



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RUBEN C. MAGTOTO and
ARTEMIA MAGTOTO,
Petitioners.

G.R. No. 175792

Present:

- versus -

CARPIO, *Chairperson.*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

COURT OF APPEALS, and
LEONILA DELA CRUZ,
Respondents.

Promulgated:

NOV 21 2012 *[Signature]*

DECISION

DEL CASTILLO, J.:

Petitioners' failure to timely file their Answer was unreasonable and unjustified. The trial court properly declared them in default. We thus sustain the appellate court's ruling dismissing petitioners' appeal for lack of merit.

This Petition for *Certiorari*¹ assails the May 31, 2006 Decision² of the Court of Appeals (CA) in CA-G.R. CV No. 85286 dismissing for lack of merit the appeal of petitioner spouses Ruben C. Magtoto and Artemia Magtoto (spouses Magtoto) from the November 22, 2004 Decision³ of the Regional Trial Court (RTC), Branch 58, Angeles City, Pampanga in Civil Case No. 10940. Said RTC Decision ordered the spouses Magtoto to pay respondent Leonila Dela Cruz (Leonila) the amount of P9,497,750.00 representing the former's unpaid balance for their purchase of three parcels of land from the latter, and attorney's fees. *[Signature]*

¹ *Id.*, pp. 3-28.

² *Id.*, pp. 44-52; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Regalado E. Maambong and Monica Arevalo Zenarosa.

³ *Id.*, pp. 217-219; penned by Judge Philbert E. Iruarte.

Likewise assailed is the CA's October 25, 2006 Resolution⁴ denying spouses Magtoto's Motion for Reconsideration.

Factual Antecedents

On May 15, 2003, Leonila filed before the RTC a Complaint⁵ for Specific Performance with Damages and prayer for a writ of preliminary injunction against the spouses Magtoto.

In said Complaint, Leonila alleged that on January 11, 1999, she sold her three parcels of land situated in Mabalacat, Pampanga to petitioner Ruben C. Magtoto (Ruben) for ₱11,952,750.00.⁶ As payment therefor, Ruben issued several postdated checks.⁷ After the parties executed the corresponding Deed of Absolute Sale,⁸ Leonila delivered the Transfer Certificates of Title (TCTs) of the properties to spouses Magtoto. From then on, the spouses Magtoto exercised acts of dominion over the said properties, enjoyed the use thereof, and transferred their titles in the name of Ruben.

Meanwhile, most of the checks that Ruben issued were dishonored. Out of the total purchase price of ₱11,952,750.00, the spouses Magtoto were only able to pay the amount of ₱2,455,000.00. Despite Leonila's repeated demands, the balance of ₱9,497,750.00 remained unpaid. Hence, the Complaint.

On June 6, 2003, spouses Magtoto were served with summons requiring them to file an Answer within 15 days from notice.⁹ The said spouses, however, thrice moved for extensions of time within which to file the same.¹⁰ In an

⁴ CA *rollo*, p. 70.

⁵ Records, pp. 1-5.

⁶ Id. at 1.

⁷ Id. at 166-170, Exhibits "C" to "Q".

⁸ Id. at 163-165, Exhibit "B".

⁹ Id., Sheriff's Return dated June 9, 2003, (unpaginated, between pp. 33 and 34), and Summons, (at 34).

¹⁰ Id., Urgent Motion for Extension of Time to File Answer and/or Any Responsive Pleading dated June 23, 2003, (at 36); Entry of Appearance with Urgent Motion for Time to File Answer and/or Any Responsive Pleading dated July 7, 2003, (at 45); Final Motion for Extension of Time to File Answer and/or Any Responsive Pleading dated July 23, 2003, (at 57).

Order¹¹ dated July 25, 2003, the RTC granted the spouses Magtoto a final extension until August 2, 2003 within which to file their Answer. On *August 4, 2003* or two days after the last day for filing the Answer, the spouses Magtoto instead filed a Motion to Dismiss.¹² In an Order¹³ dated September 11, 2003, the RTC denied the Motion to Dismiss for lack of merit.

On September 25, 2003, Atty. Noel T. Canlas (Atty. Canlas) filed an Ex-Parte Motion to Withdraw Appearance as counsel for petitioners.¹⁴ The motion was set for hearing on October 9, 2003¹⁵ but Atty. Canlas failed to appear.

On January 23, 2004, Leonila filed a Motion to Declare Defendants in Default and to Render Judgment Based on the Complaint.¹⁶ Citing Section 4, Rule 16 of the Rules of Court, Leonila argued that after the denial of their Motion to Dismiss, spouses Magtoto should have filed their Answer within the reglementary period. However, despite the lapse of more than three months from receipt of notice of denial of their Motion to Dismiss, the spouses Magtoto still failed to file their Answer. Leonila also cautioned the spouses Magtoto that their counsel's withdrawal of appearance does not justify their failure to file an Answer.¹⁷

The motion to declare petitioners in default was heard by the RTC on March 18, 2004. During said hearing, Ruben was present. The court *a quo* noted that despite the spouses Magtoto's counsel's withdrawal of appearance as early as September 25, 2003, they have not yet engaged the services of another counsel.¹⁸ The RTC thus deemed the motion submitted for resolution.¹⁹ Eventually, the

¹¹ Id. at 61.

¹² Id. at 64-66.

¹³ Id. at 80.

¹⁴ Id. at 85-86.

¹⁵ Id. at 89.

¹⁶ Id. at 102-104.

¹⁷ Id. at 102.

¹⁸ Id. at 123.

¹⁹ Id.

RTC declared the spouses Magtoto in default on March 23, 2004.²⁰ Leonila's presentation of evidence *ex parte*²¹ and formal offer of evidence followed.²²

On June 25, 2004 or almost three months after they were declared in default, the spouses Magtoto, through their new counsel, filed an Omnibus Motion to Lift Order of Default and to Admit Attached Answer,²³ and their Answer.²⁴ The RTC, however, denied the said motion,²⁵ viz:

x x x x

From the sequence of events, there is no showing of fraud, accident, mistake or inexcusable negligence to warrant the grant of the very much belated Omnibus Motion to Lift Order of Default and admission of the Attached Answer filed by defendants.

Defendants['] period to file a responsive pleading had long expired on August 2, 2003 and it took them more than ten (10) months before filing their [r]esponsive pleading which has long been overtaken by plaintiff's Motion to Declare them in Default as early as March 23, 2004. The Court believes that the Omnibus Motion to Lift Order of Default is fatally flawed not only that it was filed more than two (2) months from their receipt of the Order declaring them in default (April 1, 2004) but for the reason that the Omnibus Motion was not accompanied by an Affidavit of Merit stating therein that their failure to [a]nswer was due to fraud, accident, mistake or excusable negligence and that they have a good and meritorious defense as required in Rule 9, Section 3 (b) of the 1997 Rules of Civil Procedure. x x x

WHEREFORE, for lack of merit, the Omnibus Motion to Lift Order of Default and to Admit Attached Answer is DENIED.

x x x x

SO ORDERED.²⁶

The spouses Magtoto moved for reconsideration but the same was likewise denied by the said court.²⁷

²⁰ Id. at 127.

²¹ TSN dated June 4, 2004, as incorporated in the records, unpaginated, between p. 131 and p. 132.

²² Records, pp. 159-160.

²³ Id. at 138-140.

²⁴ Id. at 141-146.

²⁵ Id. at 190-191.

²⁶ Id. at 191.

²⁷ Id. at 216.

Ruling of the Regional Trial Court

On November 22, 2004, the RTC issued its Decision²⁸ finding that the spouses Magtoto failed to comply with their obligation to pay the full amount of ₱11,952,750.00 for the purchase of the three parcels of land and ordering them to pay the balance thereof. The dispositive portion of the said Decision reads:

WHEREFORE, foregoing premises considered, judgment is rendered in favor of plaintiff [Leonila] and against defendants [spouses Magtoto] who are ordered:

1. to pay plaintiff the amount of ₱9,497,750.00 representing the unpaid balance of the purchase price of the three (3) parcels of land with interest at the rate of 6% per annum commencing from the time judicial demand was made until full payment thereof;
2. to pay the amount equivalent to 10% of the total amount due as reasonable attorney's fees;
3. to pay the costs of this suit.

SO ORDERED.²⁹

The spouses Magtoto timely filed a Notice of Appeal³⁰ which was given due course by the RTC.³¹

Ruling of the Court of Appeals

Before the CA, spouses Magtoto averred that the trial court erred when it denied their Omnibus Motion to lift the order of default and to admit their Answer;³² that they have sufficiently explained the reason behind their failure to timely file their Answer;³³ that they failed to secure the services of a new counsel because the RTC did not act on the motion for withdrawal of appearance of their

²⁸ Id. at 217-219.

²⁹ Id. at 219.

³⁰ Id. at 220-221.

³¹ Id. at 228.

³² CA *rollo*, pp. 6-34 at 24.

³³ Id. at 27-29.

former counsel;³⁴ that Leonila was partly to blame for the delay in filing their Answer since the Complaint was initially dismissed for her lack of interest to prosecute;³⁵ and that the RTC erred in denying their right to present evidence based on technicality.³⁶

As earlier mentioned, the CA dismissed the appeal for being bereft of merit in its Decision³⁷ of May 31, 2006. It ratiocinated, thus:

Records on hand reveal that even prior to the initial dismissal of the complaint, [spouses Magtoto] were already in delay. It must be noted that instead of filing an answer, [spouses Magtoto's] counsel, on September 25, 2003, lodged a motion to withdraw appearance because he has lost contact with his clients despite reasonable efforts to communicate with them. Thus, the principal cause of the delay is no other than the [spouses Magtoto].

In addition to this, it bears stressing that while the withdrawal of appearance was communicated to the trial court on 25 September 2003; it was only on 12 December 2003, or after more that three (3) months, that the court dismissed the *Complaint*.

To the mind of this Court, the period of three (3) months is more than sufficient for the [spouses Magtoto] to be able to hire a lawyer. x x x [T]he Court cannot help but conclude that [spouses Magtoto] were not earnest in finding a counsel. It smacks [of] bad faith and clearly abuses the liberality of the trial court. Simply put, [spouses Magtoto] are guilty of gross negligence.

Not only that. It must be further noted that despite of [sic] the reinstatement of the Complaint on 19 February 2004, it was only on 25 June 2004, or after the lapse of another four (4) months, that [spouses Magtoto] proffered their answer. x x x

As to the argument of [spouses Magtoto] that cases must be decided in [sic] the merits rather than on technicality, suffice it to state that:

x x x x

In the case at bar, [spouses Magtoto] simply failed to provide persuasive reasons to warrant the relaxation of the rule. x x x³⁸

³⁴ Id. at 29-31.

³⁵ Id. at 31-32.

³⁶ Id. at 32.

³⁷ Id. at 44-52.

³⁸ Id. at 50-52,

Their Motion for Reconsideration³⁹ having been denied by the CA in its Resolution⁴⁰ dated October 25, 2006, the spouses Magtoto are now before this Court by way of this Petition for *Certiorari*.

Issues

The spouses Magtoto ascribe upon the CA the following errors:

I.

WHETHER X X X THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF ITS JURISDICTION WHEN IT ERRONEOUSLY HEAPED ALL THE BLAME UPON THE PETITIONERS FOR THE SUPPOSED DELAY IN THE FILING OF THEIR ANSWER BEFORE THE COURT A QUO WHEN THE HONORABLE TRIAL COURT AND THE PRIVATE RESPONDENT HAVE THEIR MORE THAN SUFFICIENT SHARE OF THE FAULT THEMSELVES.

II.

WHETHER X X X THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND/ OR EXCESS OF ITS JURISDICTION WHEN IT ERRONEOUSLY ACCUSED THE PETITIONERS OF DELAYING THE PROCEEDINGS FOR AVAILING OF THEIR RIGHT TO FILE A MOTION TO DISMISS[,] A RIGHT CLEARLY PROVIDED UNDER THE RULES OF COURT.⁴¹

Our Ruling

The petition lacks merit.

Petitioners availed of the wrong remedy.

At the outset, it must be pointed out that petitioners' resort to a Petition for *Certiorari* under Rule 65 of the Rules of Court is inappropriate. Petitioners' remedy from the adverse Decision of the CA lies in Rule 45 which is a Petition for

³⁹ Id. at 56-65.

⁴⁰ Id. at 70.

⁴¹ *Rollo*, p. 16.

Review on *Certiorari*. As such, this petition should have been dismissed outright for being a wrong mode of appeal. Even if the petition is to be treated as filed under Rule 45, the same must still be denied for late filing and there being no reversible error on the part of the CA. Records show that petitioners received a copy of the CA Resolution denying their Motion for Reconsideration on October 30, 2006.⁴² They therefore had 15 days or until November 14, 2006 within which to file their Petition for Review on *Certiorari* before this Court. However, they filed their Petition for *Certiorari* on December 29, 2006,⁴³ after the period to file a Petition for Review on *Certiorari* under Rule 45 had expired. Hence, this Petition for *Certiorari* under Rule 65 was resorted to as a substitute for a lost appeal which is not allowed.

The spouses Magtoto's failure to file a timely Answer was due to their own fault; the RTC correctly declared them in default.

We agree with the CA that the RTC correctly declared the spouses Magtoto in default. The records show that after receipt of the summons, the spouses Magtoto thrice requested for extensions of time to file their Answer. The RTC granted these requests. For their final request for extension, the RTC gave the spouses Magtoto until August 2, 2003 within which to file their Answer. But still, no Answer was filed. Instead, *on August 4, 2003, or two days after the deadline for filing their Answer*, the spouses Magtoto filed a Motion to Dismiss the Complaint. Despite its belated filing, the RTC acted on the motion and resolved the same, albeit not in favor of the said spouses. Thereafter, Atty. Canlas, petitioners' former counsel, filed a motion to withdraw his appearance since he could no longer effectively defend spouses Magtoto because he had lost communication with them.

⁴² Id. at 5.

⁴³ Id. at 3.

After the denial of their Motion to Dismiss on September 11, 2003, petitioners should have filed their Answer within the balance of the period prescribed in Rule 11.⁴⁴ Instead, they filed their Answer on June 25, 2004 or nine months after the denial of their Motion to Dismiss or three months after they were declared in default. This delay is unreasonable as well as unjustified.

In an attempt to pass the blame on the RTC for their failure to timely file an Answer, the spouses Magtoto aver that it took them a while to secure the services of a new counsel because they were waiting for the RTC to rule on Atty. Canlas's motion for withdrawal of appearance and for its advice for them to retain a new counsel.

We are not persuaded. On the contrary, we find the allegations of spouses Magtoto as part of their desperate efforts to attribute negligence to everybody else but themselves. It is worth reiterating that the RTC gave spouses Magtoto until August 2, 2003 within which to file their Answer. They did not file their Answer despite the deadline. Notably, it was only on September 25, 2003 that Atty. Canlas moved to withdraw his appearance. Clearly, even before Atty. Canlas moved for the withdrawal of his appearance, the period within which spouses Magtoto should have filed their Answer had already expired. This means that as early as that time, they had already compromised their case. Hence, they cannot shift the blame to the RTC for not resolving Atty. Canlas's motion to withdraw. Besides, said withdrawal was not automatic as it was set for hearing on October 9, 2003.⁴⁵ Atty. Canlas however was absent during said hearing.

⁴⁴ Section 1 of Rule 11 pertinently provides:

Section 1. *Answer to the complaint.* - The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless a different period is fixed by the court.

On the other hand, Section 4, Rule 16 of the Rules of Court provides:

Section 4. *Time to plead.* - If the motion [to dismiss] is denied, the movant shall file his answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended pleading, unless the court provides a longer period.

⁴⁵ Records, p. 89.

Moreover, if the spouses Magtoto were indeed keen in protecting their cause, they should have manifested before the RTC that Atty. Canlas's motion for withdrawal remains pending for resolution. Interestingly, only Ruben continued to attend the hearings on Leonila's motions but did not engage the services of a new lawyer. In fact, during the hearing on March 18, 2004, the RTC noted the failure of the spouses Magtoto to secure the services of a new counsel. Yet, the said spouses still chose not to do anything. It was only long after the issuance of the order of default and the completion of Leonila's presentation of evidence *ex parte* and formal offer of evidence that the spouses Magtoto, through their new counsel, filed an Omnibus Motion to Lift Order of Default and to Admit attached Answer and their Answer.

Neither could the spouses Magtoto blame Atty. Canlas for not drafting the Answer. Atty. Canlas needed to confer with them in order to formulate their counter-arguments and to rebut the charges brought forward by Leonila in her Complaint. However, the spouses Magtoto failed to make themselves available to Atty. Canlas who could not reach them despite earnest efforts exerted. They did not even bother to offer any explanation as to why they stopped communicating with Atty. Canlas.

Similarly, petitioners should not blame Leonila for their failure to timely file their Answer. Indeed, on December 12, 2003, the RTC initially dismissed the case due to Leonila's lack of interest to prosecute.⁴⁶ However, by this time, petitioners were already in delay in filing their Answer. Recall that their Motion to Dismiss was denied as early as September 11, 2003. Atty. Canlas received the notice of denial on September 17, 2003.⁴⁷ Hence, by December 12, 2003, the prescriptive period for filing the Answer had definitely expired.

⁴⁶ Id. at 97.

⁴⁷ Id., dorsal portion of p. 80.

It has not also escaped our notice that as early as January 23, 2003 when Leonila moved to declare petitioners in default, she already intimated that petitioners' reglementary period to file an Answer had already lapsed. At the same time, she reminded petitioners not to use their counsel's withdrawal as justification for not filing their Answer. Still, petitioners did nothing to remedy their situation. When Leonila's motion to declare petitioners in default was heard on March 18, 2004, the RTC reminded Ruben in open court that after their counsel's withdrawal of appearance on September 25, 2003, they have not yet engaged the services of a new lawyer. Again, petitioners did nothing. It was only on June 25, 2004, or after a lapse of considerable time that they engaged the services of a new counsel and filed their Answer.

In fine, the belated filing of the Answer is solely attributable to the spouses Magtoto. They miserably failed to be vigilant in protecting and defending their cause. The RTC thus properly declared them in default.

The spouses Magtoto failed to show that their failure to file a timely Answer was due to fraud, accident, mistake or excusable negligence and that they have a meritorious defense.

Furthermore, the spouses Magtoto are unable to show that their failure to timely file an Answer was due to fraud, accident, mistake or excusable negligence and, more importantly, that they have a meritorious defense pursuant to Section 3(b), Rule 9 of the Rules of Court, viz:

(b) Relief from order of default. – A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

x x x x (Emphasis supplied.)

"Negligence, to be 'excusable,' must be one which ordinary diligence and prudence could not have guarded against."⁴⁸ Certainly, this is not the kind of negligence committed by the spouses Magtoto in this case. More significantly, a review of the records does not convince the Court that the spouses Magtoto have a meritorious defense. At most, the allegations in their Answer⁴⁹ and the attached Affidavit of Merit,⁵⁰ to wit: that the agreed purchase price is only ₱10,000,000.00; that they provided financial support to Leonila for the settlement of estate of the latter's predecessors-in-interest and for the transfer of titles in her name; and that they already paid the total amount of ₱4,500,000.00, are mere allegations not supported by evidence they, at the outset, are supposed to present.


All told, we find no reversible error much less grave abuse of discretion on the part of the CA in rendering its assailed Decision and Resolution.

WHEREFORE, the petition is **DISMISSED**. The May 31, 2006 Decision and the October 25, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 85286, are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

⁴⁸ *Local Line Transit Inc. v. Ramos*, 415 Phil. 492, 503 (2001) Records, pp. 141-145.

⁴⁹ CLJ at 151-153.


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

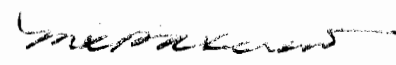
ATTESTATION

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.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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