

## THIRD DIVISION

[ G.R. No. 196419, October 04, 2017 ]

**PILIPINAS MAKRO, INC., PETITIONER, VS. COCO CHARCOAL PHILIPPINES, INC. AND LIM KIM SAN, RESPONDENTS.**

### DECISION

**MARTIRES, J.:**

This Petition for Review on Certiorari seeks to reverse and set aside the 30 December 2010 Decision<sup>[1]</sup> and 7 April 2011 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 83836 which reversed the 16 August 2004 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 276, Muntinlupa City (RTC).

Petitioner Pilipinas Makro, Inc. (*Makro*) is a duly registered domestic corporation. In 1999, it was in need of acquiring real properties in Davao City to build on and operate a store to establish its business presence in the city. After conferring with authorized real estate agents, Makro found two parcels of land suitable for its purpose.<sup>[4]</sup>

On 26 November 1999, Makro and respondent Coco Charcoal Phils., Inc. (*Coco Charcoal*)<sup>[5]</sup> executed a notarized Deed of Absolute Sale<sup>[6]</sup> wherein the latter would sell its parcel of land, with a total area of 1,000 square meters and covered by Transfer Certificate of Title (TCT) No. 208776, to the former for the amount of P8,500,000.00. On the same date, Makro entered into another notarized Deed of Absolute Sale<sup>[7]</sup> with respondent Lim Kim San (*Lim*) for the sale of the latter's land, with a total area of 1,000 square meters and covered by TCT No. 282650, for the same consideration of P8,500,000.00.

Coco Charcoal and Lim's parcels of land are contiguous and parallel to each other. Aside from the technical descriptions of the properties in question, both deeds of sale contained identical provisions, similar terms, conditions, and warranties.<sup>[8]</sup>

In December 1999, Makro engaged the services of Engineer Josefino M. Vedula (*Engr. Vedula*), a geodetic engineer, to conduct a resurvey and relocation of the two adjacent lots. As a result of the resurvey, it was discovered that 131 square meters of the lot purchased from Coco Charcoal had been encroached upon by the Department of Public Works and Highways (DPWH) for its road widening project and construction of a drainage canal to develop and expand the Davao-Cotabato National Highway. On the other hand, 130 square meters of the land bought from Lim had been encroached upon by the same DPWH project. Meanwhile, TCT Nos. T-321199 and T-321049 were issued in January 2000 in favor of Makro after the deeds of sale were registered and the titles of the previous owners were cancelled.<sup>[9]</sup>

Makro informed the representatives of Coco Charcoal and Lim about the supposed

encroachment on the parcels of land due to the DPWH project. Initially, Makro offered a compromise agreement in consideration of a refund of 75% of the value of the encroached portions. Thereafter, Makro sent a final demand letter to collect the refund of the purchase price corresponding to the area encroached upon by the road widening project, seeking to recover P1,113,500.00 from Coco Charcoal and P1,105,000.00 from Lim. Failing to recover such, Makro filed separate complaints against Coco Charcoal and Lim to collect the refund sought.

### ***The RTC Decision***

In its 16 August 2004 Decision, the RTC granted Makro's complaint and ordered respondents to refund the amount corresponding to the value of the encroached area. The trial court ruled that the DPWH project encroached upon the purchased properties, such that Makro had to adjust its perimeter fences. It noted that Makro was constrained to bring legal action after its demand for refund remained unheeded. The trial court expounded that the road right of way includes not only the paved road, but also the shoulders and gutters. It highlighted that the unpaved portion of the right of way was well within the area Makro had purchased.

The RTC also found respondents in bad faith because they had concealed from Makro the fact that the DPWH had already taken possession of a portion of the lands they had sold, respectively, considering that drainage pipes had already been installed prior to the sale. It noted that DPWH could not have undertaken the diggings and subsequent installation of drainage pipes without Coco Charcoal and Lim's consent, being the previous owners of the lots in question. The dispositive portion reads:

PREMISES CONSIDERED, judgment is rendered for the plaintiff and defendants LIM KIM SAN directed to return and reimburse to plaintiff the sum of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, attorney's fees of Php200,000.00, exemplary damages of Php200,000.00 to deter anybody similarly prone;

Coco Charcoal Philippines, Inc. is likewise directed to pay a refund and return to plaintiff corporation the value of ONE MILLION FIVE HUNDRED THOUSAND (Php1,500,000.00) PESOS, Philippine Currency, with interest at 12% per annum, representing the 131 square meters parcel of land it cannot occupy and to pay attorney's fees in the sum of Php200,000.00 and exemplary damages of Php200,000.00 to deter anybody similarly inclined;

Both Defendants are directed to pay the cost of this litigation.

It is SO ORDERED.<sup>[10]</sup>

Aggrieved, Coco Charcoal and Lim appealed before the CA.

### ***The CA Ruling***

In its 30 December 2010 Decision, the CA reversed the RTC decision. While the appellate court agreed that the DPWH project encroached upon the frontal portions

of the properties, it ruled that Makro was not entitled to a refund. It explained that the warranty expressed in Section 4(i)<sup>[11]</sup> of the deeds of sale is similar to the warranty against eviction set forth under Article 1548 of the Civil Code. As such, the CA posited that only a buyer in good faith may sue to a breach of warranty against eviction. It averred that Makro could not feign ignorance of the ongoing road widening project. The appellate court noted Makro's actual knowledge of the encroachment before the execution of the sale constitutes its recognition that Coco Charcoal and Lim's warranty against liens, easements, and encumbrances does not include the respective 131 and 130 square meters affected by the DPWH project, but covers only the remainder of the property. It ruled:

WHEREFORE, premises considered, the instant appeal is GRANTED. Accordingly, the herein assailed August 16, 2004 Decision of the trial court is REVERSED and SET ASIDE, and the action instituted by appellee MAKRO against appellants Coco Charcoal and Lim Kim San for collection of sum of money by way of refund is hereby DISMISSED for lack of cause of action.

SO ORDERED.<sup>[12]</sup>

Makro moved for reconsideration, but the same was denied by the CA in its assailed 7 April 2011 Resolution.

Hence, this present petition raising the following:

## **ISSUES**

### **I**

**WHETHER THE COURT OF APPEALS ERRED IN DENYING MAKRO'S MOTION FOR EXTENSION TO FILE A MOTION FOR RECONSIDERATION; AND**

### **II**

**WHETHER THE COURT OF APPEALS ERRED IN DENYING MAKRO A REFUND ON THE GROUND OF BAD FAITH.**

## **THE COURT'S RULING**

The petition is meritorious.

### ***Non-extendible period to file motion for reconsideration; exceptions***

Makro filed two motions for extension to file a motion for reconsideration. On the first motion, it sought an extension after its former lawyer, Atty. Edwin Lacierda, withdrew as a counsel in view of his appointment as press secretary for former President Benigno Aquino III. Makro again asked for an extension after its present counsel was confined for dengue and typhoid fever. Eventually, it filed its motion for reconsideration on 7 March 2011.

In its 7 April 2011 Resolution, the CA denied Makro's motions for extension to file a motion for reconsideration, explaining that the 15-day period for the filing of such is

non-extendible and that a motion for extension is prohibited.

It must be remembered that procedural rules are set not to frustrate the ends of substantial justice, but are tools to expedite the resolution of cases on their merits. The Court reminds us in *Gonzales v. Serrano*<sup>[13]</sup> that the prohibition on motion for extension to file a motion for reconsideration is not absolute, to wit:

The Court shall first delve on the procedural issue of the case. In *Imperial v. Court of Appeals*,<sup>[14]</sup> the Court ruled:

In a long line of cases starting with *Habaluyas Enterprises v. Japson*,<sup>[15]</sup> we have laid down the following guideline:

Beginning one month after the promulgation of this Resolution, the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. Such a motion may be filed only in cases pending with the Supreme Court as the court of last resort, which may in its sound discretion either grant or deny the extension requested.

Thus, the general rule is that no motion for extension of time to file a motion for reconsideration is allowed. This rule is consistent with the rule in the 2002 Internal Rules of the Court of Appeals that unless an appeal or a motion for reconsideration or new trial is filed within the 15-day reglementary period, the CA's decision becomes final. Thus, a motion for extension of time to file a motion for reconsideration does not stop the running of the 15-day period for the computation of a decision's finality. At the end of the period, a CA judgment becomes final, immutable and beyond our power to review.

**This rule, however, admits of exceptions based on a liberal reading of the rule, so long as the petitioner is able to prove the existence of cogent reasons to excuse its non-observance. xxx**

While the CA was correct in denying his Urgent Motion for Extension to File Motion for Reconsideration for being a prohibited motion, the Court, in the interest of justice, looked into the merits of the case, and opted to suspend the prohibition against such motion for extension after it found that a modification of the CA Decision is warranted by the law and the jurisprudence on administrative cases involving sexual harassment. **The emerging trend of jurisprudence, after all, is more inclined to the liberal and flexible application of procedural rules. Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling**

reasons or when the purpose of justice requires it. (emphases and underscoring supplied)

The Court finds that cogent reason exists to justify the relaxation of the rules regarding the filing of motions for extension to file a motion for reconsideration. The explanation put forth by Makro in filing its motions for extension clearly were not intended to delay the proceedings but were caused by reasons beyond its control, which cannot be avoided even with the exercise of appropriate care or prudence. Its former counsel had to withdraw in the light of his appointment as a cabinet secretary and its new lawyer was unfortunately afflicted with a serious illness. Thus, it would have been more prudent for the CA to relax the procedural rules so that the substantive issues would be thoroughly ventilated.

More importantly, the liberal application of the rules becomes more imperative considering that Makro's position is meritorious.

### ***Express Warranty vis-a-vis Implied Warranty***

In addressing the issues of the present case, the following provisions of the deeds of sale between Makro and respondents are pertinent:

#### Section 2. General Investigation and Relocation

Upon the execution of this Deed, the BUYER shall undertake at its own expense a general investigation and relocation of their lots which shall be conducted by a surveyor mutually acceptable to both parties. Should there be any discrepancy between the actual areas of the lots as re-surveyed and the areas as indicated in their Transfer Certificates of Title, the Purchase Price shall be adjusted correspondingly at the rate of PESOS: EIGHT THOUSAND FIVE HUNDRED (Php8,500.000) per square meter. In the event that the actual area of a lot is found to be in excess of the area specified in the Titles, the Purchase Price shall be increased on the basis of the rate specified herein. Conversely, in the event that the actual area of a lot is found to be less than the area specified in the Titles, the BUYER shall deduct a portion of the Purchase Price corresponding to the deficiency in the area on the basis of the rate specified herein. In any case of discrepancy, be it more or less than the actual area of the Property as specified in the Titles, the SELLER agrees to make the necessary correction of the title covering the lots before the same is transferred to the BUYER.<sup>[16]</sup>

#### Section 4. Representations and Warranties

The SELLER hereby represents and warrants to the BUYER that:

i. The Property is and shall continue to be free and clear of all easements, liens and encumbrances of any nature whatsoever, and is, and shall continue to be, not subject to any claim set-off or defense which will prevent the BUYER from obtaining full and absolute ownership and possession over the Property or from developing or using it as a site for its store building.<sup>[17]</sup>