Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES RAMON MENDIOLA and ARACELI N. MENDIOLA, Petitioners,	**G.R. No. 159746**
	Present:
-versus-	BERSAMIN, *Acting Chairperson,* *ABAD, VILLARAMA, JR., **REYES, and PERLAS-BERNABE, *JJ.*
THE HON. COURT OF APPEALS, PILIPINAS SHELL PETROLEUM CORPORATION, and TABANGAO REALTY, INC., Respondents.	Promulgated: 18 JUL 2012

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D E C I S I O N

BERSAMIN, *J.*:

Through their petition for *certiorari*, *mandamus* and prohibition, petitioners assail the resolutions promulgated on November 22, 2002[1] and July 31, 2002,[2] whereby the Court of Appeals (CA) respectively denied petitioners' motion to dismiss the appeal and motion for reconsideration. They allege that the CA thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

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* Vice Justice Teresita J. Leonardo-De Castro, who is on wellness leave, per Special Order No. 1252 issued on July 12, 2012.

** Vice Justice Mariano C. Del Castillo, who took part in the case in the Court of Appeals, per raffle on July 16, 2012.

1 *Rollo*, pp. 45-46; penned by Associate Justice Juan Q. Enriquez, Jr. (retired), with Associate Justice Bernardo P. Abesamis (retired) and Associate Justice Edgardo F. Sundiam (deceased) concurring.

2 Id. at 66; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Mariano C. Del Castillo (now a Member of the Court) concurring.

Antecedents

On July 31, 1985, Pilipinas Shell Petroleum Corporation (Shell) entered into an agreement for the distribution of Shell petroleum products (such as fuels, lubricants and allied items) by Pacific Management & Development (Pacific), a single proprietorship belonging to petitioner Ramon G. Mendiola (Ramon). To secure Pacific's performance of its obligations under the agreement, petitioners executed on August 1, 1985 a real estate mortgage in favor of Shell[3] covering their real estate and its improvements, located in the then Municipality of Parañaque, Rizal, and registered under Transfer Certificate of Title No. S-59807 of the Registry of Deeds of Rizal (in the name of "Ramon Mendiola, married to Araceli Mendoza").[4]

Pacific ultimately defaulted on its obligations, impelling Shell to commence extrajudicial foreclosure proceedings in April 1987. Having received a notice of the extrajudicial foreclosure scheduled to be held at the main entrance of the Parañaque Municipal Hall on May 14, 1987,[5] petitioners proceeded to the announced venue on the scheduled date and time but did not witness any auction being conducted and did not meet the sheriff supposed to conduct the auction despite their being at the lobby from 9:00 am until 11:30 am of May 14, 1987.[6] They later learned that the auction had been held as scheduled by Deputy Sheriff Bernardo San Juan of the Regional Trial Court (RTC) in Makati, and that their mortgaged realty had been sold to Tabangao Realty, Inc. (Tabangao), as the corresponding certificate of sale bears out.[7] They further learned that Tabangao's winning bidder bid of ₱670,000.00 had topped Shell's bid of ₱660,000.00.[8]

After application of the proceeds of the sale to the obligation of Pacific, a deficiency of ₱170,228.00 (representing the foreclosure expenses

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3 Records, pp. 80-86.
4 Id. at 400-401.
5 Id. at 3.
6 TSN dated April 16, 1991, pp. 17-29.
7 Records, p. 71.
8 TSN dated December 12, 1991, pp. 4-14.

equivalent of 25% of the amount claimed plus interest) remained. The deficiency was not paid by Ramon. Thus, on September 2, 1987, Shell sued in the RTC in Manila to recover the deficiency, docketed as Civil Case No. 87-41852 entitled *Pilipinas Shell Petroleum Corporation v. Ramon G. Mendiola, doing business under the name and style Pacific Management & Development* (Manila case).[9]

In his answer with counterclaim filed on October 28, 1987, Ramon asserted that the extra-judicial foreclosure of the mortgage had been devoid of basis in fact and in law; and that the foreclosure and the filing of the action were made in bad faith, with malice, fraudulently and in gross and wanton violation of his rights.

On March 22, 1988, petitioners commenced in the RTC in Makati an action to annul the extrajudicial foreclosure docketed as Civil Case No. 88-398 entitled *Ramon G. Mendiola and Araceli N. Mendiola v. Pilipinas Shell Petroleum Corporation, Tabangao Realty, Inc., and Maximo C. Contreras, as Clerk of Court and Ex Oficio Sheriff of Rizal*,[10] which was assigned to Branch 134 (Makati case).

As defendants in the Makati case, Shell and Tabangao separately moved for dismissal,[11] stating similar grounds, namely: (*a*) that the Makati RTC had no jurisdiction due to the pendency of the Manila case; (*b*) that the complaint stated no cause of action, the Makati case having been filed more than a year after the registration of the certificate of sale; (*c*) that another action (Manila case) involving the same subject matter was pending; (*d*) that the venue was improperly laid; and (*e*) that the Makati case was already barred by petitioners' failure to raise its cause of action as a compulsory counterclaim in the Manila case.

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9 Records, pp. 199-204.
10 Id. at 1-7.
11 Id. at 24-37 (urgent omnibus motion filed by Shell); id. at 115-128 (motion to dismiss filed by Tabangao).

After the Makati RTC denied both motions on September 23, 1988,[12] Shell filed its answer *ad cautelam*,[13] whereby it denied petitioners' allegation that no auction had been held; insisted that there had been proper accounting of the deliveries made to Pacific and its clients; and averred that petitioners' failure to file their compulsory counterclaim in the Manila case already barred the action.

Pending the trial of the Makati case, the Manila RTC rendered its judgment in favor of Shell on May 31, 1990, *viz*:

> WHEREFORE, IN VIEW OF THE FOREGOING, defendants (*sic*) is ordered to pay plaintiffs as follows:
>
> 1. On the First Cause of Action –
>
> a) ₱167,585.50 representing the deficiency as of the date of the foreclosure sale;
>
> b) ₱2,643.26 representing the interest due on the unpaid principal as of 30 June 1987; and
>
> c) The sum corresponding to the interest due on the unpaid principal from 30 June 1987 to date.
>
> 2. On the Second Cause of Action – attorney's fees and expenses of litigation to (*sic*) the amount of ₱15,000.00; and finally,
>
> 3. Costs of suit.
>
> SO ORDERED.[14]

As sole defendant in the Manila case, Ramon appealed (C.A.-G.R. No. CV-28056), but his appeal was decided adversely to him on July 22, 1994,[15] with the CA affirming the Manila RTC's decision and finding that he was guilty of forum shopping for instituting the Makati case.

Undaunted, he next appealed to the Court (G.R. No. 122795), which denied his petition for review on February 26, 1996,[16] and upheld the

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12 Id. at 164.
13 Id. at 169-184.
14 Id. at 546-557.
15 Id. at 535-545.
16 *Rollo*, p. 92.

foreclosure of the mortgage. The decision of the Court became final and executory, as borne out by the entry of judgment issued on June 10, 1996.[17]

Nonetheless, on February 3, 1998, the Makati RTC resolved the Makati case,[18] finding that there had been no auction actually conducted on the scheduled date; that had such auction taken place, petitioners could have actively participated and enabled to raise their objections against the amount of their supposed obligation; and that they had been consequently deprived of notice and hearing as to their liability. The Makati RTC disposed as follows:

> WHEREFORE, premises considered, plaintiffs having duly established their case that the SHERIFF's Certificate of Sale of May 14, 1987, is void for lack of actual auction sale and lack of valid consideration as the amount utilized by the SHERIFF was based on an invalid amount as a basis of an Extra-Judicial Foreclosure of Mortgage where the amount of the mortgage is based on a future obligation unilaterally adjudicated by SHELL alone in violation of MENDIOLA's right of due process, and judgment is hereby rendered as follows:
>
> 1. Declaring as NULL and VOID the Extra-Judicial Foreclosure of Mortgage of plaintiff's house and lot under TCT No. T-59807 issued by the Register of Deeds of Rizal;
>
> 2. Declaring as NULL and VOID the Certificate of Sale issued by Maximo C. Contreras on May 14, 1987 in favor of TABANGAO REALTY, INC.;
>
> 3. Ordering defendant PILIPINAS SHELL PETROLEUM CORPORATION to make a full accounting of the extent of the future obligation of plaintiff MENDIOLA in the Mortgage Contract before any foreclosure proceedings are initiated;
>
> 4. Ordering defendants PILIPINAS SHELL PETROLEUM CORPORATION and TABANGAO REALTY INC. to pay the amount of ₱20,000.00 as and by way of attorney's fees; and
>
> 5. To pay the costs.
>
> SO ORDERED.

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17 Id. at 93.

18 Records, pp. 575-578.

Shell sought the reconsideration of the decision,[19] maintaining that the issues raised on the validity of the foreclosure sale and on the amount of the outstanding obligation of Pacific had been settled in the Manila case; and that the Makati RTC became bereft of jurisdiction to render judgment on the same issues pursuant to the principle of *res judicata*.

Tabangao adopted Shell's motion for reconsideration.

On October 5, 1999, however, the Makati RTC denied Shell's motion for reconsideration,[20] to wit:

> WHEREFORE, premises considered, there is NO RES JUDICATA to speak of in this case. Consequently, the "Motion for Reconsideration" filed by defendant Pilipinas Shell Petroleum Corporation, which was later adopted by defendant Tabangao Realty, Inc., is hereby DENIED. Plaintiff's "Motion for Execution" is likewise DENIED for reasons as stated above.
>
> SO ORDERED.[21]

Aggrieved by the decision of the Makati RTC, Shell and Tabangao filed a joint notice of appeal.[22] The appeal was docketed in the CA as C.A.-G.R. No. 65764.

In their appellants' brief filed in C.A.-G.R. No. 65764,[23] Shell and Tabangao assigned the following errors, namely:

> I
>
> THE COURT *A QUO* COMMITTED GRAVE ERROR IN NOT DISMISSING THE CASE ON THE GROUND OF *LITIS PENDENTIA* AND, SUBSEQUENTLY, ON THE GROUND OF *RES JUDICATA*.
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> II
>
> THE COURT *A QUO* COMMITTED MANIFEST ERROR IN DISREGARDING THAT THE LEGAL REQUIREMENTS FOR A VALID EXTRAJUDICIAL FORECLOSURE WERE SATISFIED.

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19 Id. at 579-594.
20 Id. at 644-650.
21 Id. at 650.
22 Id. at 651.
23 CA *rollo*, pp. 49-89.

III
THE COURT *A QUO* COMMITTED SERIOUS ERROR IN RENDERING THE ASSAILED DECISION AND ASSAILED RESOLUTION IN CONTRAVENTION OF THE RULINGS OF A CO-EQUAL COURT AND SUPERIOR COURTS.

Instead of filing their appellees' brief, petitioners submitted a motion to dismiss appeal,[24] mainly positing that Section 1, Rule 41 of the *Rules of Court* prohibited an appeal of the order denying a motion for reconsideration.

On November 22, 2002, the CA denied petitioners' motion to dismiss appeal through the first assailed resolution, stating: [25]

> For consideration is the Motion to Dismiss Appeal dated August 6, 2002 filed by counsel for plaintiffs-appellees praying for the dismissal of the appeal on the grounds that the Notice of Appeal filed by defendants-appellants was specifically interposed solely against the Resolution of the trial court dated October 20, 1999 which merely denied defendant-appellants' Motion for Reconsideration of the trial court's decision, dated February 3, 1998.
>
> Upon perusal of the records of the case, it seems apparent that herein defendants-appellants intended to appeal not only the Resolution dated October 2, 1999 but also the Decision dated February 3, 1998. Assuming arguendo that defendants-appellants indeed committed a technical error, it is best that the parties be given every chance to fight their case fairly and in the open without resort to technicality to afford petitioners their day in court (*Zenith Insurance vs. Purisima*, 114 SCRA 62).
>
> The Motion to Dismiss Appeal must not be granted if only to stress that the rules of procedure may not be misused as instruments for the denial of substantial justice. We must not forget the plain injunction of Section 2 of (now Sec. 6 of Rule 1, 1997 Revised Rules of Civil Procedure) Rule 1 that the "rules shall be liberally construed in order to promote their object and to assist the parties in obtaining not only speedy, but more imperatively just and inexpensive determination of justice in every action and proceeding" (Lim Tanhu vs. Ramolete 66 SCRA 425).
>
> WHEREFORE, in view of the foregoing, the Motion to Dismiss Appeal is hereby DENIED.
>
> SO ORDERED.

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24 Id. at 147-150.
25 *Supra,* note no. 1.

On July 31, 2002, the CA denied petitioners' motion for reconsideration through the second assailed resolution.[26]

Hence, petitioners brought these special civil actions for *certiorari*, *mandamus* and prohibition, insisting that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying their motion to dismiss appeal and their motion for reconsideration.

Issue

Petitioners contend that the CA committed grave abuse of discretion in entertaining the appeal of Shell and Tabangao in contravention of Section 1, Rule 41 of the *Rules of Court*, which proscribes an appeal of the denial of a motion for reconsideration.

Shell and Tabangao counter that their appeal was not proscribed because the action could be said to be completely disposed of only upon the rendition on October 5, 1999 of the assailed resolution denying their motion for reconsideration; that, as such, the decision of February 3, 1998 and the denial of their motion for reconsideration formed one integrated disposition of the merits of the action; and that the CA justifiably applied the rules of procedure liberally.

Two issues have to be determined. The first is whether or not an appeal may be taken from the denial of a motion for reconsideration of the decision of February 3, 1998. The determination of this issue necessarily decides whether the petitions for *certiorari*, prohibition and *mandamus* were warranted. The second is whether the Makati case could prosper independently of the Manila case. The Court has to pass upon and resolve the second issue without waiting for the CA to decide the appeal on its merits in view of the urging by Shell and Tabangao that the Makati case was barred due to *litis pendentia* or *res judicata*.

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[26] *Supra,* note no. 2.

Ruling

The petition for *certiorari*, *mandamus* and prohibition lacks merit.

1.
Appeal by Shell and Tabangao of the denial of their motion for reconsideration was not proscribed

Petitioners' contention that the appeal by Shell and Tabangao should be rejected on the ground that an appeal of the denial of their motion for reconsideration was prohibited cannot be sustained.

It is true that the original text of Section 1, Rule 41 of the 1997 *Rules of Civil Procedure* expressly limited an appeal to a judgment or final order, and proscribed the taking of an appeal from an order denying a motion for new trial or reconsideration, among others, *viz*:

> Section 1. S*ubject of appeal*. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> **No appeal may be taken from:**
>
> **(a) An order denying a motion for new trial or reconsideration;**
>
> (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (c) An interlocutory order;
>
> (d) An order disallowing or dismissing an appeal;
>
> (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (f) An order of execution;
>
> (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (h) An order dismissing an action without prejudice.

> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n)

The inclusion of the order denying a motion for new trial or a motion for reconsideration in the list of issuances of a trial court *not subject to appeal* was by reason of such order not being the final order terminating the proceedings in the trial court. This nature of the order is reflected in Section 9 of Rule 37 of the 1997 *Rules of Civil Procedure*, which declares that such order denying a motion for new trial or reconsideration is not appealable, "the remedy being an appeal from the judgment or final order."

In *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*,[27] the Court further expounded:

> The restriction against an appeal of a denial of a *motion for reconsideration* independently of a judgment or final order is logical and reasonable. A *motion for reconsideration* is not putting forward a new issue, or presenting new evidence, or changing the theory of the case, but is only seeking a reconsideration of the judgment or final order based on the same issues, contentions, and evidence either because: (*a*) the damages awarded are excessive; or (*b*) the evidence is insufficient to justify the decision or final order; or (*c*) the decision or final order is contrary to law. By denying a *motion for reconsideration*, or by granting it only partially, therefore, a trial court finds no reason either to reverse or to modify its judgment or final order, and leaves the judgment or final order to stand. The remedy from the denial is to assail the denial in the course of an appeal of the judgment or final order itself.

In *Quelnan v. VHF Philippines, Inc.*,[28] however, the Court has interpreted the proscription against appealing the order denying a motion for reconsideration to refer only to a motion for reconsideration filed against an interlocutory order, not to a motion for reconsideration filed against a judgment or final order, to wit:

> **[T]his Court finds that the proscription against appealing from an order denying a motion for reconsideration refers to an interlocutory order, and not to a final order or judgment. That that**

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[27] G.R. No. 159941, August 17, 2011, 655 SCRA 580, 592.
[28] G.R. No. 145911, July 7, 2004, 433 SCRA 631, 639.

> **was the intention of the above-quoted rules is gathered from *Pagtakhan v. CIR*, 39 SCRA 455 (1971), cited in above-quoted portion of the decision in Republic, in which this Court held that an order denying a motion to dismiss an action is interlocutory, hence, not appealable.**
>
> **The rationale behind the rule proscribing the remedy of appeal from an interlocutory order is to prevent undue delay, useless appeals and undue inconvenience to the appealing party by having to assail orders as they are promulgated by the court, when they can be contested in a single appeal. The appropriate remedy is thus for the party to wait for the final judgment or order and assign such interlocutory order as an error of the court on appeal.**
>
> **The denial of the motion for reconsideration of an order of dismissal of a complaint is not an interlocutory order, however, but a final order as it puts an end to the particular matter resolved, or settles definitely the matter therein disposed of, and nothing is left for the trial court to do other than to execute the order.**
>
> **Not being an interlocutory order, an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself.**
>
> The reference by petitioner, in his notice of appeal, to the March 12, 1999 Order denying his Omnibus Motion—Motion for Reconsideration should thus be deemed to refer to the January 17, 1999 Order which declared him non-suited and accordingly dismissed his complaint.
>
> **If the proscription against appealing an order denying a motion for reconsideration is applied to any order, then there would have been no need to specifically mention in both above-quoted sections of the Rules "final orders or judgments" as subject of appeal. In other words, from the entire provisions of Rule 39 and 41, there can be no mistaking that what is proscribed is to appeal from a denial of a motion for reconsideration of an interlocutory order.**[29]

In *Apuyan v. Haldeman,*[30] too, the Court categorized an order denying the motion for reconsideration as the final resolution of the issues a trial court earlier passed upon and decided, and accordingly held that the notice of appeal filed against the order of denial was deemed to refer to the decision subject of the motion for reconsideration.[31]

Subsequently, in *Neypes v. Court of Appeals*,[32] where the decisive issue was whether or not the appeal was taken within the reglementary

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29 Bold emphasis supplied.
30 G.R. No. 129980, September 20, 2004, 438 SCRA 402.
31 Id. at 419.
32 G.R. No. 141524, September 14, 2005, 469 SCRA 633.

period, with petitioners contending that they had timely filed their notice of appeal based on their submission that the period of appeal should be reckoned from July 22, 1998, the day they had received the final order of the trial court denying their motion for reconsideration (of the order dismissing their complaint), instead of on March 3, 1998, the day they had received the February 12, 1998 order dismissing their complaint, the Court, citing *Quelnan v. VHF Philippines, Inc.* and *Apuyan v. Haldeman*, ruled that the receipt by petitioners of the denial of their motion for reconsideration filed against the dismissal of their complaint, which was a final order, started the reckoning point for the filing of their appeal, to wit:

> Rule 41, Section 3 of the 1997 Rules of Civil Procedure states:
>
> SEC. 3. *Period of ordinary appeal*. **— The appeal shall be taken within fifteen (15) days from the 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 the notice of judgment or final order.
>
> The period to 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. (emphasis supplied)
>
> Based on the foregoing, an appeal should be taken within 15 days from the notice of judgment or final order appealed from. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action.
>
> As already mentioned, petitioners argue that the order of July 1, 1998 denying their motion for reconsideration should be construed as the "final order," not the February 12, 1998 order which dismissed their complaint. Since they received their copy of the denial of their motion for reconsideration only on July 22, 1998, the 15-day reglementary period to appeal had not yet lapsed when they filed their notice of appeal on July 27, 1998.
>
> What therefore should be deemed as the "final order," receipt of which triggers the start of the 15-day reglementary period to appeal – the February 12, 1998 order dismissing the complaint or the July 1, 1998 order dismissing the MR?
>
> In the recent case of *Quelnan v. VHF Philippines, Inc.*, the trial court declared petitioner Quelnan non-suited and accordingly dismissed his complaint. Upon receipt of the order of dismissal, he filed an omnibus

> motion to set it aside. When the omnibus motion was filed, 12 days of the 15-day period to appeal the order had lapsed. He later on received another order, this time dismissing his omnibus motion. He then filed his notice of appeal. But this was likewise dismissed — for having been filed out of time.
>
> The court *a quo* ruled that petitioner should have appealed within 15 days after the dismissal of his complaint since this was the final order that was appealable under the Rules. We reversed the trial court and declared that it was the *denial of the motion for reconsideration* of an order of dismissal of a complaint which constituted the *final order* as it was what ended the issues raised there.
>
> This pronouncement was reiterated in the more recent case of *Apuyan v. Haldeman et al.* where we again considered the order denying petitioner Apuyan's motion for reconsideration as the final order which finally disposed of the issues involved in the case.
>
> Based on the aforementioned cases, we sustain petitioners' view that *the order dated July 1, 1998 denying their motion for reconsideration* was the *final order* contemplated in the Rules.[33]

As the aftermath of these rulings, the Court issued its resolution in A.M. No. 07-7-12-SC to approve certain amendments to Rules 41, 45, 58 and 65 of the *Rules of Court* effective on December 27, 2007. Among the amendments was the delisting of an order denying a motion for new trial or motion for reconsideration from the enumeration found in Section 1, Rule 41 of the 1997 *Rules of Civil Procedure* of what are not appealable. The amended rule now reads:

> Section 1. *Subject of appeal.*— An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
>
> (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
>
> (b) An interlocutory order;
>
> (c) An order disallowing or dismissing an appeal;
>
> (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
>
> (e) An order of execution;

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[33] Bold emphasis and italics are in the original text.

> (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
>
> (g) An order dismissing an action without prejudice.
>
> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

Based on the foregoing developments, Shell and Tabangao's appeal, albeit seemingly directed only at the October 5, 1999 denial of their motion for reconsideration, was proper. Thus, we sustain the CA's denial for being in accord with the rules and pertinent precedents. We further point out that for petitioners to insist that the appeal was limited only to the assailed resolution of October 5, 1999 was objectively erroneous, because Shell and Tabangao expressly indicated in their appellant's brief that their appeal was directed at both the February 3, 1998 decision and the October 5, 1999 resolution.[34]

The petition cannot prosper if the CA acted in accordance with law and jurisprudence. *Certiorari*, prohibition and *mandamus* are extraordinary remedies intended to correct errors of jurisdiction and to check grave abuse of discretion. The term *grave abuse of discretion* connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction.[35] The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[36] Yet, here, petitioners utterly failed to establish that the CA abused its discretion, least of all gravely.

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34 CA *rollo*, pp. 52-53.
35 *Litton Mills, Inc. v. Galleon Trader, Inc*., No. L-40867, July 26, 1988, 163 SCRA 489, 494.
36 *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17.

2.
Makati case is barred and should be dismissed on ground of *res judicata* and waiver

The dismissal of the petition should ordinarily permit the CA to resume its proceedings in order to enable it to resolve the appeal of Shell and Tabangao. But the Court deems itself bound to first determine whether the Makati case could still proceed by virtue of their insistence that the cause of action for annulment of the foreclosure sale in the Makati case, which was intimately intertwined with the cause of action for collection of the deficiency amount in the Manila case, could not proceed independently of the Manila case.

Shell and Tabangao's insistence has merit. The Makati case should have been earlier disallowed to proceed on the ground of *litis pendentia*, or, once the decision in the Manila case became final, should have been dismissed on the ground of being barred by *res judicata*.

In the Manila case, Ramon averred a compulsory counterclaim asserting that the extrajudicial foreclosure of the mortgage had been devoid of basis in fact and in law; and that the foreclosure and the filing of the action had been made in bad faith, with malice, fraudulently and in gross and wanton violation of his rights. His pleading thereby showed that the cause of action he later pleaded in the Makati case - that of annulment of the foreclosure sale - was identical to the compulsory counterclaim he had set up in the Manila case.

Rule 6 of the 1997 *Rules of Civil Procedure* defines a compulsory counterclaim as follows:

> Section 7. *Compulsory counterclaim*. — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of

> the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount. (n)

Accordingly, a counterclaim is compulsory if: (*a*) it arises out of or is necessarily connected with the transaction or occurrence which is the subject matter of the opposing party's claim; (*b*) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (*c*) the court has jurisdiction to entertain the claim both as to its amount and nature, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount.

A compulsory counterclaim that a defending party has at the time he files his answer shall be contained therein.[37] Pursuant to Section 2, Rule 9 of the 1997 *Rules of Civil Procedure*, a compulsory counterclaim not set up shall be barred.

The four tests to determine whether a counterclaim is compulsory or not are the following, to wit: (*a*) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (*b*) Would *res judicata* bar a subsequent suit on defendant's claims, absent the compulsory counterclaim rule? (*c*) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (*d*) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?[38] Of the four, the one compelling test of compulsoriness is the logical relation between the claim alleged in the complaint and that in the counterclaim. Such relationship exists when conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort

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[37] Section 8, Rule 11, 1997 *Rules of Civil Procedure*.

[38] *Bungcayao, Sr. v. Fort Ilocandia Property Holdings and Development Corporation*, G.R. No. 170483, April 19, 2010, 618 SCRA 381, 389; *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 77; *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, G.R. No. 155173, November 23, 2004, 443 SCRA 522, 534; *Tan v. Kaakbay Finance Corporation*, G.R. No. 146595, June 20, 2003, 404 SCRA 518, 525.

by the parties and the court; when the multiple claims involve the same factual and legal issues; or when the claims are offshoots of the same basic controversy between the parties.[39] If these tests result in affirmative answers, the counterclaim is compulsory.

The four tests are affirmatively met as far as the Makati case was concerned. The Makati case had the logical relation to the Manila case because both arose out of the extrajudicial foreclosure of the real estate mortgage constituted to secure the payment of petitioners' credit purchases under the distributorship agreement with Shell. Specifically, the right of Shell to demand the deficiency was predicated on the validity of the extrajudicial foreclosure, such that there would not have been a deficiency to be claimed in the Manila case had Shell not validly foreclosed the mortgage. As earlier shown, Ramon's cause of action for annulment of the extrajudicial foreclosure was a true compulsory counterclaim in the Manila case. Thus, the Makati RTC could not have missed the logical relation between the two actions.

We hold, therefore, that the Makati case was already barred by *res judicata*. Hence, its immediate dismissal is warranted.

Bar by *res judicata* avails if the following elements are present, to wit: (*a*) the former judgment or order must be final; (*b*) the judgment or order must be on the merits; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (*d*) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.[40]

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[39] *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, *supra*, at 534; *Tan v. Kaakbay Finance Corporation*, *supra*, at 525-526; *Alday v. FGU Insurance Corporation*, G.R. No. 138822, January 23, 2001, 350 SCRA 113, 121.

[40] *Development Bank of the Philippines v. La Campana Development* Corporation, G.R. No. 137694, January 17, 2005, 448 SCRA 384, 392-393; *Taganas v. Emuslan*, G.R. No. 146980, September 2, 2003, 410 SCRA 237, 242.

The Manila RTC had jurisdiction to hear and decide on the merits Shell's complaint to recover the deficiency, and its decision rendered on May 31, 1990 on the merits already became final and executory. Hence, the first, second and third elements were present.

Anent the fourth element, the Makati RTC concluded that the Manila case and the Makati case had no identity as to their causes of action, explaining that the former was a personal action involving the collection of a sum of money, but the latter was a real action affecting the validity of the foreclosure sale, stating in its order of October 5, 1999 denying Shell's motion for reconsideration as follows:

> Finally, as to whether there is identity of causes of action between the two (2) cases, this Court finds in negative.
>
> xxxx
>
> True, the test of identity of causes of action lies not in the form of an action but on whether the same evidence would support and establish the former and the present causes of action. The difference of actions in the aforesaid cases is of no moment. It has been held that a party cannot by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties and their privies. (Sangalang vs. Caparas, 151 SCRA 53; Gutierrez vs. Court of Appeals, 193 SCRA 437. This ruling however does not fall squarely on the present controversy.
>
> Civil Case No. 42852 is for collection of sum of money, a personal action where what is at issue is whether spouses Mendiola have indebtedness to Pilipinas Shell. There is no concrete findings on questions regarding the validity of sale affecting the mortgaged property, otherwise, there would be a determination of transferring of title over the property which is already a real action. In the latter action, Manila courts has no jurisdiction considering that the property is located in Paranaque, then sitting under Makati RTC. At any rate, this Court is not unmindful of series of cases which state that from an otherwise rigid rule outlining jurisdiction of courts being limited in character, deviations have been sanctioned where the (1) parties agreed or have acquiesced in submitting the issues for determination by the court; (2) the parties were accorded full opportunity in presenting their respective arguments of the issues litigated and of the evidence in support thereof; and (3) the court has already considered the evidence on record and is convinced that the same is sufficient and adequate for rendering a decision upon the issues controverted. xxx. While there is a semblance of substantial compliance with the aforesaid criteria, primarily because the issue of validity of foreclosure proceedings was submitted for determination of RTC Manila when this was stated as an affirmative defense by spouses Mendiola in their Answer to the complaint in Civil Case No. 42852, however it appears from the Decision rendered in said case that the issue on validity of

> foreclosure sale was not fully ventilated before the RTC Manila because spouses Mendiola's right to present evidence in its behalf was declared waived. Naturally, where this issue was not fully litigated upon, no resolution or declaration could be made therein.
>
> On the other hand, Civil Case No. 88-398 is an action for declaration of nullity or annulment of foreclosure sale, a real action where the location of property controls the venue where it should properly be filed. This Court undoubtedly has jurisdiction to adjudicate this case. Plaintiff spouses Mendiola merely claimed that no actual foreclosure sale was conducted, and if there was, the same was premature for lack of notice and hearing. Take note that plaintiffs do not deny their indebtedness to Pilipinas Shell although the amount being claimed is disputed. They are simply asserting their rights as owners of the mortgaged property, contending that they were not afforded due process in the course of foreclosure proceedings. And based mainly on the testimonial and documentary evidence presented, as well as the postulations, expositions and arguments raised by all parties in this case, it is the Court's considered view that spouses Mendiola have established the material allegations in their complaint and have convincingly shown to the satisfaction of the Court that they are entitled to the reliefs prayed for. With these findings and adjudications, the Court does not find inconsistency with those held in Civil Case No. 42852. As to whether spouses Mendiola is still indebted to Pilipinas Shell is not in issue here, and not even a single discussion touched that matter as this would tantamount to encroaching upon the subject matter litigated in Civil Case No. 42852.[41]

The foregoing conclusion of the Makati RTC on lack of identity between the causes of action was patently unsound. The identity of causes of action does not mean absolute identity; otherwise, a party may easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain the actions, or whether there is an identity in the facts essential to the maintenance of the actions. If the same facts or evidence will sustain the actions, then they are considered identical, and a judgment in the first case is a bar to the subsequent action.[42] Petitioners' Makati case and Shell's Manila case undeniably required the production of the same evidence. In fact, Shell's counsel faced a dilemma upon being required by the Makati RTC to present the original copies of certain documents because the documents had been made part of the records of the Manila case elevated to the CA in connection with the appeal of the

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[41] Records, pp. 648-650.

[42] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 557.

Manila RTC's judgment.[43] Also, both cases arose from the same transaction (*i.e.*, the foreclosure of the mortgage), such that the success of Ramon in invalidating the extrajudicial foreclosure would have necessarily negated Shell's right to recover the deficiency.

Apparently, the Makati RTC had the erroneous impression that the Manila RTC did not have jurisdiction over the complaint of petitioners because the property involved was situated within the jurisdiction of the Makati RTC. Thereby, the Makati RTC confused venue of a real action with jurisdiction. Its confusion was puzzling, considering that it was well aware of the distinction between venue and jurisdiction, and certainly knew that venue in civil actions was not jurisdictional and might even be waived by the parties.[44] To be clear, venue related only to the place of trial or the geographical location in which an action or proceeding should be brought and does not equate to the jurisdiction of the court. It is intended to accord convenience to the parties, as it relates to the place of trial, and does not restrict their access to the courts.[45] In contrast, jurisdiction refers to the power to hear and determine a cause,[46] and is conferred by law and not by the parties.[47]

By virtue of the concurrence of the elements of *res judicata*, the immediate dismissal of the Makati case would have been authorized under Section 1, Rule 9 of the 1997 *Rules of Civil Procedure*, which 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**. (2a)

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[43] See TSN dated December 16, 1993, pp. 1-16.

[44] *Philippine Bank of Communications v. Lim*, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 720; *Rudolf Lietz Holdings, Inc. v. The Registry of Deeds of Parañaque City*, G.R. No. 133240, November 15, 2000, 344 SCRA 680, 685.

[45] *Nocum v. Tan*, G.R. No. 145022, September 23, 2005, 470 SCRA 639, 648.

[46] *Platinum Tours and Travel, Inc. v. Panlilio*, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146.

[47] *Guinhawa v. People*, G.R. No. 162822, August 25, 2005, 468 SCRA 278, 299.

The rule expressly mandated the Makati RTC to dismiss the case *motu proprio* once the pleadings or the evidence on record indicated the pendency of the Manila case, or, later on, disclosed that the judgment in the Manila case had meanwhile become final and executory.

Yet, we are appalled by the Makati RTC's flagrant disregard of the mandate. Its reason for the disregard was not well-founded. We stress that its disregard cannot be easily ignored because it needlessly contributed to the clogging of the dockets of the Judiciary. Thus, we deem it to be imperative to again remind all judges to consciously heed any clear mandate under the *Rules of Court* designed to expedite the disposition of cases as well as to declog the court dockets.

WHEREFORE, we **DISMISS** the petition for *certiorari*, prohibition and *mandamus* for lack of merit; **CONSIDER** Civil Case No. 88-398 dismissed with prejudice on the ground of *res judicata*; and **ORDER** petitioners to pay the costs of suit to respondents.

The Office of the Court Administrator is **DIRECTED** to disseminate this decision to all trial courts for their guidance.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

WE CONCUR:

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)