

JOLIBEE FOODS CORP.,
Opposer-Appellant,

-versus-

HAMBLES FOOD, INC.,
Respondent-Appellee.

Appeal No. 14-2010-0035

Inter Partes Case No. 2006-00165
Opposition to:
Application No. 4-2005-003283
Date Filed: 12 April 2005
Trademark: JOLLYDAY &
DEVICE

X-----X

ORDER

On 22 June 2010, the Appellant filed through registered mail its "APPEAL MEMORANDUM" alleging among other things that:

"5. A copy of Decision No. 2007-143 was received by the Appellant on 20 November 2007. Hence, the Appellant had until 20 December 2007 within which to file an Appeal Memorandum before the Honorable IPO Director General, pursuant to the IPO Uniform Rules on Appeal.

6. On 17 December 2010, the Appellant filed a Motion of Reconsideration to the Decision. However, the IPO denied the Motion for Reconsideration in its Order dated 17 May 2010. A copy of the Order was received by the Appellant on 2 June 2010.

7. Under the IPO Uniform Rules on Appeal, the Appellant had a balance of three (3) days, or until 5 June 2010 within which to file an appeal with the Honorable IPO Director General. Considering that 5 June 2010 fell on a Saturday, the proper deadline was 7 June 2010, the next working day.

8. On 7 June 2010, Appellants filed a "Motion for Extension of Time to File Appeal" requesting for fifteen (15) days from 7 June 2010, or until 22 June 2010, within which to file the Appeal Memorandum.

9. In an Order dated 18 June 2010, this Honorable Office granted the Motion for Extension and gave the Appellant until 22 June 2010 to file its Appeal Memorandum."

The Appellant attached to the APPEAL MEMORANDUM copies of the Notice of Decision, dated 15 October 2007, and Notice of Resolution, dated 17 May 2010 which showed the dates the Appellant received the foregoing notices. However, a scrutiny of the copy of the Notice of Resolution showed that the Appellant received a copy of Resolution No. 2010-07, dated 17 May 2010, on 01 June 2010 and not on 02 June 2010 as alleged by the Appellant. In this regard, this Office clarified with the Bureau of Legal Affairs (BLA) the date the Appellant received a copy of the Notice of Resolution. The BLA issued a certification on 29 June 2010 stating that the counsel for the Appellant received a copy of the Notice of Resolution on 01 June 2010.

Accordingly, the records show that the Appellant:

1. received on 20 November 2007 a copy of Decision No. 2007-143 of the BLA;
2. filed on 17 December 2007 a motion for reconsideration of Decision No. 2007-143;
3. received on 01 June 2010 a copy of the Resolution No. 2010-07(D) denying its motion for reconsideration; and
4. filed on 07 June 2010 a Motion for Extension of Time to File Appeal;

Section 2 of the Uniform Rules on Appeal, as amended,¹ provides that:

Section 2. Appeal to the Director General.- The decisions or final orders of the Bureau Director shall become final and executory thirty (30) days after receipt of a copy

thereof by the parties unless, within the same period, a motion for reconsideration is filed with the Bureau Director or an appeal to the Director General has been perfected; Provided, that only one (1) motion for reconsideration of the decision or order of the Bureau Director shall be allowed; and, in case the motion for reconsideration is denied, the appellant or appellants has/have the balance of the period prescribed above within which to file the appeal.

Upon proper motion citing meritorious reasons and the payment of the full amount of appeal fee and other applicable fees before the expiration of the reglementary period to perfect an appeal, the Office of the Director General may grant an additional period of fifteen (15) days within which to file the appeal. No further extension of the period to file the appeal, however, shall be allowed.

Thus, when the Appellant filed its motion for reconsideration, it has already used 27 days of the 30 days given to it to file a motion for reconsideration or an appeal. When the Appellant received a copy of the resolution denying its motion for reconsideration on 01 June 2010, it only had three (3) days left or until 04 June 2010 to perfect an appeal or to file the proper motion for extension of time to file the appeal.

However, in this case, the Appellant filed the motion for extension of time to file appeal and paid the required fees only on 05 June 2010 or one (1) day late from the deadline to perfect the appeal. Therefore, the Appellant's Motion for Extension of Time to File Appeal was not properly filed and, consequently, the appeal is deemed to have been filed out of time. Moreover, the Appellant did not pay the appeal fee and the other applicable fees within the reglementary period to perfect the appeal. Section 5 (b) of the Uniform Rules on Appeal provides that:

Section 5. Action on the Appeal Memorandum. — x x x

b. The appeal shall be dismissed outright on any of the following grounds:

1. the appeal is filed out of time;
2. the subject of the appeal is an interlocutory order, or is not a decision or final order;
3. the appeal fee and other applicable fees are not paid within the reglementary period.

The appeal, therefore, should be dismissed outright. In *Sehwani, Incorporated and/or Benita's Frites, Inc. vs. In-N-Out Burger, Inc.*² the Supreme Court affirmed the ruling of the Court of Appeals sustaining this Office's decision dismissing an appeal, thus:

“The court has invariably ruled that perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/final order final and executory, and deprives the appellate court of jurisdiction to alter the judgment or final order, much less to entertain the appeal. True, this rule had been relaxed but only in highly meritorious cases to prevent a grave injustice from being done. Such does not obtain in this case.”

Wherefore, the instant appeal is hereby dismissed for the reasons discussed above.

SO ORDERED.

September 16, 2010, Makati City

RICARDO R. BLANCAFLOR
Director General