

**UNIVERSITY OF MINDANAO, INC., DR. GUILLERMO P. TORRES, JR.,
ATTY. VICTOR NICASIO P. TORRES, NANCY C. TE ENG FO, FE
AZUCENA MARCELINO, EVANGELINE F. MAGALLANES,
CARMENCITA E. VID...**

G.R. No. 181201. February 21, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for certiorari,[1] under Rule 65 of the Rules of Court, seeking to set aside the July 6, 2007 Resolution[2] and October 24, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 00824.

The facts of the case are as follows:

On August 31, 1990, the Monetary Board (Board) issued a Resolution[4] ordering the closure of the Mindanao Savings and Loan Association (MSLA). The MSLA was placed under receivership with the president of the Philippine Deposit and Insurance Corporation (PDIC) appointed as its receiver.

On May 24, 1991, the Board issued Resolution No. 600[5] ordering the liquidation of the MSLA and designating the PDIC as its liquidator. Accordingly, the PDIC filed before the Regional Trial Court (RTC) of Davao City, Branch 12, a Petition[6] seeking from the said court assistance in the liquidation of the MSLA. On September 29, 1991, the trial court issued an Order[7] giving due course to PDIC's request for assistance.

On January 23, 1993, the RTC of Davao City issued an Order[8] reminding the PDIC to submit a liquidation plan approved by the Board. On February 3, 1993, the PDIC submitted a copy of the Master Liquidation Plan for all Banks[9] issued by the Board. On March 31, 1993, the trial court issued another Order[10] directing the PDIC to take appropriate steps to hasten the liquidation of the MSLA.

On June 18, 1993, the trial court issued an Order[11] directing the PDIC to take over and conduct an inventory of the assets, books, papers and properties of the MSLA. In addition, it directed the PDIC to cause to be published in a newspaper of general circulation a notice directing all claimants, depositors and creditors of the MSLA to file their respective claims.

On November 22, 1993, the PDIC submitted to the RTC a copy of the Master Liquidation Plan[12] for general application in the liquidation of all closed banking institutions.

On June 3, 1997, petitioner Atty. Reymundo Villarica (Villarica), one of the claimants of the MSLA, filed a motion to dismiss the PDIC's petition.[13] Villarica argued that the petition for liquidation should be dismissed because of the PDIC's failure to prosecute and/or to comply with the rules on liquidation of a bank, the PDIC's failure to comply with the lawful orders of the RTC, and the PDIC's unexplained delay in the liquidation of the MSLA.

On September 30, 1997, acting on Villarica's motion to dismiss, the RTC issued an Order[14] directing the PDIC to submit a liquidation plan and for it to show its compliance with the requirements in the liquidation of a closed bank.

Thereafter, on July 1, 2003, the PDIC filed with the RTC a Motion for Approval of Partial Project of Distribution.[15] In said motion, the PDIC classified, among others, the claims of the Bureau of Internal Revenue (BIR), Social Security System (SSS), PAG-IBIG and the National Home Mortgage and Finance Corporation (NHMFC), under the category of trust funds.[16]

An Opposition[17] was filed by petitioners-stockholders Dolores P. Torres,[18] Dr. Guillermo P. Torres, University of Mindanao, Inc., Antonio M. Pilpil, Nancy C. Te Eng Fo, Fe Azucena Marcelino and Evangeline F. Magallanes against the PDIC's motion. In said Opposition, the petitioners-stockholders of the MSLA argued that the motion for the approval of the partial project of distribution was improper and that the PDIC should, instead, submit a project of distribution in compliance with its earlier master liquidation plan.

On June 27, 2004, a Motion to Join as Claimants-Stockholders[19] was filed by petitioners-stockholders Saturnino Petalcorin, Reynaldo M. Petalcorin, Lilian M. Petalcorin-Castillo, Mary Ann M. Petalcorin-Ras, Neri Filipinas, Vitaliano Malayo, Jr., Natividad Miranda and Antonio Ferrer, Jr. On April 19, 2004, another Motion to Join as Claimants-Stockholders[20] was filed by petitioners-stockholders Carmencita E. Vidamo and Carmichael E. Vidamo.

On November 5, 2003, the RTC issued an Order[21] directing the PDIC to settle the claims of Mr. Felix Gonzales (Gonzales),[22] the labor claims of the former employees of the MSLA,[23] and the claim of the NHMFC.[24] All of these were uncontested by the PDIC.

On April 20, 2005, the RTC issued a Resolution[25] terminating the liquidation proceedings, the dispositive portion of which reads:

WHEREFORE, premises considered, this liquidation proceeding is hereby terminated, dismissing the same for petitioner PDIC's failure to comply with the jurisdictional or mandatory requirements of inventory and publication, as well as the orders of this Court; ordering petitioner to pay the approved claims and the trust funds, and to deliver to MSLA and claimants-stockholders, all remaining MSLA funds, assets, properties and books, etc., in its possession for their disposition and distribution in the winding up of MSLA's affairs for its dissolution pursuant to law.

SO ORDERED.[26]

Aggrieved by the said Resolution, the PDIC filed a Notice of Appeal[27] with the RTC. The Bangko Sentral ng Pilipinas (BSP) also filed a Notice of Appeal.[28]

On July 4, 2005, the PDIC filed a Motion for Extension to File Record on Appeal.[29] The same was granted by the RTC in an Order[30] dated June 23, 2005.

On July 15, 2005, the PDIC filed its Record on Appeal.[31]

Oppositions were then filed.

On July 25, 2005, the RTC issued an Order[32] denying BSP's Notice of Appeal, the pertinent portion of which reads:

x x x x

Considering that petitioner Philippine Deposit Insurance Corporation has already filed its Record on Appeal,

the appeal of the Bangko Sentral ng Pilipinas has become unnecessary. The claimants of the Mindanao Savings and Loan Association, Inc. are, therefore, correct that the Notice of Appeal of the Bangko Sentral ng Pilipinas should no longer be allowed.

WHEREFORE, the notice of appeal of the Bangko Sentral ng Pilipinas is hereby denied admission.[33]

On May 25, 2006, the RTC issued another Order[34] approving PDIC's record of appeal, the pertinent portion of which reads:

Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law, and taking into consideration the Comment/Opposition, Amended Comment, Supplemental to Amended Comment/Opposition to Petitioner's Notice of Appeal and Record on Appeal filed by Plaintiff-Claimant, thereto, and the Reply and Rejoinder to Petitioner's Reply, the Court hereby resolves to approve the said Record on Appeal.

WHEREFORE, let the Record on Appeal, together with the transcript of stenographic notes of the proceedings in this case, be forwarded to the Honorable Court of Appeals, Cagayan de Oro City.

SO ORDERED.[35]

On September 14, 2006, the Chief of the Judicial Records Division of the CA issued a Notice[36] that the records of the case are "now complete and are at the disposal in the Judicial Records Division for preparation of the required briefs." Accordingly, the PDIC was ordered to file its Appellant's Brief.

On November 3, 2006, the PDIC filed a Motion for Extension to File Appellant's Brief.[37]

On November 16, 2006, petitioners-claimants-stockholders (petitioners) filed a Motion to Dismiss the Appeal.[38] Petitioners argued that PDCI's appeal should be dismissed for its failure to comply with the mandatory or jurisdictional requirement of filing with the Clerk of Court seven (7) legible copies of the approved Record on Appeal, pursuant to Section 4,[39] Rule 44 and Section 1(d),[40] Rule 50 of the 1997 Rules of Civil Procedure.

On December 18, 2006, the PDIC filed a Second Motion for Extension of Time to File Appellant's Brief.[41]

Thereafter, petitioners filed a Comment[42] raising other grounds in support of the dismissal of the appeal of the PDIC. Petitioners argued that the PDIC's Record on Appeal failed to show on its face the timely perfection of the appeal in violation of Section 1(a), Rule 50, for failure to state: (1) the timely filing of Notice of Appeal; (2) the timely filing of the appeal bond/fees; and (3) the timely filing of the Record on Appeal. Moreover, petitioners contended that the Notice of Appeal violated Section 1(b), Rule 50 of the Rules of Court, because it failed to state: (1) the timely filing of the Notice of Appeal; (2) the timely payment of the appeal bond/fees; (3) the timely filing of the Record on Appeal; (4) the appellees; and (5) the appellate court of appeal.

On February 1, 2007, the PDIC filed its Appellant's Brief.

On July 6, 2007, the CA issued a Resolution denying petitioners' motion to dismiss the appeal, the dispositive portion of which reads:

WHEREFORE, claimants-appellees are granted a period of fifteen (15) days from receipt of this Resolution within which to file Appellees' Brief as they have prayed for in their Motion for Leave to File Appellees' Brief dated 24 April 2007.

SO ORDERED.[43]

Aggrieved, petitioners filed a Motion for Reconsideration,[44] which was, however, denied by the CA in a

Resolution dated October 24, 2007.

Hence, herein petition, with petitioners raising the following issues for this Court's resolution, to wit:

I.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISREGARDING PETITIONERS' MOTION TO DISMISS APPEAL BASED ON RESPONDENT PDIC'S DELIBERATE REFUSAL TO COMPLY WITH SEC. 4, RULE 44 OF THE 1997 RULES OF CIVIL PROCEDURE, OFFERING NO EXCUSE OR JUSTIFICATION WHATSOEVER FOR FAILING TO DO SO, BUT DEFIANTLY IGNORING SUCH COMPLIANCE AS IF THIS MANDATORY RULE WAS INCONSEQUENTIAL;

II.

THE HON. RESPONDENT COURT OF APPEALS ACTED WITH GROSS ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE APPEAL WHEN RESPONDENT PDIC'S NOTICE OF APPEAL IS PATENTLY DEFECTIVE FOR FAILURE TO COMPLY WITH SEC. 5, RULE 41 OF 1997 RULES OF CIVIL PROCEDURE VIOLATING SEC. 1(b) OF RULE 50 OF THE SAID RULES, AND RENDERING THE HON. RESPONDENT COURT WITHOUT JURISDICTION TO TAKE COGNIZANCE OF THE APPEAL IN VIEW OF THE INVALID NOTICE OF APPEAL-WARRANTING DISMISSAL OF THE APPEAL;

III.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GROSS ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DENYING DISMISSAL OF THE APPEAL, FINDING RESPONDENT PDIC'S RECORD ON APPEAL TO HAVE INCLUDED THE DATA SHOWING ITS TIMELY PERFECTION REQUIRED UNDER SEC. 6, RULE 41 OF THE 1997 RULES OF CIVIL PROCEDURE, WHEN SAID RECORD ON APPEAL CLEARLY DOES NOT SHOW ON ITS FACE ITS TIMELY PERFECTION, WARRANTING ITS DISMISSAL PURSUANT TO SEC. 1 (a) RULE 50 OF THE SAID 1997 RULES AND APPLICABLE JURISPRUDENCE.

IV.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS [OR] LACK OF JURISDICTION IN APPLYING THE RULING IN THE CASE OF PRUDENTIAL BANK VS. BUSINESS ASSISTANCE GROUP, INC., G.R. NO. 158806, 16 DECEMBER 2004; IT SHOULD HAVE DISMISSED THE APPEAL APPLYING INSTEAD THE JURISPRUDENCE ENUNCIATED IN THE CASES OF LAMZON VS. NATIONAL LABOR RELATIONS COMMISSION (307 SCRA 665), ANTONIO VS. COMMISSION ON ELECTIONS (315 SCRA 62) AND PET PLANS, INC. ET AL. VS. COURT OF APPEALS, G.R. NO. 148287, NOVEMBER 23, 2004, FOR RESPONDENT PDIC'S APPEAL IS FLIMSY AND FRIVOLOUS, POINTLESS AND PURELY DILATORY, GROSSLY PREJUDICIAL TO PETITIONERS.[45]

The petition has no merit. At the crux of the controversy is the determination of the propriety of the remedy of certiorari in order to assail the denial of a motion to dismiss.

The denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari. It cannot be the subject of appeal, until a final judgment or order is rendered.[46] An interlocutory order may be assailed by certiorari or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by

certiorari will not only delay the administration of justice, but will also unduly burden the courts.[47]

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[48]

Petitioners argue that the CA committed grave abuse of discretion when it did not dismiss the appeal of the PDIC when the latter failed to file seven copies of the approved record on appeal. Petitioners contend that such omission violated Section 4, Rule 44 of the Rules of Court which reads:

SEC. 4. Docketing of case - Upon receiving the original record or the record on appeal and the accompanying documents and exhibits transmitted by the lower court, as well as the proof of payment of the docket and other lawful fees, the clerk of court of the Court of Appeals shall docket the case and notify the parties thereof.

Within ten (10) days from receipt of said notice, the appellant, in appeals by record on appeal, shall file with the clerk of court seven (7) clearly legible copies of the approved record on appeal, together with the proof of service of two (2) copies thereof upon the appellee.

Any unauthorized alteration, omission or addition in the approved record on appeal shall be a ground for dismissal of the appeal.

Petitioners argue that since Section 4, Rule 44 provides for the dismissal of an appeal in case of "any unauthorized alterations, omissions and additions in the approved record on appeal," with more reason that an appeal should be dismissed in case of failure of an appellant to file the requisite copies of the approved record thereof.

Petitioners' argument is bereft of merit.

Contrary to petitioners' assertion, a plain reading of Section 4, Rule 44 does not provide that non-submission of copies of the approved record on appeal is a ground to dismiss an appeal. Quite plainly, the rule only reads that should there be "any unauthorized alteration, omission or addition in the approved record of appeal," the same should be considered as a ground for dismissal. Petitioners' construction of the rules would unduly extend its meaning and application as there is no mention therein that non-submission of the required copies is a ground to dismiss an appeal. Moreover, Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Indeed, rules of procedure should be used to promote, not frustrate justice.[49] This Court cannot attribute to the CA grave abuse of discretion when simply put, the rules does not provide that non-submission of the copies of the approved record on appeal is a mandatory ground for the dismissal of an appeal.

Moreover, this Court observes that the PDIC filed on July 15, 2005 its record on appeal and that the same was approved by the RTC in an Order dated May 25, 2006. The CA did not find the non-submission of the copies fatal to PDIC's appeal. In the same vein, this Court finds no grave abuse of discretion on the part of the CA for choosing not to dismiss the appeal as it could just simply ask the PDIC to submit the required copies of the approved record on appeal. In any case, it bears to stress that certiorari will not issue to correct errors of procedure.[50]

Anent the second issue raised by petitioners, the same is without merit.

Petitioners contend that the PDIC's notice of appeal failed to comply with the formal requirements provided for in Section 5, Rule 41 of the Rules of Court. Petitioners thus argue that the PDIC's notice of appeal should be

considered a mere scrap of paper and treated as if no notice of appeal was filed within the period prescribed under Section 1 (b), Rule 50 the Rules of Court.[51] Section 5, Rule 41 reads:

Sec. 5. Notice of appeal. - The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

On the other hand, Section 1(b), Rule 50 reads:

Sec. 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

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

Specifically, petitioners point out that a perusal of the PDIC's notice of appeal would readily show that said notice failed to state:

- the timely filing of the notice of appeal;
- the timely payment of the appeal bond/fees;
- the timely filing of the record of appeal;
- the appellees; and
- the appellate court of appeal.[52]

The validity of the PDIC's notice of appeal has already been passed upon by the CA in its July 6, 2007 Resolution, which affirmed the findings of the RTC. The pertinent portion of said Resolution is hereunder reproduced, to wit:

The timeliness of the filing of petitioner-appellant's Notice of Appeal and Record of Appeal has already been resolved by the court a quo in an Order dated 25 May 2006, which reads:

Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law, and taking into consideration the Comment/Opposition, Amended Comment, Supplemental to Amended Comment/Opposition to Petitioner's Notice of Appeal and Record on Appeal filed by Plaintiff-Claimant, thereto, and the Reply and Rejoinder to Petitioner's Reply, the Court hereby resolves to approve the said Record on Appeal. (Emphasis supplied.)

WHEREFORE, let the Record on Appeal, together with the transcript of stenographic notes of the proceedings in this case, be forwarded to the Honorable Court of Appeals, Cagayan de Oro City.

SO ORDERED.

The Record on Appeal, consisting of seven (7) thick voluminous folders and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the court a quo and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees.

As such and also taking into consideration the Comment/Opposition filed by petitioner-appellant on 22 May 2007 and the Reply to Comment/Opposition filed by claimants-appellants on 4 June 2007, this Court deems petitioner-appellant to have substantially complied with the requirements for the perfection of its appeal.

X X X X

SO ORDERED.[53]

Again, this Court finds that the CA did not abuse its discretion in finding that the PDIC had substantially complied with the requirements for the perfection of its appeal. While it may be true that the PDIC's notice of appeal did not state on its face the appellate court to which the appeal was being taken, the same is merely a formal error. Moreover, while it is also true that on the face of the notice of appeal the timely filing thereof, the timely filing of the appeal bond/fees, and the timely filing of the record on appeal are all not stated, the same has already been resolved by the CA when it declared that, "The Record on Appeal, consisting of seven (7) thick voluminous folders and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the court a quo and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees." Moreover, the timely filing of the notice of appeal and the record on appeal was resolved by the RTC when it declared that "Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law."

In addition, petitioners' argument that PDIC should have furnished the notice of appeal not just to the claimants-stockholders but also to the employees of MSLA, Gonzales, BIR, SSS, PAG-IBIG and NHMFC is not meritorious. As correctly observed by PDIC, the claim of the employees of MSLA is a labor claim and was not originally filed with the liquidation court. Moreover, the claim of Gonzales is already final and was earlier approved by the RTC in an Order[54] dated May 29, 1998. Lastly, the unremitted taxes due the BIR, unremitted premiums and salary loan payments due SSS, unremitted premiums and salary loan payments due PAG-IBIG, and unremitted loan amortizations due NHMFC fall under the category of trust. Said amounts were already set aside by PDIC for payment as seen in its July 1, 2003 Motion for Approval of Partial Project of Distribution. Assets held in trust do not form part of the assets of MSLA which are to be distributed to its general creditors. Such being the case, since the BIR, SSS, PAG-IBIG and NHMFC are not considered creditors of MSLA, they need not be furnished copies of the notice of appeal. The same, however, does not follow for petitioners-claimants-stockholders, who, being creditors of the MSLA, were correctly served with copies of the notice of appeal. Moreover, it bears to point out that if there is any party who should object to their non-inclusion to the PDIC's notice of appeal, such cause of action belongs to the parties who were allegedly omitted. However, a perusal of the records would show that the parties concerned interposed no objection to their non-inclusion. Consequently, this Court finds that the CA did not act with grave abuse of discretion when it ruled not to dismiss the PDIC's appeal based on the said ground.

Anent the third error raised by petitioners, the same is again without merit. Petitioners argue that the PDIC's record of appeal is defective for failure to state (1) when the notice of appeal was filed; (2) when the appellate court and docket fees were paid; and (3) when the record on appeal was filed. Moreover, petitioners argue that the PDIC did not include a copy of the May 25, 2006 RTC Order approving the Record of Appeal. Petitioners thus theorize that the PDIC violated Section 6,[55] Rule 41 of the Rules of Court and that the same warrants dismissal under Section 1 (a) of Rule 50.

Section 1 (a) reads:

Sec. 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:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;[56]

To stress, the CA ruled that "the Record on Appeal, consisting of seven (7) thick voluminous folders and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the court a quo and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees." Moreover, the RTC found that both the notice of appeal and record on appeal were filed within the reglementary period provided by law.

The findings of the CA that the PDIC substantially complied with the requirements for an appeal must be respected. There can be no grave abuse of discretion attributed to it more so since the grounds for dismissing an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. This can be gleaned from the very language of the Rules which uses the word *may* instead of *shall*. In *De Leon v. Court of Appeals*,[57] we held that Section 1, Rule 50, which provides specific grounds for dismissal of appeal, manifestly "confers a power and does not impose a duty. Moreover, it is directory, not mandatory." With the exception of Section 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal.[58] Based on the RTC's findings as well as its own independent assessment of the PDIC's appeal, it was discretionary on the CA whether or not to dismiss the appeal. In ruling to accept the PDIC's appeal, such action does not constitute capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

Lastly, petitioners would have this Court apply the jurisprudence enunciated in *Lamzon v. NLRC* (*Lamzon*),[59] *Antonio v. Comelec* (*Antonio*)[60] and *Pet Plans, Inc. v. Court of Appeals* (*Pet Plans*),[61] however, a perusal of the said decisions would show that the same are not at fours with herein petition. In *Lamzon*, the appeal filed was not perfected within the reglementary period because the appeal bond was filed out of time. In *Antonio*, the appeal was dismissed for having been filed out of time under *Comelec* rules. In *Pet Plans*, the appeal was dismissed for failure to comply with the rules on verification and certificate of non-forum shopping. The present petition, on the other hand, involves substantial compliance to the form and contents of the notice of appeal and record on appeal. The decisions relied upon by petitioners, therefore, have no application to herein petition.

In sum, this Court finds that the CA did not act with grave abuse of discretion when it denied petitioners motion to dismiss. In the absence of abuse of discretion, interlocutory orders such as a motion to dismiss are not the proper subject of a petition for certiorari. Time and again, this Court has ruled that dismissal of appeals on purely technical grounds is not encouraged. The rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. When a rigid application of the rules tends to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.[62]

WHEREFORE, premises considered the petition is DISMISSED. The July 6, 2007 Resolution and October 24, 2007 Resolution of the Court of Appeals, in CA-G.R. CV No. 00824, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ. concur.

[1] Rollo, pp. 4-46.

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring; id. at 53-55.

[3] Id. at 58-62.

[4] Rollo, p. 93.

[5] Id. at 94.

[6] Id. at 87- 92.

[7] Id. at 95.

[8] Id. at 96.

[9] Id. at 98-110.

[10] Id. at 111.

[11] Id. at 112.

[12] Id. at 115-123.

[13] Records, Volume II, pp. 206-208.

[14] Rollo, pp. 125-126.

[15] Id. at 154-169.

[16] See Schedule of Trust Funds; records, p. 985.

[17] Rollo, pp. 206-212.

[18] Substituted by Atty. Victor Nicasio Torres and Dr. Guillermo P. Torres; See rollo, pp. 361-364.

[19] Rollo, pp. 221-223.

[20] Id. at 225-226.

[21] Records, p. 1137.

[22] Based on the Decision of RTC, Branch 8, Davao City in "Felix Gonzales vs. D.S. Homes, Inc. Mindanao Savings and Loan Association and Francisco Villamor"; Docketed as Civil Case No. 20, 168-90; Amounting to P965,924. 43.

[23] Amounting to P2,965,834.25.

[24] Amounting to P15,120.38.

[25] Rollo, pp. 231-240.

[26] Id. at 239-240.

[27] Id. at 241-242.

[28] Records, p. 1802.

[29] Id. at 1804-1808.

[30] Id. at 1822.

[31] See Records, Volume I, with Annexes.

[32] CA rollo, pp. 528-529.

[33] Id. at 528.

[34] Rollo, pp. 494-495.

[35] Id. at 494.

[36] Id. at 249.

[37] Id. at 250-252.

[38] Id. at 253-256.

[39] SEC. 4. Docketing of case. - Upon receiving the original record or the record on appeal and the accompanying documents and exhibits transmitted by the lower court, as well as the proof of payment of the docket and other lawful fees, the clerk of court of the Court of Appeals shall docket the case and notify the parties thereof.

Within ten (10) days from receipt of said notice, the appellant, in appeals by record on appeal, shall file with the clerk of court seven (7) clearly legible copies of the approved record on appeal, together with the proof of service of two (2) copies thereof upon the appellee.

Any unauthorized alteration, omission or addition in the approved record on appeal shall be a ground for dismissal of the appeal."

[40] SEC. 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

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in section 4 of Rule 44.

[41] Rollo, pp. 257-258.

[42] Id. at 260-269.

[43] Id. at 55.

[44] Id. at 345-347.

[45] Id. at 18-19.

[46] Santiago Land Development Co. v. Court of Appeals, 328 Phil. 38, 44 (1996).

[47] Lee v. People, 441 Phil. 705, 713-714 (2002).

[48] *Solvic Industrial Corporation v. NLRC*, G.R. No. 125548, September 25, 1998, 296 SCRA 432, 441.

[49] *Mendoza v. David*, 484 Phil. 128, 137 (2004).

[50] *La Campana Development Corporation v. See*, G.R. No. 149195, June 26, 2006, 492 SCRA 584, 590.

[51] *Rollo*, pp. 28-29.

[52] *Id.* at 24.

[53] *Id.* at 54-55.

[54] *Records*, pp. 463-465.

[55] Sec. 6. Record on appeal; form and contents thereof. - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the judgment or final order from which the appeal is taken and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed judgment or final order for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, testimonial and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the testimonial evidence by the names of the corresponding witnesses. If the whole testimonial and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index.

[56] Underscoring supplied.

[57] 432 Phil. 775, 789 (2002).

[58] *Id.* at 230.

[59] 373 Phil. 680 (1999).

[60] 486 Phil. 112 (2004).

[61] G.R. No. 148287, November 23, 2004, 443 SCRA 510.

[62] *Heirs of Victoriana Villagrancia v. Equitable Banking Corporation*; G.R. No. 136972, March 28, 2008, 550 SCRA 60, 69.

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