

SECOND DIVISION

[G.R. No. 169292, April 13, 2011]

SPOUSES FRANCISCO DE GUZMAN, JR. AND AMPARO O. DE GUZMAN, PETITIONERS, VS. CESAR OCHOA AND SYLVIA A. OCHOA, REPRESENTED BY ARACELI S. AZORES, AS THEIR ATTORNEY-IN-FACT, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for review on certiorari assailing the August 11, 2005 Decision^[1] of the Court of Appeals (CA), in CA-GR. SP No. 89329, filed by petitioners, Spouses Francisco De Guzman, Jr. and Amparo O. De Guzman (*petitioners*). In the assailed decision, the CA found no commission of grave abuse of discretion when the public respondent therein, Judge Amelia A. Fabros (*Judge Fabros*), Presiding Judge of the Regional Trial Court, Pasig City, Branch 160 (RTC), denied petitioners' second motion to dismiss, in Civil Case No. 68896, an action for annulment of contract and damages.

The facts of the case have been succinctly summarized by the CA as follows:

On March 25, 2002, respondent spouses Cesar Ochoa and Sylvia Ochoa, through respondent Araceli Azores, ostensibly acting as attorney-in-fact, commenced in the Regional Trial Court (RTC) in Pasig City an action seeking the annulment of contract of mortgage, foreclosure sale, certificate of sale and damages. The action, docketed as Civil Case No. 68896 and entitled *Cesar Ochoa and Sylvia A. Ochoa, etc. v. Josefa M. Guevarra, et al.*, was raffled to Branch 160, presided by the respondent RTC Judge.

On May 22, 2002, the petitioners, as defendants in Civil Case No. 68896, filed a *motion to dismiss*, alleging the sole ground that the complaint did not state a cause of action. The petitioners' *motion to dismiss* was formally opposed by the private respondents.

On December 16, 2002, the respondent RTC Judge denied petitioners' *motion to dismiss* and at the same time set Civil Case No. 68896 for pre-trial conference, directing the parties to submit their respective pre-trial briefs.

On March 31, 2003, the petitioners filed a second *motion to dismiss*, alleging that the certification against forum shopping attached to the *complaint* was not executed by the principal parties (plaintiffs) in violation of Sec. 5, Rule 7, 1997 *Rules of Civil Procedure*, rendering the

complaint fatally defective and thus dismissible.

The private respondents opposed the second *motion to dismiss*.

On February 12, 2004, the respondent RTC Judge issued her first assailed order, denying the second *motion to dismiss*, disposing thus:

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Inasmuch as the records show that the pending incident is the second motion to dismiss filed by the defendants, the same is hereby Denied for lack of merit.

SO ORDERED.

On May 25, 2004, the petitioners filed their motion for reconsideration, but the respondent RTC Judge denied the motion through her second assailed order dated December 29, 2004, to wit:

Acting on the Motion for Reconsideration (of the Order dated February 12, 2004, filed by the defendant Spouses Francisco and Amparo De Guzman, through counsel, on May 25, 2004, and after considering the grounds stated therein in support of their motion, and finding no cogent reason to warrant the reconsideration sought for, the motion is DENIED.

SO ORDERED.^[2]

Aggrieved, petitioners elevated the order of denial to the CA via a petition for certiorari contending that the RTC should have dismissed the complaint *motu proprio* since it was fatally defective. They pointed out that the Verification and Certification of Non-Forum Shopping attached to the complaint was not signed by Cesar Ochoa or Sylvia Ochoa but by Araceli S. Azores (*Azores*), who was acting as the attorney-in-fact of Cesar Ochoa only. They invited the attention of the RTC to the fact that the powers delegated to Azores did not include the authority to institute an action in court. Thus, according to the petitioners, the denial by the RTC of their motion to dismiss was capricious, whimsical and arbitrary, amounting to lack or excess of jurisdiction and should be struck down as null and void.

On August 11, 2005, the CA denied the petition for lack' of merit. The CA, in its decision, agreed with the RTC that following the omnibus motion rule, the defects of the complaint pointed out by the petitioners were deemed waived when they failed to raise it in their first motion to dismiss.

Not in conformity, the petitioners filed this petition for review under Rule 45, anchored on this:

GROUND