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THIRD DIVISION

[G.R. No. 164150. April 14, 2008]

THE GOVERNMENT OF THE KINGDOM OF BELGIUM, represented by the Royal Embassy of Belgium, *petitioner, vs.* **HON. COURT OF APPEALS, UNIFIED FIELD CORPORATION, MARILYN G. ONG, VICTORIA O. ANG, EDNA C. ALFUERTE, MARK DENNIS O. ANG and ALVIN O. ANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW TO THE COURT OF APPEALS; EFFECT OF FAILURE TO FILE APPELLANT'S BRIEF WITHIN THE REGLEMENTARY PERIOD; GENERAL RULE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— It is thus daylight clear from all these cases that: (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules; (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory; (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal; (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that: (a) the circumstances obtaining warrant the court's liberality; (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice; (c) no material injury has been suffered by the appellee by the delay; (d) there is no contention that the appellees' cause was prejudiced; (e) at least there is no motion to dismiss filed. (5) In case of delay, the lapse must be for a reasonable period; and (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except: (a) where the reckless or gross negligence of counsel deprives the client of due process of law; (b) when application of the rule will result in outright deprivation of the client's liberty or property; or (c) where the interests of justice so

require. In this case, the Court cannot say that the issues being raised by respondents are of such importance that would justify the appellate court to exempt them from the general rule and give due course to their appeal despite the late filing of their appellant's brief.

2. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTION; NOT PRESENT IN CASE AT BAR.— Our attention is riveted to respondents' repeated laxity and indolence as regards this case even when it was still pending before the RTC. xxx. Respondents evidently continued with their lack of care even when they filed an appeal with the Court of Appeals as shown by their not having filed an appellants' brief under the reglementary period. The purported inadvertence of their counsel cannot justify a relaxation of the rules. It is the counsel's responsibility to see to it that he has established an efficient system to monitor the receipt of important notices and orders from the courts. While the omission can plausibly qualify as simple negligence, it does not amount to gross negligence to call for the exception to the oft-repeated rule that the negligence of counsel binds the client. Respondents are, thus, bound by their counsel's negligence.

3. REMEDIAL LAW; RULES OF PROCEDURE; ABSENT SUFFICIENT AND COMPELLING REASONS, THE COURT WILL ADHERE STRICTLY TO THE PROCEDURAL RULES.— Finally, it appears that respondents finally "attached" their Brief only in their Motion for Reconsideration filed on 27 October 2003 in the Court of Appeals seeking a reconsideration of the appellate court's Resolution of 30 September 2003, dismissing their appeal. The delay in the filing thereof, 57 days after the expiration of the period to file the same on 1 September 2003, was, indeed, unreasonably long. ALL TOLD, the Court finds no sufficient and compelling reasons to justify the exercise of the Court's leniency and sound discretion. Under the facts of the case, the Court is constrained to adhere strictly to the procedural rules.

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APPEARANCES OF COUNSEL

Conde and Associates for petitioner.
Elmer T. Rabuya for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* under Rule 65[1] of the Rules of Court assailing the (1) Resolution[2] dated 27 November 2003 of the Court of Appeals in CA-G.R. CV No. 77701 granting the Motion for Reconsideration filed in said case by herein respondent Unified Field Corporation (UFC), thus, allowing the latter to file its appellant's brief; and (2) Resolution[3] dated 5 May 2004 of the appellate court in the same case denying reconsideration of its 27 November 2003 Resolution sought by herein petitioner Government of the Kingdom of Belgium, represented by the Royal Embassy of Belgium.[4]

The facts of the case are as follows:

A Complaint[5] for specific performance of contract with damages was filed by petitioner against respondents UFC, Marilyn G. Ong, Victoria O. Ang, Edna C. Alfuerte, Mark Dennis O. Ang, and Alvin O. Ang, with the Regional Trial Court (RTC) of Makati City, Branch 150, docketed as Civil Case No. 01-976.

In its Complaint, petitioner avers that it entered into a Contract of Lease dated 30 July 1997 with respondent UFC, represented by its President and co-respondent, Marilyn G. Ong. By virtue of the said contract, petitioner leased from UFC Units "B" and

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Mario L. Guarina III and Edgardo F. Sundiam, concurring. *Rollo*, pp. 25-29.

[2] *Rollo*, p. 25.

[3] *Id.* at 27-29.

[4] Through its Ambassador to the Philippines, His Excellency, R. Schellinck.

[5] *Rollo*, p. 30.

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"D", with a gross area of 377 square meters, more or less, and six parking lots, at the Chatham House Condominium, located at the corner of Valero and Herrera Streets, Salcedo Village, Makati City (leased premises), for a maximum term of four (4) years beginning 1 October 1997. For the use of the leased premises, petitioner agreed to pay the sum of ₱5,430,240.00, as rentals for the first two years, from 1 October 1997 to 30 September 1999, payable in full upon the official turn-over of the leased premises; and the sum of ₱678,780.00, as security deposit, for a total amount of ₱6,109,020.00.[6] The Contract provided for the pre-termination option that may be exercised by the lessee.[7]

On or about 23 June 2000, three months prior to the expiration of the third year of the lease, petitioner, through counsel, served by personal service upon respondent UFC, through its President

[6] *Id.* at 31-32.

[7] 22. PRETERMINATION CLAUSE. Should the LESSEE, during the term of the lease be disinterested to continue the lease for no reason whatsoever, the LESSEE shall pay the LESSOR according to the schedule heretofore as enumerated, and the LESSOR shall thereafter refund all unused advance rental payments to the LESSEE, if so required under this lease agreement, within FORTY –FIVE (45) days following receipt of full pre-termination payment.

Total sum due LESSOR in the event of pre-termination:

- pre-termination before end of first year of lease, or prior to 01 October 1998: SIX HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY PESOS (₱678,780.00), Philippine Currency, including any and all unused advance rental payments applicable for the first year of the lease. The unused advanced rental payments applicable for the second year of the lease shall be refunded to the LESSEE within FORTY-FIVE (45) days following receipt of full pre-termination payment;
- pre-termination after first year of lease and before end of second year of lease, or after 01 October 1998 and before 30 September 1999: SIX HUNDRED SEVENTY-EIGHT THOUSAND SEVEN HUNDRED EIGHTY PESOS ONLY (₱678,780.00) Philippine currency;
- pre-termination after second year of lease and before end of lease period, or after 30 September 1999 and before 30 September 2001: (Please refer to paragraph 1 of this contract of lease). (*Rollo*, 43-43-A.)

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and co-respondent, Marilyn G. Ong, a letter dated 23 June 2000[8] informing the corporation that petitioner was pre-terminating the Lease Contract effective 31 July 2000. Considering that under the Contract of Lease, it could pre-terminate the lease after the expiry of the second-year term without having to pay pre-termination penalties, petitioner also requested the return or delivery of the total sum of ₱1,093,600.00, representing its unused two months advance rentals for August and September 2000, in the sum of ₱414,820.00, and the security deposit in the sum of ₱678,780.00, within forty-five days after the pre-termination of the lease contract, or on 15 September 2000.

On 31 July 2000, petitioner vacated and surrendered the leased premises to respondent UFC through the latter's President and co-respondent Marilyn G. Ong free of any outstanding bills for water, electricity, telephone and other utility charges or damages to said leased premises. However, respondents UFC and Marilyn G. Ong, in her capacity as UFC President, totally ignored the demands made by petitioner in its letter of 23 June 2000 and, consequently, failed to return or deliver the ₱1,093,600.00 sought by petitioner.

Petitioner claims that respondent UFC plainly committed fraud in the performance of its clear duty under paragraph 22 of the Contract of Lease by not returning petitioner's unused two months advance rentals and security deposit despite repeated demands therefor. Hence, the individual respondents as directors of respondent UFC should be deemed to have willfully and knowingly assented to a patently unlawful act or are guilty of gross negligence or bad faith, as the case may be, in directing the affairs of respondent UFC. Under Section 31 of the Corporation Code[9]

[8] Records, p. 66.

[9] Section 31. *Liability of directors, trustees or officers*.- Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

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of the Philippines, the respondent directors must be jointly and severally held liable together with respondent UFC.

Petitioner thus prayed to the RTC:

> x x x that, after due notice and trial, to render a judgment in favor of [herein petitioner] and against [herein respondents] by ordering [respondents] jointly and severally to pay [petitioner] the following sums of money, to wit:
>
> a) the principal amount of ₱1,093,600.00, representing the return or delivery of the unused two (2) months rentals and the security deposit, plus interest at the rate of twelve per centum (12%) per annum from 15 September 2000 until the principal amount due is fully paid, plus six per centum (6%) per annum on the aforesaid interest due from the filing of this complaint until the principal amount is fully paid;
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> b) the sum of ₱400,000.00, as and for actual damages by way of attorney's fees and litigation expenses;
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> c) the sum of ₱100,000.00, as and for moral damages;
>
> d) the sum of ₱100,000.00, as and for exemplary damages;
>
> e) the costs of suit.[10]

Respondents filed their Answer with Compulsory Counterclaim on 2 August 2001.[11] Thereafter, pre-trial was set. However, respondents failed to appear and, worse, failed to file their pre-trial brief, as required by the Rules of Court. They were therefore declared to have waived their right to adduce evidence on their behalf. Respondents did not seek for a reconsideration of the aforesaid Order; hence, petitioner was allowed to present its evidence *ex-parte* on 19 June 2002 and 19 August 2002.

On 8 November 2002, the RTC rendered a Decision, the dispositive portion of which states:

> From the foregoing, the Court is convinced that the [herein petitioner] has established its claim against the [herein respondents].

[10] Records, pp. 9-10.

[11] *Id*. at 38.

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WHEREFORE, judgment is hereby rendered in favor of the [petitioner] and against the [respondents], ordering the latter, jointly and severally, to pay [petitioner]:

1. the principal amount of Php1,093,600.00 representing two (2) months rentals and security deposit, plus interest of 12% per annum from September 15, 2000, until the principal amount due is fully paid, plus 6% per annum on the interest due from the filing of this complaint until the principal amount is fully paid;
2. the sum of Php400,000.00, as and by way of attorney's fees and litigation expenses;
3. the sum of Php100,000.00, as moral damages;
4. the sum of Php100,000.00, as exemplary damages; and
5. costs of suit.[12]

Respondents elevated the case on appeal to the Court of Appeals. They received a Notice to File Brief[13] from the Court of Appeals. Respondents were unable to comply with this directive. Petitioner thus filed on 17 September 2003 with the Court of Appeals a Motion to Dismiss Appeal of the respondents on the ground that respondents' counsel received the Notice to File Brief on 16 July 2003 as shown by the Registry Return Receipt and had forty-five (45) days or until 1 September 2003 to file their appellants' brief, but failed to do so. No opposition to the said Motion to Dismiss Appeal was filed by respondents. Neither did they file a motion for extension of time to file appellants' brief.

On 30 September 2003, the Court of Appeals issued a Resolution which reads:

For failure of the [herein respondents] to file their brief within the reglementary period, this appeal is hereby considered ABANDONED and accordingly DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules on Civil Procedure, as amended.[14]

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[12] *Rollo*, p. 52.

[13] *Id*. at 10.

[14] *Id*. at 62.

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On 27 October 2003, respondents filed a Motion for Reconsideration[15] of the foregoing Resolution stating that their failure to file their appellants' brief was due to their counsel's inadvertence, attaching their brief thereto and praying for its admission. Respondents' counsel had used his residence as his mailing address and the domestic helper might have misplaced the notice to file brief; hence, respondents' counsel failed to monitor the running of the reglementary period for the filing of the appellants' brief.

On 27 November 2003, the Court of Appeals resolved respondents' Motion for Reconsideration as follows:

> For consideration is [herein respondents'] Motion for Reconsideration of this Court's resolution dated September 30, 2003 dismissing their appeal for failure to file the [appellants'] brief within the reglementary period. [Respondents] contend that their failure to file the same was due to inadvertence and not for the purpose of delay.
>
> WHEREFORE, finding the motion to be meritorious and in the interest of substantial justice, this Court resolves to GRANT the motion.
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> Accordingly, this Court's resolution dated September 30, 2003 is hereby REVERSED and SET ASIDE and a new one entered allowing the filing of the [appellants'] brief. The appellants' brief attached to the motion for reconsideration is ADMITTED.
>
> [Herein petitioner] may file its appellee's brief within the period prescribed by the rules upon receipt hereof.[16]

Petitioner then filed a Motion for Reconsideration of the aforequoted Resolution which the Court of Appeals denied in another Resolution dated 5 May 2004. According to the appellate court:

> The failure of the [herein respondents] to file their brief within the prescribed period does not have the effect of automatically dismissing the appeal. The Court has the discretion to dismiss or not to dismiss the appeal, fully aware of its primary duty to render

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[15] *Id*. at 64.

[16] *Id*. at 25-26.

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or dispense justice, if possible, with dispatch. However, every party must be afforded the amplest opportunity for the proper and just determination of his cause, free from the game of technicalities. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Courts in real justice have always been guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around.

Dismissal of appeal purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid and technical sense.

WHEREFORE, premises considered, [herein petitioner's] motion for reconsideration is hereby DENIED.[17]

Hence, the present Petition raising the sole issue:

Whether or not Public Respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the resolutions of November 27, 2003 and May 5, 2004.[18]

In brief, petitioner submits that the inadvertence of respondents' counsel to timely file their appellants' brief is not a persuasive reason or a compelling justification to forego the Rules of Procedure.[19]

Respondents, on the other hand, insist that the substantive merit of their appeal to the Court of Appeals outweigh the procedural infirmity they committed by their omission to file appellants' brief within the prescribed period, and that the decision of the RTC has no basis in fact and law.

The pertinent rules of procedure can be found in Section 7, Rule 44, and Section 1(e), Rule 50 of the Rules of Court which read:

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[17] *Id*. at 28-29.

[18] *Id*. at 180.

[19] *Id*.

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Procedure in the Court of Appeals

Rule 44
Ordinary Appealed Cases

Section 7. *Appellant's brief*.- It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50
DISMISSAL OF APPEAL

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:

xxx xxx xxx

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

The issue in this case is not a novel one. It has already been the subject of cases previously decided by this Court.

It is a good time to revisit the cases we have decided, delving on the issue of non-filing of appellants' brief to the Court of Appeals and its consequence.

Early in *Pongasi v. Court of Appeals*,[20] involving the failure to file the appellant's brief within the prescribed period, this Court ruled:

[P]etitioner's counsel filed a timely motion for special extension of time on February 19, 1975, two days before the expiration date on February 21, 1975, and that petitioners' counsel filed defendants-appellants' brief on March 3, 1975, well within the 15 days special extension prayed for by him in his motion.

xxx xxx xxx

[20] 163 Phil. 638, 643-644 (1976).

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This litigation is one for partition and the conflicting assertions of the parties herein over property rights deserve to be passed upon by the appellate court if only to assure itself that the properties in question are awarded to those who rightfully deserve them.

Gregorio v. Court of Appeals[21] followed suit as this Court again gave due course to the appeal despite the filing of the appellant's brief beyond the reglementary period, considering the subject matter of the appeal:

What is before the court is a question of forgery in the supposed conveyance of a 57,491-square meter land located in the residential area of a 57,491-square meter land located in the residential area of Las Piñas, Rizal. Petitioner claims that the sale of the land to the Spouses Corpuz Parami and Luciana Parami is an absolute falsity. He stubbornly asserts that he never sold the land to them. Such charges are doubtless not devoid of significance. Respondent Appellate Court, therefore, grievously erred in dismissing the appeal.

This Court expounded on its decision thus:

The expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties. It is sufficient ground for extending the time where the delay in filing the brief was caused in part by a misunderstanding of counsel, and in part by appellant's inability, *because of his poverty,* to obtain the money necessary to pay the expenses of the appeal. Similarly, where the question raised is of sufficient importance to require an examination of the record, the late filing of the brief may be forgone. This is especially true, like in the case before Us, where there is no showing or assertion whatsoever of any intent to delay on the part of the appellant. Dismissal of appeals purely on technical grounds is frowned upon where the policy of the courts is to encourage ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure not override substantial justice. If a technical and rigid enforcement of the rules is made, their aim would be defeated.

Development Bank of the Philippines v. Court of Appeals,[22] took its bearings from the above case, thus:

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[21] 164 Phil. 129, 136 (1976).

[22] 411 Phil. 121, 135-136 (2001).

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[t]he need x x x to determine once and for all whether the lands subject of petitioner's reversion efforts are foreshore lands constitutes good and sufficient cause for relaxing procedural rules and granting the third and fourth motions for extension x x x" and constituted an "exceptional circumstance" which impressed petitioner's appeal with public interest. Thus, petitioner's appeal was given due course despite the late filing of its appellant's brief.

Similarly, the case at bar is impressed with public interest. If petitioner's appeal is denied due course, a government institution could lose a great deal of money over a mere technicality.

Though not deviating from the basic principle set in the above cases earlier mentioned, *Philippine Merchant Marine School, Inc. v. Court of Appeals*[23] became more succinct and this Court emphasized that sufficient cause must exist for the relaxation of procedural rules:

As consistently reiterated, the power conferred upon the Court of Appeals to dismiss an appeal is discretionary and not merely ministerial. With that affirmation comes the caution that such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

In the case at bar, we find no reason to disturb the conclusions of the Court of Appeals. Petitioner failed to adduce sufficient proof that any inadvertence was caused by the Post Office. Moreover, no conclusive proof could be shown that a motion for extension was indeed filed at any time. All these create a doubt that petitioner's counsel has been candid in his dealings with the courts. Needless to stress, a lawyer is bound by ethical principles in the conduct of cases before the courts at all times.

As a last recourse, petitioner contends that the interest of substantial justice would be served by giving due course to the appeal. However, we must state that the liberality with which we exercise our equity jurisdiction is always anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Having found petitioner's explanation less than worthy of credence, and without evidentiary support, we are constrained to adhere strictly to the procedural rules on the timeliness of submission before the

[23] 432 Phil. 733, 741-742 (2002).

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court.

Bago v. People[24] followed the lead of *Philippine Merchant*, and ruled as follows:

> On March 9, 1998, petitioner's counsel filed a manifestation stating the Appellant's Brief was filed seasonably by his secretary with the Court of Appeals. However, the original of the same was inadvertently filed with the copies intended for the Brief Section because there were Christmas parties going on. Petitioner's counsel likewise admitted that the Office of the Solicitor General had just been furnished with a copy of the Appellant's Brief due to the failure of her secretary to send it on December 22, 1997.
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> xxx xxx xxx
>
> [I]t is axiomatic that Rules of Court, promulgated by authority of law, have the force and effect of law. More importantly, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. Strict compliance with such rules is mandatory and imperative. Only strong considerations of equity, which are wanting in this case, will lead us to allow an exception to the procedural rule in the interest of substantial justice.
>
> Consequently, the instant petition must perforce be denied. Petitioner has failed to show compelling reasons to relax the rules in his favor. His failure to comply strictly with the procedural requirements of the Rules of Court and observe the reglementary periods prescribed therein will not warrant the application of equity and the liberal construction of the Rules.

Of the same tenor is *De la Cruz v. Ramiscal*,[25] where we again explained at length that:

> Petitioner's justification that their former counsel belatedly transmitted said order to them only on 20 March 1998 is not a good reason for departing from the established rule. It was the responsibility of petitioners and their counsel to devise a system for the receipt

[24] 443 Phil. 503, 505-506 (2003).

[25] G.R. No. 137882, 4 February 2005, 450 SCRA 456-457.

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of mail intended for them. Rules on procedure cannot be made to depend on the singular convenience of a party.

Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista[26] stayed on course with the more recent jurisprudence by refusing to allow the late filing of the appellant's brief on the ground of the mistake or inadvertence of the counsel's secretary:

> Blaming its counsel's unidentified secretary for its abject failure to file its brief is a common practice for negligent lawyers to cover up for their own negligence, incompetence, indolence, and ineptitude. Such excuse is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. It bears stressing that it is the duty of counsel to adopt and strictly maintain a system that insures that all pleadings should be filed and duly served within the period therefor and, if he fails to do so, the negligence of his secretary or clerk to file such pleading is imputable to the said counsel.

In *Uy v. Baloja*,[27] counsel of therein petitioner attributed his failure to file the appellant's brief on time to his inability to locate the transcript of stenographic notes in the case. Unmoved, this Court dismissed the appeal and pronounced:

> Truly, petitioner's conduct in the premises can never be a case of excusable neglect. Quite the contrary, it smacks of a lack of honest concern on his part and a blatant disregard of the lawful directive of the appellate court. Giving in to petitioner's maneuverings is tantamount to putting premium on a litigant's naked indolence and imparting imprimatur to a scheme of prolonging litigation.

This Court reiterated its stance on the strict adherence to the rules of procedure when in *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*,[28] it rejected therein petitioner's excuse for the late filing of his appellant's brief:

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[26] G.R. No. 164668, 14 February 2005, 451 SCRA 294, 300.

[27] G.R. No. 134155, 6 April 2005, 455 SCRA 55, 60-61.

[28] G.R. No. 135507, 29 November 2005, 476 SCRA 361, 367.

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We note that petitioner's previous counsel is a large law firm with several lawyers in its roster. Yet it took said counsel *four (4) months, from the expiration of the reglementary period,* within which to file the appellant's brief. It is settled that failure to file brief for a client constitutes inexcusable negligence. Petitioner's flimsy excuse that it's counsel's log-book containing the schedules for the filing of pleadings and hearings was lost is, to say the least, most unpersuasive. Said counsel should have examined consistently the records of its cases to find out what appropriate actions have to be taken thereon. The notice to file the appellant's brief was in the records of the instant cases all along. Had counsel been efficient in the handling of its cases, the required appellant's brief could have been filed on time. Its failure to do so is an inexcusable negligence.

In *Cruz v. Court of Appeals,*[29] the Court likewise refused to relax its procedural rules:

> Petitioner does not deny the procedural infraction on his part, but he asks for the relaxation of the rules. Granting his plea, however, would be to fault the appellate court for acting in faithful compliance with the rules of procedure which the court has been mandated to observe.
>
> The Rules of Court are designed for the proper and prompt disposition of cases before the appellate court. We cannot just turn a blind eye and tolerate its contravention. Section 7, Rule 44 of the Rules of Court provides that it shall be the duty of the appellant to file his brief within 45 days from receipt of notice. His failure to comply with this mandate is a ground for the dismissal of his appeal as provided under Section 1(e), Rule 50 of the Rules of Court. Petitioner actually had 135 days to prepare his brief which is a considerable period of time.
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> In not a few instances, we relaxed the rigid application of the rules of procedure, so that the ends of justice may be better served. However, such liberality may not be invoked if it would result in the wanton disregard of the rules, and cause needless delay. Save for the most persuasive of reason, strict compliance with the rules is enjoined to facilitate the orderly administration of justice. Negligence of petitioner's counsel and his own failure to enter the

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[29] G.R. No. 156894, 2 December 2005, 476 SCRA 581, 585-586.

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appearance of his collaborating counsel are, to our mind, unacceptable reasons for relaxing the observance of the period set for filing briefs.

The same principle was highlighted in *Moneytrend Lending v. Court of Appeals*,[30] where we again repeated that the general rule is that failure to file the appellant's brief within the prescribed period would result in the dismissal of the appeal, and any exemption from the rule must be for the most compelling reasons **and** the delay must be for a reasonable period:

> It may be that mere lapse of the period to file an appellant's brief does not automatically result in the dismissal of the appeal and loss of jurisdiction by the appellate court. It ought to be stressed, however, the relaxation of the rules on pleadings and practice to relieve a party-litigant of an injustice must be for most persuasive reasons. And in case of delay, the lapse must be for a reasonable period.

In *Delos Santos v. Elizalde*,[31] this Court reminded litigants of their responsibility to monitor the status of their case and the inexcusability of the inability to file appellant's brief on account of non-monitoring:

> Petitioners' failure to apprise themselves of the status of their case during its pendency before the CA is inexcusable. Moreover, their former counsel's failure or neglect to file the required appellant's brief shall bind them.

Then in *Redena v. Court of Appeals*,[32] we repeated that negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period, and explained at length that:

> In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He

[30] G.R. No. 165580, 20 February 2006, 482 SCRA 705, 713-714.

[31] G.R. Nos. 141810 & 141812, 2 February 2007, 514 SCRA 14, 34.

[32] G.R. No. 146611, 6 February 2007, 514 SCRA 389, 402.

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thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.

Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here.

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below.

In *Natonton v. Magaway*,[33] this Court deemed it proper to underscore once more that the dismissal of an appeal for the late filing of the appellant's brief is discretionary upon the court, depending on the circumstances surrounding the same:

In *Carco Motor Sales v. Court of Appeals* (G.R. No. L-44609, August 31, 1977, 78 SCRA 526), this Court held:

> "As held by the Court in Gregorio v. Court of Appeals (70 SCRA 546 [1976]), **'(T)he expiration of the time to file brief**, unlike lateness in filing the notice of appeal, appeal bond or record on appeal **is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee be reason of the delay or where there is no contention that the appellee's cause was prejudiced."**

Technically, the **Court of Appeals may dismiss an appeal for failure to file appellant's brief on time. However, the dismissal is directory, not mandatory**. It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his

[33] G.R. No. 147011, 31 March 2006, 486 SCRA 199, 203-204.

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brief within the time prescribed does not have the effect of dismissing the appeal automatically. The court has discretion to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. (Emphases supplied.)

It is thus daylight clear from all these cases that:

(1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;

(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;

(c) no material injury has been suffered by the appellee by the delay;

(d) there is no contention that the appellees' cause was prejudiced;

(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

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(a) where the reckless or gross negligence of counsel deprives the client of due process of law;

(b) when application of the rule will result in outright deprivation of the client's liberty or property; or

(c) where the interests of justice so require.

In this case, the Court cannot say that the issues being raised by respondents are of such importance that would justify the appellate court to exempt them from the general rule and give due course to their appeal despite the late filing of their appellant's brief. It is starkly clear that respondents do not deny that they owe petitioner the amount it is demanding, as borne out in the Answer they filed before the RTC, save to say that petitioner refused and failed to accept the payment thereof. Respondents' Answer before the RTC confirms this observation. Their Answer reads:

5. [Herein petitioner] has no valid cause of action as against the [herein respondents] considering that [respondent UFC] has already prepared the check as early as October 3, 2000 as its payment in the amount of ₱1,025,590.00 but the [petitioner] refused and failed to accept such payment. For reference, we attached herewith copy of the check voucher and check as Annexes "A" and "B" respectively.[34]

Even the claim of refusal by petitioner to accept the check payment is contrary to ordinary human character and cannot be given even half a life. For, why would the petitioner go to this length in collecting the amount due him after allegedly refusing and failing to accept the respondents' payment?

Our attention is riveted to respondents' repeated laxity and indolence as regards this case even when it was still pending before the RTC. As shown by the records and contained in the RTC Order dated 22 April 2002:

When called for pre-trial, there was no appearance on the part of the [herein respondents]. Records show that this is the 4th time this case is set for pre-trial. In fact, up to the present time despite the requirements of the Rules of Court the [respondents] have failed to

[34] *Id*. at 46.

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file their Pre-trial Brief. When called for the third time at 10:00 a.m., there was still no appearance on the part of the [respondents], prompting the [herein petitioner] thru counsel to pray for an Order of default.

Premises considered, and as prayed for, the [respondents] are now declared to have waived their right to adduce evidence on Pre-trial, and the [petitioner] may present evidence *ex-parte* on May 24, 2002, at 2:00 p.m.[35]

Respondents did not file any motion to set aside the above order.

Respondents evidently continued with their lack of care even when they filed an appeal with the Court of Appeals as shown by their not having filed an appellants' brief under the reglementary period. The purported inadvertence of their counsel cannot justify a relaxation of the rules. It is the counsel's responsibility to see to it that he has established an efficient system to monitor the receipt of important notices and orders from the courts. While the omission can plausibly qualify as simple negligence, it does not amount to gross negligence to call for the exception to the oft-repeated rule that the negligence of counsel binds the client. Respondents are, thus, bound by their counsel's negligence.

Finally, it appears that respondents finally "attached" their Brief only in their Motion for Reconsideration filed on 27 October 2003 in the Court of Appeals seeking a reconsideration of the appellate court's Resolution of 30 September 2003, dismissing their appeal. The delay in the filing thereof, 57 days after the expiration of the period to file the same on 1 September 2003,[36] was, indeed, unreasonably long.

ALL TOLD, the Court finds no sufficient and compelling reasons to justify the exercise of the Court's leniency and sounddiscretion. Under the facts of the case, the Court is constrained to adhere strictly to the procedural rules.

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[35] *Rollo,* p. 49.

[36] *Rollo,* p. 60.

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WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, the Court of Appeals' Resolutions dated 27 November 2003 and 5 May 2004 are *ANNULLED* and *SET ASIDE*, and the Resolution dated 30 September 2003 dismissing the appeal of respondents Unified Field Corporation, Marilyn G. Ong, Victoria O. Ang, Edna C. Alfuerte, Mark Dennis O. Ang and Alvin Ang, is *REINSTATED*. Costs against respondents.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165968. April 14, 2008]

PEPSI COLA PRODUCTS PHILIPPINES, INC. and ERNESTO F. GOCHUICO, *petitioners, vs.* **EMMANUEL V. SANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; WHERE THE FACTUAL FINDINGS OF THE LABOR ARBITER, THE NLRC, AND THE COURT OF APPEALS ARE IN ABSOLUTE AGREEMENT, THE SAME ARE ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— The *first* issue involves a question of fact which the Court is not at liberty to review. Our jurisdiction is generally limited to reviewing errors of law that may have been committed by the Court of Appeals. Not being a trier of facts, the Court cannot re-examine and re-evaluate the probative value of evidence presented to the Labor