

SPOUSES AMADO O. IBAÑEZ AND ESTHER A. RAFAEL-IBAÑEZ, PETITIONERS, VS. REGISTER OF DEEDS OF MANILA AND CAVITE AND PHILIPPINE VETERANS BANK (PVB), RESPONDENTS.

G.R. No. 192500. February 02, 2011

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-192500/>

NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Resolutions dated July 23, 2009[1] and December 15, 2009[2] in CA-G.R. CV No. 92007.

The case originated from a petition for Injunction and Damages with Prayer for Preliminary Injunction and/or Temporary Restraining Order filed by petitioners, Spouses Amado O. Ibañez and Esther A. Rafael-Ibañez, against respondent Philippine Veterans Bank (PVB), before the Regional Trial Court (RTC), Branch 20, Imus, Cavite. The case was docketed as R.T.C. No. 2563-02. The RTC decided against petitioners, who eventually elevated the case to the CA via a Notice of Appeal. The appeal was docketed as CA-G.R. CV No. 92007.

In a Notice[3] of the CA dated February 23, 2009, petitioners and their counsel were required to file their appellants' brief within 45 days from receipt of the Notice.

On May 8, 2009, the CA issued a Resolution[4] which states that:

The returned copy of this Court's Notice to File Brief dated February 23, 2009 addressed to Ibañez & Zerrudo Law Office was returned to this Court with the postal notation "NOBODY TO RECEIVE." The Judicial Records Division is ORDERED to resend copy of the said Notice of Resolution to the aforementioned law office within five (5) days from receipt hereof.

Thereafter, the appellate court issued another Resolution[5] dated July 23, 2009, the pertinent portions of which read:

- The copy of the Resolution dated February 23, 2009 addressed to plaintiffs-appellants' counsel Ibañez Zerrudo Law Office returned to this Court on 08 May 2009 with postal notation "Nobody to Receive" is NOTED.
- Plaintiffs-appellants' Urgent Motion for Issuance of Writ of Preliminary Injunction and or Temporary Restraining Order against the issuance of a writ of possession is DENIED considering that an order for a writ of possession issues as a matter of course, pursuant to R.A. 3135, as amended.
- Per Judicial Records Division's (JRD) report dated 10 June 2009 NO APPELLANTS' BRIEF has been filed as per docket book entry despite receipt by defendants-appellants themselves on 12 March 2009 of the Notice to File Brief, the instant appeal is considered ABANDONED and accordingly DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.[6]

Aggrieved, petitioners filed an Urgent Motion for Reconsideration and Motion to Admit Appellants' Brief.[7] They explained that they and their counsel could not have received a copy of the Notice sent by the court because

their counsel, together with his secretary, was then on official business in Iloilo City, and that their law office in Malate, Manila was under renovation.

In a Resolution[8] dated December 15, 2009, the appellate court denied petitioners' motion. The CA reiterated that petitioners received the Notice to file appellants' brief on March 12, 2009. It also explained that though the Notice was given to petitioners themselves, it was a sufficient notice to counsel since petitioner Amado Ibañez is one of the members of the law firm representing petitioners. Lastly, the court held that the fact that petitioners' counsel and his secretary were out of town and that their law office was under renovation at the time could not justify their failure to file the appellants' brief.

Petitioners now come before this Court insisting on the admission of their appellants' brief, though belatedly filed, considering that they did not receive the Notice to file the same. They point out that it was impossible for them to receive the Notice since it was sent not to the residential address of petitioners but to PVB's counsel at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. In this connection, they impute fraud on the part of PVB for receiving the Notice addressed to petitioners and for making it appear that it was so received by signing the registry return card. They also accuse the staff of the CA, especially those of the Judicial Records Division (JRD), of taking part in the commission of fraud by deliberately sending the Notice to the wrong address.[9]

In its Comment,[10] PVB confirms that the Notice to File Appellants' Brief contained the following addresses:

Ibañez and Zerrudo Law Office
2370 Singalong Street
Cor. Dagonoy, Malate
1000 Manila (reg. w/ ret. card)
Sps. Amado O. Ibañez and

Esther A. Rafael-Ibañez
101 Herrera cor. Dela Rosa Sts.
Legaspi Village
1200 Makati City (reg. w/ ret. card)[11]

PVB contends that the Notice was sent to petitioners' counsel's address, only that, there was nobody to receive the same. As to the wrong address of petitioners where the CA Notice was sent, PVB blames petitioners for using different addresses in their various pleadings filed in court. Thus, PVB insists that there was no justification for the belated filing of the appellants' brief.

We grant the petition.

The sole issue for resolution is the propriety of the dismissal of petitioners' appeal for their failure to file the appellants' brief within the reglementary period.

It is noteworthy that the dismissal of petitioners' appeal was based on the JRD's report that no appellants' brief has been filed despite receipt by petitioners themselves of the Notice sent by the appellate court. The CA thus considered the appeal abandoned, and accordingly dismissed the same. Upon receipt of the Resolution dismissing their appeal, petitioners moved for reconsideration and explained that no appellants' brief was filed as they had not received the CA Notice to file their brief. The CA, however, sustained its earlier Resolution on the mistaken belief that the Notice addressed to petitioners was received by the addressees in the ordinary course of mail as shown by the registry return card.

It appears from the records that the CA overlooked material and substantial facts which warrant the reversal of its

assailed resolutions. First, it is undisputed that a Notice to file brief was sent by the CA to petitioners' counsel of record. However, that Notice was returned to the court with the notation "Nobody to Receive." This is the reason why the CA directed the JRD to resend the same to the law firm. Yet, no notice was resent to the counsel. Second, instead of sending the Notice to the counsel in the law firm's address, the JRD sent it to petitioners themselves, but to a wrong address. Not only was the Notice sent to an address which was not petitioners', but it was sent to the address of PVB's counsel. In its December 15, 2009 Resolution, the CA ratified such act of the JRD, ratiocinating that Amado Ibañez is a member of the law firm representing petitioners and, thus, notice to him was already notice to counsel. Lastly, relying on the JRD's report that petitioners themselves received the Notice and that they failed to file the required appellants' brief within 45 days from receipt of the Notice, the CA dismissed the appeal. As claimed by petitioners and as admitted by PVB, the Notice addressed to petitioners was wrongly sent to PVB's counsel's address at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. This latter fact was further shown by the Certification[12] issued by the Makati Central Post Office. It is obvious from the resolutions of the CA that the above address is that of PVB's counsel and not that of petitioners'. Accordingly, both petitioners and their counsel were not served a copy of the Notice to file brief. Thus, the 45-day period within which to file appellants' brief had not commenced to run.

Indeed, the failure to file appellants' brief within the period granted by the appellate court results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.[13] However, since it was duly proven that neither petitioners nor their counsel actually received the Notice to file brief sent by the CA, there was no abandonment of the appeal. The CA has, therefore, erred in dismissing petitioners' appeal.

One final note. We cannot help but be disturbed by the carelessness exhibited by the CA, particularly the JRD, in the sending of notices to parties. We call the attention of the CA to take to heart what this Court said in *Heirs of Juan Valdez v. Court of Appeals*: [14]

Had the CA exercised due care and attention in the performance of [its] duties, the present petition would have been avoided. Truly, as public officers, we are bound by our oath to bring to the discharge of our duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs. To do less affects not only the substance of our actions, but the all important perception of the public we serve of the kind of justice we dispense. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the people manning the courts - from the justices, judges, the clerks of court, to the lowest-ranked personnel. It is the duty of each one of us to maintain the judiciary's good name and standing as a true temple of justice.[15]

We also deplore and must express our disappointment at the total lack of candor of the counsel for PVB. By not informing the CA that its office had received the Notice intended for petitioners because of the erroneous address, counsel for PVB had displayed conduct bordering on bad faith - and had contributed to the undue delay in the disposition of this case.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Court of Appeals Resolutions dated July 23, 2009 and December 15, 2009 in CA-G.R. CV No. 92007 are REVERSED and SET ASIDE. The case is REMANDED to the Court of Appeals for proper proceedings.

SO ORDERED.

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

[1] Rollo, p. 6.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr., concurring; *id.* at 16-17.

[3] *Id.* at 54.

[4] *Id.* at 121.

[5] *Supra* note 1.

[6] Emphasis supplied.

[7] Rollo, pp. 7-12.

[8] *Supra* note 2.

[9] *Id.* at 31-38.

[10] *Id.* at 110-119.

[11] *Id.* at 115.

[12] *Id.* at 90.

[13] *Tamayo v. Court of Appeals*, 467 Phil. 603, 608 (2004).

[14] G.R. No. 163208, August 13, 2008, 562 SCRA 89.

[15] *Id.* at 101-102.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.