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[G.R. No. L-34447. June 22, 1973]

TEOFILO GUIALA, *petitioner, vs.* HONORABLE COURT OF APPEALS, PEOPLE'S HOMESITE & HOUSING CORPORATION, ROSA HIZON and DOMINADOR HIZON, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RECORD ON APPEAL; STATEMENT IN THE RECORD ON APPEAL THAT IT HAS BEEN APPROVED NOT REQUIRED BY THE RULES OF COURT.**— It must be clarified that Section 6 of Rule 41 does not require that the record on appeal should state that it has been approved. Indeed, it would be absurd to so require because the approval has to come only after its filing. In this connection, it is in the transmittal and certification of the records ordained by Section 11 of the same rule that the fact of approval of the record on appeal is supposed to be included.

2. **ID.; ID.; ID.; REQUIREMENT THAT SUCH RECORD SHOULD STATE DATA THAT SHOW TIMELINESS OF APPEAL.**— On its face, the record on appeal in question shows: (1) Appellant's notice of appeal dated March 12, 1971 states that the decision was served on appellant on March 10, 1971. It also states that a cash appeal bond had been filed March 13, 1971 when this notice was filed. (2) Appellant's motion for approval of the record on appeal, alleged in said motion to be attached thereto, is dated March 15, 1971 and set for hearing, according to the notice thereunder for March 27, 1971. There is no statement as to when this motion was filed although, it is alleged therein that the notice on appeal and appeal bond were filed on March 13, 1971. HELD: Although literally speaking, the record on appeal in question does not really state when the same was filed, in the light of all the foregoing circumstances, the conclusion is inescapable that it must have been filed before March 27, 1971. It would be purely technical and contrary to the irrefutable cogent logic of the extant facts to even speculate on the possibility that it could have been filed later.

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APPEARANCES OF COUNSEL

Villareal, Navarro & Associates for petitioner.

Abaya, De Leon & Melendres for respondents.

DECISION

BARREDO, *J.*:

Certiorari against the resolutions of the Court of Appeals in C.A. - G. R. No. 48753-R, People's Homesite & Housing Corporation *vs.* Teofilo Guiala, denying herein petitioner's motion to dismiss the appeal of his adversary, said motion being predicated on the alleged failure of the appellant to comply with the requirement of Section 6 of Rule 41 that the record on appeal should state "such data as will show that the appeal was perfected (taken) on time."[1]

On its face, the record on appeal in question shows:

(1) Appellant's notice of appeal dated March 12, 1971 states that the decision was served on appellant on March 10, 1971. It also states that a cash appeal bond had been filed March 13, 1971 when this notice was filed.

(2) Appellant's motion for approval of the record on appeal, alleged in said motion to be attached thereto, is dated March 15, 1971 and set for hearing, according to the notice thereunder for March 27, 1971. There is no statement as to when this motion was filed although, it is alleged therein that the notice on appeal and appeal bond were filed on March 13, 1971.

Petitioner maintains that the above showings in the record on appeal fall short of compliance with the rule aforementioned. It is further contended that it does not appear in the record on appeal that the same had been approved by the trial court.

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[1] Actually the provision should not refer to the perfection of the appeal under Section 9, Rule 41 but to the taking of the same under Section 3 of the same rule.

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Anent this second contention, it must be clarified that Section 6 of Rule 41 does not require that the record on appeal should state that it has been approved. Indeed, it would be absurd to so require because the approval has to come only after its filing. In this connection, it is in the transmittal and certification of the records ordained by Section 11 of the same rule that the fact of approval of the record on appeal is supposed to be included. We have examined the transmittal in this case and it appears therein that the court issued the order of approval on March 27, 1971.

Now, although literally speaking, the record on appeal in question does not really state when the same was filed, in the light of all the foregoing circumstances, the conclusion is inescapable that it must have been filed before March 27, 1971. It would be purely technical and contrary to the irrefutable cogent logic of the extant facts to even speculate on the possibility that it could have been filed later.

Premises considered, the Court cannot hold that the Court of Appeals gravely abused its discretion in giving due course to respondents' appeal. Certiorari denied. Costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Fernando, Teehankee, Antonio, and *Esguerra, JJ.,* concur.

Ruiz Castro and *Makasiar, JJ.,* took no part.

[G.R. No. L-30137. June 25, 1973]

PHILNABANK EMPLOYEES ASSOCIATION (PEMA)-ABUP-COLU, *petitioners, vs.* AUDITOR GENERAL and PHILIPPINE NATIONAL BANK, *respondents.*

SYLLABUS

ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; PHILIPPINE NATIONAL BANK; UNION FORMED BY EMPLOYEES OF SAID BANK, NOT A PRIVATE ENTITY WHO CAN APPEAL AUDITOR GENERAL'S RULING