

FIRST DIVISION

[G.R. NO. 169420, September 22, 2006]

**ATTY. ERLANDO A. ABRENICA, PETITIONER, VS. LAW FIRM OF
ABRENICA, TUNGOL AND TIBAYAN, DANILO N. TUNGOL AND
ABELARDO M. TIBAYAN, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court seeks to set aside the Court of Appeals' Resolution^[1] dated June 29, 2005 in CA- G.R. SP No. 90076, denying petitioner's Motion for Leave of Court to Admit Attached Petition for Review, and the Resolution^[2] dated August 23, 2005 denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

Petitioner Atty. Erlando A. Abrenica was a partner of individual respondents, Attys. Danilo N. Tungol and Abelardo M. Tibayan, in the Law Firm of Abrenica, Tungol and Tibayan ("the firm").

In 1998, respondents filed with the Securities and Exchange Commission (SEC) two cases against petitioner. The first was SEC Case No. 05-98-5959, for Accounting and Return and Transfer of Partnership Funds With Damages and Application for Issuance of Preliminary Attachment,^[3] where they alleged that petitioner refused to return partnership funds representing profits from the sale of a parcel of land in Lemery, Batangas. The second was SEC Case No. 10-98-6123,^[4] also for Accounting and Return and Transfer of Partnership Funds where respondents sought to recover from petitioner retainer fees that he received from two clients of the firm and the balance of the cash advance that he obtained in 1997.

The SEC initially heard the cases but they were later transferred to the Regional Trial Court of Quezon City pursuant to Republic Act No. 8799,^[5] which transferred jurisdiction over intra-corporate controversies from the SEC to the courts. In a Consolidated Decision^[6] dated November 23, 2004, the Regional Trial Court of Quezon City, Branch 226, held that:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

CIVIL CASE NO. Q01-4294

1. Ordering the respondent Atty. Erlando Abrenica to render full accounting of the amounts he received as profits from the sale and resale of the Lemery property in the amount of P4,524,000.00;

2. Ordering the respondent Atty. Erlando Abrenica to remit to the law firm the said amount of P4,524,000.00 plus interest of 12% per annum from the time he received the same and converted the same to his own personal use or from September 1997 until fully paid; and
3. To pay the costs of suit.

CIVIL CASE NO. Q01-42959

1. Ordering Atty. Erlando Abrenica to render a full accounting of the amounts he received under the retainer agreement between the law firm and Atlanta Industries Inc. and Atlanta Land Corporation in the amount of P320,000.00.
2. Ordering Atty. Erlando Abrenica to remit to the law firm the amount received by him under the Retainer Agreement with Atlanta Industries, Inc. and Atlanta Land Corporation in the amount of P320,000.00 plus interests of 12% per annum from June 1998 until fully paid;
3. Ordering Atty. Erlando Abrenica to pay the law firm his balance on his cash advance in the amount of P25,000.00 with interest of 12% per annum from the date this decision becomes final; and
4. To pay the costs of suit.

SO ORDERED.^[7]

Petitioner received a copy of the decision on December 17, 2004. On December 21, 2004, he filed a notice of appeal under Rule 41 and paid the required appeal fees.^[8]

Two days later, respondents filed a Motion for Issuance of Writ of Execution^[9] pursuant to A.M. 01-2-04-SC,^[10] which provides that decisions in intra-corporate disputes are immediately executory and not subject to appeal unless stayed by an appellate court.

On January 7, 2005, respondents filed an Opposition (To Defendant's Notice of Appeal)^[11] on the ground that it violated A.M. No. 04-9-07-SC^[12] prescribing appeal by certiorari under Rule 43 as the correct mode of appeal from the trial court's decisions on intra-corporate disputes.

Petitioner thereafter filed a Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal)^[13] and an Opposition^[14] to respondents' motion for execution.

On May 11, 2005, the trial court issued an Order^[15] requiring petitioner to show cause why it should take cognizance of the notice of appeal in view of A.M. No. 04-9-07-SC. Petitioner did not comply with the said Order. Instead, on June 10, 2005, he filed with the Court of Appeals a Motion for Leave of Court to Admit Attached Petition for Review Under Rule 43 of the Revised Rules of Court.^[16] Respondents opposed the motion.^[17]

The Court of Appeals denied petitioner's motion in its assailed Resolution dated June 29, 2005 and held:

In this case, when the lower court rendered its decision and when the petitioner erroneously filed his notice of appeal, the aforesaid Resolution of the Supreme Court was already in full force and effect. Petitioner's counsel could not validly invoke his previous resort to the remedy of notice of appeal in a case, which was allegedly of similar nature as this instant case, before the same branch of the lower court, which was allegedly given due course by this Court, because when petitioner's counsel filed an appellee's brief before this Court on September 6, 2004 in CA-G.R. CV No. 78179, the aforesaid Supreme Court Resolution was not yet promulgated and effective. Worse, the petition for review was filed beyond the reglementary period.

Moreover, paragraph 3 of said resolution applies to pending appeals, which were taken prior to the effectivity of the said resolution.

It is incumbent upon counsel to familiarize himself with the procedural rules designed to settle pending legal disputes and controversies in an orderly and expeditious manner.

This Court is not unaware that "excusable negligence" and "oversight" have become an all too familiar and ready excuse on the part of the counsels remiss in their bounden duty to comply with established rules.

Besides, the order of the lower court to show cause why the notice of appeal should be given due course has not been complied with. Hence, there is still a pending issue with the lower court.

WHEREFORE, in view of the foregoing, the motion is DENIED, the attached petition for review is DENIED ADMISSION, and this case is hereby ordered DISMISSED.

SO ORDERED.^[18]

The Court of Appeals also denied petitioner's motion for reconsideration in its August 23, 2005 Resolution.

Hence, this petition,^[19] raising the following issues:

A

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED IN THE APPRECIATION OF THE LAW AND APPLICABLE JURISPRUDENCE IN ITS ASSAILED RESOLUTION (ANNEX "B" AND "C") DENYING ADMISSION OF PETITIONER'S PETITION FOR REVIEW AND DISMISSING COMPLETELY THE CASE.

B

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT TOTALLY DISREGARDED THE EVENTS OR FACTS AND CIRCUMSTANCES THAT TRANSPIRED BEFORE THE TRIAL COURT, PRIOR TO THE FILING OF THE

MOTION FOR LEAVE OF COURT TO ADMIT PETITION FOR REVIEW WHICH WOULD JUSTIFY ITS ADMISSION BASED ON LAW AND APPLICABLE JURISPRUDENCE.

C

THE HONORABLE COURT OF APPEALS MANIFESTLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT TOTALLY IGNORED AND DISREGARDED THE VERY MERITORIOUS, VALID AND LEGAL GROUNDS RAISED IN THE PETITION FOR REVIEW ASSAILING THE CONSOLIDATED DECISION OF THE LOWER COURT.^[20]

In their comment,^[21] respondents insist that the trial court's consolidated decision had already become final and executory and no longer subject to appellate review; and that having been guilty of gross neglect, petitioner cannot invoke liberal construction of the rules for to do so would subvert the proceedings below.

The only issue in this case is whether the Court of Appeals erred in refusing to admit petitioner's petition for review.

The petition lacks merit.

Petitioner invokes liberal construction of the rules in seeking reversal of the assailed resolutions. He alleges that his appeal was not filed late but that he only resorted to the wrong mode of appeal; that realizing his error, he immediately filed the Motion For Leave to Admit Petition for Review; that his notice of appeal had the effect of tolling the period of perfecting his appeal under Rule 43 of the Rules of Court; that although unaware of A.M. No. 04-9-07-SC, he appealed four days after receiving the consolidated decision through a notice of appeal, thus showing his "sincerity" in appealing the decision.

We find no compelling reasons to relax the stringent application of the rules in this case. The following circumstances militate against petitioner's position:

First, when petitioner received the trial court's consolidated decision on December 16, 2004, A.M. No. 04-9-07-SC was already in effect for more than two months.

Second, petitioner had known about the new rules on the second week of January, 2005 when he received a copy of respondents' Opposition (To Defendant's Notice of Appeal) dated January 6, 2005. In their opposition, respondents specifically pointed to the applicability of A.M. No. 04-9-07-SC to the instant case.

Third, petitioner originally insisted in his Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal) that the correct mode of appeal was a "notice of appeal."^[22]

Petitioner reiterated in his Opposition^[23] to respondents' motion for execution dated January 14, 2005 that a notice of appeal was the correct remedy.

Finally, petitioner filed his Motion to Admit Attached Petition for Review only on