

SECOND DIVISION

[G.R. No. 138884, June 06, 2002]

**RODOLFO DE LEON, PETITIONER, VS. COURT OF APPEALS AND
SPOUSES ESTELITA AND AVELINO BATUNGBACAL,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

Before us is a special civil action for certiorari and prohibition under Rule 65 of the Rules of Court. It seeks to annul and set aside the resolution^[1] dated January 13, 1999 of the Court of Appeals, in CA-G.R. CV No. 57989, denying petitioner's motion (a) to dismiss the appeals of private respondents, and (b) to suspend the period to file appellee's brief. Also assailed is the CA resolution^[2] dated April 19, 1999, denying petitioner's motion for reconsideration.

The antecedent facts are as follows:

On March 11, 1996, petitioner Rodolfo de Leon filed with the Regional Trial Court of Bataan, Branch 3, a complaint^[3] for a sum of money plus damages, with a prayer for preliminary attachment, against herein private respondents Avelino and Estelita Batungbacal. The complaint averred that private respondent Estelita Batungbacal executed a promissory note^[4] in favor of herein petitioner for her P500,000 loan with stipulated interest at 5 percent monthly. The loan and interest remained unpaid allegedly because the check issued by Estelita was dishonored. Private respondents filed an answer with counterclaim. Estelita admitted the loan obligation, but Avelino denied liability on the ground that his wife was not the designated administrator and therefore had no authority to bind the conjugal partnership. Avelino further averred that his wife contracted the debt without his knowledge and consent.

Based on Estelita's admission, petitioner filed a motion for partial judgment against Estelita, which the trial court granted in an order^[5] dated May 14, 1996:

WHEREFORE, the Motion for Partial Judgment on the Pleadings is hereby granted in accordance with Sec. 4 of Rule 36, Rules of Court. As prayed for, judgment is hereby rendered against Estelita Q. Batungbacal, ordering her to pay plaintiff Rodolfo de Leon the principal amount of the loan obligation of P500,000.00 plus the stipulated interest which has accrued thereon at 5% per month since May 1995 until now, plus interest at the legal rate on said accrued interest from date of judicial demand until the obligation is fully paid.

SO ORDERED.

Counsel for private respondent spouses received a copy of the partial judgment on May 21, 1996, but no appeal was taken therefrom. Thus, petitioner filed a motion for execution of said judgment on June 6, 1996. Counsel for private respondents was furnished a copy of the motion on the same date. As private respondents interposed no objection, a writ of execution was correspondingly issued. The sheriff then proceeded to execute the writ and partially satisfied the judgment award against the paraphernal property of Estelita and the conjugal properties of the private respondents with due notice to the latter and their counsel. Again, private respondents interposed no objection.

Pre-trial was held and trial proceeded on two main issues: (1) whether the loan was secured with the knowledge and consent of the husband and whether the same redounded to the benefit of the conjugal partnership; and (2) whether the capital of the husband would be liable if the conjugal assets or the paraphernal property of the wife were insufficient to satisfy the loan obligation. On June 2, 1997, the trial court rendered judgment^[6] ordering private respondent Avelino Batungbacal to pay the amount of the loan plus interest and other amounts in accordance with Article 121 of the Family Code.

Counsel for private respondent spouses received a copy of the decision on June 6, 1997. Avelino through counsel, filed a notice of appeal^[7] on June 19, 1997. In a notice of appearance^[8] dated June 25, 1997 bearing the conformity solely of Estelita, a new counsel appeared in collaboration with the counsel of record for the private respondents. On the same date, Estelita through said new counsel, served a notice that she is appealing both decisions promulgated on May 14, 1996, and June 2, 1997, to the Court of Appeals. However, the trial court, in an order^[9] dated July 7, 1997 denied the notice of appeal^[10] filed by Estelita on the ground that said notice was filed beyond the reglementary period to appeal.

Private respondents' appeal was docketed with the respondent Court of Appeals as CA-G.R. CV No. 57989. Petitioner then filed with the Court of Appeals a Motion to Dismiss the Appeal with Motion to Suspend period to file Appellee's Brief^[11] on October 21, 1998. Petitioner based his motion to dismiss on the following grounds: (1) that the statement of the case as well as the statement of the facts in the appellants' brief do not have page references to the record, and that the authorities relied upon in the arguments are not cited by the page of the report at which the case begins and the page of the report on which the citation is found; (2) that no copy of the appealed decision of the lower court was attached to the appellants' brief, in violation of the Internal Rules of the Court of Appeals; (3) that private respondents furnished only one copy of the appellants' brief to the petitioner, also in violation of the Rules of Court; (4) that the decision promulgated against Estelita on May 14, 1996 is no longer appealable; and (5) that the notice of appeal filed on June 25, 1996 by Estelita concerning the decision of the trial court against Avelino was filed beyond the reglementary period to appeal.^[12] The motion also prayed that the period for filing the appellee's brief be suspended in view of the pendency of the motion to dismiss.^[13]

Private respondents, in their opposition,^[14] insisted that the statements of the case as well as the statement of facts in their brief contained page references to the record, and that Estelita had seasonably filed her appeal. Private respondent

spouses also stated that they had filed an Amended Appellants' Brief^[15] on November 27, 1998 and that two copies thereof had been served on petitioner together with copies of the trial court's decisions.

On January 13, 1999, the Court of Appeals issued the assailed resolution^[16] denying petitioner's motion to dismiss and virtually admitting the Amended Appellants' Brief as follows:

As submitted by appellants, they adopted pertinent portions of the appealed Decision in the Statement of the Case, indicated specific pages in the appealed decision where the quoted portions are found. In the bottom of page 2 of the brief, is the quoted portions of the decision, referring to pages 1 and 2 thereof. On page 3 of the brief is the dispositive portion, taken on page 11 of the decision. The rest of the narration in the Statement of the Case are the specific dates of the pleadings, orders, and portions of the decision citing the page references where they are found.

Two (2) copies of the Amended Brief were served upon appellee with the appealed Decision attached as Annex "A", and "B".

Appellant Estellita Batungbacal explained that her appeal was filed on time. She cited Guevarra, et. al. vs. Court of Appeals, et. al., L-49017 and 49024, that a partial judgment may be appealed only together with the judgment in the main case. She personally received a copy of the main Decision, dated June 2, 1997 on June 10, 1997, and filed her notice of appeal dated June 25, 1995 (sic) sent by registered mail on even date, per Registry Receipt No. 2618, attached as Annex "C" hereof, thereby showing that the notice of appeal was filed within 15 days from receipt of the Decision appealed from. At any rate, the merit of appellee's contention that appellant Estellita Batungbacal can no longer appeal from the decision may be resolved after the case is considered ready for study and report.

WHEREFORE, the motion to dismiss is hereby DENIED, and appellee is required to file his appellee's brief within forty-five (45) days from receipt hereof.

SO ORDERED.

On January 22, 1999, petitioner filed a Motion for Reconsideration^[17] of the aforesaid resolution but said motion was denied by the Court of Appeals in a resolution^[18] dated April 19, 1999, the pertinent portion of which reads as follows:

The resolution promulgated on January 13, 1999 required appellee to file his appellee's brief within forty-five (45) days from receipt of that resolution, or up to March 4, 1999. Up to this date no appellee's brief has been submitted.

WHEREFORE, the appeal by appellants is deemed submitted for decision without the benefit of appellee's brief, and the records of this case is hereby transmitted to the Raffle Committee, for re-raffle, for study and

report.

SO ORDERED.

Hence, this Petition for Certiorari and Prohibition^[19] wherein petitioner contends that respondent Court of Appeals acted:

- (1) WITHOUT JURISDICTION IN ENTERTAINING THE APPEAL OF PRIVATE RESPONDENT ESTELITA BATUNGBACAL;
- (2) WITH GRAVE ABUSE OF DISCRETION AND IN DISREGARD OF THE EXPRESS MANDATORY REQUIREMENTS OF THE RULES AS WELL AS AGAINST SETTLED JURISPRUDENCE WHEN IT DENIED THE PETITIONER'S MOTION TO DISMISS THE APPEAL OF THE PRIVATE RESPONDENT SPOUSES;
- (3) WITH GRAVE ABUSE OF DISCRETION AND IN GRAVE VIOLATION OF DUE PROCESS OF LAW IN ADMITTING THE AMENDED APPELLANT'S BRIEF FILED BY PRIVATE RESPONDENTS AND IN REQUIRING THE PETITIONER AS APPELLEE TO FILE HIS APPELLEE'S BRIEF;
- (4) WITHOUT DUE PROCESS OF LAW WHEN IT RESOLVED TO HAVE THE APPEAL OF THE APPELLANT PRIVATE RESPONDENTS DEEMED SUBMITTED FOR DECISION WITHOUT BENEFIT OF APPELLEE'S BRIEF....^[20]

Simply put, the following are the issues presented before this Court for resolution:

- (1) whether or not the appellate court erred in taking cognizance of the appeal; and
- (2) whether or not the appellate court erred or committed grave abuse of discretion when it considered the appeal as submitted for decision without petitioner's brief.

On the first issue, petitioner contends that the decisions of the trial court in Civil Case No. 6480 promulgated on May 14, 1996 and June 2, 1997 had become final and executory as to private respondent Estelita Batungbacal. This is because Estelita never appealed the partial judgment promulgated on May 14, 1996. In fact, there has been a partial execution of said judgment with notice to and without objection from private respondent spouses. As regards the decision dated June 2, 1997, petitioner contends that the same had become final for failure to file the notice of appeal within 15 days, counted from the time counsel of record for private respondent spouses received a copy on June 6, 1997 and not from the time Estelita received a copy on June 10, 1997. Petitioner points to Section 2 of Rule 13 of the Rules of Court and argues that since the trial court never ordered that service of the judgment be made upon Estelita, she was not entitled to service of the judgment. The fact that she received a copy of the judgment separately from her counsel cannot prejudice the legal consequences arising out of prior receipt of copy of the decision by her counsel. It was thus clear error for the Court of Appeals to accept Estelita's argument that the reglementary period commenced not from receipt of a copy of the decision by counsel of record but from the time she received a copy of the decision. The appeal having been filed out of time, the Court of Appeals did not have jurisdiction to entertain the appeal of Estelita.

Petitioner also assails the appellants' brief for certain formal defects. As pointed out in his motion to dismiss filed before the public respondent, there are no page references to the record in the statements of the case and of the facts in the appellants' brief submitted by private respondents. Petitioner asserts that while there are many pleadings and orders mentioned in said statements, only the decision dated June 2, 1997 is cited, and the citation is limited only to the particular page or pages in said decision where the citation or quotation is taken, without any reference to the pages in the record where the decision can be found. Neither is there reference to the pages in the record where the particular cited or quoted portions of the decision can be found.

Petitioner likewise alleges that the authorities relied upon in the appellants' brief of private respondents are also not cited by the page on which the citation is found, as required in Sec. 13 (f) of Rule 44 of the Rules of Court. Page references to the record are also required in Section 13, paragraphs (c), (d) and (f) of Rule 44 and absence thereof is a ground for dismissal of the appeal, pursuant to Sec. 1 (f) of Rule 50 of the Rules of Court. Petitioner also harps on the failure of private respondents to furnish petitioner with two copies of the original appellants' brief, to submit proof of service of two copies of the brief on the appellee, and to furnish the petitioner with two copies of the amended appellants' brief as required by the Rules of Court. Additionally, petitioner asserts that the failure of private respondents to append copies of the appealed decisions to their appellants' brief constitutes a violation of the Internal Rules of the Court of Appeals and is likewise a ground for dismissal under Section 1 of Rule 50 of the Rules of Court.

Lastly, petitioner contends that the virtual admission into the record by the respondent court of the amended appellants' brief of the private respondents under the resolution dated January 13, 1999 and its corresponding action to require the petitioner to respond thereto, constitute grave abuse of discretion and blatant disregard of due process of law because the amended brief was filed without leave of court.

Private respondents, for their part, argue that the resolutions being assailed by petitioner are interlocutory in character because the Court of Appeals still has to decide the appeal on the merits; hence, certiorari does not lie in his favor. Private respondents allege that petitioner has another adequate and speedy remedy, *i.e.*, to file his brief raising all issues before the Court of Appeals. Once the appeal is resolved on the merits, all proper issues may be elevated to the Supreme Court. An order denying a motion to dismiss being merely interlocutory, it cannot be the basis of a petition for certiorari. The proper remedy is to appeal in due course after the case is decided on the merits.

We find the petition devoid of merit.

On the first issue, we find that the Court of Appeals did not act without jurisdiction in entertaining the appeal filed by private respondent Estelita Batungbacal. Contrary to petitioner's apparent position, the judgments rendered by the trial court in this case are not several judgments under the Rules of Court so that there would be multiple periods of finality.

A several judgment is proper only when the liability of each party is clearly separable and distinct from that of his co-parties, such that the claims against each