

SECOND DIVISION

[G.R. No. 156278, March 29, 2004]

PLANTERS PRODUCTS, INC., PETITIONER, VS. FERTIPHIL CORPORATION, RESPONDENT.

DECISION

PUNO, J.:

Before us is a petition for review under Rule 45 assailing the Decision dated July 19, 2002^[1] of the Court of Appeals in CA-G.R. SP No. 67434, and its Resolution dated December 4, 2002 denying petitioner's motion for reconsideration.

Petitioner Planters Products, Inc. ("PPI") and respondent Fertiphil Corporation ("Fertiphil") are domestic corporations engaged in the importation and distribution of fertilizers, pesticides and agricultural chemicals. On the strength of Letter of Instruction No. 1465 issued by then President Ferdinand E. Marcos on June 3, 1985, Fertiphil and other domestic corporations engaged in the fertilizer business paid P10.00 for every bag of fertilizer sold in the country to the Fertilizer and Pesticide Authority (FPA), the government agency governing the fertilizer industry. FPA in turn remitted the amount to PPI for its rehabilitation, according to the express mandate of LOI No. 1465.^[2]

After the EDSA I revolution in 1986, the imposition of P10.00 by the FPA on every bag of fertilizer sold was voluntarily stopped. Fertiphil demanded from PPI the refund of P6,698,144.00 which it paid under LOI No. 1465. PPI refused. Hence, on September 14, 1987, Fertiphil filed a collection and damage suit against FPA and PPI before the Regional Trial Court of Makati City docketed as Civil Case No. 17835 demanding refund of the P6,698,144.00. Fertiphil contended that LOI No. 1465 was void and unconstitutional for being a glaring example of crony capitalism as it favored PPI only. PPI filed its answer but for failure to attend the pre-trial conference, it was declared in default and Fertiphil was allowed to present evidence *ex-parte*.

On November 20, 1991, the RTC of Makati City, Branch 147, decided in favor of Fertiphil declaring LOI No. 1465 void and unconstitutional. It ordered PPI to return the amount which Fertiphil paid thereunder, with twelve percent (12%) interest from the time of judicial demand. PPI's motion for reconsideration was denied in an Order dated February 13, 1992. Hence, it filed notice of appeal on February 20, 1992. At the same time, Fertiphil moved for execution of the decision pending appeal. The trial court granted the motion and a writ of execution pending appeal was issued upon the posting of a surety bond by Fertiphil in the amount of P6,698,000.00. PPI assailed the propriety of the execution pending appeal before the Court of Appeals and, thereafter, to this Court. We resolved the case in its favor in our Decision dated October 22, 1999 in G.R. No. 106052.^[3] Fertiphil was ordered to return all the properties of PPI taken in the course of execution pending appeal or

the value thereof, if return is no longer possible. After the decision became final and executory, PPI moved for execution before the trial court and Fertiphil's bank deposits were accordingly garnished.

On January 5, 2001, Fertiphil moved to dismiss PPI's appeal from the trial court's Decision dated November 20, 1991 citing as grounds the non-payment of the appellate docket fee and alleged failure of PPI to prosecute the appeal within a reasonable time. The trial court denied the motion in an Order dated April 3, 2001 ruling that the payment of the appellate docket fee within the period for taking an appeal is a new requirement under the **1997 Rules of Civil Procedure** which was not yet applicable when PPI filed its appeal in 1992. Moreover, the court found that PPI did not fail to prosecute the appeal within a reasonable time.

On April 5, 2001, the court issued another order, upon PPI's motion, directing Fertiphil's banks to deliver to the Deputy Sheriff the garnished deposits maintained with them and for the levying upon of the surety bond posted by Fertiphil.

Fertiphil moved to reconsider the Orders dated April 3 and 5, 2001, to no avail. Hence, on October 30, 2001, it filed a special civil action for certiorari with the Court of Appeals imputing grave abuse of discretion on the part of the trial court in issuing the two orders.^[4] The Court of Appeals partially granted the petition and set aside the Order dated April 3, 2001. It ruled that although PPI filed its appeal in 1992, the **1997 Rules of Civil Procedure** should nevertheless be followed since it applies to actions pending and undetermined at the time of its passage. Due to PPI's failure to pay the appellate docket fee for three (3) years from the time the **1997 Rules of Civil Procedure** took effect on July 1, 1997 until Fertiphil moved to dismiss the appeal in 2001, the trial court's decision became final and executory. The Court of Appeals thus disposed of the petition, *viz*:

WHEREFORE, the instant petition is PARTIALLY GRANTED and the Order of 03 April 2001 of the Regional Trial Court of Makati City, Branch 147, is SET ASIDE. The decision of 20 November 1991 of the said court is hereby declared final and executory.

The Clerk of Court is directed to return to the Regional Trial Court of Makati City, Branch 147, the record of Civil Case No. 17385 (sic) entitled "Fertiphil Corporation vs. Planters Product(s) Inc., and Fertilizer and Pesticide Authority," for the computation of the amount due the petitioner Fertiphil Corporation pursuant to the 20 November 1991 decision.

SO ORDERED.^[5]

Hence, this petition by PPI.

As a general rule, rules of procedure apply to actions pending and undetermined at the time of their passage, hence, retrospective in nature. However, the general rule is not without an exception. Retrospective application is allowed if no vested rights are impaired.^[6] Thus, in **Land Bank of the Philippines v. de Leon**^[7] our ruling that the appropriate mode of review from decisions of Special Agrarian Courts is a petition for review under Sec. 60 of R.A. No. 6657 and not an ordinary appeal as Sec. 61 thereof seems to imply, was not given retroactive application. We held that to give our ruling a retrospective application would prejudice petitioner's pending

appeals brought under said Sec. 61 before the Court of Appeals at a time when there was yet no clear pronouncement as to the proper interpretation of the seemingly conflicting Secs. 60 and 61. In fine, to apply the Court's ruling retroactively would prejudice LBP's right to appeal because its pending appeals would then be dismissed outright on a mere technicality thereby sacrificing the substantial merits of the cases.

In the instant case, at the time PPI filed its appeal in 1992, all that the rules required for the perfection of its appeal was the filing of a notice of appeal with the court which rendered the judgment or order appealed from, within fifteen (15) days from notice thereof.^[8] PPI complied with this requirement when it filed a notice of appeal on February 20, 1992 with the RTC of Makati City, Branch 147, after receiving copy of its Order dated February 13, 1992 denying its motion for reconsideration of the adverse Decision dated November 20, 1991 rendered in Civil Case No. 17835. PPI's appeal was therefore already perfected at that time.

Thus, the **1997 Rules of Civil Procedure** which took effect on July 1, 1997 and which required that appellate docket and other lawful fees should be paid within the same period for taking an appeal,^[9] can not affect PPI's appeal which was already perfected in 1992. Much less could it be considered a ground for dismissal thereof since PPI's period for taking an appeal, likewise the period for payment of the appellate docket fee as now required by the rules, has long lapsed in 1992. While the right to appeal is statutory, the mode or manner by which this right may be exercised is a question of procedure which may be altered and modified only when vested rights are not impaired.^[10] Thus, failure to pay the appellate docket fee when the **1997 Rules of Procedure** took effect cannot operate to deprive PPI of its right, already perfected in 1992, to have its case reviewed on appeal. In fact the Court of Appeals recognized such fact when it gave PPI a fresh period to pay the appellate docket fee in an Order dated April 9, 2002 issued in UDK-CV-No. 0304^[11] directing it to pay the fee within fifteen (15) days from receipt thereof.

This is not all. We have also previously ruled that failure to pay the appellate docket fee does not automatically result in the dismissal of an appeal, dismissal being discretionary on the part of the appellate court.^[12] And in determining whether or not to dismiss an appeal on such ground, courts have always been guided by the peculiar legal and equitable circumstances attendant to each case. Thus, in **Pedrosa v. Hill**^[13] and **Gegare v. Court of Appeals**,^[14] the appeals were dismissed because appellants failed to pay the appellate docket fees despite timely notice given them by the Court of Appeals and despite its admonitions that the appeals would be dismissed in case of non-compliance. On the other hand, the appeal in **Mactan Cebu International Airport Authority v. Mangubat**^[15] was not dismissed because we took into account the fact that the **1997 Rules of Civil Procedure** had only been in effect for fourteen (14) days when the Office of the Solicitor General appealed from the decision of the RTC of Lapu-Lapu City on July 14, 1997 without paying the appellate court docket fees as required by the new rules. Considering the recency of the changes and appellant's immediate payment of the fees when required to do so, the appeal was not dismissed. We can do no less in the instant case where PPI was not even required under the rules in 1992 to pay the appellate docket fees at the time it filed its appeal. We note moreover that PPI, like the appellant in **Mactan**, promptly paid the fees when required to do so for