

## THIRD DIVISION

[ G.R. No. 167398, August 09, 2011 ]

**AUGUSTUS GONZALES AND SPOUSES NESTOR VICTOR AND MA. LOURDES RODRIGUEZ, PETITIONERS, VS. QUIRICO PE, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* seeking to set aside the Decision<sup>[1]</sup> dated June 23, 2004 and Resolution<sup>[2]</sup> dated February 23, 2005 of the Court of Appeals (CA), Twentieth Division, in CA-G.R. SP No. 73171, entitled *Quirico Pe v. Honorable Judge Rene Hortillo, in his capacity as Presiding Judge of the Regional Trial Court of Iloilo City, Branch 31, Augustus Gonzales and Spouses Engr. Nestor Victor and Dr. Ma. Lourdes Rodriguez*, which granted the petition of respondent Quirico Pe. The CA Decision reversed and set aside the Order<sup>[3]</sup> dated September 23, 2002 of the Regional Trial Court (RTC) of Iloilo City, Branch 31, which dismissed respondent's appeal for non-payment of docket and other lawful fees, and directing the issuance of the writ of execution for the implementation of its Decision<sup>[4]</sup> dated June 28, 2002 in favor of the petitioners and against the respondent. The CA Decision also directed the RTC to assess the appellate docket fees to be paid by the respondent, if it has not done so, and allow him to pay such fees and give due course to his appeal.

The antecedents are as follows:

Respondent Quirico Pe was engaged in the business of construction materials, and had been transacting business with petitioner Spouses Nestor Victor Rodriguez and Ma. Lourdes Rodriguez. The Department of Public Works and Highways (DPWH) awarded two contracts in favor of petitioner Nestor Rodriguez for the following projects, namely, construction of "Lanot-Banga Road (Kalibo Highway) km. 39 + 200 to km. 40 + 275 Section IV (Aklan side)" and concreting of "Laua-an Pandan Road (Tibial-Culasi Section), Province of Antique." In 1998, respondent agreed to supply cement for the construction projects of petitioner Spouses Rodriguez. Petitioner Nestor Rodriguez availed of the DPWH's pre-payment program for cement requirement regarding the Lanot-Banga Road, Kalibo Highway project (Kalibo project), wherein the DPWH would give an advance payment even before project completion upon his presentment, among others, of an official receipt for the amount advanced. Petitioner Nestor Rodriguez gave Land Bank of the Philippines (LBP) Check No. 6563066 to respondent, which was signed by co-petitioners (his wife Ma. Lourdes Rodriguez and his business partner Augustus Gonzales), but leaving the amount and date in blank. The blank LBP check was delivered to respondent to guarantee the payment of 15,698 bags of Portland cement valued at P1,507,008.00, covered by Official Receipt No. 1175,<sup>[5]</sup> issued by respondent (as owner of Antique Commercial), in favor of petitioner Nestor Rodriguez (as owner of

Greenland Builders). However, a year later, respondent filled up blank LBP Check No. 6563066, by placing P2,062,000.00 and June 30, 1999, corresponding to the amount and date.

On December 9, 1999, petitioners filed an Amended Complaint<sup>[6]</sup> for Declaration of Payment, Cancellation of Documents and Damages against respondent with the RTC, Branch 31, Iloilo City, docketed as Civil Case No. 25945. The amended complaint alleged that they entrusted blank LBP Check No. 6563066 to respondent so as to facilitate the approval of the pre-payment application of petitioner Nestor Rodriguez with the DPWH. They stated that the blank LBP check would "serve as collateral" to guarantee the payment for 15,698 bags to be used for the Kalibo project, amounting to P1,507,008.00, and that after payment of the said amount, respondent would return the LBP check. According to them, after having paid respondent the amount of P2,306,500.00, which is P139,160.00 more than the amount of P2,167,340.00 (representing the value for 23,360 bags of cement taken for the Kalibo project), they were cleared of any liability.

On January 6, 2000, respondent filed an Answer to Amended Complaint,<sup>[7]</sup> averring that he had so far delivered 40,360 bags of cement to petitioners who remitted P2,306,500.00, thereby leaving an outstanding amount of P2,062,000.00. He countered that when petitioners stopped the bank-to-bank online payments to him, he filled up the amount of P2,062,000.00 and made the LBP check payable on June 30, 1999. The LBP check was dishonored for being "drawn against insufficient funds (DAIF)." By way of compulsory counterclaim, he sought recovery of the balance of P2,062,000.00, with interest at 24% from January 29, 1999 until fully paid as actual damages.

In the Pre-trial Order<sup>[8]</sup> dated January 28, 2000, the trial court determined the following to be the delimited issues, to wit:

- (1) whether plaintiffs' [herein petitioners] liability to defendant [herein respondent] for 15,698 bags priced at P1,507,008.00 subject of the earlier-mentioned pre-payment program and covered by the "blank" LBP Check No. 6563066 has already been paid, hence, plaintiffs are no longer liable to the defendant for this amount;
- (2) whether this LBP Check No. 6563066 should not be returned by defendant to plaintiffs, or failing in which, should now be declared as cancelled, null and void;
- (3) whether plaintiffs have completely paid to the defendant the price of the cement used for the Kalibo project which specifically is the amount of 23,360 bags of cement valued in the total amount of P2,167,340.00;
- (4) whether plaintiffs are entitled to damages and attorney's fees; and
- (5) whether this case be dismissed and with the dismissal of the complaint to proceed with the counterclaim.<sup>[9]</sup>

In a Decision dated June 28, 2002, the trial court, applying Section 14<sup>[10]</sup> of the Negotiable Instruments Law, found that respondent's subsequent filling up of LBP Check No. 6563066 in the amount of P2,062,000.00 was not made strictly in accordance with the authority given to him by petitioner Nestor Rodriguez, and that since one year had already lapsed, the same was not done within a reasonable time. As to the 23,360 bags of cement for the Kalibo project, valued at P2,167,340.00 which was subject of previous transactions, the trial court ruled that the same had been fully paid and considered a settled issue. Consequently, the RTC rendered judgment in favor of the petitioners and against the respondent, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant, as follows:

1. Declaring plaintiffs' obligation to the defendant for the cement supplied for the Kalibo (Lanot-Banga) Road Construction Project in the amount of P2,167,340.00 as already and fully paid, hence, plaintiffs are no longer liable to the defendant;
2. Declaring Land Bank Check No. 6563066 dated June 30, 1999 for P2,062,000.00 as null and void and without any legal effect;
3. Ordering defendant to pay each plaintiff the sums of P100,000.00 as actual damages; P500,000.00 as moral damages; P200,000.00 as attorney's fees and P2,000.00 per hearing as appearance fee; P50,000.00 as miscellaneous actual and necessary litigation expenses; and
4. To pay the costs.

Defendant's counterclaim is hereby DISMISSED.

SO ORDERED.<sup>[11]</sup>

After receipt of a copy of the said RTC Decision on July 26, 2002, respondent filed a Notice of Appeal on July 30, 2002.

In an Order<sup>[12]</sup> dated August 5, 2002, the trial court gave due course to respondent's appeal, and directed the Branch Clerk of Court to transmit the entire records of the case to the CA.

On August 26, 2002, petitioners filed a Motion for Reconsideration, to Dismiss Appeal, and for Issuance of Writ of Execution,<sup>[13]</sup> stating that respondent's appeal should be dismissed as the same was not perfected due to non-payment of docket and other lawful fees as required under Section 4, Rule 41 of the Rules of Court. Claiming that since the respondent's appeal was not perfected and, as a consequence, the RTC Decision dated June 28, 2002 became final and executory, petitioners sought the issuance of a writ of execution for the implementation of the said RTC Decision. To buttress their motion, petitioners also appended a

Certification<sup>[14]</sup> dated August 19, 2002, issued by the Clerk of Court of the Office of the Clerk of Court (OCC) of the RTC, Iloilo City, certifying that no appeal fees in the case had been paid and received by the OCC.

In the Order dated September 23, 2002, the trial court dismissed respondent's appeal and directed the issuance of a writ of execution to implement the RTC Decision dated June 28, 2002.

On October 2, 2002, the Clerk of Court and *Ex-officio* Provincial Sheriff of Iloilo issued the Writ of Execution<sup>[15]</sup> directing the execution of the RTC Decision dated June 28, 2002.

On October 7, 2002, respondent filed a Petition for *Certiorari* and Prohibition with Application for Writ of Preliminary Injunction and Prayer for Temporary Restraining Order,<sup>[16]</sup> seeking to set aside the RTC Order dated September 23, 2002 (which dismissed his appeal and directed the issuance of a writ of execution to implement the RTC Decision dated June 28, 2002), and to enjoin the implementation of the Writ of Execution dated October 2, 2002.

In a Resolution<sup>[17]</sup> dated October 9, 2002, the CA granted the respondents' prayer for Temporary Restraining Order and, in the Resolution<sup>[18]</sup> dated August 20, 2003, approved the respondent's injunction bond and directed the Division Clerk of Court to issue the writ of preliminary injunction.

On August 20, 2003, the Division Clerk of Court issued the Writ of Preliminary Injunction,<sup>[19]</sup> thereby enjoining the implementation of the Writ of Execution dated October 2, 2002.

On June 23, 2004, the CA rendered a Decision in favor of the respondent, the dispositive portion of which reads:

WHEREFORE, the petition is granted. The assailed order and writ of execution of the Regional Trial Court must be, as it is hereby, SET ASIDE. The trial court is hereby ordered to assess the appellate docket fees, if it has not done so, and allow the petitioner to pay such fees and give due course to the petitioner's appeal. No costs.

SO ORDERED.<sup>[20]</sup>

Aggrieved, petitioners filed a Motion for Reconsideration<sup>[21]</sup> on August 24, 2004, which, however, was denied by the CA in a Resolution<sup>[22]</sup> dated February 23, 2005.

Hence, petitioner filed this present petition raising the sole issue that:

THE COURT OF APPEALS PATENTLY ERRED IN REVERSING THE DECISION OF THE LOWER COURT AND ALLOWING RESPONDENT TO BELATEDLY PAY THE REQUIRED APPELLATE DOCKET AND OTHER LEGAL FEES.

Petitioners allege that since respondent failed to pay the docket and other legal fees at the time he filed the Notice of Appeal, his appeal was deemed not perfected in contemplation of the law. Thus, petitioners pray that the CA decision be set aside and a new one be rendered dismissing the respondent's appeal and ordering the execution of the RTC Decision dated June 28, 2002.

On the other hand, respondent, citing Section 9, Rule 41 of the Rules of Court, maintains that his appeal has been perfected by the mere filing of the notice of appeal. Respondent theorizes that with the perfection of his appeal, the trial court is now divested of jurisdiction to dismiss his appeal and, therefore, only the CA has jurisdiction to determine and rule on the propriety of his appeal. He raises the defense that his failure to pay the required docket and other legal fees was because the RTC Branch Clerk of Court did not make an assessment of the appeal fees to be paid when he filed the notice of appeal.

The petition is meritorious.

In cases of ordinary appeal, Section 2, Rule 41 of the Rules of Court provides that the appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the RTC (the court which rendered the judgment or final order appealed from) and serving a copy thereof upon the adverse party. Section 3 thereof states that the appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Concomitant with the filing of a notice of appeal is the payment of the required appeal fees within the 15-day reglementary period set forth in Section 4 of the said Rule. Thus,

*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.

In reversing the ruling of the trial court, the CA cited *Yambao v. Court of Appeals*<sup>[23]</sup> as justification for giving due course to respondent's petition and ordering the belated payment of docket and other legal fees. In *Yambao*, the CA dismissed therein petitioners' appeal from the RTC decision for failure to pay the full amount of the required docket fee. Upon elevation of the case, the Court, however, ordered the CA to give due course to their appeal, and ruled that their subsequent payment of the P20.00 deficiency, even before the CA had passed upon their motion for reconsideration, was indicative of their good faith and willingness to comply with the Rules.

The ruling in *Yambao* is not applicable to the present case as herein respondent never made any payment of the docket and other lawful fees, not even an attempt to do so, simultaneous with his filing of the Notice of Appeal. Although respondent was able to file a timely Notice of Appeal, however, he failed to pay the docket and other legal fees, claiming that the Branch Clerk of Court did not issue any