

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

SALISBURY BKT
SECURITIES
CORPORATION,

CTA Case No. 9925

Petitioner,

-versus-

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Members:
UY, *Chairperson, and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

OCT 22 2018

12:42 pm

X - - - - - X

RESOLUTION

In the Petition, under the heading "Nature and Timeliness of Petition", petitioner alleged that it had until September 5, 2018 within which to the appeal, thus:

"Under Section 228 of the NIRC as implemented by RR No. 18-2003, amending RR No. 12-99, if the protest or administrative appeal is not acted upon by the Commissioner within one hundred eighty (180) days counted from the date of filing the protest, Petitioner may appeal to the Court of Tax Appeal (*sic*) (CTA) within thirty (30) days from after the expiration of the one hundred eighty (180)-day period. The 180-day period expired on 06 August 2018, thus, **Petitioner has until 05 September 2018 within which to file this appeal.** Hence, this Petition is filed on time." (*Emphasis supplied*)

The Petition for Review was indeed posted via registered mail on September 5, 2018 which the Court received on September 11, 2018.

In petitioner's Ex-Parte Manifestation filed on September 11, 2018, petitioner manifested that its messenger was already at the Court of Tax Appeals premises ready to file its Petition for Review via Personal Service on September 5, 2018, but was unable to do so as its messenger was informed by the guard that the business hours for filing was already closed. Hence, petitioner was constrained to file via registered mail. In the same pleading, petitioner likewise manifested that it paid the corresponding docket fees amounting to ₱756,571.80 on September 11, 2018.

Section 3, Rule 6 of the Revised Rules of the Court of Tax Appeals (RRCTA) under the heading "*Pleadings Filed with the Court*" provides:

"SEC. 3. *Payment of docket fees.* - The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of the docket fees. Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant." (Emphasis supplied)

Given that payment of the docket fees was only tendered on September 11, 2018, in accordance with the afore-quoted rule, the Petition for Review is deemed filed on September 11, 2018 and not on September 5, 2018, the day that it was posted via registered mail. Hence, the Petition for Review was filed late.

Section 3, Rule 8 of the RRCTA, provides:

"RULE 8, SEC. 3. *Who may appeal; period to file petition.* - x x x (a) A party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes x x x may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from the payment or collection of the taxes." (Emphasis supplied)

In **Heirs of Dr. Mariano Favis Sr. vs. Juana Gonzales, et al.**¹, the Supreme Court discussed the instances wherein a Court may dismiss a claim *motu proprio*, thus:

“The base issue is whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made. The appellate court committed egregious error in dismissing the complaint. The appellate courts’ decision hinged on Article 151 of the Family Code, viz:

Art. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(j) That a condition precedent for filing the claim has not been complied with.

The appellate court’s reliance on this provision is misplaced. **Rule 16** treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically

¹ G.R. No. 185922, January 15, 2014.

deals with dismissal of the claim by the court *motu proprio*.
Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action.² Specifically in *Gumabon v. Larin*,³ cited in *Katon v. Palanca, Jr.*,⁴ the Court held:

x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. **Under the new rules, a court may *motu proprio* dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations.** x x x.⁵

² *P.L. Uy Realty Corporation v. ALS Management and Development Corp.*, G.R. No. 166462, 24 October 2012, 684 SCRA 453, 464-465.

³ 422 Phil. 222, 230 (2001).

⁴ 481 Phil. 168, 180 (2004).

⁵ *Gumabon v. Larin*, G.R. No. 142523. November 27, 2001.

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; litis pendentia; res judicata; and prescription of action.** Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

It was in *Heirs of Domingo Valientes v. Ramas*⁶ cited in *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*⁷ where we noted that **the second sentence of Section 1 of Rule 9 does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds. The tenor of the second sentence of the Rule is that the allowance of a *motu proprio* dismissal can proceed only from the exemption from the rule on waiver; which is but logical because there can be no ruling on a waived ground."**

Given that petitioner's appeal was only perfected upon the payment of the necessary docket fees on September 11, 2018, the Court can no longer assume jurisdiction over the late appeal. Since petitioner's right of appeal is a mere statutory privilege, it was bound to a strict observance of the periods of appeal, which requirements are not merely mandatory, but jurisdictional.⁸

⁶ G.R. No. 157852, 15 December 2010, 638 SCRA 444, 451.

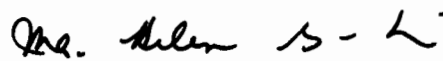
⁷ *P.L. Uy Realty Corporation v. ALS Management and Development Corp.*, G.R. No. 166462, 24 October 2012, 684 SCRA 453, 464-465.

⁸ *Boardwalk Business Ventures, Inc. vs Elvira A. Villareal, et al.*, G.R. No. 181182, April 10, 2013.

WHEREFORE, premises considered, the Petition for Review docketed as CTA Case No. 9925, entitled *Salisbury BKT Securities Corporation v. Commissioner of Internal Revenue* is **DISMISSED** for lack of jurisdiction.

SO ORDERED.


ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice