 18, 2008.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must comply strictly with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[19]

Rule 41 of the Rules of Court provides the procedure for appeals to the Court of Appeals from judgments or final of the RTC in the exercise of its original jurisdiction. Sec. 4 thereof, which particularly applies to the instant case, provides:

Sec. 4. Appellate court docket and other lawful fees.--Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate

court together with the original record or the record on appeal.

As stated, the payment of the docket fee within the prescribed period is mandatory. In *Buenaflor v. Court of Appeals*,^[20] however, we qualified this rule, and declared, first, that the failure to pay the appellate court docket fee within the reglementary period warrants only discretionary as opposed to automatic dismissal of the appeal; and second, that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances.

In that case, the postal money orders which were intended for the payment of the appellate docket fees were actually sent to the trial court within the reglementary period and received by the latter. Thus, although the money orders were made payable to the clerks of court of the Supreme Court and the Court of Appeals and not the clerk of court of the trial court, we held that the defect was minor and should not be construed as a failure to pay the docket fees.

In contrast, the OCC of the trial court in this case did not receive the docket fee payment within the reglementary period. To reiterate, it was only on March 29, 2001, two months beyond the 15-day reglementary period for taking an appeal, that the clerk of court of the RTC finally received payment of the docket fee, and not even because the letter with the enclosed payment had finally found its way to the OCC. That would have at least lent credibility to Amex's contention that it had indeed sent the letter containing the docket fee payment within the prescriptive period.

There is no specific provision in the Rules of Court prescribing the manner by which docket or appeal fees should be paid. However, as a matter of convention, litigants invariably opt to use the postal money order system to pay such fees not only for its expediency but also for the official nature of transactions coursed through this system. The controversy spawned by the question of whether Amex had, in fact, paid the appeal fees within the reglementary period could have been avoided entirely had it chosen to pay such fees through postal money order and not by enclosing its payment in a letter. After all, Amex's counsel's messenger could easily have procured a postal money order while he was already at the Ayala Post Office filing the Notice of Appeal by registered mail.

A discussion of the insufficiency of the evidence presented by Amex to prove the payment of the docket fee within the reglementary period is in order. In this regard, Sec. 12, Rule 13 of the Rules of Court is applicable because the payment of the docket fee is intertwined with the filing of the Notice of Appeal. The section provides:

Sec. 12. Proof of filing.--The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; if filed by registered mail, by the registry receipt and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the court, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if not delivered.

Amex professed that it had paid the docket fee on the same day that it filed a Notice of Appeal. It presented as proof of payment a photocopy of the January 29, 2001 letter in which was supposedly enclosed the docket fee of P600.00, with the superimposed photocopy of Ayala Post Office Postal Registry Receipt No. 1860, under which the letter was allegedly mailed. Based on the proof required under Sec. 12 above, the registry receipt presented by Amex does not suffice as proof of payment of the docket fee in this case. For one, filed with the Court are mere photocopies of the letter and the registry receipt and even if the original of the registry receipt was submitted, there is no indication therein that it refers to the letter or the alleged docket fee payment. For another, Amex should have also submitted in evidence the affidavit of the person who did the mailing, containing a full statement of the details of mailing. As the party to whom the burden of proof to show that the letter was mailed and received

by the addressee lay, Amex could have easily presented the affidavit of its messenger to satisfy the requirement of the Rules of Court. Unfortunately, Amex offered no explanation for its failure to discharge its burden.

Thus, we agree with the appellate court that no grave abuse of discretion attended the trial court's denial of Amex's Notice of Appeal. The Court acknowledges that appeal is an essential part of our judicial system and every party litigant must be afforded the opportunity for the proper and just disposition of his cause. However, the force and effect of procedural rules, such as those that prescribe the period and manner by which appeals should be perfected, or those that detail the means by which the filing of pleadings, notices or similar papers is proved, should not be undermined without the most compelling of reasons. We find no such compelling reason to warrant a liberal application of the rules.

As a final note, we find that impleading the trial court judge in the present petition is improper. Sec. 4, Rule 45 of the Rules of Court specifically states that the lower courts or judges thereof shall not be impleaded either as petitioners or respondents in a petition or review on certiorari. Amex's explanation that the trial court judge was impleaded in the petition because the same is an appeal from the appellate court's decision in Amex's petition for certiorari under Rule 65 of the Rules of Court where the judge was required to be joined as a respondent is not only circuitous but also an obvious misapprehension of the rules. Nonetheless, we do not find this error sufficient to warrant the outright denial of the petition, considering that it raises a question of law worthy of review.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 71987 dated December 19, 2005 and its Resolution dated June 1, 2006 are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

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

[1]Rollo, pp. 10-22; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao.

[2]Id. at 24-25.

[3]Id. at 82-89; RTC decision dated December 1, 2000.

[4] Id. at 296-319.

[5]

[6] Id. at 130-131.

[7] Id. at 132-133.

[8] Id. at 144-146.

[9] Id. at 147-150.

[10] Id. at 27-28.

[11]Id. at 31-64.

[12]Id. at 357-371.

[13]Now an Associate Justice of the Court of Appeals.

[14]Id. at 376-389.

[15]Id. at 397-398.

[16]Id. at 400-422.

[17]Id. at 427-432.

[18]Id. at 436-437.

[19] M.A. Santander Construction, Inc. v. Villanueva, G.R. No. 136477, November 10, 2004, 441 SCRA 525, 528.

[20] 400 Phil. 395 (2000).

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