

FIRST DIVISION

[G.R. No. 170728, August 31, 2011]

**D. M. WENCESLAO AND ASSOCIATES, INC., PETITIONER, VS.
CITY OF PARAÑAQUE, PARAÑAQUE CITY ASSESSOR,
PARAÑAQUE CITY TREASURER AND PARAÑAQUE CITY COUNCIL,
RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Challenged in this petition for review on certiorari are the October 15, 2004 and November 24, 2005 Resolutions^[1] of the Court of Appeals (CA) in CA-G.R. CV UDK No. 9532-D. The CA dismissed the appeal of D.M. Wenceslao and Associates, Inc. from the Order^[2] of the Regional Trial Court (RTC) of Parañaque City in Civil Case No. 03-048 for nonpayment of docket and other lawful fees.

The facts are as follows:

Petitioner D.M. Wenceslao and Associates, Inc. is a domestic corporation engaged in the construction business. It is the registered owner of more than 200,000 square meters of reclaimed land in Barangay Tambo, Parañaque City, now known as the Aseana Business Park.

In 1996, the City of Parañaque passed Ordinance No. 96-16, providing for the market values of the properties within its jurisdiction as basis for assessment and real property taxation. The ordinance also provided for a discount of 70% of the base value of the developed lots in the area, for low, sunken and undeveloped parcels of land, such as the lots reclaimed and owned by petitioner.

The City Assessor of Parañaque, however, assessed petitioner's lots based on the rates applicable to Barangay Baclaran, which rates were higher than those applicable to properties in Barangay Tambo. Petitioner informed the City Assessor of the wrongful assessment in 1998; hence, starting on the 3rd quarter of 1998, the Tambo rates were used, although petitioner claimed that the discount provision in the ordinance was still not applied.

Subsequently, the City Treasurer declared petitioner's properties delinquent and included them in the auction sale scheduled on February 7, 2003. On February 4, 2003, petitioner filed with the RTC of Parañaque City a Complaint^[3] for collection of excess real property taxes and damages with prayer for the issuance of a temporary restraining order and/or preliminary injunction seeking to restrain respondents from enforcing the foreclosure sale. The RTC denied petitioner's prayer for the issuance of a writ of preliminary injunction. Thus, to prevent its properties from being auctioned, petitioner paid under protest the amount of P101,422,581.75 on

February 7, 2003.^[4] Said payment brought the total amount of real property taxes paid by petitioner to P111,424,157.10 for the taxable years 1995 to 2002.

On March 20, 2003^[5] petitioner amended its complaint. Essentially, petitioner argued that had the correct assessment been made, it should have paid only P6,172,979.51^[6] instead of P111,424,157.10^[7] to the City of Parañaque. Petitioner argued that pursuant to Ordinance No. 96-16, the properties located in Barangay Tambo should have been assessed based on the market value of P3,000.00 for the years 1995 to 1996 and P4,000.00 for the years 1997 to 1999. However, the City Assessor used the market value applicable to properties located in Barangay Baclaran, which were subject to a higher rate. Petitioner also pointed out that the ordinance provided that undeveloped parcels of land shall have 70% of the base value of the nearest developed or improved lots located in that area. Thus, petitioner claimed that the City of Parañaque is liable to return the excess realty taxes under the principle of *solutio indebiti*.

Respondents filed a motion to dismiss based on the following grounds: (1) the cause of action is barred by prior judgment or by the statute of limitations; (2) the court has no jurisdiction over the subject matter of the claim; and (3) the complaint is filed in violation of the rule on forum shopping. Respondents contended that petitioner's cause of action based on *solutio indebiti* is in reality a smoke screen to its real intention which is to claim for tax refund. As such, petitioner's action has already prescribed pursuant to the provisions of the Local Government Code.

On November 20, 2003, the RTC issued an Order granting the motion to dismiss. It found that petitioner's cause of action was really based on Section 253^[8] of the Local Government Code. As such, petitioner's cause of action had already prescribed inasmuch as the allegations in the complaint show that the alleged overpayment of real property tax occurred in 1995-1999 and 2001-2002 while the complaint was only filed in February 4, 2003. Moreover, the RTC ruled that the action to undo the alleged wrong tax assessments and collections in order to ask for refund would make the court do a technical job reserved for special administrative bodies like the Local Board of Assessment Appeals and the Central Board of Assessment Appeals.

Petitioner sought reconsideration of the order, but its motion was denied by the RTC on May 4, 2004.^[9]

On May 17, 2004, petitioner filed a Notice of Appeal,^[10] which was approved by the RTC on May 24, 2004.^[11] Accordingly, the Branch Clerk of Court was directed to transmit the entire records of the case to the CA.

As earlier mentioned, the CA dismissed petitioner's appeal in a Resolution dated October 15, 2004, to wit:

For failure of plaintiff-appellant to pay the required docketing fees, the appeal interposed in this case is deemed abandoned and is accordingly DISMISSED.

SO ORDERED.^[12]

Petitioner filed a motion for reconsideration^[13] alleging that it never intended to abandon its appeal. It explained that because of extremely heavy workload and by excusable inadvertence, petitioner's counsel overlooked the fact that the required appeal fee was not paid at the time of the filing of the notice of appeal. Petitioner also informed the CA that its counsel had already paid the appeal fee of P3,000 on October 20, 2004.

In a Resolution dated November 24, 2005, the CA denied petitioner's motion for reconsideration, thus:

WHEREFORE, plaintiff-appellant's motion for reconsideration is DENIED for lack of sufficient merit.

SO ORDERED.^[14]

The CA held that it could no longer reconsider the October 15, 2004 Resolution considering that the appealed dismissal order of the trial court has become final and executory due to petitioner's failure to perfect the appeal by paying the docket fees on time. It explained that although there are recognized circumstances that warrant the relaxation of the rules on payment of docket fees, such as fraud, accident, mistake, excusable negligence, or a similar supervening casualty, the heavy workload and inadvertence of counsel are not among them. The CA also noted that in this case, petitioner was delayed in the payment of the docket fees for five months counted from the filing of the notice of appeal. Finding no justifiable reason for such delay, the CA ruled that it can no longer accept such payment.

Undaunted, petitioner filed the instant petition before this Court.

The sole issue for our resolution is whether the CA erred in dismissing petitioner's appeal for late payment of docket fees.

Petitioner contends that it immediately paid the appeal fee of P3,000 on October 20, 2004 after having been advised of its nonpayment, and such action negates the theory that it intended to abandon its appeal. Petitioner adds that it would not abandon its case to recover the amount of P105,251,177.59 especially after it had paid P2,111,914.30 in docket and other legal fees. Petitioner argues that the court, in the exercise of its equity jurisdiction and liberally applying the rules of procedure, may give due course to the appeal despite its failure to pay the docket fees within the reglementary period.

On the other hand, respondents counter that petitioner failed to perfect its appeal. They stress that under Section 4, Rule 41 of the 1997 Rules of Civil Procedure, as amended, petitioner should have paid the appellate docket fees within the period to appeal or within fifteen (15) days from notice of the judgment appealed from. Moreover, the payment of appellate docket and other legal fees within the prescribed period is both mandatory and jurisdictional. Since the payment of the docket fees was made more than one-hundred fifty (150) days after the expiration of the period for the perfection of an appeal, the CA did not acquire jurisdiction over the case except to order its dismissal.

We agree with respondents' contention.

The rule that appellate court docket and other lawful fees must be paid within the period for taking an appeal is stated in Section 4, Rule 41 of the 1997 Rules of Civil Procedure, as amended:

SEC. 4. *Appellate court docket and other lawful fees.* - Within the period for taking an appeal, the appellant shall pay to the clerk of the court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

Likewise, Section 3, Rule 41, of the same Rules state:

SEC. 3. *Period of ordinary appeal, x x x.* - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x

x x x x

In this case, petitioner received a copy of the trial court's Order on May 14, 2004. Thus, pursuant to Section 3, Rule 41, in relation to Section 1,^[15] Rule 22, it had until May 31, 2004 within which to perfect its appeal by filing within that period the notice of appeal and paying the appellate docket and other legal fees. On May 17, 2004, petitioner filed its notice of appeal within the reglementary period. We note, however, that it paid the required docket fees only on October 20, 2004, or late by almost five months.

It bears stressing that payment of docket and other fees within this period is mandatory for the perfection of the appeal. Otherwise, the right to appeal is lost. This is so because a court acquires jurisdiction over the subject matter of the action only upon the payment of the correct amount of docket fees regardless of the actual date of filing of the case in court. The payment of appellate docket fees is not a mere technicality of law or procedure. It is an essential requirement, without which the decision or final order appealed from becomes final and executory as if no appeal was filed.^[16]

We held in one case that the CA correctly dismissed the appeal where the docket fees were not paid in full within the prescribed period of fifteen (15) days but were paid forty-one (41) days late due to inadvertence, oversight, and pressure of work.^[17] In another case, we ruled that no appeal was perfected where half of the appellate docket fee was paid within the prescribed period, while the other half was tendered after the period within which payment should have been made.^[18]