[G.R. No. 139882, August 16, 2000]

ORIENTAL ASSURANCE CORPORATION, PETITIONER, VS. SOLIDBANK CORPORATION, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

The retroactive application, of procedural rules to pending cases is well settled. Hence, the 1997 Rules of Civil Procedure, which require the payment of docket fees upon the filing of the notice of appeal, applies to the present case.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45, assailing the March 8, 1999[1] and the June 4, 1999[2] Resolutions of the Court of Appeals (CA). The first Resolution reads as follows:

> "The Court considers the appeal of Leonila Cui and Oriental Assurance Corporation ABANDONED and DISMISSED for their failure to pay the required docket fees (Section 1 [c], Rule 50 of the 1997 Rules of Civil Procedure, as amended.)" (emphasis in the original)

The second Resolution denied petitioner's Motion for Reconsideration.

The Facts

Petitioner Oriental Assurance Corporation issued Fire Insurance Policy No. F-92/22733-D, insuring the stock of finished and/or unfinished products including raw materials, machinery and equipment belonging to Wear Me Garments Manufacturing, Inc. (Wear Me). The policy insured against loss and/or damage by fire from March 20, 1991 to March 20, 1992. The policy was subsequently renewed for another year from March 20, 1992 to March 20, 1993 under Renewal Receipt No. 40948. A Memorandum stating that the policy was "[m]ade further subject to MORTGAGEE CLAUSE in favor of SOLIDBANK CORPORATION"' was typewritten on the face of the receipt.

On April 27, 1993, petitioner issued another Fire Insurance Policy (No. F-93-40690-D) insuring the same items of Wear Me from March 20, 1993 to March 20, 1994.

On July 12, 1993, a fire broke out at the factory of Wear Me, destroying a major portion of the insured properties. Wear Me submitted to petitioner and its co-insurers[3] a Notice of Loss for the value of the damaged properties. The claims were denied.

As holder of trust receipts over the burned goods, Solidbank Corporation sent an undated telegram to petitioner, asking the latter to pay the proceeds of Fire Insurance Policy No. F-92/22733-D. Petitioner refused to comply, because the Policy did not contain a mortgagee clause in favor of Solidbank.

Before the Regional Trial Court of Manila (RTC),[4] respondent then instituted Civil Case No. 94-70505 against petitioner and Wear Me; as well as Angelita Amparo Go and Arnold A. Go, Leonila Cui, and Prudential Guarantee and Assurance Inc. Acting favorably on respondent's Motion for Summary Judgment,[5] the RTC rendered a Decision,[6] the dispositive part of which reads:

> "WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:
>
> 1.1 Holding that the plaintiff is entitled to be paid under the loan of P1.2 Million and under the five trust receipts the sum of P4,797, 294.83, plus interests and other charges form December 29, 1992, until fully paid;
>
> 1.2 Holding defendant WEAR ME, Angelita Amparo Go and spouse, Arnold A. Go, jointly and severally liable to pay the plaintiff the above amounts;
>
> 1.3 Prudential Guarantee and Assurance, Inc., and Oriental Assurance Corporation, are held jointly and severally liable to pay the plaintiff, together with defendants WEAR ME, Angelita Amparo Go and her spouse, Arnold A. Go, the above amounts but limited to the extent of the insurance coverage representing the insurance coverage assigned to Solidbank Corporation under the two (2) fire insurance policies;
>
> 1.4 Leonila Cui is held jointly and severally liable to the plaintiff, together with all the other defendants, but only with respect to the loan of P1.2 million and the accrued interest and penalties.
>
> 2. Ordering all the defendants jointly and severally to pay the plaintiff a sum equal to 10% of the amounts above payable plus the costs of the suit."[7]

On August 18, 1995, respondent filed a Motion for Execution pending appeal. It was opposed by petitioner, which filed a Motion for Reconsideration of the RTC Decision.

Subsequently, the trial court issued an Omnibus Order granting the Motion for Execution and denying the Motion for Reconsideration. On October 23, 1995, petitioner appealed. the RTC Decision and Omnibus Order to the Court of Appeals. It should be added that before elevating the records of the case to the appellate court, the RTC granted respondent's Motion to Stay Execution Pending Appeal Based on Supersedeas Bond.

As earlier mentioned, the CA denied petitioner's appeal and subsequent Motion for Reconsideration. Hence, this recourse to this Court.[8]

The Issue

In its Memorandum, petitioner submits for the consideration of this Court this lone issue:

> "xxx [W]hether or not the Court of Appeals x x x committed reversible error in giving retroactive effect to Section 1 (c) of Rule 50 of the 1997 Rules of Civil Procedure [dismissing] petitioner's appeal for failure of the petitioner to pay the appellate court docket and other lawful fees."[9]

The Court's Ruling

The Petition is devoid of merit.

Sole Issue: Retroactive Effect of Rules of Procedure

According to both parties, the sole controversy is the retroactive application of Section 1 (c), Rule 50 of the 1997 Rules of Court, which provides:

> "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:
>
> xxx...............................xxx...............................xxx
>
> (c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40[10] and section 4 of Rule 41;"

Section 4 of Rule 41 in turn reads:

> "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."

Petitioner contends that these Rules cannot be given retroactive effect because such action would impair its "vested" rights under the old Rules.[11] The latter required an appellant to pay the docket fees within fifteen days from the receipt of notice from the CA clerk of court that the record on appeal has been received.

The retroactive application of procedural rules to pending cases is undoubtedly well settled.[12] Petitioner even admits this in its efforts to reason out its case.[13] For this reason alone, the present Petition should be dismissed.

Even assuming that it is entitled to the aforecited right, the CA's dismissal of the appeal still stands.

Counsel's Negligence

In *Arambulo v. CA,*[14] a case in which the required notice invoked by herein petitioner was sent to the wrong counsel, we held:

> "Both the Withdrawal of Appearance of Atty. Jimenez and the Appearance of Atty. Pineda are undeniably found in the original record of Civil Case No. 5301 and are explicitly referred to in the Summary Index in the record of CA-G.R. CV No. 32348. And since the withdrawal of Atty. Jimenez had taken effect upon its filing before the trial court on 12 February 1991, the notice to pay the docket and other fees sent to him by the Judicial Records Division of the Court of Appeals on 4 March 1991 was thus void or otherwise ineffective. Receipt thereof by him did not operate as notice to the Arambulos. It is a fact on record that no notice to pay the docket fee was sent to and received by Atty. Pineda, therefore,