

FIRST DIVISION

[G.R. NO. 153696, September 11, 2006]

SPOUSES HUMBERTO DELOS SANTOS AND CARMENCITA DELOS SANTOS, PETITIONERS, VS. HON. EMMANUEL C. CARPIO, PRESIDING JUDGE OF RTC, BRANCH 16, DAVAO CITY AND METROPOLITAN BANK AND TRUST COMPANY,

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by spouses Humberto delos Santos and Carmencita delos Santos (petitioners) assailing the Decision^[1] dated April 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 64961.^[2]

The antecedent facts of the case as summarized by the CA are as follows:

On January 3, 2001, Metropolitan Bank and Trust Company (or "Metrobank") filed a complaint^[3] for sum of money against spouses Humberto and Carmencita delos Santos (or "petitioners") before the Regional Trial Court of Davao City (Branch 16).

On January 22, 2001, petitioners were served with the summons, together with a copy of the complaint. As petitioners failed to file an answer within the reglementary period, Metrobank, on February 8, 2001, ^[4] filed a motion to declare them in default. The motion was set for hearing on February 16, 2001.

Acting on the motion, the lower court, presided over by Hon. Emmanuel C. Carpio (or "respondent judge"), issued an order dated February 12, 2001 declaring petitioners in default and setting the *ex-parte* presentation of Metrobank's evidence on March 7, 2001.

On February 15, 2001, petitioners filed an opposition to Metrobank's motion to declare them in default, claiming that upon receipt of the summons, they immediately sought the services of Atty. Philip Pantojan (or "Atty. Pantojan") of the Into Pantojan Gonzales and Marasigan Law Offices but it was only on February 12, 2001 that they were able to meet with Atty. Pantojan. Petitioners alleged that not being "learned in law", they were unaware "of the consequences of delay in the filing of their answer."

On the same date, February 15, 2001, petitioners filed a motion to admit answer, as well as the answer. In an order dated February 16, 2001, respondent judge disregarded petitioners' opposition to Metrobank's

motion for default and stood pat on his previous default order.

On February 19, 2001, Metrobank filed an opposition to petitioners' motion to admit answer, arguing that said motion was rendered moot and academic by the February 12, 2001 order. Metrobank also chided petitioners for violating the three-day notice rule under Sec. 4, Rule 15 of the 1997 Rules of Civil Procedure. In an order dated February 20, 2001, the motion to admit answer was denied.

On February 27, 2001, petitioners filed a motion to lift the order of default; Metrobank opposed the motion. In their motion, petitioners reiterated that, being laymen, they were unaware of the fifteen-day period within which to file the answer and that their failure to do so was due to the unavailability of Atty. Pantojan who was then "always out of town." They attached to their motion an "Affidavit of Merits" which restated the contents of the motion. Petitioners further claimed that "if given our day in Court, we have a meritorious defense to set up against the allegations of the plaintiff's complaint."

On March 2, 2001, respondent judge issued an order holding in abeyance the *ex-parte* reception of evidence pending resolution of petitioners' motion to lift the order of default.

On March 5, 2001, respondent judge issued an order denying petitioners' motion to lift the order of default and setting the reception of Metrobank's evidence on March 7, 2001, as previously scheduled. On that date (March 7, 2001), Metrobank presented its evidence and the case was submitted for decision. Petitioners moved for reconsideration of the March 5, 2001 order but their motion was denied on March 21, 2001.

[5]

Aggrieved, petitioners filed a Petition for *Certiorari* with the CA ascribing grave abuse of discretion committed by the trial court amounting to lack of jurisdiction in issuing the Orders dated February 12 and 16, 2001, declaring them in default and denying their Opposition to Metropolitan Bank and Trust Company's (Metrobank) Motion to Declare them in Default, respectively; and the Orders dated March 5 and 21, 2001 denying their Motion to Lift the Order of Default and their Motion for Reconsideration, respectively.

In a Decision dated April 30, 2002, the CA denied the petition for lack of merit and accordingly dismissed the same. The CA did not find the excuse proffered by petitioners, *i.e.*, the ignorance of procedural rules and their lawyer's unavailability, as constitutive of excusable negligence. It also ruled that for an order of default to be set aside, petitioners must have a meritorious defense or that something could be gained by having the order of default set aside; that petitioners' affidavit of merit did not show a meritorious defense since it merely stated that "they have a meritorious defense to set up against the allegation of petitioners' complaint" but there was no discussion of such defense and the facts which they intend to prove in support thereof.

The CA further found unmeritorious the contention of petitioners that they were declared in default without giving them ample time to file an opposition to

Metrobank's Motion to Declare them in Default; that under Section 3, Rule 9 of the Rules of Court, it is provided that the court shall, upon motion of the claiming party with notice to the defending party in default, and proof of such failure, declare the defending party in default; and that since it is clear from the records that the reglementary period for filing an answer had expired with no responsive pleading filed by petitioners, the trial court had properly declared them in default. The CA further declared that even assuming that the trial court committed a procedural lapse in declaring petitioners in default before the scheduled hearing of Metrobank's motion, such error is not so serious as to constitute grave abuse of discretion.

Hence, the instant petition filed by petitioners raising the following issues, to wit:

1. Whether or not the procedural lapse committed by Honorable Public Respondent in issuing an Order declaring petitioners' [sic] in default on 12 February 2001 or four (4) days before the scheduled hearing of Metrobank's Motion to declare petitioners' [sic] in default on 16 February 2001 is so serious as to constitute grave abuse of discretion.
2. Whether or not LITIS PENDENTIA raised by petitioners' [sic] as an affirmative defense is a meritorious defense.
3. Whether or not it is beyond the authority of the Honorable Trial Court to rule on the issue of LITIS PENDENTIA simply and chiefly because the defendants failed to seasonably raise it.
4. What constitutes Affidavit of Merit? [6]

Petitioners claim that the trial court committed grave abuse of discretion in declaring them in default in its Order dated February 12, 2001, which was four days before the hearing set on Metrobank's Motion to Declare them in Default; that their failure to file their Answer within the reglementary period was due to the fact that the services of their counsel of choice could not be secured within the period; that they had filed their Motion to Admit Answer and their Answer as well as their Opposition to respondent's motion to declare them in default on February 15, 2001, a day prior to the scheduled date of hearing.

Petitioners aver that under Section 1, Rule 9 of the Rules of Court, defenses like the "court has no jurisdiction, *litis pendentia*, *res judicata* and prescription" can be taken cognizance of by the court despite the fact that they are not in a motion to dismiss or Answer; that the trial court should have looked into their affirmative defense of *litis pendentia* raised in their Answer since it is a meritorious defense as it is a ground for a dismissal of a complaint. They further contend that although the affirmative defense of *litis pendentia* had reached the trial court's attention, it still refused to pass judgment on said legal concern; that the defense of *litis pendentia* raised in their Answer is sufficient to show that the affidavit of merit showed a meritorious defense; that the procedural lapse committed by the trial court would cause the unlawful deprivation of their property rights through undue haste.

In its Comment, Metrobank contends that petitioners failed to file a motion for reconsideration before filing the instant petition which would vest authority for this Court to assume jurisdiction; that the rule on declaration of default did not expressly

mandate the trial court to conduct a hearing of the motion as it merely requires that the notice of the motion was made to the defending party; that the trial court declared petitioners in default since they failed to file their Answer within the reglementary period; that assuming *arguendo* that the trial court committed procedural lapse in declaring petitioners in default before the scheduled hearing, there is still no grave abuse of discretion committed by the trial court since even if the hearing was held, it would not make any difference as petitioners failed to file their Answer within the reglementary period.

Metrobank further argues that petitioners' negligence is not excusable because if they have consulted the associates of Atty. Pantojan, they would definitely be advised to ask for an extension of time to file their answer; that petitioners failed to present a meritorious defense since aside from merely stating in general terms their claim of *litis pendentia* as a defense, the same is misplaced because Civil Case No. 28,362-2001 pending in RTC of Davao City, Branch 16, and Civil Case No. 27,875-2000 filed by petitioners in RTC of Davao City, Branch 10, have separate and distinct causes of action; that the trial court is correct in not ruling on the issue of *litis pendentia* as petitioners' Answer was not admitted as part of the records of the case.

Petitioners filed their Reply contending that appeal by *certiorari* under Rule 45 does not require prior filing of a motion for reconsideration; that the procedural lapse committed by the trial court in declaring petitioners in default before the scheduled hearing should not be tolerated since petitioners' land and building are at stake; and that they should not be faulted for not consulting the associates of Atty. Pantojan as they reposed their trust and confidence in him.

Petitioners and Metrobank filed their respective memoranda. Metrobank's Memorandum no longer questioned petitioners' non-filing of a motion for reconsideration of the CA decision.

Prefatorily, we agree with petitioners that in appeal by *certiorari*, the prior filing of a motion for reconsideration is not required.^[7]

The principal issue before us is whether or not the CA erred in upholding the Orders of the trial court declaring petitioners in default and denying their Motion to Lift Order of Default.

We rule in the affirmative.

Section 3, Rule 9 of the Rules of Court provides:

Sec. 3. Default; declaration of - If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.