

SECOND DIVISION

[G.R. No. 175792, November 21, 2012]

**RUBEN C. MAGTOTO AND ARTEMIA MAGTOTO, PETITIONERS, VS.
COURT OF APPEALS, AND LEONILA DELA CRUZ, RESPONDENTS.**

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 Decision^[2] 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 Decision^[3] 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. Likewise assailed is the CA's October 25, 2006 Resolution^[4] denying spouses Magtoto's Motion for Reconsideration.

Factual Antecedents

On May 15, 2003, Leonila filed before the RTC a Complaint^[5] 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 P11,952,750.00.^[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 P11,952,750.00, the spouses Magtoto were only able to pay the amount of P2,455,000.00. Despite Leonila's repeated demands, the balance of P9,497,750.00 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 Order^[11] 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 Order^[13] 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, 2003^[15] 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 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]

Ruling of the Regional Trial Court

On November 22, 2004, the RTC issued its Decision^[28] finding that the spouses Magtoto failed to comply with their obligation to pay the full amount of P11,952,750.00 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 P9,497,750.00 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 Appeal^[30] 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 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 Decision [37] 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 [3], 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 [4], 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 x [38]

Their Motion for Reconsideration [39] having been denied by the CA in its Resolution [40] 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 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