

SECOND DIVISION

[G.R. No. 174982, September 10, 2012]

**JOSE VICENTE ATILANO II, HEIRS OF CARLOS V. TAN
REPRESENTED BY CONRAD K. TAN, CARLOS K. TAN, CAMILO
KARL K. TAN, CARISA ROSENDA T. GO, NELIDA F. ATILANO AND
ISIDRA K. TAN, PETITIONERS, VS. HON. JUDGE TIBING A.
ASAALI, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
ZAMBOANGA CITY AND ATLANTIC MERCHANDISING, INC.,
RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

This Petition for Review on Certiorari assails the May 27, 2005 Resolution^[1] and September 6, 2006 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00231 which dismissed the petition for certiorari filed by petitioners Jose Vicente Atilano II, Heirs of Carlos V. Tan represented by Conrad K. Tan, Carlos K. Tan, Camilo Karl K. Tan, Carisa Rosenda T. Go, Nelida F. Atilano and Isidra K. Tan for failure to comply with the rules of procedure.

The Factual Antecedents

Sometime in January 1990, private respondent Atlantic Merchandising, Inc. filed an action for revival of judgment against Zamboanga Alta Consolidated, Inc. (ZACI) before the Regional Trial Court (RTC) of Zamboanga City, Branch 17, docketed as Civil Case No. 3776. In its January 31, 1991 Decision, the RTC revived the judgment in Civil Case No. 3049 and ordered ZACI to pay private respondent the amount of P673,536.54 representing its principal obligation, interest, attorney's fees and costs, plus 12% legal interest *per annum* computed from the time of the filing of the complaint until the same is fully paid. ZACI was likewise directed to pay private respondent attorney's fees equivalent to 15% of the unpaid amount as well as expenses of litigation and costs.

A writ of execution was issued to enforce the RTC's January 31, 1991 Decision but because it was returned unsatisfied, private respondent sought the examination of ZACI's debtors, which included petitioners as its stockholders. In the course of the proceedings, petitioners denied liability for any unpaid subscriptions with ZACI and offered various documentary evidence to support their claim.

The RTC Ruling

In the proceedings before the RTC, petitioners offered official records from the Securities and Exchange Commission (SEC) which revealed the following information^[3] as of **February 20, 1988** with respect to ZACI's incorporators, their

respective subscriptions:

<u>Name</u>	<u>Amount Subscribed</u>	<u>Amount Paid-in</u>
Jose Vicente F. Atilano II	P300,000.00	P75,000.00
Carlos F. Tan	150,000.00	37,500.00
Arthur M. Lopez	150,000.00	37,500.00
Nelida F. Atilano	150,000.00	37,500.00
Isidra K. Tan	150,000.00	37,500.00
Mauro Tan	100,000.00	25,000.00

However, the RTC noted^[4] that ZACI had folded up and ceased business operations as early as **1983**, and when inquiries regarding its paid-in capital were made in **1992**, or almost ten (10) years later, no changes were reflected in the company books.

Finding petitioners to be indebted to ZACI as its incorporators in the aggregate amount of P750,000.00 by way of unpaid stock subscriptions on the basis of the records of the SEC, the RTC, in its September 29, 2004 Decision,^[5] ordered petitioners to settle their obligations to the capital stock of ZACI.

Petitioners' motion for reconsideration was denied in the RTC's December 9, 2004 Order.^[6]

The CA Ruling

Aggrieved, petitioners filed a petition for *certiorari* before the appellate court, imputing grave abuse of discretion upon the RTC for failing to consider Section 43, Rule 39 of the Revised Rules of Court which substantially provides for the proceedings that should be conducted when a third person allegedly indebted to a judgment debtor denies the debt. However, the CA dismissed^[7] their petition outright on the following grounds: (1) failure to attach certified true copies of the assailed RTC Decision and Order; (2) only three out of four petitioners signed the verification and certification of non-forum shopping; (3) the IBP Official Receipt Number of the counsel for petitioners was outdated, violating Bar Matter No. 287; and (4) deficiency in the docket and other fees in the sum of P1,530.00.

Petitioners sought reconsideration of the dismissal of their petition and substantially complied with the procedural defects enumerated. However, in its September 6, 2006 Resolution,^[8] the CA, while acknowledging petitioners' compliance with the technical defects of their petition, nonetheless, denied petitioners' motion for reconsideration, finding that the payment of the deficiency in the docket fee was made beyond the reglementary period.

Issues Before The Court

In this petition for review, petitioners maintain that the CA's outright dismissal of their petition on procedural grounds, despite substantial compliance, and the RTC Decision directing them to pay private respondent the amount of their alleged unpaid stock subscriptions to ZACI, are tantamount to a denial of due process of

law.

The Court's Ruling

The petition has merit.

Payment of the full amount of docket fees is an indispensable step to the perfection of an appeal, and the Court acquires jurisdiction over any case only upon such payment.^[9] Corollary to this, the Court has consistently held that procedural rules are not to be disregarded simply because their non-observance may result in prejudice to a party's substantive rights.^[10]

However, these same rules may be relaxed, for persuasive and weighty reasons, to relieve a litigant of an injustice commensurate with his failure to comply with procedure.^[11] Thus, in *La Salette College v. Pilotin*,^[12] the Court explained:

Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first*, failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

After a judicious perusal of the records, the Court finds that compelling and substantial reasons exist in this case as to justify the relaxation of procedural rules.

Records show that petitioners merely became involved in this case when, upon failure to execute the revived final judgment in its favor in Civil Case No. 3776, respondent sought to examine the debtors of ZACI, the judgment obligor, which included petitioners on the allegation that they had unpaid stock subscriptions to ZACI, as its incorporators and stockholders. During the proceedings, petitioners *vehemently denied* any such liability or indebtedness.

Under the circumstances, therefore, the RTC should have directed respondent to institute a separate action against petitioners for the purpose of recovering their alleged indebtedness to ZACI, in accordance with Section 43, Rule 39 of the Rules of Court, which provides:

Section 43. *Proceedings when indebtedness denied or another person claims the property.* – If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such