Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUICO INDUSTRIAL CORP., and SPOUSES ESMERALDO and ELIZABETH SUICO, **Petitioners,**	**G.R. No. 177711**
	Present:
	SERENO, *CJ.*, *Chairperson,*
- versus -	LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
HON. MARILYN LAGURA-YAP, Presiding Judge of Regional Trial Court of Mandaue City, Branch 28; PRIVATE DEVELOPMENT CORP. OF THE PHILS. (PDCP now First E-Bank); and ANTONIO AGRO DEVELOPMENT CORPORATION, **Respondents.**	Promulgated:
	05 SEP 2012

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DECISION

REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which assails the Decision[1] dated January 16, 2006 and Resolution[2] dated April 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 78676 entitled *Suico Industrial Corporation and Spouses Esmeraldo*

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1 Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 32-43.

2 Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; id. at 44-45.

and Elizabeth Suico v. Hon. Marilyn Lagura-Yap, Presiding Judge of Mandaue City Regional Trial Court, Branch 28; Private Development Corporation of the Phils. (PDCP Bank); and Antonio Agro Development Corporation.

The Factual Antecedents

In 1993, respondent Private Development Corporation of the Philippines (PDCP Bank), later renamed as First E-Bank and now Prime Media Holdings, Inc., foreclosed the mortgage constituted on two real estate properties in Mandaue City then owned by petitioners and mortgagor-spouses Esmeraldo and Elizabeth Suico, following petitioner Suico Industrial Corporation's failure to pay the balance of two secured loans it obtained from the bank in 1987 and 1991. PDCP Bank emerged as the highest bidder in the foreclosure sale of the properties, as evidenced by a Certificate of Sale dated February 29, 1993 issued by the Sheriff of Mandaue City.

The mortgagors' failure to redeem the foreclosed properties within the period allowed by law resulted in the consolidation of ownership in favor of PDCP Bank and the issuance of Transfer Certificate of Title Nos. 34987 and 34988 in the bank's name. The enforcement of a writ of possession obtained by PDCP Bank from the Regional Trial Court (RTC), Mandaue City, Branch 28, was however enjoined by an injunctive writ obtained by the petitioners on January 17, 1995 from the RTC, Mandaue City, Branch 56, where they filed on December 9, 1994 an action for specific performance, injunction and damages to prevent PDCP Bank from selling and taking possession of the foreclosed properties. Petitioners alleged in said action for specific performance that they had an agreement with PDCP Bank to intentionally default in their payments so that the mortgaged properties could be foreclosed and purchased during public auction by the bank. After consolidation of title in the bank's name, PDCP Bank, allegedly, was to

allow the petitioners to purchase the properties for ₱5,000,000.00 through a recommended buyer. Petitioners then claimed that PDCP Bank increased the properties' selling price, thereby preventing their recommended buyers from purchasing them.

When PDCP Bank questioned before the CA the issuance of the injunctive writ by the RTC Branch 56, the appellate court declared the trial court to have exceeded its jurisdiction in issuing the assailed writ, as it interfered with the proceedings of a court of concurrent jurisdiction, the RTC Branch 28. Said CA decision was affirmed in 1999 by this Court in G.R. No. 123050, entitled *Suico Industrial Corporation v. CA,*[3] wherein we declared:

> When petitioners failed to pay the balance of the loan and thereafter failed to redeem the properties, title to the property had already been transferred to respondent PDCP Bank. Respondent PDCP Bank's right to possess the property is clear and is based on its right of ownership as a purchaser of the properties in the foreclosure sale to whom title has been conveyed. Under Section 7 of Act No. 3135 and Section 35 of Rule 39, the purchaser in a foreclosure sale is entitled to possession of the property. Respondent PDCP Bank has a better right to possess the subject property because of its title over the same.
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> **Furthermore, petitioners undertook a procedural misstep when it filed a suit for specific performance, injunction and damages before the RTC Branch 56 instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act 3135** x x x[.][4] (Citations omitted and emphasis ours)

Notwithstanding the afore-quoted portions in this Court's *Suico* decision, the proceedings in Civil Case No. MAN-2321 for specific performance, injunction and damages before RTC Branch 56 continued. Herein respondent Antonio Agro Development Corporation (AADC), which in the meantime had purchased the foreclosed properties from PDCP Bank, filed with the trial court a motion to intervene and an answer-in-intervention.

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3 361 Phil. 160 (1999).

4 Id. at 170-171.

RTC Branch 56's Presiding Judge Augustine Vestil later voluntarily inhibited himself from further hearing the case, resulting in the re-raffle of the case to RTC Branch 55. When PDCP Bank failed to file its answer within the period allowed by the rules, the petitioners moved that the bank be declared in default and the answer-in-intervention of AADC be stricken off the records. In an Order[5] dated August 3, 2001, Judge Ulric R. Cañete (Judge Cañete) of RTC Branch 55 still gave therein defendants the time to file their written oppositions on the motions after noting the following antecedents:

> Record shows that this case was filed in 1994 yet and until this point in time there is no answer by the defendant. Likewise, the Motion for Intervention, filed by Antonio Agro Development Corporation was denied per record by the Court. However, [in spite] of the denial[,] an answer in intervention was filed. Hence, plaintiff now, per their motion and manifestation are praying for a default order against PDCP [Bank], and for the striking off from the records [of] Intervenor's Answer in Intervention.
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> In today's hearing of the incidents, Atty. Cavada entered his appearance and manifested that he will [sic] just filed a notice of appearance as counsel for the defendant, Private Development Corporation of the Philippines. Atty. Go appeared for the Intervenor. Both counsels pray for a period of ten (10) days from today to file their written opposition in these incidents subject for today's hearing.
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> Plaintiff failed to appear for the hearing of this incident.[6]

On October 23, 2001, the RTC issued an order denying the petitioners' motion to declare PDCP Bank in default. PDCP Bank's answer filed on August 24, 2001 and AADC's answer-in-intervention were also admitted. When Judge Cañete also inhibited from further hearing the case, the case was transferred to Judge Marilyn Lagura-Yap (Judge Yap) of RTC Branch 28.

During the case's scheduled pre-trial conference on September 6, 2002, the petitioners' counsel asked for a resetting to allow him more time to

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5 *Rollo*, pp. 48-49.

6 Id. at 48.

prepare the required pre-trial brief. This was opposed by PDCP Bank and AADC, which filed a motion for the case's dismissal later granted by Judge Yap in its order that reads in part:

> Although the Court notes that plaintiff Elizabeth Suico is in court, the fact that there is no pre-trial brief submitted by plaintiffs militates against their cause this morning. Under Section 6 of Rule 18 of the Revised Rules of Court[,] in the penultimate paragraph thereof[,] it is quite expressly provided that failure to file pre-trial brief has the same effect as failure to appear in the pre-trial.
>
> FINDING the joint motion of defendant PDCP[,] now 1st e-Bank[,] and defendant-intervenor Antonio Agro Development Corporation to be meritorious, the Court hereby orders the DISMISSAL of this case.
>
> IT IS SO ORDERED.[7]

Petitioners' motion for reconsideration, with pre-trial brief attached, was denied by the trial court in its Order[8] dated February 21, 2003, the dispositive portion of which reads:

> Applying these rulings to the environmental circumstances in this case, the Court finds no basis to reconsider its Order dated September 6, 2002.
>
> The Motion for Reconsideration is hereby DENIED.
>
> IT IS SO ORDERED.[9]

A copy of the order was received by the petitioners' counsel on March 21, 2003.

Unsatisfied with the trial court's rulings, the petitioners filed on April 4, 2003 their notice of appeal. The RTC, however, refused to give due course to the appeal *via* its Order[10] dated May 15, 2003 given the following findings:

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7 CA *rollo*, pp. 38-39.
8 Id. at 55-58.
9 Id. at 58.
10 Id. at 18-19.

> A review of the records of the case shows that the Order dismissing the Complaint was received by plaintiffs through counsel on September 17, 2002. On that date, the 15-day prescriptive period within which to file an appeal began to run. **Plaintiffs filed their Motion for Reconsideration on October 1, 2002, and their filing of the motion interrupted the reglementary period to appeal. By that time however, 14 days had already elapsed**; thus, from their receipt of the order denying the Motion for Reconsideration, they had only one (1) day left within which to file a notice of appeal. **On March 21, 2003, plaintiff received the Order denying their Motion for Reconsideration. Accordingly, they had only one (1) day left, or until March 22, 2003 to file a notice of appeal. However, they were able to do so only on April 4, 2003, or thirteen (13) days late**.[11] (Emphasis ours)

Petitioners deemed it useless to still file a motion for reconsideration of the Order dated May 15, 2003, and thus went straight to the CA to question the RTC's orders *via* a petition for *certiorari*.

The Ruling of the CA

On January 16, 2006, the CA rendered its Decision[12] dismissing the petition for lack of merit, taking note of the following circumstances:

> The September 6, 2002 order dismissing the case pointed out that as early as July 29, 2002, the court had already issued the notice of pre-trial conference and the return of the notice showed that [plaintiffs'] counsel was furnished a copy on August 21, 2002 but despite the notice, Atty. Manuel Ong, plaintiffs' counsel, did not file the appropriate motion to the [sic] have the conference reset. The order further ruled that in the notice of pre-trial, it was expressly stated that failure to file pre-trial brief may be given the same effect as failure to appear in the pre-trial conference.[13] (Citation omitted)

As regards to the petitioners' late filing of their notice of appeal, the CA cited the provisions of Section 13, Rule 41 of the Rules of Court, which provides that the court may dismiss an appeal filed out of time, *motu proprio* or on motion, prior to the transmittal of the original records or the record on appeal to the appellate court.[14]

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11 Id. at 18.
12 *Rollo*, pp. 32-43.
13 Id. at 38.
14 Id. at 42.

Feeling aggrieved, the petitioners filed a motion for reconsideration, which was however denied by the CA in its Resolution[15] dated April 11, 2007. Hence, the present petition for review on *certiorari.*

The Present Petition

Petitioners cite the following grounds to support their petition:

I.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN NOT RULING THAT RESPONDENT JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 28 OF MANDAUE CITY COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THE PETITIONER[S] NON-SUITED AND DISMISSING THE CASE ON THE GROUND OF FAILURE TO FILE A PRE-TRIAL BRIEF.

II.

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN RULING THAT PETITIONERS' NOTICE OF APPEAL FILED ON THE 14TH DAY AFTER RECEIPT OF THE ORDER DENYING THEIR MOTION FOR RECONSIDERATION [WAS FILED OUT OF TIME].[16]

In their prayer, the petitioners specifically ask this Court to, among other things, reverse the CA's rulings and annul and set aside the RTC's Order[17] dated September 6, 2002 which dismissed their action for specific performance, injunction and damages, and the Order dated February 21, 2003 which denied their motion for reconsideration.

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15 Id. at 44-45.

16 Id. at 18.

17 Referred to as Order of dismissal dated September 5, 2002 in the petition's prayer; CA *rollo*, pp. 38-39.

The petitioners were represented in this petition by the same counsel who assisted them during the pre-trial and filing of the notice of appeal before the RTC. A new counsel entered his appearance for the petitioners only upon the filing of a reply.

This Court's Ruling

This Court finds the petition dismissible.

Given the antecedents that led to the filing of this petition, and the fact that the timeliness of an appeal from the RTC's dismissal of the action for specific performance is a crucial issue that will determine whether or not the other issues resolved by the RTC can still be validly questioned at this time, we find it proper to first resolve the question on the RTC's ruling that the petitioners' notice of appeal was filed out of time.

A party is given a "fresh period" of fifteen (15) days from receipt of the court's resolution on a motion for reconsideration within which to file a notice of appeal.

Section 3, Rule 41 of the Rules of Court prescribes the period to appeal from judgments or final orders of RTCs, as follows:

> **Sec. 3.** ***Period of ordinary appeal.*** – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. x x x.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

In *Neypes v. Court of Appeals*[18] decided by this Court on September 14, 2005, we ruled that to standardize the appeal periods provided in the Rules of Court and to afford litigants a fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of fifteen (15) days within which to file the notice of appeal in the RTC, counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. Said "fresh period rule" also aims to regiment or make the appeal period uniform.[19] It eradicates the confusion as to when the fifteen (15)-day appeal period should be counted – from receipt of notice of judgment or from receipt of notice of final order appealed from.[20]

Thus, in similar cases decided by this Court after *Neypes*, the fresh period rule was applied, thereby allowing appellants who had filed with the trial court a motion for reconsideration the full fifteen (15)-day period from receipt of the resolution resolving the motion within which to file a notice of appeal. Among these cases is *Sumiran v. Damaso*,[21] wherein we reiterated our ruling in *Makati Insurance Co., Inc. v. Reyes*[22] and *De Los Santos v. Vda. de Mangubat*[23] to explain that the rule can be applied to actions pending upon its effectivity:

> As early as 2005, the Court categorically declared in *Neypes v. Court of Appeals* that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration. This would standardize the appeal periods provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. x x x
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> x x x x
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> The foregoing ruling of the Court was reiterated in *Makati Insurance Co., Inc. v. Reyes*, to wit:

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18 506 Phil. 603 (2005).
19 Id. at 626-627.
20 Id. at 628.
21 G.R. No. 162518, August 19, 2009, 596 SCRA 450.
22 G.R. No. 167403, August 6, 2008, 561 SCRA 234.
23 G.R. No. 149508, October 10, 2007, 535 SCRA 411.

> "Propitious to petitioner is *Neypes v. Court of Appeals*, promulgated on 14 September 2005 while the present Petition was already before us. x x x
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> x x x x
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> With the advent of the "fresh period rule," parties who availed themselves of the remedy of motion for reconsideration are now allowed to file a notice of appeal within fifteen days from the denial of that motion.
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> x x x x
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> In *De los Santos v. Vda. de Mangubat*, we applied the same principle of "fresh period rule", expostulating that procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive application of statutes. **The "fresh period rule" is irrefragably procedural, prescribing the manner in which the appropriate period for appeal is to be computed or determined and, therefore, can be made applicable to actions pending upon its effectivity, such as the present case, without danger of violating anyone else's rights.**"[24] (Citations omitted)

The retroactivity of the *Neypes* ruling was further explained in our Resolution dated June 25, 2008 in *Fil-Estate Properties, Inc. v. Homena-Valencia*,[25] wherein we held:

> The determinative issue is whether the "fresh period" rule announced in *Neypes* could retroactively apply in cases where the period for appeal had lapsed prior to 14 September 2005 when *Neypes* was promulgated. That question may be answered with the guidance of the general rule that procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure. Amendments to procedural rules are procedural or remedial in character as they do not create new or remove vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing.
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> *Sps. De los Santos* reaffirms these principles and categorically warrants that *Neypes* bears the quested retroactive effect, x x x.[26] (Citations omitted)

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24 Supra note 21, at 455-457.

25 G.R. No. 173942, June 25, 2008, 555 SCRA 345.

26 Id. at 349-350.

Given the foregoing rules, the petitioners' notice of appeal was timely filed on April 4, 2003, since it was filed within the fifteen (15)-day period from their receipt on March 21, 2003 of the RTC's order denying their motion for reconsideration of the case's dismissal.

In any case, instead of remanding the case to the trial court with the order to take due course on the appeal made by the petitioners, this Court finds it more proper and appropriate to already resolve the issue on the legality of the court's dismissal of the main action filed before it on the basis of the counsel for the petitioners' failure to file a pre-trial brief. This, considering that the issue has already been extensively argued by the parties in their pleadings. The prayer in this petition even specifically seeks the annulment of the RTC's Order of dismissal dated September 6, 2002, and the order denying the motion for reconsideration thereof. The CA decision being appealed from and the RTC orders subject thereof have likewise decided on the issue, with in-depth discussion of the facts pertaining to the issue and the rationale for the courts' rulings.

Failure to file a pre-trial brief within the time prescribed by the Rules of Court constitutes sufficient ground for dismissal of an action.

Section 4, Rule 18 of the Rules of Court provides that it is the duty of the parties and their counsel to appear at the pre-trial. The effect of their failure to do so is provided in Section 5 of Rule 18, particularly:

> **Sec. 5.** ***Effect of failure to appear.*** **– The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action.** The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. (Emphasis ours)

Under Section 6, Rule 18, the failure to file a pre-trial brief when required by law produces the same effect as failure to attend the pre-trial, to wit:

> **Sec. 6.** ***Pre-trial brief***. – The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:
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> x x x x
>
> **Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.** (Emphasis ours)

On the basis of the foregoing, the trial court clearly had a valid basis when it ordered the dismissal of the petitioners' action. Still, petitioners assail the trial court's dismissal of their case, invoking a liberal interpretation of the rules.

Instructive on this point are the guidelines we applied in *Bank of the Philippine Islands v. Dando*,[27] wherein we cited the reasons that may provide a justification for a court to suspend a strict adherence to procedural rules, namely: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[28] Upon review, we have determined that these grounds do not concur in this action.

A review of the factual antecedents indicate that the dismissal of the action for specific performance has not caused any injustice to the petitioners, barring any special or compelling circumstances that would

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[27] G.R. No. 177456, September 4, 2009, 598 SCRA 378.

[28] Id. at 387-388, citing *Barranco v. Commission on the Settlement of Land Problems*, 524 Phil. 533, 543 (2006).

warrant a relaxation of the rules. The alleged agreement between PDCP Bank and the petitioners on the purchase by the latter's recommended buyers of the foreclosed properties at a specified amount deserves scant consideration for being unsupported by sufficient proof especially since said supposed agreement was vehemently denied by the bank. What the records merely adequately establish is the petitioners' failure to satisfy their obligation to the bank, leading to the foreclosure of the mortgage constituted to secure it, the sale of the foreclosed properties and the failure of the petitioners to make a timely redemption thereof. In the 1999 case of *Suico* which also involves herein parties, we have thus declared that when the petitioners failed to pay the balance of the secured loan and thereafter failed to redeem the mortgaged properties, title to the property had already been transferred to PDCP Bank, which had the right to possess the property based on its right of ownership as purchaser of the properties in the foreclosure sale. These even led us to declare that the petitioners undertook a procedural misstep when they filed a suit for specific performance, injunction and damages instead of a petition to set aside the sale and cancellation of the writ of possession as provided under Section 8 of Act No. 3135.

The petitioners' allegations on their desire and efforts to negotiate during the pre-trial conference, and the argument that the case should have just been suspended instead of dismissed for said reason by the trial court, were only first raised by the petitioners through their new counsel in their reply, and merit no consideration at this point. Furthermore, nowhere in the records is it indicated or supported that such antecedents transpired or were made known by the parties to the courts below.

In affirming the dismissal of petitioners' case for their disregard of the rules on pre-trial, we emphasize this Court's ruling in *Durban*

Apartments Corporation v. Pioneer Insurance and Surety Corporation[29] on the importance and the nature of a pre-trial, to wit:

> Everyone knows that a pre-trial in civil actions is mandatory, and has been so since January 1, 1964. Yet to this day its place in the scheme of things is not fully appreciated, and it receives but perfunctory treatment in many courts. Some courts consider it a mere technicality, serving no useful purpose save perhaps, occasionally to furnish ground for non-suiting the plaintiff, or declaring a defendant in default, or, wistfully, to bring about a compromise. The pre-trial is not thus put to full use. Hence, it has failed in the main to accomplish the chief objective for it: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. This is a great pity, because the objective is attainable, and with not much difficulty, if the device were more intelligently and extensively handled.
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> x x x x
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> Consistently with the mandatory character of the pre-trial, the Rules oblige not only the lawyers but the parties as well to appear for this purpose before the Court, and when a party "fails to appear at a pre-trial conference[,] (he) may be non-suited or considered as in default." **The obligation "to appear" denotes not simply the personal appearance, or the mere physical presentation by a party of one's self, but connotes as importantly, preparedness to go into the different subject[s] assigned by law to a pre-trial x x x.**[30] (Emphasis ours)

In addition to the foregoing, this Court finds no cogent reason to liberally apply the rules considering that the petitioners and their counsel had not offered sufficient justification for their failure to file the required pre-trial brief. As held by this Court in *Lapid v. Judge Laurea*,[31] concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules.[32] Members of the bar are reminded that their first duty is to comply with the rules of procedure, rather than seek exceptions as loopholes. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court

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29 G.R. No. 179419, January 12, 2011, 639 SCRA 441.

30 Id. at 452, citing *Development Bank of the Phils. v. CA*, 251 Phil. 390, 392-395 (1989).

31 439 Phil. 887 (2002).

32 Id. at 896, citing *Banco Filipino v. Court of Appeals*, 389 Phil. 644, 656 (2000).

dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.[33]

The failure to file the pre-trial brief is then attributable to the fault or negligence of petitioners' counsel. The settled rule is that the negligence of a counsel binds his clients. Neither counsel nor his clients can now evade the effects thereof by invoking that the failure amounts to an inexcusable negligence which, by jurisprudence, should not bind the parties. It is absurd for a counsel to emphasize on the gravity of his own inaction and then invoke the same misfeasance to evade the consequences of his act. Furthermore, the claim of petitioners' counsel that his failure to file a pre-trial brief may be regarded as an inexcusable negligence is inconsistent with his plea for the court to consider the fact that he attended the scheduled pre-trial conference but only needed more time to file the pre-trial brief. As in the case of *Air Phils. Corp. v. Int'l. Business Aviation Services Phils., Inc.*,[34] there was in this case a simple, not gross, negligence. There was only a plain "disregard of some duty imposed by law," a slight want of care that "circumstances reasonably impose," and a mere failure to exercise that degree of care that an ordinarily prudent person would take under the circumstances. There was neither a total abandonment or disregard of the petitioners' case nor a showing of conscious indifference to or utter disregard of consequences. Again, axiomatic is the rule that negligence of counsel binds the client.

Petitioners attempt to confuse the issues by citing the respondents' own prior delay in the filing of pleadings and the leniency accorded to them by the trial court in still later admitting their pleadings. Significantly, however, such matter on the court's admission of the respondents' pleadings, though belatedly filed, depended on the sound discretion of the court, the circumstances then attending the case and the particular

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33 Id. at 897, citing *Santos v. Court of Appeals*, 413 Phil. 41, 54 (2001).

34 481 Phil. 366 (2004).

consequences provided by law for the non-filing of the pleadings. Petitioners could not expect the trial court to rule similarly in all incidents, considering that factual circumstances and results of the parties' actions vary in each issue. In addition, if the petitioners believed that the trial court gravely abused its discretion in admitting the respondents' pleadings, then they should have availed of the remedies available to them to question the trial court's orders, rather than wrongfully including the said matters at the first instance in the appeal from the case's dismissal.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated January 16, 2006 and Resolution dated April 11, 2007 of the Court of Appeals in CA-G.R. SP No. 78676 upholding the Regional Trial Court, Mandaue City, Branch 28's dismissal of petitioners' action for specific performance, injunction and damages are hereby **AFFIRMED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
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.

MARIA LOURDES P. A. SERENO
Chief Justice