509 Phil. 420

# THIRD DIVISION

# [ G.R. NO. 134113, October 12, 2005 ]

## AIR FRANCE PHILIPPINES, PETITIONER, VS. THE HONORABLE JUDGE EMILIO L. LEACHON (REGIONAL TRIAL COURT, QUEZON CITY, BRANCH 224) AND LUMEN POLICARPIO, RESPONDENTS.

## D E C I S I O N

**GARCIA, J.:**

In this petition for review under Rule 45 of the Rules of Court, petitioner Air France Philippines seeks the annulment and setting aside of the Resolutions dated February 20, 1998[1] and June 9, 1998 of the Court of Appeals (CA) in *CA-G.R. SP No. 45251*. The first assailed resolution dismissed the main petition, while the second denied petitioner's motion for reconsideration.

The facts:

Sometime in 1980, in the then Court of First Instance (CFI) of Caloocan City, herein respondent, Atty. Lumen Policarpio, filed a complaint for damages against petitioner Air France Philippines.

On December 2, 1980, petitioner and respondent entered into an amicable settlement via a document entitled "*Release and Quitclaim*". Pursuant thereto, the parties filed a joint motion for the dismissal of *Civil Case No. C-6952*, with prejudice. Acting thereon, the court ordered petitioner to submit the parties' amicable agreement, and thereafter dismissed the case, with prejudice.

On March 25, 1995, or after a lapse of more than (14) fourteen years, respondent filed another complaint for damages against petitioner, this time with the Regional Trial Court at Quezon City whereat the complaint was docketed as *Civil Case No. Q-95-23539*. In her complaint, respondent alleged that petitioner reneged in its obligation under their 1980 "*Release and Quitclaim*" agreement. To the complaint, petitioner interposed a motion to dismiss on grounds of *res judicata* and prescription.

Opposing the motion, respondent countered that on account of petitioner's failure to submit the notarized "*Release and Quitclaim*" agreement as ordered by the Caloocan CFI in Civil Case No. C-6952, said court did not issue a Compromise Judgment. Hence, so respondent argued, there was no final judgment or order on the merits and therefore *res judicata* has not set in to bar her complaint in Civil Case No. Q-95-23539.

In an order dated October 28, 1996, the trial court denied petitioner's motion to dismiss. With its motion for reconsideration having been rejected by the same court in its subsequent order of May 6, 1997, petitioner went to the Court of Appeals (CA)

on a petition for *certiorari* under Rule 65 in *CA-G.R. SP No. 45015*. In a Resolution dated August 29, 1997, the appellate court dismissed the petition due to petitioner's failure to attach an affidavit of service and a written explanation why personal service of the petition was not effected, and to state in the caption of its petition the docket number of the case before the lower court whose orders are assailed in the petition.

On *September 12, 1997*, instead of filing a motion for reconsideration in *CA-G.R. SP No. 45015*, petitioner filed with the appellate court another petition for *certiorari* assailing the very same orders of the trial court in its Civil Case No. Q-95-23539. This second petition was docketed as ***CA-G.R. SP No. 45251***.

In the herein challenged Resolution dated February 20, 1988, the appellate court dismissed CA-G.R. SP No. 45251 for having been filed late. Because the 1997 Rules of Civil Procedure was then in its stage of infancy, the appellate court explained in its dismissal resolution, as follows:

> Prior to the effectivity of the 1997 Rules of Civil Procedure on July 1, 1997, the yardstick, so to speak, to determine the timeliness of a petition for *certiorari* was the reasonableness of the time that had elapsed from the commission of the acts complained of up to the institution of the proceedings to annul the same (Fernandez v. National Labor Relations Commission, 230 SCRA 460 [1994]). Such standard was flexible and was initially pegged at three months (People v. Magallanes, 249 SCRA 212 [1995]; Paderanga v. Court of Appeals, 247 SCRA 741 [1995]). And in the cases cited by the petitioner (People vs. Castañeda, 165 SCRA 327, Santos v. National Labor Relations Commission, 169 SCRA 759 and Philgreen Trading Construction Corporation vs. Court of Appeals, G.R. No. 120408, April 18, 1997), the Supreme Court even allowed greater leeway to the interest of substantial justice.
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> Under the 1997 Rules of Civil Procedure, however the element of flexibility was eliminated and Section 4, Rule 65 of the said Rules now specifically provides that:
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> > SEC. 4. *Where petition filed*. - The petition may be filed **not later than sixty (60) days from notice of the judgment**, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, or person, in the Regional Trial Court exercising jurisdiction in the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
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> The use of the words "**not later than sixty (60) days from notice**" emphasizes the inflexibility of the period fixed for the filing of a petition for *certiorari*. This Court has not even been given authority to grant extensions such as in Rules 42 and 43. Unlike the Supreme Court, which alone can suspend the applicability of its rules of procedure, this Court