

SECOND DIVISION

[G.R. NO. 164668, February 14, 2005]

**ASIAN SPIRIT AIRLINES (AIRLINE EMPLOYEES COOPERATIVE),
PETITIONER, VS. SPOUSES BENJAMIN AND ANNE MARIE
BAUTISTA, KARL BAUTISTA AND GLORIA POMERA,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on certiorari of the Resolution^[1] of the Court of Appeals (CA) dismissing the appeal of the petitioner herein in CA-G.R. CV No. 79317 and its resolution in the same case denying the petitioner's motion for reconsideration of its first resolution.

The Antecedents

The Spouses Benjamin and Anna Marie Bautista filed a complaint, in behalf of their son Karl Bautista and Gloria Pomera, against the Asian Spirit Airlines in the Regional Trial Court of Pasig City for breach of contract and damages. After trial, the court rendered a decision on March 24, 2003 in favor of the plaintiffs and against the defendant. The *falla* of the decision reads:

WHEREFORE, judgment is hereby rendered IN FAVOR OF THE PLAINTIFFS and AGAINST THE DEFENDANT ordering the latter to pay the former:

1. P5,000.00 as temperate damages;
2. P200,000.00 as moral damages;
3. P150,000.00 as exemplary damages;
4. P50,000.00 as attorney's fees;
5. P18,371.25 as litigation expenses.

Defendant's counterclaim is DISMISSED.^[2]

Its motion for the reconsideration of the decision having been denied by the trial court,^[3] the defendant appealed. The appeal was docketed as CA-G.R. CV No. 79317. On December 10, 2003, the appellate court directed the defendant-appellant to file its brief as appellant within forty-five (45) days from notice thereof.^[4] The defendant-appellant received its copy of the resolution on December 17, 2003. Thus, it had until January 31, 2004 within which to file its brief. However, the defendant-appellant failed to file its appellant's brief. On March 3, 2004, the plaintiffs-appellees filed a Manifestation and Motion^[5] for the dismissal of the appeal of the defendant-appellant for its failure to file its brief.

On March 10, 2004, the defendant-appellant filed an unverified Motion to Admit

Attached Appellant's Brief.^[6] The plaintiffs-appellees opposed the motion.^[7] On April 23, 2004, the CA issued a Resolution^[8] denying the motion of the defendant-appellant and granting the motion of the plaintiffs-appellees, and ordered the appeal of the defendant-appellant dismissed. The defendant-appellant filed a motion for the reconsideration of the said resolution but on July 16, 2004, the appellate court denied the said motion for lack of merit.^[9]

The defendant-appellant, now the petitioner, filed a petition for review on certiorari with this Court assailing the resolutions of the CA and asserting that:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN STRICTLY APPLYING THE PROVISIONS OF THE RULES OF COURT ON DISMISSAL OF APPEAL TO HEREIN PETITIONER'S APPEAL WHICH IS CONTRARY TO THE MANDATED PRECEPT OF LIBERAL CONSTRUCTION EXPLICITLY PROVIDED FOR IN THE RULES AND SANCTIONED BY JURISPRUDENTIAL PRONOUNCEMENTS OF THIS HONORABLE SUPREME COURT, AND CONSIDERING THAT PETITIONER'S APPEAL BELOW IS BASED AND FOUNDED ON VERY MERITORIOUS GROUNDS THE DENIAL OF WHICH WILL DEFINITELY RESULT TO PREJUDICE TO PETITIONER'S SUBSTANTIAL RIGHTS AND DENIAL TO IT OF ITS RIGHT TO DUE PROCESS.^[10]

The petitioner avers that the late filing of its brief did not cause material injury or prejudice to the respondents and the issues raised by it in its brief require an examination of the evidence on record.

The petitioner prays that we set aside the assailed resolution of the CA and order the appellate court to reinstate its appeal for further proceedings. In their comment on the petition, the respondents submit that:

The Court of Appeals was evidently **not satisfied with the explanation** by the petitioner. Its action in this regard is not subject to review, for the Supreme Court cannot interfere with the discretion of the Court of Appeals.

It is necessary to impress upon litigants and their lawyers the necessity of a **strict compliance with the periods for performing certain acts incident to the appeal** and the transgressions thereof, as a rule, would not be tolerated; otherwise, those periods could be **evaded by subterfuges** and **manufactured excuses** and would **ultimately become inutile**. (Don Lino Gutierrez & Sons, Inc. vs. CA, G.R. No. L-39124, Nov. 15, 1974).

This Honorable Court will be **setting a bad example** if it accepts the excuse of the Petitioner's counsel that he instructed his secretary to file the motion for extension who, in turn, forgot to file it. Logic dictates that the Secretary cannot release the request without the lawyer's signature but still the basic and simple prudence to follow it up by counsel leaves much to be desired. **Every lawyer may soon adopt this reasoning** to justify non-filing of the brief on time.^[11]

The petition has no merit.