

## SECOND DIVISION

[ G.R. No. 173942, October 15, 2007 ]

**FIL-ESTATE PROPERTIES, INC. AND FAIRWAYS AND BLUE-WATERS RESORT AND COUNTRY CLUB, INC., PETITIONERS, VS. HON. MARIETTA J. HOMENA-VALENCIA, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 1, REGIONAL TRIAL COURT, KALIBO, AKLAN, AND SULLIAN SY NAVAL, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This Petition for Review on Certiorari seeks the reversal of the rulings of the Court of Appeals in CA-G.R. SP No. 61567 involving the dismissal of the petition for certiorari wherein petitioners assailed the Decision dated 28 February 2000 of the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 1, Kalibo, Aklan<sup>[1]</sup> in Civil Case No. 5626.

We begin with the salient facts.

The case stemmed from a complaint for recovery of possession dated 5 November 1998 filed by private respondent Sullian Sy Naval (Naval) against petitioners Fil-Estate Properties, Inc. (Fil-Estate) and Fairways and Blue-Waters Resort and Country Club Inc. (Fairways). Naval alleged that she was the registered owner of a 1,000-square meter parcel of land located in Barangay Yapak, Malay, Aklan and covered by Transfer Certificate of Title No. 22944.<sup>[2]</sup> This lot as admitted by petitioners is situated within the vicinity of Holes 12 and 13 of the Fairways and Bluewaters Golf and Country Club, a golf course owned by Fairways and developed by Fil-Estate. According to the complaint, petitioners took possession of the subject property and constructed thereon a portion of the golf course without Naval's consent. Despite written demands, petitioners refused to vacate the property. This prompted Naval to file the complaint, seeking the recovery of possession of the property and rentals for the use thereof, as well as actual damages plus moral and exemplary damages "of at least P500,000.00."

Petitioners filed an answer<sup>[3]</sup> wherein they alleged that Naval had purchased the subject lot from Divina Marte Villanueva (Villanueva) with whom they entered into a joint venture agreement for the development into a golf course of several parcels of land owned by Villanueva. It later emerged that Villanueva had previously sold said parcels of land to third persons, one of whom was Naval. Thus, Villanueva assured petitioners that she would convince Naval and the other previous buyers to swap the lots they had bought from her for lots of equal size within a subdivision that was to be developed adjacent to the golf course. While several buyers did agree to the swap, Naval held out. The impasse did not constrain petitioners from developing the golf course and later commencing its operations. Petitioners did manifest though in their answer that they "took pains to exclude development work on the said lot as there is no definitive agreement yet between [the parties] concerning the same."<sup>[4]</sup>

The answer was filed for petitioners by Atty. Alfredo Lagamon, Jr., then employed as an in-house corporate legal counsel for petitioners. Pre-trial was set for 16 July 1999, with notice thereof received by Atty. Lagamon, Jr. eight days prior. However, on 12 July 1999, Atty. Lagamon, Jr. filed a motion for postponement, wherein it was adduced that he had already tendered his resignation as corporate legal counsel for petitioners effective 15 July 1999 and thus, the prayer for postponement of the pre-trial to a later date. Accordingly, pre-trial was reset to 27 September 1999, with notice thereof served on Atty. Lagamon, Jr. However, nobody appeared for petitioners on the new pre-trial date. Hence, the RTC issued an order setting the date for presentation of Naval's evidence as plaintiff. At the trial, only Naval presented evidence on her behalf.

On 28 February 2000, the RTC rendered a decision<sup>[5]</sup> in favor of Naval, ordering petitioners to restore to her possession the subject property. The trial court cited Sections 5 and 6 of Rule 18 of the 1997 Rules of Civil Procedure as bases for allowing Naval to present evidence *ex parte* in view of petitioners' non-appearance at the pre-trial. It concluded that petitioners had indeed illegally occupied the subject property from the start of the construction of the golf course. Thus, the RTC ordered petitioners to pay monthly rentals amounting to P50,000.00 from April 1997 to October 1998, and P70,000.00, compounded by a 20% increase per annum thereafter until possession is restored to Naval. In addition, Naval was awarded the sum of

₱261,177.75 as "attorney's fees and other compensatory damages," ₱3,000,000.00 as moral damages and another ₱3,000,000.00 as exemplary damages.

Petitioners apparently received a copy of the decision on 27 April 2000.<sup>[6]</sup> Thirteen days later, on 10 May 2000, they filed before the RTC a motion for reconsideration, later followed by a supplemental motion for reconsideration. Both motions were prepared for petitioners by Atty. Edgar B. Uytiepo. These motions recounted that Atty. Lagamon, Jr., on whom notice of pre-trial and other succeeding processes were served in behalf of petitioners, had already resigned effective 15 July 1999. Thus, the subsequent trial held without their participation violated their right to due process. The RTC in an order dated 26 July 2000 pointed out, among others, that Atty. Lagamon, Jr. had never formally withdrawn his appearance and that the service of subsequent orders and notices at his given address at Renaissance Bldg., Meralco Avenue, Pasig City, which was the same address as petitioners,' was sufficient notice to petitioners.<sup>[7]</sup>

Petitioners received a copy of the order denying the motion for reconsideration on 11 August 2000.<sup>[8]</sup> Through Atty. Uytiepo, they filed a notice of appeal on the same day. However, they did not pay the docket fees contemporaneously with the filing of the notice. Instead, they obtained the postal money orders covering the docket fees from the Bacolod City post office only on 25 August 2000, or outside the reglementary period to appeal which, according to the RTC, expired on 13 August 2000.<sup>[9]</sup> Consequently, in an order dated 13 September 2000, the RTC denied the appeal of the petitioners and directed the issuance of a writ of execution to enforce the judgment of the court.

Petitioners filed with the Court of Appeals a special civil action for certiorari assailing the 13 September 2000 order of the RTC disallowing the notice of appeal, as well as its earlier decision and order denying the motion for reconsideration. The Court of Appeals, in a decision<sup>[10]</sup> promulgated on 26 March 2004, reiterated the rule that full payment of docket fees within the prescribed period is mandatory and non-compliance therewith is cause for the dismissal of the appeal. Petitioners' motion for reconsideration of the decision proved unsuccessful; hence, the present petition.

Petitioners argue that the Court of Appeals erred in "rigidly and perfunctorily" sustaining the dismissal of their appeal on account of their failure to timely pay the requisite docket fees, as they rely instead on the liberal application of procedural rules in their favor. They contend that prior to its amendment in 2000, Section 13 of Rule 41 had originally provided only one ground for the dismissal of appeal by the trial court which is that the appeal was "taken out of time," adding that it was only with the adoption of A.M. 00-2-10-SC that the rule was amended to include the non-payment of docket fees among the grounds for the dismissal of the appeal. Petitioners admit that the amendment took effect on 1 May 2000, or around three (3) months before the subject incidents had transpired, yet they claim that such amendment was "a very recent or novel development" which their former lawyer, or even the respondent judge, might not have been aware of at the time the notice of appeal was filed. They further point out that the rule respondent judge had cited in dismissing the appeal is Section 4, Rule 41, which required the payment of the full amount of the appellate court docket fees within the period for taking an appeal. Said rule, petitioners say, did not grant the trial court authority to dismiss the appeal on the ground of late payment of the appellate docket fee.

Petitioners likewise cite arguments concerning the imputed violation of their right to due process by the RTC when it proceeded to receive Naval's evidence *ex parte*, as well as in view of the "excessive" damages awarded in favor of Naval and the alleged disastrous effects on the golf course should the RTC decision be finally executed. These arguments though cannot merit the attention of this Court unless petitioners first overcome the jurisdictional barrier caused by the non-perfection of their appeal from the RTC decision. It is a serious complication of petitioners' own making which they are unable to untangle.

According to petitioners' analysis of the Rules, it was only with the adoption of A.M. No. 00-2-10-SC, amending Section 13 of Rule 41 effective 1 May 2000, that it became obligatory on the part of the trial courts to dismiss appeals on account of the failure to pay the full docket fees. The argument is self-defeating given the fact that petitioners' failure to pay the requisite docket fees on time precisely occurred after the amendments had taken effect. It has somehow persuasive effect only to the extent that the requirement might have been new and hardly intuitive at the time it applied to petitioners in August of 2000. Yet the argument, if considered, is ultimately erroneous and baseless. The dismissal of the appeal as the inevitable aftermath of the late payment of the appellate docket fee has been mandated since the effectivity of the 1997 Rules of Civil Procedure, with Section 4 of Rule 41 in connection with the old Section 13, Rule 41 covering the situation.

The old Section 13 provided that "the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time." Petitioners may be correct in stating that under the old rule, there was only one provided ground for the dismissal of the appeal â"€ that it was "taken out of time." Yet Section 4 also

provides for a rule that helps delineate how exactly an appeal is timely taken. The rule, which incidentally was cited as the basis for the RTC's dismissal of the notice of appeal, states in full:

*Sec. 4. Appellate court docket and other fees.* — Within the period for taking an appeal, the appellant shall pay to the clerk of 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.

It bears further notice that had the RTC anyway allowed the notice of appeal, Section 1(c) of Rule 50 of the 1997 Rules would have authorized the Court of Appeals to also dismiss the appeal on account of the non-payment of the docket fees within the period for taking an appeal.

Taking into account all of these provisions, the Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. Time and again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of the appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.<sup>[11]</sup>

In *Enriquez v. Enriquez*,<sup>[12]</sup> we illustrated at length the scope and history of the requirement laid down in Section 4, Rule 41.

Prior to the effectivity of the 1997 Rules of Civil Procedure, as amended, payment of appellate court docket fee is not a prerequisite for the perfection of an appeal. In *Santos vs. Court of Appeals*, this Court held that although an appeal fee is required to be paid in case of an appeal taken from the Municipal Trial Court to the Regional Trial Court, it is not a prerequisite for the perfection of an appeal under Sections 20 2 and 23 3 of the Interim Rules and Guidelines issued by this Court on January 11, 1983 implementing the Judiciary Reorganization Act of 1981 (B.P. Blg. 129). Under these sections, there are only two requirements for the perfection of an appeal, to wit: (a) the filing with the trial court of a notice of appeal within the reglementary period; and (b) the expiration of the last day to appeal by any party.

However, the 1997 Rules of Civil Procedure, as amended, which took effect on July 1, 1997, now require that appellate docket and other lawful fees must be paid within the same period for taking an appeal. This is clear from the opening sentence of Section 4, Rule 41 of the same Rules that, "(W)ithin 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."

The use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory. Petitioners cannot give a different interpretation to the Rule and insist that payment of docket fee shall be made only upon their receipt of a notice from the trial court to pay. For it is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be interpreted together with the other parts, and kept subservient to the general intent of the whole enactment. Indeed, petitioners cannot deviate from the Rule.

Also under Rule 41 of the same Rules, an appeal to the Court of Appeals from a case decided by the RTC in the exercise of the latter's original jurisdiction, shall be taken within fifteen (15) days from the notice of judgment or final order appealed from. Such appeal is made by filing a notice thereof with the court that rendered the judgment or final order and by serving a copy of that notice upon the adverse party. Furthermore, within this same period, appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. The payment of docket fee within this period is mandatory for the perfection of appeal. Otherwise, the appellate court would not be able to act on the subject matter of the action, and the decision sought to be appealed from becomes final and executory.

**Time and again, this Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.** [emphasis supplied]<sup>[13]</sup>