

## **EIGHTH DIVISION**

**[ CA - G.R. SP No. 119607, April 08, 2014 ]**

**ABS-CBN BROADCASTING CORPORATION, PETITIONER, VS.  
HON. CHARITO B. GONZALES IN HER CAPACITY AS PRESIDING  
JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 80, QUEZON  
CITY, AND AGB NIELSEN MEDIA RESEARCH (PHILIPPINES),  
INC., RESPONDENTS.**

### **D E C I S I O N**

**LOPEZ, J.:**

This Petition for Certiorari under Rule 65 of the Rules of Court assails the October 27, 2010 Order of the Regional Trial Court of Quezon City, Branch 80 (RTC), that dismissed ABS-CBN Broadcasting Corporation's petition for relief from judgment; and the March 21, 2011 Order that denied its motion for reconsideration.

The facts are culled from the records.

ABS-CBN is a corporation engaged in the broadcasting of television programs and the selling of advertising spots in their various television programs. AGB Nielsen Media Research (Philippines), Inc. is a research company that provides the media industry with Television Audience Measurement (TAM) Data, commonly known as "TV ratings data", used in determining TV programming and advertising placements. AGB Nielsen forms "panel homes", a representative sample of households that mirror the TV population's viewing habits, when gathering TAM Data. In 2007, ABS-CBN and AGB Nielsen executed a "Service Contract for TV Audience Measurement Mega Manila and National Urban Service" (TAM Service Contract for brevity).<sup>[1]</sup>

On December 14, 2007, ABS-CBN filed a complaint for specific performance and damages against AGB Nielsen before the RTC. ABS-CBN alleged that AGB Nielsen failed to keep the identity of the panel homes confidential; hence, it should be enjoined from releasing the TAM Data gathered from the corrupted panel homes.<sup>[2]</sup> AGB Nielsen filed a motion to dismiss the complaint for prematurity citing Section 5 of the TAM Service Contract<sup>[3]</sup>.

On January 7, 2008, the RTC issued a Decision granting the motion to dismiss.<sup>[4]</sup> ABS-CBN filed a motion for reconsideration, but it was denied in the June 8, 2009 Order.<sup>[5]</sup>

On January 5, 2010, the RTC issued a Certificate of Finality stating that ABS-CBN's counsel received a copy of the June 8, 2009 Order on June 23, 2009 and that "no notice of appeal or any other petition has been filed with or received by the [RTC]".<sup>[6]</sup>

On May 14, 2010, ABS-CBN filed a petition for relief from judgment claiming that it was prevented from appealing because of accident. According to ABS-CBN, it did not receive a copy of the June 8, 2009 Order. It only learned about the Order on March 17, 2010 when ABS-CBN's counsel checked the status of the case with the RTC. Counsel investigated the matter and confirmed that the June 8, 2009 Order was not listed among the law firm's "Incoming Pleadings" – a computer-generated document prepared and emailed to all lawyers that contains a list of all orders and pleadings received on June 23, 2009 by the firm.<sup>[7]</sup> Furthermore, during the period when the Order was allegedly received, a fire in the basement of the Philippine Stock Exchange Centre (PSEC), where the law firm is located<sup>[8]</sup>, caused numerous power interruptions that may have been a contributing factor why the Order was not properly received or logged in the firm's "Incoming Pleadings". The power interruptions are evidenced by the memoranda issued by the PSEC Building Administrator.<sup>[9]</sup> ABS-CBN also insisted that its right to due process must be preserved.<sup>[10]</sup>

AGB Nielsen countered that ABS-CBN cannot restore its lost right to appeal by filing the petition for relief. AGB Nielsen stressed that the June 8, 2009 Order of the RTC was received by ABS-CBN on June 23, 2009 as evidenced by the Certification issued by the Postmaster for Ortigas Center<sup>[11]</sup>. The "Incoming Pleadings" cannot prevail over the Postmaster's Certificate which is a public document entitled to full faith and credit. Furthermore, the power interruptions do not constitute an "accident" within the meaning of Rule 38 of the Rules of Court. The memoranda issued by the PSEC Building Administrator implies that the power interruptions were not unforeseen and in fact known to ABS-CBN's counsel. Also, the petition for relief was filed more than six months from entry of the July 8, 2009 Order; hence, filed out of time.<sup>[12]</sup>

The RTC dismissed the petition for relief from judgment,<sup>[13]</sup> ratiocinating thus:

Anent the substantive ground, the records of the case clearly reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009, as evidenced by the return card attached to the records of this case, which date is the basis for the Certificate of Finality dated January 5, 2010 issued by the Court through its Branch Clerk of Court.

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xxx The "Incoming Pleadings" document presented by petitioner's counsel to prove that it did not receive a copy of the Order dated June 8, 2009, besides being self-serving, cannot be said to faithfully reflect all the pleadings received by petitioner's counsel on June 23, 2009. As admitted by petitioner itself, the numerous power interruptions prompting a suspension of the firm's work during the subject date may have contributed to why the Order was not properly received or logged in the firm's "Incoming Pleadings."

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In the case at bar, records reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009. Petitioner

then had fifteen (15 days therefrom or until July 8, 2009 to file an appeal which it did not. As such, the Orders dated January 7, 2008 and June 8, 2009 became final and executory after the lapsed (sic) of such 15-day period or on July 9, 2009. Thus, petitioner had six months therefrom or only until January 5, 2010 to file the petition for relief therefrom or only until January 5, 2010 to file the petition for relief from judgment. Petitioner filed the instant Petition only on May 14, 2010, clearly beyond the 6-month period from entry of the assailed orders.

Indeed, a petition for relief from judgment cannot be granted to revive the lost right to appeal.

WHEREFORE, in view of the foregoing, the Petition for Relief from Judgment is hereby DISMISSED.

SO ORDERED.<sup>[14]</sup>

ABS-CBN moved for reconsideration but it was denied.<sup>[15]</sup> Hence this petition for certiorari.

Petitioner insists that the circumstances of this case merit the equitable remedy of relief from judgment. Respondent judge erroneously relied on the registry return card in ruling that petitioner received the June 8, 2009 Order on June 23, 2009. Also, petitioner's counsel was prevented from taking notice of the June 8, 2009 Order by the numerous power interruptions caused by fire in the basement of the PSEC building, as evidenced by the memoranda issued by the Building Administrator. The fire and power interruptions were unforeseen events and constitute accident under Rule 38 of the Rules of Court. Moreover, petitioner was denied due process from the beginning when the complaint for specific performance was dismissed for prematurity and is now being deprived of its right to appeal.

The petition lacks merit.

It is of record that the petitioner received the June 8, 2009 Order on June 23, 2009. This was confirmed by the Certification issued by the Postmaster of Ortigas Center that the Order was received by a certain Allan S. Bustamante, an authorized representative of petitioner's counsel.<sup>[16]</sup> Petitioner cannot deny receipt of the Order by claiming that it was not listed among the "Incoming Pleadings" on June 23, 2009. The "Incoming Pleadings" cannot prevail over the Postmaster's Certification which enjoys the presumption that duty was regularly performed, and that he has acted in good faith.<sup>[17]</sup> It is petitioner's burden to overcome the presumptions by clear and convincing evidence.<sup>[18]</sup> The "Incoming Pleadings" is a computer-generated document, prepared and emailed to all lawyers, that contains a list of all orders and pleadings received on June 23, 2009 by the firm.<sup>[19]</sup> The entries in this document are wholly dependent on what was encoded or logged by the law firm's personnel. Hence, it is a self-serving document that cannot be given weight or credence.

Considering that ABS-CBN received the June 8, 2009 Order on June 23, 2009, its remedy was to file an appeal within fifteen days from notice<sup>[20]</sup>, but it failed to do so. We cannot agree that the failure to log the June 8, 2009 Order among the "Incoming Pleadings" due to power interruptions in the PSEC building is an

"accident" within Section 1, Rule 38<sup>[21]</sup> of the Rules of Court.

An accident pertains to an unforeseen event in which no fault or negligence attaches to the defendant.<sup>[22]</sup> It is an event happening without any human agency, or if happening wholly or partly through human agency, one which is unusual or unexpected by the person to whom it happens.<sup>[23]</sup> Here, petitioner submitted the memoranda issued by the PSEC Building Administrator on June 23, 2009 to prove that a fire in the basement indeed caused power interruptions, to wit:

**Annex C of the Petition for Relief from Judgment:**

**The power capacitor bank at the sub-station in Basement 1 overheated due to a short circuit. As circularized last June 4 and 18, 2009.** Preventive maintenance on the equipment was scheduled on June 27, 2009 where a total power shutdown is necessary for the risky procedure. Unfortunately[, ] this power outage happened before the scheduled maintenance work could be performed.

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**Annex D of the Petition for Relief from Judgment:**

Our engineering team has restored the power for the whole West Tower and East Tower 17th floor up to the 33rd floor only. The power for the 16th floor down to the ground floor is still running on generator set. Repairs for the circuit breakers are still on-going.

We are hoping that normal power will be restored today.<sup>[24]</sup> [Emphasis Ours.]

From the foregoing, the fire clearly occurred before June 4, 2009 and the building was plagued with power interruptions since then. Thus, the power outages cannot be considered as unforeseen events at the time the June 8, 2009 Order was received. Petitioner's counsel should have ensured that documents and court processes are accurately recorded despite the power interruptions. Also, it was doubtful that a power interruption prevented the recording of the June 8, 2009 Order in the "Incoming Pleadings" since one of the memoranda also stated that power in the East Tower, where the law firm is located, was restored on June 23, 2009.

Petitioner's claim that it was deprived of due process is specious. It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.<sup>[25]</sup> "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>[26]</sup> Records show that petitioner was able to file an Opposition<sup>[27]</sup> and Rejoinder<sup>[28]</sup> to the private respondent's motion to dismiss the complaint for specific performance. Subsequently, petitioner filed a Motion for Reconsideration<sup>[29]</sup> and a Memorandum<sup>[30]</sup> on the Order granting the motion to dismiss. Clearly, petitioner was given ample opportunities to be heard and present