

**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**FRANCIS M. ZOSA, NORA M.  
ZOSA and MANUEL M. ZOSA,  
JR.,**

Petitioners,

- versus -

**CONSILIUM, INC.,**  
Respondent.

**G.R. No. 196765**

Present:

**LEONARDO-DE CASTRO, CJ.,**  
Chairperson,  
**BERSAMIN,**  
**DEL CASTILLO,**  
**JARDELEZA, and**  
**TIJAM, JJ.**

Promulgated:

**SEP 19 2018**

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**DECISION**

**LEONARDO-DE CASTRO, CJ.:**

This is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, as amended, assailing the Decision<sup>1</sup> and Resolution<sup>2</sup> dated November 30, 2010 and April 8, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03538 entitled, “*Consilium Inc. represented by Arturo T. Guillen v. The Honorable Presiding Judge Geraldine Faith Econg of the Regional Trial Court, Branch 9 of Cebu City, Francis M. Zosa, Nora M. Zosa, and Manuel M. Zosa, Jr.,*” which reversed and set aside the Orders dated January 15, 2008<sup>3</sup> and April 2, 2008<sup>4</sup> of the Regional Trial Court (RTC) Branch 9, Cebu City in Civil Case No. CEB-26038 entitled, “*Francis M. Zosa, Nora M. Zosa and Manuel M. Zosa, Jr. v. Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa.*”

<sup>1</sup> *Rollo*, pp. 23-31; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez concurring.

<sup>2</sup> *Rollo*, p. 40.

<sup>3</sup> *CA rollo*, pp. 54-55.

<sup>4</sup> *Id.* at 61.

*mm*

### *The Facts*

On January 17, 2001, a complaint<sup>5</sup> for “Declaration of Nullity of Deed of Sale and TCT No. T-113390, and Quieting of Title” was filed before the RTC by herein petitioners Francis M. Zosa, Nora M. Zosa and Manuel M. Zosa, Jr. (hereinafter collectively referred to as the “Zosas”), against Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa (hereinafter collectively referred to as the “Paypas”).

During the pendency of the aforementioned case, on January 29, 2003, respondent Consilium, Inc. (Consilium) was allowed to intervene therein on the ground that on November 23, 2000, it had purchased the subject property in good faith from the Paypas for ₱1,585,100.00.<sup>6</sup>

In a Decision<sup>7</sup> dated September 27, 2007, the RTC ruled in favor of the Zosas, to wit:

WHEREFORE, by reason of preponderance of evidence, the court hereby renders judgment in favor of the plaintiffs and against defendants. The court hereby:

1. Declares the Deed of Absolute Sale as void; and
2. Orders the cancellation of TCT No. T-113390 which was issued in the name of defendants Sps. Paypa.

All other claims, as well as the counterclaims are hereby considered DISMISSED.<sup>8</sup>

On October 17, 2007, Consilium filed a Notice of Appeal,<sup>9</sup> alleging to have received the Decision of the RTC on October 10, 2007. Note, however, that the corresponding appeal fee was paid only on October 31, 2007, or six days from October 25, 2007, the last day to perfect an appeal.

The Zosas opposed the Notice of Appeal on the ground that the appeal was “*filed out of time x x x while the Notice of Appeal was filed on October 17, 2007, the docket/appeal fee was paid only on October 31, 2007 which was beyond the period x x x to file the Notice of Appeal.*”<sup>10</sup>

In Consilium’s Comment to the Zosas’ Opposition (to the Notice of Appeal), it explained that such omission, however, was sheer inadvertence, *i.e.*, “[t]hat after the Notice of Appeal was prepared by undersigned counsel, [he] left for Basilan to attend to some pressing engagements with the Basilan Electric Cooperative of which he is the designated Project

<sup>5</sup> Id. at 63-65.

<sup>6</sup> Id. at 83-84.

<sup>7</sup> Id. at 38-49.

<sup>8</sup> Id. at 48-49. The RTC held that the signatures of the spouses Manuel Zosa and Amparo Zosa on the subject deed were forgeries; hence, making the document void.

<sup>9</sup> Id. at 50-52.

<sup>10</sup> Id. at 111-112; Opposition to Notice of Appeal.

*hmk*

*Supervisor, in charge for its rehabilitation x x x instruction[s] were given to his clerk Jonathan Cabañez to file the Notice of Appeal as well as to pay the docket fee x x x [t]hat, while the Notice of Appeal was filed, the aforementioned clerk forgot to pay the docket fee as required x x x upon the return of the undersigned counsel on October 31, 2007, he found out that the docket fee was not paid, thus, he immediately caused the payment of the same.” It insisted that such “inadvertence” was a case of excusable negligence.<sup>11</sup>*

Acting on the Notice of Appeal, the RTC resolved to deny due course thereto in an Order dated January 15, 2007, viz.:

WHEREFORE, in view of the foregoing, the Notice of Appeal filed by the Intervenor Consilium, Inc. is hereby denied due course.<sup>12</sup>

On February 7, 2008, Consilium moved for the reconsideration of the above-mentioned Order, and prayed for the relaxation of the rules of procedure. The motion was set for hearing on February 22, 2008 per the Notice of Hearing stated in the said motion.

The Zosas, however, sought the outright denial of Consilium’s motion for reconsideration on the ground that it was set for hearing beyond the 10-day period prescribed in Section 5, Rule 15 of the Rules of Court, as amended.

The RTC, for its part, set the hearing of Consilium’s motion for reconsideration on March 3, 2008.<sup>13</sup>

And in an Order dated March 3, 2008, the RTC treated the motion as a mere scrap of paper, viz.:

The Court, however, regrets that it cannot rule on the motion for reconsideration filed by [the] intervenor thru counsel, on the ground that the same was received by this Court on February 7, 2008 and yet, the Motion was set for hearing beyond the 10-day period set forth by the rules, pursuant to Section 5, Rule 15 of the 1997 Rules on Civil Procedure.<sup>14</sup>

Upon receipt of the above-quoted Order, Consilium sought clarification as to its import, arguing –

2. That with the foregoing pronouncement of the Honorable Court, intervenor-movant is now in a quandary on what to do and where to go, considering that the action of the Court, with due respect, left practically everything in a suspended animation or uncertainty;

x x x x

<sup>11</sup> Id. at 113-116; Comments to Opposition to Notice of Appeal.

<sup>12</sup> Id. at 55.

<sup>13</sup> Per Order dated February 12, 2008; CA *rollo*, p. 57.

<sup>14</sup> CA *rollo*, p. 59.

4. That the court's refusal to rule on the Motion for Reconsideration after having taken cognizance of it, may simply mean a deferment of its action on the motion, which is not countenance[d] by Section 3, second paragraph of Rule 16, which states that "the court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable" x x x;

5. That, whether or not, the motion was filed contrary to the provision of Section 5, Rule 15, the Court should render a resolution thereon, in as much as the grounds relied upon by intervenor-movant in its motion are not only worthy of consideration, and did not appear indubitable, but also worth giving the aggrieved party the chance to avail of the remedies provided for under the Rules in the interest of justice and fair play x x x;

x x x x

8. That, having taken cognizance of the Motion for Reconsideration by the Court's admission of the filing thereof, and the subsequent resetting of the date of hearing and its actual hearing of the arguments of intervenor-movant, the latter is of the view and for which it submits, that the alleged procedural defect mentioned above was cured. Moreover, the alleged defect herein mentioned is entirely procedural and within the discretion of the court to set aside if only to uphold justice, equity and fair play, and discourage the disposition of cases by technicality. In this connection, it is pertinent to consider that, "the rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding(,)" Rule 1, Section 6(,) Rules of Court.<sup>15</sup>

In response to the foregoing motion for clarification, the RTC issued an Order<sup>16</sup> dated April 2, 2008, to wit:

Under established jurisprudence, any motion that does not comply with Sec. 5 of Rule 16 of the 1997 Rules of Civil Procedure is a mere scrap of paper. In this case, the scheduled hearing of the said motion for reconsideration was beyond the period specified by the rules which must not be later than ten (10) days after the filing of the motion. Furthermore, a motion that fails to comply with the mandatory provision of Rule 15, Section 5 is pro forma which do not merit the attention of the court. The subsequent action of the court did not cure the procedural defect for a motion with a notice fatally defective is a "useless piece of paper." And finally, the motion for reconsideration aside from being a mere scrap of paper is also pro forma as the motion reiterates issues already passed upon by the court.

Thereafter, Consilium elevated the matter to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Rules of Court, as amended.<sup>17</sup>

In a Decision dated November 30, 2010, the Court of Appeals granted the petition, the dispositive part of which reads:

<sup>15</sup> Id. at 132-134,

<sup>16</sup> Id. at 61.

<sup>17</sup> Id. at 2-36.

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WHEREFORE, premises considered, the PETITION is GRANTED. The assailed Orders dated 15 January 2008 and 02 April 2008, are hereby REVERSED and SET ASIDE. The Regional Trial Court, Branch 9, Cebu City, is DIRECTED to GIVE DUE COURSE to the Notice of Appeal filed by the petitioner on 17 October 2007 in Civil Case No. CEB-26038.<sup>18</sup>

The appellate court held that the “liberal application of the Rules is warranted since the rights of the parties were not affected even if the hearing of said motion [for reconsideration] was originally set by petitioner beyond the 10-day period required by the Rules [of Court, as amended]. Private respondents [the Zosas] received a copy of the motion for reconsideration in question. They were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same.”<sup>19</sup> Further, it gave great weight to the fact that, notwithstanding the non-compliance to the 10-day rule on notice of hearing, the RTC reset the hearing of said motion to a later date – a fact that points to the original intention of the trial court, which is to take cognizance of the motion.

With respect to the matter of the late payment of appeal fee, the Court of Appeals opined that “jurisprudence is replete [with] cases which gave due course to an appeal even if the appellate docket fees were filed out of time”; hence, “it is x x x incumbent upon the public respondent to give due course to the Notice of Appeal.”<sup>20</sup>

The subsequent motion for reconsideration was denied in a Resolution dated April 8, 2011.

Hence, the present petition raising the following assignment of errors:

### *The Issue*

I – The Court of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Acting On Respondent’s Motion For Reconsideration For Being Filed In Violation Of Section 5 Of Rule 15;

II – The Court Of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Giving Due Course To Respondent’s Notice Of Appeal On The Ground That The Docket Fee For The Appeal Was Paid Only 6 Days After The Expiration Of The Reglementary Period To File The Appeal;

III – The Court Of Appeals Erred In Holding That The Forgetfulness Of The Clerk Of Respondent’s Counsel To Pay The Docket Fee For The Appeal On Time Is A Good Reason To Liberally Apply The Rule On Perfection Of Appeal; and

<sup>18</sup> Id. at 30.

<sup>19</sup> *Rollo*, p. 27.

<sup>20</sup> Id. at 28-30.

*mnw*

IV – The Court Of Appeals Erred In Not Dismissing Respondent’s  
Petition On The Ground That It Does Not Have A Meritorious Case.<sup>21</sup>

The Zosas maintain that the Court of Appeals erred when it held that the lack of notice of hearing is cured when the trial court “promptly resets a hearing with a notice to the parties.”<sup>22</sup> They argue that the defect is not about the lack of notice of hearing but the fact that the motion was set for hearing beyond the 10-day period required under Section 5 of the Rules of Court, as amended.

The Zosas assert that “[t]he payment of the docket fee within the reglementary period is a mandatory requisite for the perfection of the appeal.”<sup>23</sup> The reason extended by Consilium’s counsel, *i.e.*, that the latter’s clerk forgot to pay the appeal fee within the period to file the notice of appeal, is not enough to justify a liberal application of such mandatory requirement.<sup>24</sup>

For its part, Consilium counters that “[t]he rules were formulated for a just and speedy disposition of cases x x x it must [be] construed liberally in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.”<sup>25</sup>

Consilium’s counsel, Atty. Gaviola, particularly clarifies that he set the notice of hearing of the motion for reconsideration on February 22, 2008, or 15 days from the time he filed said motion on February 7, 2008 because he would be unavailable to attend the hearing on any day earlier than February 22, 2008 – “[i]t may be considered disrespect upon the Honorable Court for respondent Consilium’s counsel to set the date within the tenth day, but be absent therefrom because he would not be unavailable.”<sup>26</sup>

Atty. Gaviola further rationalizes that his action showed that he had been “more than compliant in preventing delays [by] immediately filing [the] motion for reconsideration [on February 7, 2008] without awaiting for the final day of filing which would have been on the 13<sup>th</sup> of February.”<sup>27</sup>

In any case, Consilium posits that the defect in the notice of hearing was cured when the RTC reset same to a later date.

As to the issue of the late payment of its appeal fee, Consilium insists that the mandatory nature of payment of the appeal fee within the

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<sup>21</sup> Id. at 9-10.

<sup>22</sup> Id. at 11.

<sup>23</sup> Id. at 14.

<sup>24</sup> Id. at 15-16.

<sup>25</sup> Id. at 60.

<sup>26</sup> Id. at 59.

<sup>27</sup> Id.

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reglementary period to file a notice of appeal admits of exceptions as evidenced by jurisprudence to such effect.

The numerous issues notwithstanding, the basic matter to be resolved in this petition is whether or not Consilium extended a reasonable and compelling reason to justify the Court of Appeals' relaxation of the mandatory application of the rules on appeals and motions.

### *The Ruling of the Court*

The petition is meritorious.

Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction.<sup>28</sup> But even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.<sup>29</sup>

In this case, contrary to the finding of the Court of Appeals, there is no compelling reason advanced to exempt Consilium from the consequences of its noncompliance with the rules on appeals and motions.

Consilium prays for the liberal application of Section 4 in relation to Section 13, Rule 41 of the Rules of Court, as amended on the justification that its counsel's clerk "forgot" to pay the appeal fee when he filed the notice of appeal – an excusable negligence.

Sections 4 and 13, Rule 41 of the Rules of Court, as amended provide:

Section 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.

X X X X

Section 13. *Dismissal of Appeal.* — Prior to the transmittal of the original record or the record on appeal to the appellate court, the **trial court may, motu proprio or on motion, dismiss the appeal** for having been taken out of time or **for nonpayment of the docket and other**

<sup>28</sup> *Dadizon v. Court of Appeals*, 617 Phil. 139, 151-152 (2009), citing *Gutierrez v. Court of Appeals*, 135 Phil. 25, 32 (1968); *Dee Hwa Liong Electronics Corporation v. Papiona*, 562 Phil. 451, 456 (2007).

<sup>29</sup> *Labao v. Flores*, 649 Phil. 213, 223 (2010).

*mtw*

**lawful fees within the reglementary period.** (As amended, A.M. No. 00-2-10-SC, May 1, 2000.) (Emphases supplied.)

With the foregoing 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 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.”<sup>30</sup>

Admittedly, there are exceptions to the aforesaid general rule on the timely payment of appellate docket fees, embodied also in jurisprudence as identified by the Court of Appeals<sup>31</sup> and Consilium in its petition for *certiorari* with the appellate court. But reading them, including a catena of other cases,<sup>32</sup> will show that they involve exceptionally meritorious reasons why the appellate docket fees were not timely paid – the substantive merits of the case, a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, the existence of a special or compelling circumstance, *etc.*

The Court of Appeals cites *Villena v. Rupisan*<sup>33</sup> where the appellate docket fees were paid six days beyond the reglementary period to appeal. Therein, we upheld the Court of Appeals decision reversing the trial court’s denial of the notice of appeal where the reason extended by the appellant for their failure to timely pay the docket fees was admitted poverty, which is a defense miles away from the proffered lapse in memory by Consilium. Such excuse does not even come close to the ample precedents allowing for liberal construction of the rules of procedure. In other words, in *Villena* and the other cited cases where we upheld the liberal application of the rules, the appellants therein hinged their arguments on exceptionally meritorious circumstances peculiar to their particular situations that convinced Us of their entitlement to a lax application of the Rules.

If the Court were to admit the tendered excuse, *i.e.*, the negligence of the counsel’s clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerable sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for nonpayment of the full appellate docket fees. We will not do that.

<sup>30</sup> *Fil-Estate Properties, Inc. v. Judge Homena-Valencia*, 562 Phil. 246, 255 (2007); citing *Manalili v. De Leon*, 422 Phil. 214, 220 (2001); *St. Louis University v. Cordero*, 478 Phil. 739, 750 (2004). Citing *Villena v. Rupisan*, 549 Phil. 146, 164-165 (2007).

<sup>32</sup> *Yambao v. Court of Appeals*, 399 Phil. 712, 717-718 (2000); *Buenaflor v. Court of Appeals*, 400 Phil. 395, 402-403 (2000); *Alfonso v. Andres*, 439 Phil. 298, 305-306 (2002); *Villamor v. Court of Appeals*, 478 Phil. 728, 736 (2004).

<sup>33</sup> *Supra* note 31.

*mtw*



Moreover, categorizing the “lapse in memory” as compelling reason would set a bad precedent wherein such negligence of an appellant’s counsel or his clerk is sufficient to relax the jurisdictional requirements for the perfection of an appeal.

As to the defective notice of hearing in Consilium’s motion for reconsideration, the Rules of Court, as amended, require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent. The substance of a notice of hearing is laid out in Section 5, Rule 15 of the Rules of Court, as amended. It reads:

Section 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing **which must not be later than ten (10) days after the filing of the motion.** (Emphasis supplied.)

Herein, it is clear that the notice of hearing in Consilium’s motion for reconsideration failed to comply with the requisites set forth in the aforequoted rule. In fact, Consilium’s counsel, Atty. Gaviola, admitted to purposely defying the 10-day requirement as he would not be available to attend any hearing within the 10-day period from the filing of said motion.

The Court has been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper.<sup>34</sup> And “[t]he subsequent action of the court on a defective motion does not cure the flaw, for a motion with a fatally defective notice is a useless scrap of paper, and the court has no authority to act thereon.”<sup>35</sup>

In this case, therefore, the Court of Appeals erred in liberally applying the tenets of Section 5 of Rule 15 in the absence of a compelling or satisfactory reason, worse, in the face of an open defiance to the provisions of the Rules of Court, as amended.

To extricate Consilium from the effects of the mandatory application of the Rules of Court, as amended, would, again, give premium to the unbridled disregard by Atty. Gaviola of the most basic of procedural rules. Indeed, Consilium erred not once, but twice during the course of the proceedings. The negligence is anything but excusable.

A final word.

<sup>34</sup> *Garcia v. Sandiganbayan*, 532 Phil. 338, 348 (2006); *Bacelonia v. Court of Appeals*, 445 Phil. 300 (2003); *Sebastian v. Cabal*, 143 Phil. 364, 366 (1970); *Manila Surety and Fidelity Co., Inc. v. Batu Construction and Company*, 121 Phil. 1221, 1224 (1965); *Philippine National Bank v. Donasco*, 117 Phil. 429, 433 (1963); *Gov’t. of the Phil. Islands v. Sanz*, 45 Phil. 117, 121 (1923); *The Roman Catholic Bishop of Lipa v. The Municipality of Unisan*, 44 Phil. 866, 871 (1920).


<sup>35</sup> *Garcia v. Sandiganbayan*, *id.*, citing *Andrada v. Court of Appeals*, 158 Phil. 576, 579 (1974). See *Sacdalan v. Bautista*, 155 Phil. 153 (1974).

*mnr*


Litigants must bear in mind that procedural rules should always be treated with utmost respect and due regard since these are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Though litigations should, as much as possible, be decided on their merits and not on technicalities, this does not mean, however, that procedural rules are to be belittled to suit the convenience of a party. Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases x x x.<sup>36</sup>

**WHEREFORE**, the petition is **GRANTED**. The Decision and Resolution dated November 30, 2010 and April 8, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03538 entitled, "*Consilium Inc. represented by Arturo T. Guillen v. The Honorable Presiding Judge Geraldine Faith Econg of the Regional Trial Court, Branch 9 of Cebu City, Francis M. Zosa, Nora M. Zosa, and Manuel M. Zosa, Jr.*" are **REVERSED** and **SET ASIDE**. No cost.

**SO ORDERED.**


  
**TERESITA J. LEONARDO-DE CASTRO**  
Chief Justice  
Chairperson

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
Associate Justice

<sup>36</sup> *Estate of the late Juan B. Gutierrez v. Heirs of Spouses Jose and Gracita Cabangon*, 761 Phil. 511, 520 (2015).

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**NOEL GIMENEZ TIJAM**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**TERESITA J. LEONARDO-DE CASTRO**  
Chief Justice