

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SEVEN SEAS RESORTS AND LEISURE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5957

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

FEB 04 2002

x -----

Atty. [Signature]

RESOLUTION

Submitted for Our Resolution is Respondent's "Motion to Dismiss" filed on November 15, 2001 on the ground that Petitioner's counsel failed to comply with an Order of this Court.

In his Motion, Respondent averred that Petitioner's counsel failed to file his Formal Offer of Evidence within the period prescribed by the Court in its Order dated August 13, 2001. As such, Petitioner's counsel failed to comply with an order of the Court which allegedly constituted a ground for the dismissal of the case with prejudice pursuant to Section 3, Rule 17 of the Rules of Court, which provides, thus:

“SEC. 3. Dismissal due to fault of plaintiff. – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.”

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Respondent further stressed that this is the second time that Petitioner's counsel failed to file his formal offer of evidence. In a Resolution dated April 10, 2001, this Court has warned Petitioner's counsel, thus:

“Be that as it may, We cannot close this resolution without any observation on the manner by which the counsel for the Petitioner handles his case. Counsel must be reminded that as an officer of the Court, a lawyer is part of the machinery in the administration of justice. Thus, he should follow the orders of this Court and not let the period lapse without offering any satisfactory explanation for his failure to file its Formal Offer of Evidence within the period given by this Court and did not even bother to inform Us of its reason for the delay. The aim of a lawsuit is to render justice to the parties according to law and free from the “law’s delay.” Procedural rules are precisely designed to accomplish such purpose. As an officer of the Court whose primary function is to assist the Court administer impartial justice, a lawyer should use those rules for the purpose and not for its frustration.

Counsel for the Petitioner is **STERNLY WARNED** that a repetition of a similar act or acts committed by him in the future will be dealt with more severely.”

Petitioner's counsel, on the other hand, filed his “Objection to Motion to Dismiss,” posted on November 26, 2001 and received by this Court on January 10, 2002. The fact of non-submission was admitted by Petitioner's counsel, explaining that it was due to a “personal private tragedy” which he had to attend to. According to him, the dismissal of the case under the aforequoted rule would effectively disregard the testimonial evidence, legal arguments and joint stipulations already arrived at and presented before this Court, to the detriment of the ends of justice. Furthermore, counsel for the Petitioner contended that dismissal of the case would constitute too harsh an interpretation of Section 3 of Rule 17 of the Revised Rules of Court. Citing the case of **Gaga G. Mauna vs. Civil Service Commission and Criseto J. Limbaco**, G.R. No. 97794 dated May 13, 1994,

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Petitioner's counsel asserted that the Revised Rules of Court should be interpreted with the spirit of working towards the truly noble end of a just and fair adjudication of the cases before the Court. He argued that Petitioner's alleged meritorious claims warrant the continued hearing of the instant case to afford Petitioner an adequate opportunity to present all its arguments against Respondent's alleged deficiency tax assessments, to allow this Court to adjudicate the case based on the merits.

Lastly, Petitioner's counsel averred that the failure to submit the Formal Offer of Evidence was due to an error attributable to him and not to the Petitioner. Hence, he is presenting himself before this Court to face the penalty which the Court may administer upon him and not upon the Petitioner.

We resolve to grant the Motion to Dismiss.

While it is true that litigations should as much as possible, be decided on their merits and not on technicalities (**Galdo vs. Rosete, 84 SCRA 238, [1978]**) and that every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from unacceptable plea of technicalities (**Heirs of Ceferino Morales vs. Court of Appeals, 67 SCRA 304, [1975]**) (cited in Vol. I, Remedial Law, Herrera, 2000 Ed., p. 275), yet this rule should not be used as an excuse for the continuous defiance by Petitioner's counsel of an order of this Court.

It bears stressing that this is the second time that a Motion to Dismiss was filed by Respondent on the same ground, that is, failure of Petitioner's counsel to file his formal offer of evidence. During the first time that Respondent moved for the dismissal of this case on January 8, 2001, it was only after receipt of the said motion, through an "Objection to Motion to Dismiss," filed on February 9, 2001, that Petitioner's counsel

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bothered to explain why he failed to submit his formal offer of evidence on time. The reason given by the counsel was the arrival of additional voluminous documentary evidence which had to be the subject of study and scrutiny. On even date, counsel for the Petitioner filed a "Motion for Leave of Court to Allow Presentation of Additional Evidence." Both motions were granted by the court through a resolution promulgated on April 10, 2001. In granting the said motions, counsel for the Petitioner was sternly warned that a repetition of a similar act or acts in the future will be dealt with more severely. Petitioner was then allowed on several hearing dates to present his additional evidence.

After counsel for the Petitioner rested his case on August 13, 2001, he moved for a period of thirty (30) days, or until September 12, 2001, to file his formal offer of evidence. On October 17, 2001 or after 65 days from August 13, 2001, the Court issued an order setting the case for hearing for the presentation of Respondent's evidence since it appeared that Petitioner failed to file his formal offer of evidence. The said order was received by counsel for the Petitioner on October 24, 2001. Again, there was no effort on the part of Petitioner's counsel to even explain why he failed again to file his formal offer of evidence. There was also no motion for extension of time to file said formal offer. Were it not for the "Motion to Dismiss" filed by Respondent on November 15, 2001, or a period of 22 days after receipt of this Court's order of October 17, 2001, counsel for the Petitioner would not again bother to explain why he was not able to timely file his formal offer, this notwithstanding the stern warning issued by the Court.

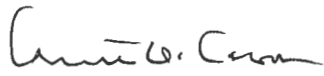
In his "Objection to Motion to Dismiss" filed through registered mail on November 26, 2001, counsel for the Petitioner invoked as reason for his omission a "personal private

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tragedy” from which he has yet to recover. While the court may sympathize with the counsel for his personal tragedy, the same should not be used as an excuse to disobey an order of the Court considering the stern warning issued to him. Records likewise show that Atty. Rommel Agan also signed in the Petition for Review as co-counsel for the Petitioner while Atty. J. Carlito Montenegro entered his appearance as collaborating counsel on June 13, 2001. In view thereof, Attys. Agan and Montenegro could have done the work which Atty. Ruiz could not do in the meantime.

Finally, it is well-settled that as an officer of the court, it is the duty of a lawyer to assist in the speedy and efficient administration of justice, Petitioner’s counsel is, thus, admonished to be more zealous in pursuing his cases.

WHEREFORE, in view of all the foregoing, the instant Motion to Dismiss is hereby **GRANTED** and the Petition for review is **DISMISSED**.


ERNESTO D. ACOSTA
Presiding Judge


JUANITO C. CASTAÑEDA, JR.
Associate Judge


AMANCIO O. SAGA
Associate Judge

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