

## FIRST DIVISION

[ G.R. No. 174193, December 07, 2011 ]

**SAMUEL JULIAN, REPRESENTED BY HIS ATTORNEY-IN-FACT,  
ROBERTO DELA CRUZ, PETITIONER, VS. DEVELOPMENT BANK OF  
THE PHILIPPINES AND THE CITY SHERIFF, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

The requirement of an appeal fee is not a mere technicality of law or procedure and should not be disregarded without the most compelling of reasons.

Before us is a Petition for Review on *Certiorari* [1] of the Resolution [2] of the Court of Appeals (CA) in CA-G.R. CV No. 00240 dated April 12, 2005 which dismissed petitioner's appeal as follows:

Considering that per JRD Report dated March 30, 2005, the appellant failed to pay the required docket and other lawful fees, the instant Appeal is hereby DISMISSED pursuant to Section [1](c) Rule 50 of the 1997 Rules of Civil Procedure.

SO ORDERED. [3]

Also assailed is the CA's Resolution [4] dated July 27, 2006 which denied the Motion for Reconsideration thereto.

Petitioner seeks to reverse the aforesaid Resolutions of the CA and direct the latter to admit the payment for the docket fees enclosed in his Motion for Reconsideration [5] so that his appeal may be given due course, or, in the alternative, to remand the case to the court a quo for further proceedings.

#### ***Factual Antecedents***

This case stemmed from a Real Estate Mortgage [6] executed by Thelma Julian (Thelma), mother of herein petitioner Samuel Julian, over a property situated in Fuentes Subdivision, Roxas City covered by Transfer Certificate of Title (TCT) No. T-16705. [7]

On December 23, 1980, [8] Thelma obtained a housing loan from respondent Development Bank of the Philippines (DBP) in the amount of P99,400.00. [9] To secure payment of the loan, she executed in favor of the respondent a Real Estate Mortgage on the aforementioned parcel of land registered under her name. A

Special Power of Attorney (SPA) appointing the respondent and its personnel to sell the property in the event of extrajudicial foreclosure was inserted and made an integral part of the mortgage contract. [10]

Subsequently, Thelma died on January 8, 1982. [11]

Because of arrearages in the monthly amortizations, respondent foreclosed the mortgaged property. Same was sold at public auction on September 15, 1983 [12] with respondent as the highest bidder. [13] No redemption having been made, title to the property was consolidated in favor of the respondent on September 21, 1984 [14] and TCT No. T-19303 [15] was thereafter issued in its name.

Thereafter, the actual occupants of the mortgaged property, spouses Ramon de la Cruz and his wife, who is likewise petitioner's sibling, Ruth Julian de la Cruz (spouses De la Cruz), offered to purchase the property. Respondent accepted the offer and executed a Deed of Conditional Sale [16] on October 31, 1985. However, spouses De la Cruz failed to pay [17] 72 monthly amortizations resulting in the rescission of the said deed on February 28, 1992. Notwithstanding, spouses De la Cruz refused to vacate the premises compelling respondent to file an "Unlawful Detainer" case against them on February 23, 1993. Judgment was rendered in favor of respondent on July 29, 1993. [18]

However, before the Writ of Execution could be carried out, [19] petitioner filed Civil Case No. 6387 [20] before the Regional Trial Court (RTC) of Roxas City on October 27, 1993, [21] for the cancellation of respondent's TCT No. T-19303. He contended that the SPA which was used to sell the mortgaged property at public auction in 1983 was no longer effective in view of Thelma's death in 1982. Consequently, the public auction, the resulting Deed of Sale, [22] Affidavit of Consolidation and TCT No. T-19303 are null and void.

During the course of the proceedings, a series of postponements [23] were made at the instance of both parties due to an impending amicable settlement. Eventually, the parties were able to reach a settlement. Thus, in an Order [24] dated October 28, 1998, the RTC directed both parties to submit a joint motion to dismiss the case. However, almost two years passed without the parties complying with the said Order.

Consequently, in an Order [25] dated October 11, 2000, the RTC dismissed the case for failure of the parties to comply for an unreasonable length of time. The dismissal, however, was set aside in an Order [26] dated February 12, 2003 in consideration of petitioner's payment of ten percent (10%) of respondent's claim. The parties were then given 15 days from notice within which to submit their compromise agreement, [27] which was subsequently extended for 30 days from notice. [28] Despite the extensions, however, no compromise agreement was filed in court. As a result, in an Order [29] dated July 24, 2003, the trial court directed the parties to show cause within 15 days from notice why the case should not be dismissed for failure to prosecute. Meanwhile, with petitioner's conformity, his counsel withdrew her appearance on August 13, 2003. [30]

### ***Ruling of the Regional Trial Court***

On January 28, 2004 or six months from the issuance of the show cause Order, the trial court dismissed the case in an Order <sup>[31]</sup> which states:

For failure of the parties thru counsel to comply with the Order dated July 24, 2003, the instant case is hereby DISMISSED.

SO ORDERED.

Petitioner, through his new counsel, timely filed a Notice of Appeal <sup>[32]</sup> on April 26, 2004 but failed to pay the docket and other lawful fees.

### ***Ruling of the Court of Appeals***

As earlier mentioned, the CA dismissed the appeal for non-payment of the required docket and other lawful fees pursuant to Section 1(c), Rule 50 of the Rules of Court. <sup>[33]</sup>

Seeking reconsideration, <sup>[34]</sup> petitioner attached to his motion Postal Money Order Nos. A-0620000276, B-0610000283 and J-065000566 in the aggregate amount of P3,020.00 <sup>[35]</sup> as payment for the docket fees. He explained that his failure to pay the required fees was due to oversight and non-cognizance of the necessity to pay the said fees since his counsel did not inform him of such requirement to pay. Petitioner prayed for liberal application of the Rules as according to him, a strict enforcement would be tantamount to imposing a penalty not commensurate to his thoughtlessness or oversight in not adhering to the procedural requisite. <sup>[36]</sup>

Petitioner's submission did not move the CA, which disposed of his motion for reconsideration through its second assailed Resolution <sup>[37]</sup> thus:

In the case of Meatmaster International Corporation vs. Lelis Integrated Development Corporation, it was held "**that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal.**" 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 the full amount of the docket fee is *sine qua non* for the perfection of an appeal. The court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

Verily, the requirement of an appeal fee is not a mere technicality of law or procedure but an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. Thus, if We allow belated payment as prayed for and reinstate the instant appeal, it will have the effect of withholding the finality of the judgment or order appealed from.

Procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not proportionate with the degree of his thoughtlessness in not complying with the procedure prescribed.

In his Motion for Reconsideration, appellant has not shown weighty and persuasive reasons to compel Us to exercise Our discretion of suspending the strict adherence to the Rules. Other than his flimsy excuse that the ground in the Court's Resolution is merely technical, appellant has miserably failed to proffer a convincing justification for [his] procedural error. Thus, appellant failed to justify why the Rules should be relaxed and [why] the equitable consideration of the Court should be exercised in his situation as an exception to the strict implementation of the Rules.

IN VIEW THEREOF, the Motion for Reconsideration is hereby DENIED and the Resolution dated April 12, 2005 MAINTAINED.

SO ORDERED. [38]

### **Issues**

Petitioner comes before this Court by way of Petition for Review on *Certiorari* raising the following issues:

A.

WHETHER X X X THE DISMISSAL OF THE TRIAL COURT [WAS] PROPER.

B.

WHETHER X X X THE COURT OF APPEALS ERRED IN APPLYING STRICTLY THE RULES ON DOCKET FEES. [39]

The pivotal issue is whether the CA was correct in strictly applying the rules on the payment of docket fees.

Petitioner acknowledges the mandatory nature of the rule that docket and other lawful fees must be paid in full within the prescribed period for an appeal to be perfected. However, he asserts that the broader interest of justice and the desired objective of deciding the case on the merits call for leniency in the application of the rules. Hence, he must be given an opportunity to air his cause without the constraints of technicalities. Petitioner contends that the CA should apply the pronouncement of this Court in *Yambao v. Court of Appeals* [40] relaxing the policy of strict adherence to the rule regarding appeal fees if justifiable reason for the non-payment of the correct amount of docket fees within the prescribed period is shown. He further contends that his act of attaching the payment for the fees to his

Motion for Reconsideration shows his intention and willingness to comply with the rules.

### **Our Ruling**

The petition lacks merit.

*Payment of full docket fees within the prescribed period for taking an appeal is mandatory.*

It is well-established that “[t]he right to appeal is a statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law.” [41] “Thus, one who seeks to avail of the right to appeal must strictly comply with the requirements of the rules, and failure to do so leads to the loss of the right to appeal.” [42]

The applicable rule for appeals from judgments issued by the RTC in the exercise of its original jurisdiction is Rule 41 of the Rules of Court, Section 4 of which provides:

Section 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.

The Rules also provide that failure of the appellant to pay the docket and other lawful fees is a ground for dismissal of the appeal. [43]

The Court has consistently ruled in a number of cases that the payment of the full amount of docket fees within the prescribed period is both mandatory and jurisdictional. [44] It is a condition *sine qua non* for the appeal to be perfected and only then can a court acquire jurisdiction over the case. [45] The requirement of an appeal fee is not a mere technicality of law or procedure and should not be undermined except for the most persuasive of reasons. Non-observance would be tantamount to no appeal being filed thereby rendering the challenged decision, resolution or order final and executory.

Admittedly, this rule is not without recognized qualifications. The Court has declared that in appealed cases, failure to pay the appellate court docket fee within the prescribed period warrants only discretionary as opposed to automatic dismissal of the appeal and that the court shall exercise its power to dismiss in accordance with the tenets of justice and fair play and with great deal of circumspection considering all attendant circumstances. [46]

In the case at bench, the justifications presented by petitioner for the non-payment of the docket fees are oversight and the lack of advice from his counsel. Unfortunately, the reasons presented are neither convincing nor adequate to merit