

SECOND DIVISION

[G.R. No. 192500, February 02, 2011]

**SPOUSES AMADO O. IBAÑEZ AND ESTHER A. RAFAEL-IBAÑEZ,
PETITIONERS, VS. REGISTER OF DEEDS OF MANILA AND CAVITE
AND PHILIPPINE VETERANS BANK (PVB), RESPONDENTS.**

R E S O L U T I O N

NACHURA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Resolutions dated July 23, 2009^[1] and December 15, 2009^[2] in CA-G.R. CV No. 92007.

The case originated from a petition for Injunction and Damages with Prayer for Preliminary Injunction and/or Temporary Restraining Order filed by petitioners, Spouses Amado O. Ibañez and Esther A. Rafael-Ibañez, against respondent Philippine Veterans Bank (PVB), before the Regional Trial Court (RTC), Branch 20, Imus, Cavite. The case was docketed as R.T.C. No. 2563-02. The RTC decided against petitioners, who eventually elevated the case to the CA *via* a Notice of Appeal. The appeal was docketed as CA-G.R. CV No. 92007.

In a Notice^[3] of the CA dated February 23, 2009, petitioners and their counsel were required to file their appellants' brief within 45 days from receipt of the Notice.

On May 8, 2009, the CA issued a Resolution^[4] which states that:

The returned copy of this Court's Notice to File Brief dated February 23, 2009 addressed to Ibañez & Zerrudo Law Office was returned to this Court with the postal notation "NOBODY TO RECEIVE." The Judicial Records Division is ORDERED to resend copy of the said Notice of Resolution to the aforementioned law office within five (5) days from receipt hereof.

Thereafter, the appellate court issued another Resolution^[5] dated July 23, 2009, the pertinent portions of which read:

1. The copy of the Resolution dated February 23, 2009 addressed to plaintiffs-appellants' counsel Ibañez Zerrudo Law Office returned to this Court on 08 May 2009 with postal notation "Nobody to Receive" is NOTED.

2. Plaintiffs-appellants' Urgent Motion for Issuance of Writ of Preliminary Injunction and or Temporary Restraining Order against the issuance of a writ of possession is DENIED considering that an order for a writ of possession issues as a matter of course, pursuant to R.A. 3135, as amended.
3. **Per Judicial Records Division's (JRD) report dated 10 June 2009 NO APPELLANTS' BRIEF has been filed as per docket book entry despite receipt by defendants-appellants themselves on 12 March 2009 of the Notice to File Brief, the instant appeal is considered ABANDONED and accordingly DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.**^[6]

Aggrieved, petitioners filed an Urgent Motion for Reconsideration and Motion to Admit Appellants' Brief.^[7] They explained that they and their counsel could not have received a copy of the Notice sent by the court because their counsel, together with his secretary, was then on official business in Iloilo City, and that their law office in Malate, Manila was under renovation.

In a Resolution^[8] dated December 15, 2009, the appellate court denied petitioners' motion. The CA reiterated that petitioners received the Notice to file appellants' brief on March 12, 2009. It also explained that though the Notice was given to petitioners themselves, it was a sufficient notice to counsel since petitioner Amado Ibañez is one of the members of the law firm representing petitioners. Lastly, the court held that the fact that petitioners' counsel and his secretary were out of town and that their law office was under renovation at the time could not justify their failure to file the appellants' brief.

Petitioners now come before this Court insisting on the admission of their appellants' brief, though belatedly filed, considering that they did not receive the Notice to file the same. They point out that it was impossible for them to receive the Notice since it was sent not to the residential address of petitioners but to PVB's counsel at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. In this connection, they impute fraud on the part of PVB for receiving the Notice addressed to petitioners and for making it appear that it was so received by signing the registry return card. They also accuse the staff of the CA, especially those of the Judicial Records Division (JRD), of taking part in the commission of fraud by deliberately sending the Notice to the wrong address.^[9]

In its Comment,^[10] PVB confirms that the Notice to File Appellants' Brief contained the following addresses:

Ibañez and Zerrudo Law Office
2370 Singalong Street
Cor. Dagonoy, Malate
1000 Manila (reg. w/ ret. card)
Sps. Amado O. Ibañez and