

## SECOND DIVISION

[ G.R. NO. 148739, November 19, 2004 ]

**FAR CORPORATION, PETITIONER, VS. RENATO MAGDALUYO,  
ANTONIO VALDEZ, AND ROLANDO CHUA, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

In an appeal from a Decision or final order of the Regional Trial Court to the Court of Appeals, will the payment of the appellate docket fees made one hundred and thirty-two (132) days after the lapse of the reglementary period to take an appeal, justify its dismissal?

This is the question to be resolved in this case.

The relevant and undisputed facts are as follows:

On 25 November 1997, a complaint<sup>[1]</sup> was filed by respondents herein against petitioner Far Corporation, Rosa O. Caram, and Fermin Manuel Caram III for Specific Performance with Prayer for a Writ of Preliminary Injunction and Damages, with the Regional Trial Court (RTC), Branch 137, Makati City, docketed as Civil Case No. 97-2745. A Decision<sup>[2]</sup> was rendered by the said court on 21 December 1998, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering defendant FAR Corporation to pay plaintiffs RENATO T. MAGDALUYO, ANTONIO L. VALDEZ and ROLANDO E. CHUA, Seven Hundred Fifty Thousand (P750,000.00) Pesos as broker's commission with legal interest at the rate of six (6%) [percent] per annum from 2 May 1990 until fully paid; however said commissions, inclusive of interest, should be divided equally in four parts, and  $\frac{1}{4}$  given to each plaintiff, and  $\frac{1}{4}$  to defendant Fermin Manuel Caram III; attorney's fees equivalent to twenty percent of the amounts due; and costs of the suit.

The complaint, insofar as defendants Rosa O. Caram and Fermin Manuel Caram III (sic), is dismissed for lack of sufficient evidence.

The Decision of the trial court was received by petitioner on 18 February 1999.<sup>[3]</sup>

Not fully satisfied with the trial court's Decision, petitioner filed a Motion for Reconsideration<sup>[4]</sup> on 02 March 1999, to which respondents filed a Comment<sup>[5]</sup> dated 18 March 1999.

In an Order<sup>[6]</sup> dated 02 February 2000, the trial court denied the Motion for Reconsideration for lack of merit. This Order was received by petitioner on 17

February 2000.<sup>[7]</sup>

On 21 February 2000, petitioner filed a Notice of Appeal<sup>[8]</sup> with the trial court. An Order<sup>[9]</sup> was issued by the trial court judge on 28 March 2000, directing the Branch Clerk of Court to transmit immediately the entire records of the case, with the transcript of stenographic notes, to the Court of Appeals. The same were transmitted to the Court of Appeals on 22 June 2000.<sup>[10]</sup>

On 18 July 2000, petitioner filed with the Court of Appeals an Ex-Parte Manifestation and Submission dated 17 July 2000.<sup>[11]</sup> In said pleading, petitioner manifested that it has paid the required appeal docket fees with the trial court, whose Decision and order were being appealed, and prayed that the receipts for payment be included as part of the records of the case. Attached therewith were the originals of the Clerk of Court, RTC-Makati Official Receipts, with numbers 12856671 (for P300) and 12857288 (for P200),<sup>[12]</sup> both dated 13 July 2000.

On 28 July 2000, respondents filed a Comment with Motion to Dismiss before the Court of Appeals.<sup>[13]</sup> Respondents moved for the dismissal of the appeal on the ground that petitioner failed to pay the docket fees within the period for taking an appeal.

On 31 August 2000, the Court of Appeals issued a Resolution,<sup>[14]</sup> quoted as follows:

From the records it appear(s) that appellant filed his notice of appeal on February 21, 2000. Yet based on the "Ex-Parte Manifestation and Submission" filed by counsel for defendant-appellant it appears that the appeal docket fees were paid only on July 13, 2000, obviously way beyond the period for perfecting an appeal. In view thereof, the present appeal is **DISMISSED** for non-payment of docket fees within the period for perfecting an appeal.

The said Resolution was received by petitioner on 18 September 2000,<sup>[15]</sup> and on 21 September 2000, it filed a Motion for Reconsideration.<sup>[16]</sup> On 21 November 2000, respondents filed a Comment on the Motion For Reconsideration,<sup>[17]</sup> to which petitioner filed a Motion to Strike Comment<sup>[18]</sup> dated 27 December 2000. The Court of Appeals, in another Resolution<sup>[19]</sup> promulgated on 27 June 2001, dismissed the Motion for Reconsideration for lack of merit. The same is quoted hereunder:

After a reading of the Motion for Reconsideration filed by defendant-appellant Far Corporation, we find no reason to disturb our previous ruling dismissing the appeal for non-payment of docket fee within the period of perfecting an appeal.

The contention of defendant appellant that under Sec. 1(c), Rule 50, the ground to dismiss an appeal is failure to pay the docket fee but not failure to pay the docket fee on time, is untenable. On this respect, it is worth stressing that based on the records, it took defendant-appellant almost five (5) months before paying the required docket fee. Such unreasonable delay would be tantamount to failure to pay the docket fee which is a ground for dismissal of an appeal pursuant to Sec. 1(c) of the

Rules of Court.

WHEREFORE, the Motion for Reconsideration is hereby denied for lack of merit.

Hence, this petition.

Petitioner assigned the following errors:

1. That the Court of Appeals committed serious and reversible error of law when it peremptorily and precipitously dismissed its formative appeal, and refused to reconsider said dismissal, based on the procedural technicality of late payment of appeal docket fees, rather than on the substantial merits of the case, thereby unduly depriving it of its right to appeal; and
2. That by its unjustifiable actions which constitute unwarranted deviation from, and disregard of, the prevailing doctrines laid down by this Court, the Court of Appeals unjustly denied due process to petitioner, who by paying the appeal docket fees at its own initiative showed complete good faith and willingness to comply with the Rules.<sup>[20]</sup>

In support of the assignment of errors, petitioner submits the arguments that the nonpayment on time of the appeal docket fees is a non-fatal lapse, or a non-jurisdictional defect which the Court of Appeals should have overlooked in order to attain substantial justice.<sup>[21]</sup> This argument, according to petitioner, was based on our rulings in the earlier cases of *Rosario Yambao v. Court of Appeals*,<sup>[22]</sup> *Ayala Land, Inc. v. Sps. Morris and Socorro Carpo*,<sup>[23]</sup> and *Santos v. Court of Appeals*.<sup>[24]</sup> Further, petitioner argues that the Court of Appeals hastily and wrongly dismissed its appeal considering that there was good faith and willingness on its part to comply with the Rules by voluntarily paying the docket fees.<sup>[25]</sup>

The petition is devoid of merit.

The reliance of petitioner in the three aforementioned cases is misplaced.

In *Yambao v. Court of Appeals*,<sup>[26]</sup> the failure of the petitioners to pay the correct amount of docket fees was due to the erroneous assessment by the Clerk of Court of the Regional Trial Court, Valenzuela City (the assessment was short by P20), as evidenced by the 10 December 1999 Certification issued by the Office of the Clerk of Court. The fault was not upon the petitioners themselves, but upon a civil servant. In this case, we even reiterated the ruling that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal.

In the case of *Ayala Land, Inc. v. Sps. Morris and Socorro Carpo*,<sup>[27]</sup> the appellant was likewise unable to pay the correct amount of docket fees due to an error of an officer of the Court in computing the correct amount (the assessment was short by P5). Therefore, there was no fault on its part.

The case of *Santos v. Court of Appeals*,<sup>[28]</sup> wherein we laid down the rule that the

payment of the appeal fee is not a prerequisite for the perfection of an appeal, is not totally applicable in the case at bar. The *Santos* case was decided at a time when the 1997 Rules on Civil Procedure was not yet in effect. It was also a case involving an appeal, not from the RTC to the Court of Appeals, but from the Municipal Trial Court to the RTC. The applicable rules at that time were the Interim Rules and Guidelines relative to the implementation of the Judiciary Reorganization Act of 1981<sup>[29]</sup> which did not provide that the payment of the appeal fee is a prerequisite for the perfection of an appeal,<sup>[30]</sup> and Section 8, Rule 141 of the Revised Rules of Court which imposes an appeal fee in cases of appeal from the municipal trial courts and specifies the person/s to whom the appeal fee shall be paid, without specifying when said payment shall be made.<sup>[31]</sup>

The rules with respect to the payment of the appellate docket fees have substantially changed with the advent of the 1997 Rules on Civil Procedure.

Rule 41, Section 4, of the 1997 Rules on Civil Procedure provides:

**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. (Emphasis supplied)

The aforesaid rule is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional.<sup>[32]</sup> It bears stressing that an appeal is not a right, but a mere statutory privilege.<sup>[33]</sup>

An ordinary appeal from a Decision or final order of the RTC to the Court of Appeals must be made within fifteen (15) days from notice.<sup>[34]</sup> And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from.

The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure.<sup>[35]</sup>

Time and again, this Court has consistently held that the “payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. 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>[36]</sup>

The nonpayment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41<sup>[37]</sup> is a ground for the dismissal of an appeal, as provided for under Section 1(c) Rule 50,<sup>[38]</sup> to wit:

**SECTION 1.** *Grounds for dismissal of appeal.*— An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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