

SECOND DIVISION

[G.R. NO. 165496, February 12, 2007]

**HUN HYUNG PARK, PETITIONER, VS. EUNG WON CHOI,
RESPONDENT.**

DECISION

CARPIO MORALES, J.:

Petitioner, Hun Hyung Park, assails the Court of Appeals (CA) Resolutions dated May 20, 2004^[1] and September 28, 2004^[2] in CA G.R. CR No. 28344 dismissing his petition and denying reconsideration thereof, respectively.

In an Information^[3] dated August 31, 2000, respondent, Eung Won Choi, was charged for violation of *Batas Pambansa* Blg. 22, otherwise known as the Bouncing Checks Law, for issuing on June 28, 1999 Philippine National Bank Check No. 0077133 postdated August 28, 1999 in the amount of P1,875,000 which was dishonored for having been drawn against insufficient funds.

Upon arraignment, respondent, with the assistance of counsel, pleaded "not guilty" to the offense charged. Following the pre-trial conference, the prosecution presented its evidence-in-chief.

After the prosecution rested its case, respondent filed a Motion for Leave of Court to File Demurrer to Evidence to which he attached his Demurrer, asserting that the prosecution failed to prove that he received the notice of dishonor, hence, the presumption of the element of knowledge of insufficiency of funds did not arise.^[4]

By Order^[5] of February 27, 2003, the Metropolitan Trial Court (MeTC) of Makati, Branch 65 granted the Demurrer and dismissed the case. The prosecution's Motion for Reconsideration was denied.^[6]

Petitioner appealed the civil aspect^[7] of the case to the Regional Trial Court (RTC) of Makati, contending that the dismissal of the criminal case should not include its civil aspect.

By Decision of September 11, 2003, Branch 60 of the RTC held that while the evidence presented was insufficient to prove respondent's criminal liability, it did not altogether extinguish his civil liability. It accordingly granted the appeal of petitioner and ordered respondent to pay him the amount of P1,875,000 with legal interest.^[8]

Upon respondent's motion for reconsideration, however, the RTC set aside its decision and ordered the remand of the case to the MeTC "for further proceedings, so that the defendant [-respondent herein] may adduce evidence on the civil aspect

of the case."^[9] Petitioner's motion for reconsideration of the remand of the case having been denied, he elevated the case to the CA which, by the assailed resolutions, dismissed his petition for the following reasons:

1. The verification and certification of non-forum shopping attached to the petition does not fully comply with Section 4, as amended by A.M. No. 00-2-10-SC, Rule 7, 1997 Rules of Court, because it does not give the assurance that the allegations of the petition are true and correct based on authentic records.
2. The petition is not accompanied by copies of certain pleadings and other material portions of the record, (i.e., motion for leave to file demurrer to evidence, demurrer to evidence and the opposition thereto, and the Municipal [*sic*] Trial Court's Order dismissing Criminal Case No. 294690) as would support the allegations of the petition (Sec. 2, Rule 42, *ibid.*).
3. The Decision dated September 11, 2003 of the Regional Trial Court attached to the petition is an uncertified and illegible mere machine copy of the original (Sec. 2, Rule 42, *ibid.*).
4. Petitioners failed to implead the People of the Philippines as party-respondent in the petition.^[10]

In his present petition, petitioner assails the above-stated reasons of the appellate court in dismissing his petition.

The manner of verification for pleadings which are required to be verified, such as a petition for review before the CA of an appellate judgment of the RTC,^[11] is prescribed by Section 4 of Rule 7 of the Rules of Court:

Sec. 4. *Verification.* Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification shall be treated as an unsigned pleading.^[12] (Emphasis and underscoring supplied)

Petitioner argues that the word "or" is a disjunctive term signifying disassociation and independence, hence, he chose to affirm in his petition he filed before the court *a quo* that its contents are "true and correct of my own personal knowledge,"^[13] and not on the basis of authentic documents.

On the other hand, respondent counters that the word "or" may be interpreted in a conjunctive sense and construed to mean as "and," or vice versa, when the context of the law so warrants.

A reading of the above-quoted Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed based on either one's own personal knowledge or on authentic records, or both, as warranted. The use of the preposition "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient.^[14] Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.^[15]

Contrary to petitioner's position, the range of permutation is not left to the pleader's liking, but is dependent on the surrounding nature of the allegations which may warrant that a verification be based either purely on personal knowledge, or entirely on authentic records, or on both sources.

As pointed out by respondent, "authentic records" as a basis for verification bear significance in petitions wherein the greater portions of the allegations are based on the records of the proceedings in the court of origin and/or the court *a quo*, and not solely on the personal knowledge of the petitioner. To illustrate, petitioner himself could not have affirmed, based on his personal knowledge, the truthfulness of the statement in his petition^[16] before the CA that at the pre-trial conference respondent admitted having received the letter of demand, because he (petitioner) was not present during the conference.^[17] Hence, petitioner needed to rely on the records to confirm its veracity.

Verification is not an empty ritual or a meaningless formality. Its import must never be sacrificed in the name of mere expedience or sheer caprice. For what is at stake is the matter of verity attested by the sanctity of an oath^[18] to secure an assurance that the allegations in the pleading have been made in good faith, or are true and correct and not merely speculative.^[19]

This Court has strictly been enforcing the requirement of verification and certification and enunciating that obedience to the requirements of procedural rules is needed if fair results are to be expected therefrom. Utter disregard of the rules cannot just be rationalized by harking on the policy of liberal construction.^[20] While the requirement is not jurisdictional in nature, it does not make it less a rule. A relaxed application of the rule can only be justified by the attending circumstances of the case.^[21]

To sustain petitioner's explanation that the basis of verification is a matter of simple preference would trivialize the rationale and diminish the resoluteness of the rule. It would play on predilection and pay no heed in providing enough assurance of the correctness of the allegations.

On the second reason of the CA in dismissing the petition - that the petition was not accompanied by copies of certain pleadings and other material portions of the record as would support the allegations of the petition (*i.e.*, Motion for Leave to File Demurrer to Evidence, Demurrer to Evidence and the Opposition thereto, and the MeTC February 27, 2003 Order dismissing the case) - petitioner contends that these

documents are immaterial to his appeal.

Contrary to petitioner's contention, however, the materiality of those documents is very apparent since the civil aspect of the case, from which he is appealing, was likewise dismissed by the trial court on account of the same Demurrer.

Petitioner, nonetheless, posits that he subsequently submitted to the CA copies of the enumerated documents, save for the MeTC February 27, 2003 Order, as attachments to his Motion for Reconsideration.

The Rules, however, require that the petition must "be accompanied by clearly legible duplicate original or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court."^[22]

A perusal of the petition filed before the CA shows that the only duplicate original or certified true copies attached as annexes thereto are the January 14, 2004 RTC Order granting respondent's Motion for Reconsideration and the March 29, 2004 RTC Order denying petitioner's Motion for Reconsideration. The copy of the September 11, 2003 RTC Decision, which petitioner prayed to be reinstated, is not a certified true copy and is not even legible. Petitioner later recompensed though by appending to his Motion for Reconsideration a duplicate original copy.

While petitioner averred before the CA in his Motion for Reconsideration that the February 27, 2003 MeTC Order was already attached to his petition as Annex "G," Annex "G" bares a replicate copy of a different order, however. It was to this Court that petitioner belatedly submitted an uncertified true copy of the said MeTC Order as an annex to his Reply to respondent's Comment.

This Court in fact observes that the copy of the other MeTC Order, that dated May 5, 2003, which petitioner attached to his petition before the CA is similarly uncertified as true.

Since both Orders of the MeTC were adverse to him even with respect to the civil aspect of the case, petitioner was mandated to submit them in the required form.
^[23]

In fine, petitioner fell short in his compliance with Section 2 (d) of Rule 42, the mandatory tenor of which is discernible thereunder and is well settled.^[24] He has not, however, advanced any strong compelling reasons to warrant a relaxation of the Rules, hence, his petition before the CA was correctly dismissed.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed

procedure to insure an orderly and speedy administration of justice.^[25]
(Emphasis supplied)

As to the third reason for the appellate court's dismissal of his petition - failure to implead the People of the Philippines as a party in the petition - indeed, as petitioner contends, the same is of no moment, he having appealed only the civil aspect of the case. Passing on the dual purpose of a criminal action, this Court ruled:

Unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action, there are two actions involved in a criminal case. The first is the criminal action for the punishment of the offender. The parties are the People of the Philippines as the plaintiff and the accused. In a criminal action, the private complainant is merely a witness for the State on the criminal aspect of the action. The second is the civil action arising from the delict. The private complainant is the plaintiff and the accused is the defendant. There is a merger of the trial of the two cases to avoid multiplicity of suits.^[26] (Underscoring supplied)

It bears recalling that the MeTC acquitted respondent.^[27] As a rule, a judgment of acquittal is immediately final and executory and the prosecution cannot appeal the acquittal because of the constitutional prohibition against double jeopardy.

Either the offended party or the accused may, however, appeal the civil aspect of the judgment despite the acquittal of the accused. The public prosecutor has generally no interest in appealing the civil aspect of a decision acquitting the accused. The acquittal ends his work. The case is terminated as far as he is concerned. **The real parties in interest in the civil aspect of a decision are the offended party and the accused.**^[28]

Technicality aside, the petition is devoid of merit.

When a demurrer to evidence is filed *without leave of court*, the whole case is submitted for judgment on the basis of the evidence for the prosecution as the accused is deemed to have waived the right to present evidence.^[29] At that juncture, the court is called upon to decide the case including its civil aspect, unless the enforcement of the civil liability by a separate civil action has been waived or reserved.^[30]

If the filing of a separate civil action has not been reserved or priorly instituted or the enforcement of civil liability is not waived, the trial court should, in case of conviction, state the civil liability or damages caused by the wrongful act or omission to be recovered from the accused by the offended party, if there is any.^[31]

For, in case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.^[32]