

FIRST DIVISION

[G.R. No. 168240, February 09, 2011]

**AURORA B. GO, PETITIONER, VS. ELMER SUNBANUN,âº
GEORGIE S. TAN, DORIS SUNBANUN AND RICHARD SUNBANUN,
RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

When a procedural rule is amended for the benefit of litigants for the furtherance of the administration of justice, it shall be retroactively applied to likewise favor actions then pending, as equity delights in equality.

For non-compliance with the formal requirements of a petition, the Court of Appeals (CA) dismissed the *certiorari* petition filed by herein petitioner Aurora Go (Aurora), prompting her to file before us this petition for review on *certiorari*. Aurora now calls for liberality in the application of the procedural rules in the hope that she would eventually be given a chance to be heard by the CA after the trial court denied her prayer for an extension of time to file a notice of appeal.

Factual Antecedents

In November 2000, respondents filed a suit for damages against Aurora, her husband Yiu Wai Sang (Sang), and Yiu-Go Employment Agency (hereinafter collectively referred to as defendants), docketed as Civil Case No. CEB-25778, before the Regional Trial Court (RTC) of Cebu, Branch 58.^[1] The respondents claimed that the spouses occupied the ground floor portion of their house in 68-F General Junquera Street, Cebu City under a one-year lease contract and had used the premises as the business office of Yiu-Go Employment Agency. This allegedly increased the risk of loss by fire, and thus a breach of warranty in the fire insurance policies that the respondents made which described the property as residential type.^[2]

Only Aurora filed her Answer with Affirmative Defenses and Counter-Claim.^[3] In her answer, Aurora averred that they already left the premises sometime in 2001 and that during the entirety of their stay, they used the leased floor as a private residence and as a lodging house. She denied that their employment agency held office there. She also pointed out that the lease contract was terminated when the one-year term expired in July 1996, and that she was not privy to the contracts of insurance since she was not informed of the contracts' existence. To her, whether the house was used as a business office or as a lodging house was immaterial as there was no increased risk of fire either way. Aurora demanded actual damages as she claimed that she works in Hong Kong on a no-work-no-pay basis and the suit would result in spending airfare and lost earnings.

After the respondents concluded their presentation of evidence, Aurora moved on October 28, 2002 that her testimony be taken by deposition upon written interrogatories, as she was unsure as to when she could come home to the Philippines considering that her work schedule as a court interpreter in Hong Kong is erratic. She averred that arrangements have already been made with the Philippine consulate in Hong Kong to take her deposition.^[4] Over the objection of the respondents, the RTC granted Aurora's motion on November 21, 2002.^[5] However, Aurora's deposition was taken only on January 28, 2004^[6] after her follow-up letter dated November 7, 2003 to the Philippine consulate.^[7]

Before this deposition was taken, the RTC in its December 1, 2003 Order^[8] already deemed the defendants to have waived their right to present their evidence and considered the case submitted for resolution since more than a year had elapsed from the date the RTC granted Aurora's motion to have her testimony be taken by deposition. Again, only Aurora moved for reconsideration^[9] and prayed that the December 1, 2003 Order be recalled and instead admit the deposition. She attributed the delay of her deposition-taking to the consulate's fault, as she was passed from one officer to another or no officer was available.

On January 26, 2004, the RTC rendered judgment^[10] finding only Aurora liable and ordering her to pay moral damages, attorney's fees, litigation expenses and costs.^[11] The trial court disregarded her two-page transcript of deposition when it received the same on March 5, 2004.^[12]

Aurora's former counsel of record, Atty. Jude Henritz R. Ycong (Atty. Ycong), belatedly discovered about this adverse judgment when he received from respondents' counsel a Motion to Direct Issuance of Entry of Judgment and Writ of Execution^[13] on March 16, 2004. It turned out that although he had already previously informed the court of his new office address, the court mistakenly sent the January 26, 2004 Decision to his former office address.^[14] He raised this in his opposition to the motion filed by the respondents.^[15] Finding this point meritorious, the court denied respondents' motion, ruling that the judgment against Aurora has not yet attained finality as the 15-day period to appeal, counted from March 16, 2004, has not yet lapsed.^[16]

Aurora filed her Motion for Reconsideration^[17] on March 31, 2004, the last day to file her appeal. The court in its April 27, 2004 Order^[18] denied said motion.

Atty. Ycong received the notice of denial on May 6, 2004, thus giving his client a day left to file her appeal. Explaining that Aurora has been busy campaigning for the local elections as she was running for the position of town mayor in Calubian, Leyte^[19] and that he and his client have yet to discuss the pros and cons of appealing the case, Atty. Ycong sought for the relaxation of the procedural rules by filing an extension of 15 days to file Aurora's notice of appeal.^[20]

Atty. Ycong thereafter filed the Notice of Appeal on May 11, 2004.

Ruling of the Regional Trial Court

In its May 12, 2004 Order, the RTC denied the notice of appeal, viz:

While there are rulings of the Supreme Court declaring that the period to appeal is not extendible, there are also instances when it allowed appeals to be perfected despite their filing out of time. x x x

In the instant case, the delay is due to defendant-Go's running for an elective post. Such is no excuse.

In other words, contrary to the belief of this court that Aurora Go had been and is out of the country, she in fact is in the Philippines. Consequently, she could have the time to confer with her counsels in order to prepare for her appeal.

Accordingly, the Motion for Extension of Time to File Notice of Appeal is DENIED for lack of merit and the Notice of Appeal is hereby declared filed out of time.

SO ORDERED.^[21]

Aurora sought for reconsideration but it was denied by the RTC on June 10, 2004.^[22]

Ruling of the Court of Appeals

Filing her petition for *certiorari* with the CA by way of registered mail on August 13, 2004,^[23] Aurora claimed that the RTC gravely abused its discretion in refusing to relax the period for filing the notice of appeal. She contended that her situation is enough reason to grant her prayer. She averred that she could not just leave the campaign trail just to discuss matters with her lawyer about her case as she was busy in Leyte at the homestretch of the campaign period.

However, the CA on December 8, 2004, dismissed the petition (docketed as CA-G.R. SP No. 85897) for being procedurally flawed, viz:

- 1) The Verification/Certification of Non-Forum Shopping is signed by only one petitioner without a Special Power of Attorney/Secretary's Certificate authorizing her to represent the two (2) other petitioners;
- 2) The Affidavit of Service shows that respondents were personally served copies of the petition but lacks explanation why service of the petition with this Court was not done personally (Section 11, Rule 13 of the Revised Rules of Court);
- 3) Counsel for petitioners failed to indicate his PTR and IBP numbers;
- 4) Certified true [sic] copies of the assailed decision dated January 26, 2004 attached to the petition is a mere photocopy of a certified true

copy;

5) The following copies of pleadings and other relevant documents referred to in the petition which would support the allegations therein are not attached:

- a) Complaint; and,
- b) Answer.^[24]

Invoking the liberal construction of procedural rules, petitioner Aurora asked for reconsideration^[25] with the following justifications:

1) A certification/verification of one of a number of principal parties is sufficient compliance. Although her *certiorari* petition named her, her spouse, and Yiu-Go Employment Agency, as 'petitioners,' her co-defendants were not held liable in the lower court. It is only she who is interested in filing the *certiorari* petition for her to be able to appeal, hence her lone signature.

2) Anent the lack of explanation of why personal service to the CA was not resorted to, Aurora averred that it was redundant to explain why registered mail was used considering the distance between Cebu, where she is based, and the CA in Manila.

3) The professional tax receipt (PTR) and Integrated Bar of the Philippines (IBP) receipt numbers were inadvertently overlooked. However, the defect was cured when Atty. Ycong included the numbers when he subsequently filed on October 14, 2004 his Notice of Change of Address^[26] with the CA.

4) Questioned in the *certiorari* are the May 12 and June 10, 2004 Orders that denied Aurora's prayer for an extension of time to file her notice of appeal. Requiring her to additionally append to the CA petition the certified true copies of the January 26, 2004 RTC Decision (*i.e.*, the decision on the merits of the case), the complaint, and the answer was not necessary as these documents are not relevant and material to the issue to be resolved.

Finding Aurora's reasoning unacceptable, the CA insisted on a strict observance of the rules in its April 8, 2005 Resolution:

As to the first ground, petitioners merely disagree with the deficiency which occasioned the outright dismissal of their petition without even curing the said defect. Suffice it to say here that the petition itself contains more than one petitioner. No less than the Supreme Court pronounced in *Loquias vs. Office of the Ombudsman* that where there are two or more plaintiffs or petitioners, a complaint or petition signed by only [sic] of the parties is defective unless he/she is authorized by his co-parties. x x x

x x x x

The reason why petitioners' petition was dismissed based on the second defect was because the said petition lacks explanation why service of the

petition with this Court was not done personally, not much for having filed the same by registered mail. In other words, the dismissal was not due to the fact that the petition was filed by registered mail, but because of the failure to explain why the personal service was not resorted to. Then again, petitioners did not even bother to cure such defect.

Anent the third ground, counsel for petitioners posits that his failure to indicate in the petition for certiorari his PTR and IBP numbers was cured by his succeeding Notice of Change Address filed with this Court. However, a closer of [sic] examination of the same reveals that the same was only filed on October 14, 2004 or some two (2) months after the petition for certiorari was filed on August 13, 2004. If it was really the intention of counsel for petitioners to cure such defect, he could have done it immediately after filing the petition. Had it not been due to the filing of the notice of change of address, We doubt if petitioners would have cured such defect.

Considering the foregoing, We deem it unnecessary to discuss the other grounds raised by petitioners.

x x x x^[27]

The Parties' Respective Arguments

Believing that her case should not have been dismissed for procedural

defects, Aurora assails the December 8, 2004 and April 8, 2005 Resolutions of the CA, reiterating to this Court that she deserves to be accorded the chance to prove to the CA that the RTC had unfairly denied her motion for extension of time to file her notice of appeal.

On the other hand, respondents defend the stance of the CA, insisting that perfection of an appeal is jurisdictional and mandatory; and that the circumstances do not justify granting Aurora leniency in the application of the procedural rules. Moreover, ever since she filed her motion for reconsideration on the RTC's January 26, 2004 Decision, she had in the interim sufficient time to think about the next legal action to take before the trial court issued its order of denial on April 27, 2004.

Issue

The sole question to resolve is whether the formal deficiencies in the petition before the CA may be relaxed in the interest of justice.

Our Ruling

The signatures/authorizations of Sang and Yiu-Go Employment Agency in the verification and certification on non-forum shopping are not necessary.

In filing a *certiorari* petition, one aggrieved by a court's judgment, order or