

**NEGROS ORIENTAL PLANTERS ASSOCIATION, INC. (NOPA),  
PETITIONER, VS. HON. PRESIDING JUDGE OF RTC-NEGROS  
OCCIDENTAL, BRANCH 52, BACOLOD CITY, AND ANICETO MANOJO  
CAMPOS, RESPONDENTS.**

*G.R. No. 179878. December 24, 2008*

Ponente: CHICO-NAZARIO, J.

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**CHICO-NAZARIO, J.:**

What's sauce for the goose is sauce for the gander.

This is a Petition for Review on Certiorari seeking the reversal of the Resolutions[1] of the Court of Appeals dated 23 May 2007 and 16 August 2007, respectively, in CA-G.R. SP No. 02651 outrightly dismissing the Petition for Certiorari filed by petitioner Negros Oriental Planters Association, Inc. (NOPA) against private respondent Aniceto Manojó Campos (Campos).

On 17 March 1999, Campos filed a Complaint for Breach of Contract with Damages, docketed as Civil Case No. 99-10773, against NOPA before the Regional Trial Court (RTC) of Negros Occidental, Bacolod City. According to the Complaint, Campos and NOPA entered into two separate contracts denominated as Molasses Sales Agreement. Campos allegedly paid the consideration of the Molasses Sales Agreement in full, but was only able to receive a partial delivery of the molasses because of a disagreement as to the quality of the products being delivered.

On 17 August 2005, more than six years after NOPA filed its Answer, NOPA filed a Motion to Dismiss on the ground of an alleged failure of Campos to file the correct filing fee. According to NOPA, Campos deliberately concealed in his Complaint the exact amount of actual damages by opting to estimate the value of the unwithdrawn molasses in order to escape the payment of the proper docket fees.

On 30 June 2006, the RTC issued an Order denying the Motion to Dismiss. NOPA received this Order on 17 July 2006.

On 1 August 2006, NOPA filed a Motion for Reconsideration of the 30 June 2006 Order. On 5 January 2007, the RTC issued an Order denying NOPA's Motion for Reconsideration.

On 2 April 2007, NOPA filed a Petition for Certiorari before the Court of Appeals assailing the Orders of the RTC dated 30 June 2006 and 5 January 2007.

On 23 May 2007, the Court of Appeals issued the first assailed Resolution dismissing the Petition for Certiorari on the following grounds:

- Failure of the Petitioner to state in its Verification that the allegations in the petition are "based on authentic records", in violation of Section 4, Rule 7, of the 1997 Rules of Civil Procedure, as amended by A.M. No. 00-2-10-SC (May 1, 2000), which provides:

" - x x x - A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or lacks a proper verification, shall be treated as an unsigned pleading."

- Failure of the petitioner to append to the petition relevant pleadings and documents, which would aid in the resolution of the instant petition, in violation of Section 1, Rule 65 of the Rules of Court, such as:
- Ex-parte Motion to Set the Case for Pre-Trial dated July 27, 1999;
- Notice of Pre-Trial;
- Motion for Leave to File Third Party Complaint;
- Orders dated July 31, 2000, March 20 2001, November 17, 2004, and May 17, 2005, respectively;
- Motion to Suspend the Proceedings dated August 10, 2003;
- Motion to Dismiss for Failure to Prosecute; and
- Motion for Reconsideration to the Order dated May 12, 2005.

Section 1, Rule 65 of the Rules of Court, provides:

"When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of section 3, Rule 46."

- Failure of petitioner's counsel to indicate in the petition his current IBP Official Receipt Number, in violation of Bar Matter No. 1132 and/or A.M. No. 287, which reads as follows:

"The Court resolved, upon recommendation of the Office of the Bar Confidant, to GRANT the request of the Board of Governors of the Integrated Bar of the Philippines and the Sanguniang Panlalawigan of Ilocos Norte to require all lawyers to indicate their Roll of Attorneys Number in all papers or pleadings submitted to the various judicial or quasi-judicial bodies in addition to the requirement of indicating the current Professional Tax Receipt (PTR) and the IBP Official Receipt or Lifetime Member Number."[2]

On 22 June 2007, NOPA filed a Motion for Reconsideration of the above Resolution, attaching thereto an Amended Petition for Certiorari in compliance with the requirements of the Court of Appeals deemed to have been violated by NOPA. The Court of Appeals denied the said Motion in the second assailed Resolution dated 16 August 2007.

Hence, this Petition for Review on Certiorari, where NOPA raises the following issue and arguments:

ISSUE

WHETHER OR NOT THE PUBLIC RESPONDENT CA COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THERE WAS NO SUBSTANTIAL COMPLIANCE WITH THE PROCEDURAL

REQUIREMENTS WHEN PETITIONER FAILED TO ALLEGE IN ITS VERIFICATION THAT THE ALLEGATIONS THEREIN ARE TRUE AND CORRECT OF HIS PERSONAL KNOWLEDGE OR BASED ON AUTHENTIC RECORDS AND FAILURE TO ATTACH THE NECESSARY DOCUMENTS ON ITS PLEADINGS AS REQUIRED BY SECTION 1, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.[3] ARGUMENTS

- The requirement that a pleading be verified is merely formal and not jurisdictional. The court may give due course to an unverified pleading where the material facts alleged are a matter of record and the questions raised are mainly of law such as in a petition for certiorari.[4]
- Petitioner had attached to its Petition for Certiorari clearly legible and duplicate original or a certified true copy of the judgment or final order or resolution of the court a quo and the requisite number of plain copies thereof and such material portions of the record as would support the petition.[5]
- Substantial compliance of the rules, which was further supplied by the petitioner's subsequent full compliance demonstrates its good faith to abide by the procedural requirements.[6]
- The resolution of the important jurisdictional issue raised by the petitioner before the PUBLIC RESPONDENT CA would justify a relaxation of the rules.[7]

The original Verification in the original Petition for Certiorari filed by NOPA states as follows:

- That I am the President and Chairman of the Board of Directors of Negros Oriental Planters' Association, Inc. (NOPA), the petitioner in this case, a domestic corporation duly organized under Philippine Laws, with principal place of business at Central Bais, Bais City, Philippines; that I am duly authorized by the Board of NOPA (Secretary's Certificate attached as Annex "A") to cause the preparation of the foregoing petition; and that I hereby affirm and confirm that all the allegations contained herein are true and correct to my own knowledge and belief;[8]

NOPA claims that this Court has in several cases allowed pleadings with a Verification that contains the allegation "to the best of my knowledge" and the allegation "are true and correct," without the words "of his own knowledge," citing *Decano v. Edu*,[9] and *Quimpo v. De la Victoria*. [10] NOPA claims that the allegations in these cases constitute substantial compliance with the Rules of Court, and should likewise apply to the case at bar.

NOPA is mistaken. NOPA cited cases promulgated before 1 May 2000, when Section 4 of Rule 7 was amended by A.M. No. 00-2-10. Before the amendment, said Section 4 stated:

SEC. 4. Verification.—Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

As amended, said Section 4 now states:

SEC. 4. Verification.—Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

Clearly, the amendment was introduced in order to make the verification requirement stricter, such that the party cannot now merely state under oath that he believes the statements made in the pleading. He cannot even merely state under oath that he has knowledge that such statements are true and correct. His knowledge must be

specifically alleged under oath to be either personal knowledge or at least based on authentic records.

Unlike, however, the requirement for a Certification against Forum Shopping in Section 5, wherein failure to comply with the requirements is not curable by amendment of the complaint or other initiatory pleading,[11] Section 4 of Rule 7, as amended, states that the effect of the failure to properly verify a pleading is that the pleading shall be treated as unsigned:

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

Unsigned pleadings are discussed in the immediately preceding section of Rule 7:

SEC. 3. Signature and address. - x x x.

x x x x

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action. (5a)

A pleading, therefore, wherein the Verification is merely based on the party's knowledge and belief produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied. In the case at bar, the Court of Appeals, in the exercise of this discretion, refused to allow the deficiency in the Verification to be remedied, by denying NOPA's Motion for Reconsideration with attached Amended Petition for Certiorari.

May an appellate court reverse the exercise of discretion by a lower court? The old case of *Lino Luna v. Arcenas*[12] states that it can, but only in exceptional cases when there is grave abuse of this discretion or adverse effect on the substantial rights of a litigant:

Discretionary power is generally exercised by trial judges in furtherance of the convenience of the courts and the litigants, the expedition of business, and in the decision of interlocutory matters on conflicting facts where one tribunal could not easily prescribe to another the appropriate rule of procedure.

The general rule, therefore, and indeed one of the fundamental principles of appellate procedure is that decisions of a trial court which "lie in discretion" will not be reviewed on appeal, whether the case be civil or criminal at law or in equity.

We have seen that where such rulings have to do with minor matters, not affecting the substantial rights of the parties, the prohibition of review in appellate proceedings is made absolute by the express terms of the statute; but it would be a monstrous travesty on justice to declare that where the exercise of discretionary power by an inferior court affects adversely the substantial legal rights of a litigant, it is not subject to review on appeal in any case wherein a clear and affirmative showing is made of an abuse of discretion, or of a total lack of its exercise, or of conduct amounting to an abuse of discretion, such as its improper exercise under a misapprehension of the law applicable to the facts upon which the ruling is based.

In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. But the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice. As was said in the case of *The Styria vs. Morgan* (186 U. S., 1, 9): "The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary will or inconsiderate action." So in the case of *Goodwin*

vs. Prime (92 Me., 355), it was said that "discretion implies that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice."

There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeal in reviewing his action in the premises, and such courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will," or in other words that his action in the premises amounted to "an abuse of discretion." But the right of an appellate court to review judicial acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear case of abuse of power to the prejudice of the appellant, or that the ruling objected to rested on an erroneous principle of law not vested in discretion.[13]

The case at bar demonstrates a situation in which there is no effect on the substantial rights of a litigant. NOPA's Petition for Certiorari is seeking the reversal of the Orders of the RTC denying NOPA's Motion to Dismiss on the ground of failure to pay the proper docket fees. The alleged deficiency in the payment of docket fees by Campos, if there is any, would not inure to the benefit of NOPA.

There is therefore no substantive right that will be prejudiced by the Court of Appeals' exercise of discretion in the case at bar. While the payment of docket fees is jurisdictional, it is nevertheless unmistakably also a technicality. Ironically, in seeking the leniency of this Court on the basis of substantial justice, NOPA is ultimately praying for a Writ of Certiorari enjoining the action for breach of contract from being decided on the merits. What's sauce for the goose is sauce for the gander. A party cannot expect its opponent to comply with the technical rules of procedure while, at the same time, hoping for the relaxation of the technicalities in its favor.

There was therefore no grave abuse of discretion on the part of the Court of Appeals warranting this Court's reversal of the exercise of discretion by the former. However, even if we decide to brush aside the lapses in technicalities on the part of NOPA in its Petition for Certiorari, we nevertheless find that such Petition would still fail.

NOPA seeks in its Petition for Certiorari for the application of this Court's ruling in *Manchester Development Corporation v. Court of Appeals*,<sup>[14]</sup> wherein we ruled that the court acquires jurisdiction over any case only upon payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the court, much less the payment of the docket fee based on the amount sought in the amended pleading.

In denying<sup>[15]</sup> NOPA's Motion to Dismiss, the RTC cited *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*,<sup>[16]</sup> wherein we modified our ruling in *Manchester* and decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. The aforesaid ruling was made on the justification that, unlike in *Manchester*, the private respondent in *Sun Insurance Office, Ltd. (SIOL)* demonstrated his willingness to abide by the rules by paying the additional docket fees required. NOPA claims that *Sun* is not applicable to the case at bar, since Campos deliberately concealed his claim for damages in the prayer.

In *United Overseas Bank (formerly Westmont Bank) v. Ros*,<sup>[17]</sup> we discussed how *Manchester* was not applicable to said case in view of the lack of deliberate intent to defraud manifested in the latter:

This Court wonders how the petitioner could possibly arrive at the conclusion that the private respondent was moved by fraudulent intent in omitting the amount of damages claimed in its Second Amended Complaint, thus placing itself on the same footing as the complainant in *Manchester*, when it is clear that the factual milieu of the instant case is far from that of *Manchester*.

First, the complainant in Manchester paid the docket fee only in the amount of P410.00, notwithstanding its claim for damages in the amount of P78,750,000.00, while in the present case, the private respondent paid P42,000.00 as docket fees upon filing of the original complaint.

Second, complainant's counsel in Manchester claimed, in the body of the complaint, damages in the amount of P78,750.00 but omitted the same in its prayer in order to evade the payment of docket fees. Such fraud-defining circumstance is absent in the instant petition.

Finally, when the court took cognizance of the issue of non-payment of docket fees in Manchester, the complainant therein filed an amended complaint, this time omitting all mention of the amount of damages being claimed in the body of the complaint; and when directed by the court to specify the amount of damages in such amended complaint, it reduced the same from P78,750,000.00 to P10,000,000.00, obviously to avoid payment of the required docket fee. Again, this patent fraudulent scheme is wanting in the case at bar.

This Court is not inclined to adopt the petitioner's piecemeal construction of our rulings in Manchester and Sun Insurance. Its attempt to strip the said landmark cases of one or two lines and use them to bolster its arguments and clothe its position with jurisprudential blessing must be struck down by this Court.

All told, the rule is clear and simple. In case where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in Sun Insurance and not the strict regulations set in Manchester will apply.

In the case at bar, Campos filed an amount of P54,898.50 as docket fee, based on the amounts of P10,000,000.00 representing the value of unwithdrawn molasses, P100,00.00 as storage fee, P200,00.00 as moral damages, P100,000.00 as exemplary damages and P500,000.00 as attorney's fees. The total amount considered in computing the docket fee was P10,900,000.00. NOPA alleges that Campos deliberately omitted a claim for unrealized profit of P100,000.00 and an excess amount of storage fee in the amount of P502,875.98 in its prayer and, hence, the amount that should have been considered in the payment of docket fees is P11,502,875.98. The amount allegedly deliberately omitted was therefore only P602,875.98 out of P11,502,875.98, or merely 5.2% of said alleged total. Campos's pleadings furthermore evince his willingness to abide by the rules by paying the additional docket fees when required by the Court.

Since the circumstances of this case clearly show that there was no deliberate intent to defraud the Court in the payment of docket fees, the case of Sun should be applied, and the Motion to Dismiss by NOPA should be denied.

WHEREFORE, the Resolutions of the Court of Appeals dated 23 May 2007 and 16 August 2007, respectively, in CA-G.R. SP No. 02651, outrightly dismissing the Petition for Certiorari filed by petitioner Negros Oriental Planters Association, Inc. against private respondent Aniceto Manojó Campos, are AFFIRMED. No costs.

### **SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Isaias P. Dicdican and Stephen C. Cruz, concurring. Rollo, pp. 45-47 and 160-163.

[2] Rollo, pp. 46-47.

[3] Id. at 198.

[4] Id. at 200.

[5] Id. at 201.

[6] Id.

[7] Id. at 202.

[8] Id. at 42.

[9] G.R. No. L-30070, 29 August 1980, 99 SCRA 410, 420.

[10] 150-B Phil. 124, 131-132 (1972).

[11] SEC. 5. Certification against forum shopping.—The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[12] 34 Phil. 80 (1916).

[13] Id. at 95-97.

[14] G.R. No. L-75919, 7 May 1987, 149 SCRA 562.

[15] Rollo, pp. 133-137.

[16] G.R. Nos. 79937-38, 13 February 1989, 170 SCRA 274.

[17] G.R. No. 171532, 7 August 2007, 529 SCRA 334, 352-353.

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