Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MCA-MBF COUNTDOWN CARDS PHILIPPINES INC., AMABLE R. AGUILUZ V, AMABLE C. AGUILUZ IX, CIELO C. AGUILUZ, ALBERTO L. BUENVIAJE, VICENTE ACSAY and MCA HOLDINGS AND MANAGEMENT CORPORATION,
Petitioners,

- *versus* -

MBf CARD INTERNATIONAL LIMITED and MBf DISCOUNT CARD LIMITED,
Respondents.

G.R. No. 173586

Promulgated:
March 14, 2012

x- -x

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* assailing the Resolutions of the Court of Appeals in CA-G.R. CV No. 84370 dated March 20, 2006[1] and July 6, 2006.[2]

Herein respondents MBf Card International Limited (MBf Card) and MBf Discount Card Limited (MBf Discount Card), both foreign corporations not doing business in the Philippines, filed a complaint for Recovery of Money, Unfair Competition and Damages, with Application for Preliminary Injunction against herein petitioners MCA-MBF Countdown Cards Phils., Inc. (MCA-MBF), Amable R. Aguiluz V (Aguiluz V), Amable C. Aguiluz IX, Cielo C. Aguiluz, Alberto L. Buenviaje, Vicente Acsay and MCA Holdings and Management Corporation (MCA Holdings). The complaint alleged that sometime in the second half of 1993, respondent MBf Card and petitioner MCA Holdings, the latter principally acting through petitioner Aguiluz V, entered into negotiations for the execution of a Joint Venture Agreement wherein: (1) they would establish a Joint Venture Company (JVC) in the Philippines with MBf Card owning about 40% and MCA Holdings owning 60% of the capital stock thereof, and (2) said JVC would execute a "Countdown Country License Agreement" with respondent MBf Discount Card, under which the JVC would conduct the business of discount cards in the Philippines under the "Countdown" mark, and use the distinctive business format and method for the operation of the "Countdown Discount Card."[3]

The Complaint further alleged that even before respondent MBf Card and petitioner MCA Holdings could agree on drafts of the Joint Venture and Licensing Agreement, and pending negotiations thereon, petitioner Aguiluz V, on January 3, 1994, wrote respondent MBf Card that he had already incorporated on October 18, 1993, a company which would later be converted into the proposed JVC upon the execution and approval of the pertinent Agreements. The company incorporated by Aguiluz V with the Securities and Exchange Commission (SEC) was stated in the letter as "MBF-MCA Discount Card Corp. Philippines," but is actually named "MCA-MBF Countdown Cards Philippines, Inc.," *i.e.*, petitioner MCA-MBF. Acceding to a request in the

1 Rollo, p. 53; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Godardo A. Jacinto and Vicente Q. Roxas, concurring.
2 Id. at 56.
3 Id. at 85-86.

same letter, respondent MBf Card remitted on January 21, 1994 the amount of US$74,074.04 to Account No. 838-06 (Metrobank, Quezon Avenue Branch), which, as it turned out, belongs to petitioner MCA-MBF. The understanding was that such amount was to be applied as MBf Card's payment of its 40% shareholding in the JVC upon the execution and approval of the Joint Venture and Licensing Agreements.[4] However, without the prior authority of the respondents, and while the parties were still discussing and negotiating on the terms and conditions of the Joint Venture and Licensing Agreements, petitioners, through the intended JVC (petitioner MCA-MBF), began to promote, market and sell the Countdown Discount Cards to the public, using the "Countdown" name, logo and trademark.[5]

The Complaint then alleged the facts that led up to respondents' decision to end its negotiations with petitioners:

> 8. Accordingly, [respondent] MBf card advised [petitioners] not to promote, market and sell Countdown Discount Cards to the public until the Joint Venture Agreement and the License Agreement (for the use of the tradename "Countdown" and the format and method for the operation of the Countdown Discount Card) had been signed and, thereafter, approved by the appropriate government agency.
>
> 9. In particular, on March 8 and 17, 1994, [respondent] MBf Card wrote [petitioner] MCA-MBF's Ruby Pearl M. Shan to "freeze" all selling activities on the Countdown Discount Card until after the pertinent Agreements had been signed and approved. x x x.
>
> 10. In reply to [respondent] MBf Card's freeze advice, [petitioner] Amable R. Aguiluz V promised that they would comply therewith. This was confirmed by Ruby Pearl M. Shan, who wrote [respondent] MBf Card on March 19, 1994 "to confirm that selling activities of Discount Card have been ordered [frozen] temporarily, effective 10th March 1994." x x x.
>
> 11. On March 30 and April 3, 1994, before any of the Joint Venture and License Agreements had been signed and approved, and with malice, bad faith and in breach of [petitioner's] promise to [respondent] MBf Card, the [petitioners] illegally caused the publication of two advertisements in the Manila Bulletin, promoting, marketing and selling the Countdown Discount Card. x x x.
>
> > 11.1 In the said ads, [petitioners] fraudulently misrepresented to the public that they have already been authorized by [respondents] to promote, market and sell the Countdown Discount Card and that the discount cards they offer are valid and enforceable, and as such would be honored in various establishments in the Philippines and elsewhere.
> >
> > 11.2 Moreover, in the said advertisements, [petitioners] offered to the public, aside from the regular features of the Countdown Discount Card, a purchase protection plan and even personal accident insurance. This caused great concern for [respondents] as, to their knowledge, these have not been firmed up with any insurance company.
>
> 12. What is worse, in his column appearing in the April 15, 1994 issue of the Philippine Star[,] [petitioner] Amable R. Aguiluz V misrepresented to the public that he, "representing the MCA Holdings had actually signed a joint venture agreement with Mr. Gordon Yuen, Chairman, of the Malaysia Borneo

4 Id. at 86.
5 Id. at 86-87.

Finance." No such joint venture agreement has to date been signed and Mr. Gordon Yuen is president and chief executive officer of [respondent] MBf Card and not the chairman of Malaysia Borneo Finance.

13. On April 20, 1994, [respondent] MBf Card wrote [petitioners], advising them that it had decided not to proceed with the joint venture project on the Countdown Discount Card, and demanding that [petitioners] immediately:

(a) refund to [respondent] MBf Card the US$74,074.04 it had remitted;

(b) cease and desist from using the MBf and Countdown names, logos and trademarks; and

(c) delete "MBf" and "Countdown" from MCA-MBF's corporate name as registered with the Securities and Exchange Commission.

x x x

14. To date, to the damage and prejudice of [respondents], the [petitioners] continue to promote, market and sell the Countdown Discount Card, thereby misrepresenting to the public that they have been authorized to do so, and that the Countdown Discount Card they offer are valid and binding against [respondents]. These acts of [petitioners], including their continued use of "Countdown" and "MBf" in the corporate name and business of MCA-MBF, are in violation of [respondent's] lawful and exclusive proprietary rights to such names. Furthermore, they are in fraud of the public and constitute unfair competition which should be enjoined and for which [petitioners] are liable to [respondents] in damages.[6]

Respondents prayed before the trial court that petitioners be enjoined from promoting, marketing and selling Countdown Discount Cards and from using the "MBf" and "Countdown" names, logos and trademarks. They also prayed that petitioners be ordered to refund to respondent MBf Card the sum of US$74,074.04, and to pay ₱2, 000,000.00 as moral damages, and ₱500, 000.00 as attorney's fees and expenses of litigation.

On April 22, 1994, the trial court issued a temporary restraining order enjoining petitioners, particularly MCA-MBF, to refrain and desist from promoting, marketing and selling Countdown Discount Cards and from using the "MBf" and "Countdown" names, logos and trademarks.

After hearings on April 28 and 29, and March 4, 1994, the trial court, in an Order dated May 6, 1994, granted respondents' prayer for a preliminary injunction.

On August 8, 1994, petitioner MCA-MBF filed its Answer with Counterclaim, claiming that the contract between the parties had already been perfected. The parties allegedly agreed that (1) they jointly undertook the task of marketing the MBf Discount Card in the Philippines; (2) MBf Card was solely responsible for securing the necessary selling paraphernalia from the main Licensor, Countdown of London, England; and (3) Gordon Yuen and T.K. Wong were elected as members of the Board of Directors of the Joint Venture Corporation. Petitioner MCA-MBF asserted that MBf Card did not suffer any damage from the introduction and marketing of the MBf Countdown Discount Card in the Philippines since all acts pertaining to the business were jointly undertaken by the parties. In its Counterclaim, petitioner MCA-MBF prayed for damages in the amount of ₱22, 500,000.00, and an order directing respondents to execute, sign and submit the

6 Id. at 87-89.

form of the Joint Venture Agreement as allegedly approved and accepted by petitioners on March 16, 1994.

On August 10, 1994, the trial court issued the Writ of Preliminary Injunction on account of the posting by the respondents of the required bond.

On October 18, 1996, petitioners Vicente R. Acsay, Amable R. Aguiluz V, Amable C. Aguiluz IX, Cielo C. Aguiluz, Alberto Buenviaje and MCA Holdings filed their Answer, alleging practically the same defenses as those raised by petitioner MCA-MBF.

On June 8, 1998, the law firm of Castillo Laman Tan Pantaleon & San Jose (CLTPSJ) filed a Motion to Record Attorney's Lien. However, while CLTPSJ did not withdraw its appearance in the case, the law firm of Poblador Bautista & Reyes (PBR) entered its appearance in October 1994 and has since then been the firm representing respondents. On August 27, 1998, the trial court noted the prayer to record attorney's lien and held that the same shall be considered in the adjudication of the case.

On March 8, 2000, the trial court rendered its Decision in favor of respondents. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered permanently enjoining the [petitioners] from promoting, marketing and selling Countdown Discount Cards, and from using "MBf" and "Countdown" names, logos and trademarks; ordering [petitioners] to jointly and severally refund to [respondent] MBf Card the sum of US$74,074.04 or its equivalent in Philippine currency, with legal interest thereon from date of demand until full payment; and ordering [petitioners] to jointly and severally pay [respondents] the amount of TWO HUNDRED THOUSAND (₱200,000.00) PESOS as attorney's fees and expenses of litigation.

> As regards CLTPSJ's claim, [respondents] are ordered to pay the amount of FIFTY THOUSAND (₱50, 000.00) PESOS, as attorney's fees.[7]

On August 15, 2003, petitioners filed a Notice of Appeal. On September 28, 2005, petitioners received an Order from the Court of Appeals requiring them to file their Appellant's Brief within 45 days from receipt of said notice.

Petitioners failed to file the Brief within the period allotted by the Court of Appeals. Thus, on March 20, 2006, the Court of Appeals issued the first assailed Resolution dismissing petitioners' appeal on the ground of abandonment of the same:

> For failure of defendants-appellants to file the required brief within the prescribed period as per report of the Judicial Records Division dated March 1, 2006, their appeal is considered ABANDONED and consequently, ordered DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.[8]

Petitioners filed a Motion for Reconsideration with Motion to Admit Appellant's Brief, wherein they claimed that the lawyer who was handling the case suddenly resigned from the law firm in October 2005, shortly after they received the notice to file the Brief. The other counsels allegedly had been handling voluminous cases and attending to numerous court appearances and out of town hearings.

On July 6, 2006, the Court of Appeals issued the second assailed Resolution denying petitioners' Motion for Reconsideration. According to the Court of Appeals, the reason given by the counsels is not substantial or meritorious to merit the relaxation of the rules. The Court of Appeals also noted that there was no action on the part of the petitioners from the time they

---

7 Id. at 259-260.
8 Id. at 53.

received the notice to file their Brief on September 28, 2005 until the Resolution of the appellate court on March 20, 2006.[9]

Hence, the present Petition for Review, wherein petitioners rely on the following grounds:

A.

The Court of Appeals grievously committed a reversible error in dismissing the case based on procedural technicalities without considering at all whether or not petitioners' appeal deserved full consideration on the merits.

B.

In the interest of substantial justice, petitioners' appeal should be reinstated considering that the errors of the trial court in rendering its appealed decision are evident on the face of the said decision and more so after an examination of the evidence on record.

1. The Trial Court erred in perfunctorily disregarding corporate fiction and adjudging individual petitioners personally liable in its Decision.

2. The Trial Court erred when it disregarded basic principles of contract law when it ruled that there was no joint venture agreement yet between respondent MBf Card and petitioner MCA because they have not yet executed the documents formalizing said contract.

3. The Trial Court erred in finding that petitioners have not proven Tan Sri's authority to represent and bind the respondents to the joint venture agreement.

4. The Trial Court's award of attorney's fees is devoid of legal basis.[10]

Petitioners pray before this Court that their appeal before the Court of Appeals, CA-G.R. CV No. 84370, be reinstated.[11]

We resolve to deny the present petition.

Confronted with the necessity to justify their failure to file their Appellants' Brief before the Court of Appeals, all that the petitioners could offer was that the lawyer who was handling the case resigned from the law firm shortly after they received the notice to file the Brief, while other counsels have been handling voluminous cases, numerous court appearances, and out of town hearings. Petitioners did not allege that the other lawyers of the firm were not informed of the appellate court's notice to file the Brief. Petitioners did not even ask the court for an extension. Instead, petitioners claim that the rules concerning the filing of the Appellant's Brief are mere "insignificant and harmless technicalities"[12] and argue that because of the alleged merits of their case, they do not have to prove that their failure to file the said brief was excusable:

In light of the merits of petitioners' appeal as will be further discussed below, and in accordance with the jurisprudence discouraging dismissal of appeals grounded on pure technicalities, whether or not the inadvertence resulting in the late filing of the appellant's brief is

9 Id. at 57.
10 Id. at 23.
11 Id. at 40.
12 Id. at 29; Petition, p. 20.

excusable is already beside the point. The focus should have been on whether or not the appeal deserved full consideration on the merits, and this can only be determined if a preliminary consideration of the merits is made.[13] (Emphasis added.)

This contention, which in effect advances that the appellate court does not even deserve a valid explanation for the appellant's failure to its Brief, cannot be countenanced. Liberality is given to litigants who are worthy of the same, and not to ones who flout the rules, give explanations to the effect that the counsels are busy with other things, and expect the court to disregard the procedural lapses on the mere self-serving claim that their case is meritorious.

In *Rural Bankers Association of the Philippines v. Tanghal-Salvaña*,[14] this Court held:

> Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[15]

Furthermore, petitioners' characterization of the rules concerning the filing of the Appellant's Brief as "insignificant and harmless technicalities" is downright improper as it is contrary to established jurisprudence. In *Casim v. Flordeliza*,[16] this Court particularly held that:

> It would be incorrect to perceive the procedural requirements of the rules on appeal as being merely "harmless and trivial technicalities" that can just be discarded. As this Court so explained in *Del Rosario vs. Court of Appeals* –
>
> > "Petitioners' plea for liberality in applying these rules in preparing Appellants' Brief does not deserve any sympathy. Long ingrained in our jurisprudence is the rule that the right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules. In *People vs. Marong*, we held that deviations from the rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants."[17]

Petitioners' claim that the trial court Decision was erroneous on its face and that even a cursory reading of the same would show *prima facie* merit in the appeal is in itself a grave exaggeration. In alleging the *prima facie* merit of its appeal, petitioners rely on two main grounds: (1) the RTC allegedly disregarded the basic principles of contract law when it ruled that the joint venture agreement had not yet been perfected; and (2) the RTC allegedly disregarded corporate fiction in adjudging individual petitioners personally liable to respondents.

---

13 Id. at 26; id. at 17.
14 G.R. No. 175020, October 4, 2007, 534 SCRA 721.
15 Id. at 741-742.
16 425 Phil. 210 (2002).
17 Id. at 220-221.

The basic principles of contract law referred to by petitioners are those enshrined in Article 1315[18] of the Civil Code, which provides that contracts are perfected by mere consent, and in Article 1356,[19] which states that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity is present.

It is clear from a reading of the RTC Decision that the above principles were not disregarded. On the contrary, the RTC went beyond the fact that the Joint Venture and Licensing Agreement has yet to be signed, and carefully weighed the evidence in order to determine whether or not there was a perfected oral joint venture agreement:

1. The trial court had to look into whether Tan Sri had the authority to bind respondents in the alleged oral agreement. In this regard, the trial court found no evidence proving the same. The RTC instead considered the admission of Aguiluz V that he neither knew nor inquired whether Tan Sri was an officer or director of the plaintiff corporations.[20]

2. Despite the absence of a written contract, the RTC discussed whether or not the remittance of US$74,074.04 and conveyance of trade secrets and advice should be considered partial execution of the Joint Venture Agreement.[21] However, the trial court apparently found the testimony of the respondents' witness to be credible and believed that the respondents were assured that the money will only be applied to its proposed 40% shareholding upon the execution and approval of the Joint Venture Licensing Agreements.[22] Furthermore, it appeared to the RTC that the advice and suggestions from respondents for the sale, promotion and marketing of the discount cards are merely preparatory acts and does not necessarily indicate the existence of a perfected contract.[23]

3. It was shown that the RTC sought to determine the existence of a Joint Venture and Licensing Agreement despite the absence of a written contract evidencing the same when it considered therefor the letter of witness Luis Pangulayan in behalf of petitioner Aguiluz V. The RTC quoted Pangulayan's April 14, 1994 letter wherein it was admitted that (a) the signing of the Joint Venture Agreement is required to finalize the formation of the JVC since the provisions of the contract shall be incorporated in the JVC's By-Laws; and (2) even the formation of the JVC does not necessarily complete the process since a Licensing Agreement still needs to be executed between the JVC and respondents.[24]

In addition to the above, while we agree with petitioners that the absence of a *written* Joint Venture and Licensing Agreement does not necessarily negate the perfection of a contract, we nevertheless find that this very lack of a written contract constitutes convincing circumstantial proof that said parties were indeed in the process of negotiating the contract's terms. When there is as of yet no meeting of the minds as to the subject matter or the cause or consideration of the contract being negotiated, the same cannot be considered to have been perfected.

In ruling in favor of respondents, the RTC made a factual finding that the Joint Venture and Licensing Agreement being negotiated between petitioners and respondents was never

---

18 Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

19 Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

20 Rollo, p. 256.

21 Id.

22 Id., citing TSN, April 23, 1994, pp. 47-49.

23 Id. at 257.

24 Id.

perfected. Respondents are neither incorporators nor stockholders of MCA-MBF, the company that was supposedly intended to be converted into the Joint Venture Company. It must be stressed that MCA-MBF has not yet been converted into the Joint Venture Company as no shares of stock have been delivered to respondents. As alleged by respondents and found by the RTC, the respondents were assured that the money remitted by them will only be applied to its proposed 40% shareholding in the JVC upon the execution and approval of the Joint Venture and Licensing Agreements. Therefore, while the US$74,074.04 was remitted to the account of MCA-MBF as requested by Aguiluz V, said money was, insofar as respondents are concerned, with the persons they are negotiating with for the creation of the JVC. Consequently, respondents cannot be said to be suing the natural persons among the petitioners as officers of the yet-to-be-created JVC. They were instead held liable for the US$74,074.04 in their individual capacities as the persons negotiating with respondents for the creation of the JVC and, thus, there was no need to pierce the corporate fiction of MCA-MBF.

IN VIEW OF THE FOREGOING, the instant Petition for Review on *Certiorari* is hereby DISMISSED.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

RENATO C. CORONA
Chief Justice

Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

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

RENATO C. CORONA
Chief Justice