

## THIRD DIVISION

[ G.R. No. 164150, April 14, 2008 ]

**THE GOVERNMENT OF THE KINGDOM OF BELGIUM,  
REPRESENTED BY THE ROYAL EMBASSY OF BELGIUM,  
PETITIONER, VS. HON. COURT OF APPEALS, UNIFIED FIELD  
CORPORATION, MARILYN G. ONG, VICTORIA O. ANG, EDNA C.  
ALFUERTE, MARK DENNIS O. ANG AND ALVIN O. ANG,  
RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a Petition for *Certiorari* under Rule 65<sup>[1]</sup> of the Rules of Court assailing the (1) Resolution<sup>[2]</sup> dated 27 November 2003 of the Court of Appeals in CA-G.R. CV No. 77701 granting the Motion for Reconsideration filed in said case by herein respondent Unified Field Corporation (UFC), thus, allowing the latter to file its appellant's brief; and (2) Resolution<sup>[3]</sup> dated 5 May 2004 of the appellate court in the same case denying reconsideration of its 27 November 2003 Resolution sought by herein petitioner Government of the Kingdom of Belgium, represented by the Royal Embassy of Belgium.<sup>[4]</sup>

The facts of the case are as follows:

A Complaint<sup>[5]</sup> for specific performance of contract with damages was filed by petitioner against respondents UFC, Marilyn G. Ong, Victoria O. Ang, Edna C. Alfuerter, Mark Dennis O. Ang, and Alvin O. Ang, with the Regional Trial Court (RTC) of Makati City, Branch 150, docketed as Civil Case No. 01-976.

In its Complaint, petitioner avers that it entered into a Contract of Lease dated 30 July 1997 with respondent UFC, represented by its President and co-respondent, Marilyn G. Ong. By virtue of the said contract, petitioner leased from UFC Units "B" and "D," with a gross area of 377 square meters, more or less, and six parking lots, at the Chatham House Condominium, located at the corner of Valero and Herrera Streets, Salcedo Village, Makati City (leased premises), for a maximum term of four (4) years beginning 1 October 1997. For the use of the leased premises, petitioner agreed to pay the sum of P5,430,240.00, as rentals for the first two years, from 1 October 1997 to 30 September 1999, payable in full upon the official turn-over of the leased premises; and the sum of P678,780.00, as security deposit, for a total amount of P6,109,020.00.<sup>[6]</sup> The Contract provided for the pre-termination option that may be exercised by the lessee.<sup>[7]</sup>

On or about 23 June 2000, three months prior to the expiration of the third year of the lease, petitioner, through counsel, served by personal service upon respondent UFC, through its President and co-respondent, Marilyn G. Ong, a letter dated 23

June 2000<sup>[8]</sup> informing the corporation that petitioner was pre-terminating the Lease Contract effective 31 July 2000. Considering that under the Contract of Lease, it could pre-terminate the lease after the expiry of the second-year term without having to pay pre-termination penalties, petitioner also requested the return or delivery of the total sum of P1,093,600.00, representing its unused two months advance rentals for August and September 2000, in the sum of P414,820.00, and the security deposit in the sum of P678,780.00, within forty-five days after the pre-termination of the lease contract, or on 15 September 2000.

On 31 July 2000, petitioner vacated and surrendered the leased premises to respondent UFC through the latter's President and co-respondent Marilyn G. Ong free of any outstanding bills for water, electricity, telephone and other utility charges or damages to said leased premises. However, respondents UFC and Marilyn G. Ong, in her capacity as UFC President, totally ignored the demands made by petitioner in its letter of 23 June 2000 and, consequently, failed to return or deliver the P1,093,600.00 sought by petitioner.

Petitioner claims that respondent UFC plainly committed fraud in the performance of its clear duty under paragraph 22 of the Contract of Lease by not returning petitioner's unused two months advance rentals and security deposit despite repeated demands therefor. Hence, the individual respondents as directors of respondent UFC should be deemed to have willfully and knowingly assented to a patently unlawful act or are guilty of gross negligence or bad faith, as the case may be, in directing the affairs of respondent UFC. Under Section 31 of the Corporation Code<sup>[9]</sup> of the Philippines, the respondent directors must be jointly and severally held liable together with respondent UFC.

Petitioner thus prayed to the RTC:

x x x that, after due notice and trial, to render a judgment in favor of [herein petitioner} and against [herein respondents] by ordering [respondents] jointly and severally to pay [petitioner] the following sums of money, to wit:

- a) the principal amount of P1,093,600.00, representing the return or delivery of the unused two (2) months rentals and the security deposit, plus interest at the rate of twelve per centum (12%) per annum from 15 September 2000 until the principal amount due is fully paid, plus six per centum (6%) per annum on the aforesaid interest due from the filing of this complaint until the principal amount is fully paid;
- b) the sum of P400,000.00, as and for actual damages by way of attorney's fees and litigation expenses;
- c) the sum of P100,000.00, as and for moral damages;
- d) the sum of P100,000.00, as and for exemplary damages;
- e) the costs of suit.<sup>[10]</sup>

Respondents filed their Answer with Compulsory Counterclaim on 2 August 2001.

[11] Thereafter, pre-trial was set. However, respondents failed to appear and, worse, failed to file their pre-trial brief, as required by the Rules of Court. They were therefore declared to have waived their right to adduce evidence on their behalf. Respondents did not seek for a reconsideration of the aforesaid Order; hence, petitioner was allowed to present its evidence *ex-parte* on 19 June 2002 and 19 August 2002.

On 8 November 2002, the RTC rendered a Decision, the dispositive portion of which states:

From the foregoing, the Court is convinced that the [herein petitioner] has established its claim against the [herein respondents].

WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against the [respondents], ordering the latter, jointly and severally, to pay [petitioner]:

1. the principal amount of Php1,093,600.00 representing two (2) months rentals and security deposit, plus interest of 12% per annum from September 15, 2000, until the principal amount due is fully paid, plus 6% per annum on the interest due from the filing of this complaint until the principal amount is fully paid;
2. the sum of Php400,000.00, as and by way of attorney's fees and litigation expenses;
3. the sum of Php100,000.00, as moral damages;
4. the sum of Php100,000.00, as exemplary damages; and
5. costs of suit.[12]

Respondents elevated the case on appeal to the Court of Appeals. They received a Notice to File Brief[13] from the Court of Appeals. Respondents were unable to comply with this directive. Petitioner thus filed on 17 September 2003 with the Court of Appeals a Motion to Dismiss Appeal of the respondents on the ground that respondents' counsel received the Notice to File Brief on 16 July 2003 as shown by the Registry Return Receipt and had forty-five (45) days or until 1 September 2003 to file their appellants' brief, but failed to do so. No opposition to the said Motion to Dismiss Appeal was filed by respondents. Neither did they file a motion for extension of time to file appellants' brief.

On 30 September 2003, the Court of Appeals issued a Resolution which reads:

For failure of the [herein respondents] to file their brief within the reglementary period, this appeal is hereby considered ABANDONED and accordingly DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules on Civil Procedure, as amended.[14]

On 27 October 2003, respondents filed a Motion for Reconsideration[15] of the foregoing Resolution stating that their failure to file their appellants' brief was due to

their counsel's inadvertence, attaching their brief thereto and praying for its admission. Respondents' counsel had used his residence as his mailing address and the domestic helper might have misplaced the notice to file brief; hence, respondents' counsel failed to monitor the running of the reglementary period for the filing of the appellants' brief.

On 27 November 2003, the Court of Appeals resolved respondents' Motion for Reconsideration as follows:

For consideration is [herein respondents'] Motion for Reconsideration of this Court's resolution dated September 30, 2003 dismissing their appeal for failure to file the [appellants'] brief within the reglementary period. [Respondents] contend that their failure to file the same was due to inadvertence and not for the purpose of delay.

WHEREFORE, finding the motion to be meritorious and in the interest of substantial justice, this Court resolves to GRANT the motion.

Accordingly, this Court's resolution dated September 30, 2003 is hereby REVERSED and SET ASIDE and a new one entered allowing the filing of the [appellants'] brief. The appellants' brief attached to the motion for reconsideration is ADMITTED.

[Herein petitioner] may file its appellee's brief within the period prescribed by the rules upon receipt hereof.<sup>[16]</sup>

Petitioner then filed a Motion for Reconsideration of the afore-quoted Resolution which the Court of Appeals denied in another Resolution dated 5 May 2004. According to the appellate court:

The failure of the [herein respondents] to file their brief within the prescribed period does not have the effect of automatically dismissing the appeal. The Court has the discretion to dismiss or not to dismiss the appeal, fully aware of its primary duty to render or dispense justice, if possible, with dispatch. However, every party must be afforded the amplest opportunity for the proper and just determination of his cause, free from the game of technicalities. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Courts in real justice have always been guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around.

Dismissal of appeal purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid and technical sense.

WHEREFORE, premises considered, [herein petitioner's] motion for reconsideration is hereby DENIED.<sup>[17]</sup>

Hence, the present Petition raising the sole issue:

Whether or not Public Respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the resolutions of November 27, 2003 and May 5, 2004.<sup>[18]</sup>

In brief, petitioner submits that the inadvertence of respondents' counsel to timely file their appellants' brief is not a persuasive reason or a compelling justification to forego the Rules of Procedure.<sup>[19]</sup>

Respondents, on the other hand, insist that the substantive merit of their appeal to the Court of Appeals outweigh the procedural infirmity they committed by their omission to file appellants' brief within the prescribed period, and that the decision of the RTC has no basis in fact and law.

The pertinent rules of procedure can be found in Section 7, Rule 44, and Section 1(e), Rule 50 of the Rules of Court which read:

#### Procedure in the Court of Appeals

##### Rule 44

##### Ordinary Appealed Cases

Section 7. *Appellant's brief.*- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

##### RULE 50

##### DISMISSAL OF APPEAL

SECTION 1. *Grounds for dismissal of appeal.* - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The issue in this case is not a novel one. It has already been the subject of cases previously decided by this Court.

It is a good time to revisit the cases we have decided, delving on the issue of non-filing of appellants' brief to the Court of Appeals and its consequence.

Early in *Pongasi v. Court of Appeals*,<sup>[20]</sup> involving the failure to file the appellant's brief within the prescribed period, this Court ruled:

[P]etitioner's counsel filed a timely motion for special extension of time on February 19, 1975, two days before the expiration date on February