# SAMUEL JULIAN, REPRESENTED BY HIS ATTORNEY-IN-FACT, ROBERTO DELA CRUZ, PETITIONER, VS. DEVELOPMENT BANK OF THE PHILIPPINES AND THE CITY SHERIFF, RESPONDENTS.

*G.R. No. 174193. December 07, 2011*

Ponente: DEL CASTILLO, J.

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**DEL CASTILLO, J.:**

The requirement of an appeal fee is not a mere technicality of law or procedure and should not be disregarded without the most compelling of reasons.

Before us is a Petition for Review on Certiorari [1] of the Resolution [2] of the Court of Appeals (CA) in CA-G.R. CV No. 00240 dated April 12, 2005 which dismissed petitioner's appeal as follows:

> Considering that per JRD Report dated March 30, 2005, the appellant failed to pay the required docket and other lawful fees, the instant Appeal is hereby DISMISSED pursuant to Section [1](c) Rule 50 of the 1997 Rules of Civil Procedure.
>
> SO ORDERED. [3]

Also assailed is the CA's Resolution [4] dated July 27, 2006 which denied the Motion for Reconsideration thereto.

Petitioner seeks to reverse the aforesaid Resolutions of the CA and direct the latter to admit the payment for the docket fees enclosed in his Motion for Reconsideration [5] so that his appeal may be given due course, or, in the alternative, to remand the case to the court a quo for further proceedings.

Factual Antecedents

This case stemmed from a Real Estate Mortgage [6] executed by Thelma Julian (Thelma), mother of herein petitioner Samuel Julian, over a property situated in Fuentes Subdivision, Roxas City covered by Transfer Certificate of Title (TCT) No. T-16705. [7]

On December 23, 1980, [8] Thelma obtained a housing loan from respondent Development Bank of the Philippines (DBP) in the amount of P99,400.00. [9] To secure payment of the loan, she executed in favor of the respondent a Real Estate Mortgage on the aforementioned parcel of land registered under her name. A Special Power of Attorney (SPA) appointing the respondent and its personnel to sell the property in the event of extrajudicial foreclosure was inserted and made an integral part of the mortgage contract. [10]

Subsequently, Thelma died on January 8, 1982. [11]

Because of arrearages in the monthly amortizations, respondent foreclosed the mortgaged property. Same was sold at public auction on September 15, 1983 [12] with respondent as the highest bidder. [13] No redemption having been made, title to the property was consolidated in favor of the respondent on September 21, 1984 [14] and TCT No. T-19303 [15] was thereafter issued in its name.

Thereafter, the actual occupants of the mortgaged property, spouses Ramon de la Cruz and his wife, who is likewise petitioner's sibling, Ruth Julian de la Cruz (spouses De la Cruz), offered to purchase the property. Respondent accepted the offer and executed a Deed of Conditional Sale [16] on October 31, 1985. However, spouses De la Cruz failed to pay [17] 72 monthly amortizations resulting in the rescission of the said deed on February 28, 1992. Notwithstanding, spouses De la Cruz refused to vacate the premises compelling respondent to file an "Unlawful Detainer" case against them on February 23, 1993. Judgment was rendered in favor of respondent on July 29, 1993. [18]

However, before the Writ of Execution could be carried out, [19] petitioner filed Civil Case No. 6387 [20] before the Regional Trial Court (RTC) of Roxas City on October 27, 1993, [21] for the cancellation of respondent's TCT No. T-19303. He contended that the SPA which was used to sell the mortgaged property at public auction in 1983 was no longer effective in view of Thelma's death in 1982. Consequently, the public auction, the resulting Deed of Sale, [22] Affidavit of Consolidation and TCT No. T-19303 are null and void.

During the course of the proceedings, a series of postponements [23] were made at the instance of both parties due to an impending amicable settlement. Eventually, the parties were able to reach a settlement. Thus, in an Order [24] dated October 28, 1998, the RTC directed both parties to submit a joint motion to dismiss the case. However, almost two years passed without the parties complying with the said Order.

Consequently, in an Order [25] dated October 11, 2000, the RTC dismissed the case for failure of the parties to comply for an unreasonable length of time. The dismissal, however, was set aside in an Order [26] dated February 12, 2003 in consideration of petitioner's payment of ten percent (10%) of respondent's claim. The parties were then given 15 days from notice within which to submit their compromise agreement, [27] which was subsequently extended for 30 days from notice. [28] Despite the extensions, however, no compromise agreement was filed in court. As a result, in an Order [29] dated July 24, 2003, the trial court directed the parties to show cause within 15 days from notice why the case should not be dismissed for failure to prosecute. Meanwhile, with petitioner's conformity, his counsel withdrew her appearance on August 13, 2003. [30]

Ruling of the Regional Trial Court

On January 28, 2004 or six months from the issuance of the show cause Order, the trial court dismissed the case in an Order [31] which states:

> For failure of the parties thru counsel to comply with the Order dated July 24, 2003, the instant case is hereby DISMISSED.
>
> SO ORDERED.

Petitioner, through his new counsel, timely filed a Notice of Appeal [32] on April 26, 2004 but failed to pay the docket and other lawful fees.

Ruling of the Court of Appeals

As earlier mentioned, the CA dismissed the appeal for non-payment of the required docket and other lawful fees pursuant to Section 1(c), Rule 50 of the Rules of Court. [33]

Seeking reconsideration, [34] petitioner attached to his motion Postal Money Order Nos. A-0620000276, B-0610000283 and J-065000566 in the aggregate amount of P3,020.00 [35] as payment for the docket fees. He explained that his failure to pay the required fees was due to oversight and non-cognizance of the necessity to pay the said fees since his counsel did not inform him of such requirement to pay. Petitioner prayed for liberal application of the Rules as according to him, a strict enforcement would be tantamount to imposing a penalty not commensurate to his thoughtlessness or oversight in not adhering to the procedural requisite. [36]


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Petitioner's submission did not move the CA, which disposed of his motion for reconsideration through its second assailed Resolution [37] thus:

> In the case of Meatmaster International Corporation vs. Lelis Integrated Development Corporation, it was held "that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal." This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court. The payment of the full amount of the docket fee is sine qua non for the perfection of an appeal. The court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.
>
> Verily, the requirement of an appeal fee is not a mere technicality of law or procedure but an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. Thus, if We allow belated payment as prayed for and reinstate the instant appeal, it will have the effect of withholding the finality of the judgment or order appealed from.
>
> 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 proportionate with the degree of his thoughtlessness in not complying with the procedure prescribed.
>
> In his Motion for Reconsideration, appellant has not shown weighty and persuasive reasons to compel Us to exercise Our discretion of suspending the strict adherence to the Rules. Other than his flimsy excuse that the ground in the Court's Resolution is merely technical, appellant has miserably failed to proffer a convincing justification for [his] procedural error. Thus, appellant failed to justify why the Rules should be relaxed and [why] the equitable consideration of the Court should be exercised in his situation as an exception to the strict implementation of the Rules.
>
> IN VIEW THEREOF, the Motion for Reconsideration is hereby DENIED and the Resolution dated April 12, 2005 MAINTAINED.
>
> SO ORDERED. [38]

Issues

Petitioner comes before this Court by way of Petition for Review on Certiorari raising the following issues:

> A.
>
> WHETHER X X X THE DISMISSAL OF THE TRIAL COURT [WAS] PROPER.
>
> B.
>
> WHETHER X X X THE COURT OF APPEALS ERRED IN APPLYING STRICTLY THE RULES ON DOCKET FEES. [39]

The pivotal issue is whether the CA was correct in strictly applying the rules on the payment of docket fees.

Petitioner acknowledges the mandatory nature of the rule that docket and other lawful fees must be paid in full within the prescribed period for an appeal to be perfected. However, he asserts that the broader interest of justice and the desired objective of deciding the case on the merits call for leniency in the application of the rules. Hence, he must be given an opportunity to air his cause without the constraints of technicalities. Petitioner contends that the CA should apply the pronouncement of this Court in Yambao v. Court of Appeals [40] relaxing the policy of strict adherence to the rule regarding appeal fees if justifiable reason for the non-payment of the correct amount of docket fees within the prescribed period is shown. He further contends that his act of attaching the payment for

the fees to his Motion for Reconsideration shows his intention and willingness to comply with the rules.

Our Ruling

The petition lacks merit.

Payment of full docket fees within the prescribed period for taking an appeal is mandatory.

It is well-established that "[t]he right to appeal is a statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law." [41] "Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal." [42]

The applicable rule for appeals from judgments issued by the RTC in the exercise of its original jurisdiction is Rule 41 of the Rules of Court, Section 4 of which provides:

> Section 4. Appellate court docket and other lawful fees. - Within the period for taking an appeal, the appellant shall pay to the clerk of the 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.

The Rules also provide that failure of the appellant to pay the docket and other lawful fees is a ground for dismissal of the appeal. [43]

The Court has consistently ruled in a number of cases that the payment of the full amount of docket fees within the prescribed period is both mandatory and jurisdictional. [44] It is a condition sine qua non for the appeal to be perfected and only then can a court acquire jurisdiction over the case. [45] The requirement of an appeal fee is not a mere technicality of law or procedure and should not be undermined except for the most persuasive of reasons. Non-observance would be tantamount to no appeal being filed thereby rendering the challenged decision, resolution or order final and executory.

Admittedly, this rule is not without recognized qualifications. The Court has declared that in appealed cases, failure to pay the appellate court docket fee within the prescribed period warrants only discretionary as opposed to automatic dismissal of the appeal and 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. [46]

In the case at bench, the justifications presented by petitioner for the non-payment of the docket fees are oversight and the lack of advice from his counsel. Unfortunately, the reasons presented are neither convincing nor adequate to merit leniency. Petitioner submits that he only found out about the requirement to pay the docket fees when he received the CA Resolution denying his appeal on April 22, 2005 or three days short of one year from filing of the said appeal. This Court finds this not to be logically true to human experience. It is unusual for petitioner's counsel not to advice him of the required docket fees. More often than not, counsels are aware of the docket fees required to be paid to the courts, and will ask clients for the said amount prior to filing pleadings in court. This is so because counsels are not expected to shoulder or advance payment for their clients. Assuming arguendo that petitioner's counsel did not inform him of the requirement to pay the docket fees to perfect the appeal, what we find incredible is that petitioner apparently failed to communicate with his counsel after the filing of said appeal. This Court has repeatedly held that "litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. [47] "It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case. [48] Moreover, the counsel's negligence binds petitioner and, for that reason alone the loss of his remedy was caused by his own negligence.

[49] Consequently, a relaxation of the rule cannot be granted. [50] The bitter consequence of such grave inadvertence is to render the trial court's order final and executory. [51]

Further, the Court notes that petitioner only attempted to perfect his appeal on May 6, 2005 by appending the postal money orders to his Motion for Reconsideration, or one year and nine days too late. [52] By that time, the challenged

Order has long become final and no longer open to an appeal. [53]

Petitioner's reliance on the policy espoused in the case of Yambao[54] is likewise unavailing. The pertinent portion relied on by petitioner reads:

> Thus, the appellate court may extend the time for the payment of the docket fees if appellant is able to show that there is a justifiable reason for his failure to pay the correct amount of docket fees within the prescribed period, like fraud, accident, mistake, excusable negligence, or a similar supervening casualty, without fault on the part of the appellant. x x x [55] (Emphasis supplied.)

Clearly, the case applies to a situation where payment of the docket fees was made albeit incomplete. In the instant case, no payment was made by petitioner at all. Even assuming arguendo that Yambao is applicable to petitioner's case, still, the Court sees no justifiable reason to allow this Court to relax the strict application of the Rules.

Likewise assuming for the sake of argument that consideration be given to petitioner's willingness to comply with the rules since he attached postal money orders to his motion for reconsideration, the broader interest of justice will still not be served if petitioner's appeal is reinstated. On one hand, petitioner calls for leniency to enable him to establish his case. On the other hand is respondent, which has been embroiled in a decades-long waiting game. The long-running dispute could be recapped thus: (1) petitioner's predecessor-in-interest, Thelma, obtained a loan from respondent secured by a Real Estate Mortgage on the subject property; (2) Thelma was unable to pay the loan thereby causing foreclosure of the Real Estate Mortgage; (3) petitioner filed his civil action to question the validity of the public auction sale only on October 27, 1993 or 10 years after the sale was conducted; and, (4) from the time of the consolidation of title in the name of respondent in 1984 until the present, spouses De la Cruz have been in possession of the foreclosed property.

Petitioner and his sister Ruth Julian de la Cruz (Ruth) know that their mother Thelma has already lost ownership rights to the property in question when the latter defaulted in her payment to respondent and none of her successors-in-interest redeemed the property within the prescribed period. This is the reason why Ruth and her husband offered to purchase the property from respondent. However, when the said spouses De la Cruz defaulted in their payment, they refused to surrender the property to respondent. For his part, petitioner reinforces such refusal to surrender by questioning the validity of the public auction sale.

Now petitioner comes before this Court praying for leniency in the interest of justice. It must be stressed, however, that it is only when persuasive reasons exist that the Rules may be relaxed to spare a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. [56] Here, the Court finds that petitioner is under no threat of suffering an injustice. On the contrary, it will be the height of injustice if the Court accords petitioner leniency and reinstates his appeal as this would mean further waiting on the part of the respondent which has long been deprived of its right to possess the property it owns.

WHEREFORE, the petition is DENIED. The Resolutions of the Court of Appeals in CA-G.R. CV No. 00240 dated April 12, 2005 and July 27, 2006 are AFFIRMED.


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**SO ORDERED.**

Corona C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

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[1] rollo, pp. 13-20.

[2] CA rollo, p. 15; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Enrico A. Lazanas.

[3] Id.

[4] Id. at 36-38; penned by Associate JusticeVicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Agustin S. Dizon.

[5] Motion for Reconsideration with Motion to Admit Payment of Docket Fee and Entry of Appearance, id. at 18-21.

[6] Records, p. 57.

[7] Id. at 10.

[8] Id. at 3.

[9] Id. at 53.

[10] Id. at 57.

[11] Id. at 4.

[12] Id. at 11.

[13] See Certificate of Sheriff's Sale, id. at 11-12.

[14] See Affidavit of Consolidation of Ownership, id. at 14.

[15] Id. at 15.

[16] Id. at 41-43.

[17] Id. at 46.

[18] Id. at 44-48.

[19] On November 22, 1993, a Preliminary Prohibitory Injunction was issued to stay the execution of the decision in the unlawful detainer case, id. at 30.

[20] For cancellation of TCT No. T-19303, Annulment of Public Auction Sale, Deed of Sale and Affidavit of Consolidation, Injunction, and Damages with Prayer for Preliminary Injunction, id. at 1-8.

[21] More than 10 years after the public auction sale.

[22] Records, p.13.

[23] Id. at 158-164.

[24] Id. at 166.

[25] Id. at 175.

[26] Id. at 182.

[27] Id.

[28] Id. at 187.

[29] Id. at 192.

[30] See Motion to Withdraw, id. at 194.

[31] Id. at 200.

[32] Id. at 206.

[33] Section 1. Grounds for dismissal of appeal.- An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40 and section 4 of Rule 41.

[34] CA rollo, pp. 18-21.

[35] Id. at 20.

[36] Id.

[37] Id. at 36-38.

[38] Id. at 37.

[39] rollo, p. 82.

[40] 399 Phil. 712 (2000).

[41] Tamayo v. Tamayo, Jr., 504 Phil. 179, 183 (2005); See also Spouses Ortiz v. Court of Appeals, 360 Phil. 95, 100-101. (1998).

[42] M.A. Santander Construction, Inc. v. Villanueva, 484 Phil. 500, 503 (2004), citing Neplum, Inc. v. Orbeso, 433 Phil. 844, 867 (2002).

[43] Supra note 33.

[44] Tamayo v. Tamayo, Jr., supra note 41 at 184; Aranas v. Endona, 203 Phil. 120, 126. (1982).

[45] Meatmasters International Corporation v. Lelis Integrated Development Corporation, 492 Phil. 698, 701 (2005).

[46] Id. at 702-703, citing La Salette College v. Pilotin, 463 Phil. 785, 794 (2003); American Express International, Inc. v. Sison, G.R. No. 172901, October 29, 2008, 570 SCRA 194, 203, citing Spouses Buenaflor v. Court of Appeals, 400 Phil. 395, 401-402 (2000).

[47] Bernardo v. Court of Appeals, 341 Phil. 413, 428 (1997) citing Greenhills Airconditioning and Services, Inc. v. National Labor Relations Commission, 315 Phil. 409, 417 (1995).

[48] Id. at 429.


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[49] Tamayo v. Tamayo, Jr., supra note 41 at 185.

[50] Aranas v. Endona, supra note 44.

[51] Tamayo v. Tamayo, Jr., supra note 41.

[52] Petitioner received the RTC's Order of dismissal on April 12, 2004. Under the Rules, he had 15 days counted from the date of receipt, or until April 27, 2004, to perfect the appeal.

[53] M.A. Santander Construction, Inc. v. Villanueva, supra note 42 at 505.

[54] Supra note 40.

[55] Id. at 719.

[56] Sebastian v. Hon. Morales, 445 Phil. 595, 605 (2003).


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