

## FIRST DIVISION

[ G.R. No. 160841, June 23, 2010 ]

**LEY CONSTRUCTION & DEVELOPMENT CORPORATION, LC BUILDERS & DEVELOPERS, INC., METRO CONTAINER CORPORATION, MANUEL T. LEY, AND JANET C. LEY, PETITIONERS, VS. PHILIPPINE COMMERCIAL & INTERNATIONAL BANK, EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF VALENZUELA, METRO MANILA, AND CLERK OF COURT AND EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF PASIG, METRO MANILA, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse the Decision<sup>[1]</sup> of the Court of Appeals dated April 11, 2003, dismissing petitioners' appeal from the Makati City Regional Trial Court (RTC) Order<sup>[2]</sup> dated July 28, 1994. The Court of Appeals dismissed the appeal on the ground that the notice of appeal was filed beyond the reglementary period.

The pertinent facts about the case follow.

From 1986 to 1990, petitioners Ley Construction and Development Corporation, LC Builders & Developers, Inc., Metro Container Corporation, Manuel T. Ley and Janet C. Ley secured 52 loans from the Philippine Commercial International Bank (PCIB, now Equitable PCIBank).<sup>[3]</sup> As collateral for said loans, petitioners executed real estate mortgages over several of their properties and chattel mortgages over their equipment and machinery.<sup>[4]</sup>

As the debts became due, PCIB made repeated demands for the borrowers to pay. Petitioners were able to pay some of their obligations, but 18 of the 52 loans remained unpaid.<sup>[5]</sup>

Thus, on August 16, 1991, PCIB filed separate requests for extrajudicial foreclosure with the sheriffs of Pasig City RTC and Valenzuela City RTC.<sup>[6]</sup> The sheriff of Valenzuela City RTC set the auction sale of personal properties on September 16, 1991, and the real property on October 3, 1991. The sheriff of Pasig City RTC set the public auction on September 24, 1991.

To forestall the scheduled auction sales, petitioners, on September 10, 1991, filed a Complaint<sup>[7]</sup> for injunction and damages with a prayer for the issuance of a temporary restraining order (TRO) before the Makati City RTC. One of the causes of action proffered was that PCIB had agreed to the extensions of the due date of the loans.<sup>[8]</sup> The Complaint for injunction and damages, docketed as Civil Case No. 91-

2495, was aimed at enjoining the respective sheriffs of the Pasig City RTC and the Valenzuela City RTC from conducting the already scheduled foreclosure sales and any other sale of their mortgaged properties. The complaint also sought the restructuring of petitioners' debts.<sup>[9]</sup>

PCIB filed a motion to dismiss the complaint for injunction and damages (Civil Case No. 91-2495) before the Makati City RTC on the ground that it did not agree to petitioners' request for extra time to make good their obligations.

In an Order dated October 16, 1991, the Makati City RTC issued a preliminary injunction, enjoining the conduct of the scheduled auction sales and denying PCIB's motion to dismiss.<sup>[10]</sup>

On November 20, 1991, PCIB filed a motion for reconsideration.<sup>[11]</sup>

On December 9, 1991, PCIB filed an Urgent Motion to Lift Writ of Preliminary Injunction, which was opposed by petitioners.<sup>[12]</sup>

The Makati City RTC, in an Order dated February 26, 1992, denied PCIB's motion for reconsideration of the Order dated October 16, 1991.<sup>[13]</sup> Although PCIB questioned the said Order with the Court of Appeals, it did not pursue the incident further after the latter court rendered an adverse ruling.

On February 1, 1993, PCIB filed an Answer to the complaint for injunction and damages.

A significant development of the injunction case happened on February 23, 1993, when the Makati City RTC granted PCIB's *Second Motion to Lift Writ of Preliminary Injunction* on the ground that said motion was unopposed.<sup>[14]</sup>

The February 23, 1993 Order of the Makati City RTC, which had lifted the preliminary injunction on the scheduled foreclosure sales, prompted PCIB to immediately cause the scheduling of the sheriff's extrajudicial foreclosure sales of the mortgaged properties in Mandaluyong City and Valenzuela City on March 30, 1993. The auction sale of the mortgaged chattels in Valenzuela City was scheduled on March 18, 1993.

The February 23, 1993 Order was opposed by petitioners, as they filed on March 30, 1993 an *Emergency Motion for Reconsideration of the Order dated February 23, 1993 and to Expand Writ of Preliminary Injunction with Application for Temporary Restraining Order*.

The Emergency Motion for Reconsideration was not the only remedy resorted to by petitioners to thwart the effect of the February 23, 1993 Order. Petitioners similarly filed two separate complaints in another venue. The first, filed with the Manila RTC, Branch 34, on March 17, 1993, docketed as Civil Case No. 93-65135, was a Complaint for Injunction and Damages with prayer for TRO against PCIB and the sheriff of Valenzuela City RTC enjoining them from proceeding with the auction sale scheduled on March 18, 1993. The second, also a complaint for Injunction with the Manila RTC, Branch 54, was filed on May 3, 1993 and docketed as Civil Case No. 93-65757, directed against the conduct of the auction sale of the Valenzuela City

properties. Civil Case No. 93-65135 was subsequently dismissed based on the pendency of Civil Case No. 91-2495, while Civil Case No. 93-65757 was dismissed because petitioners engaged in forum shopping.

The issue over the validity of the February 23, 1993 Order of the Makati City RTC eventually reached the Court of Appeals on June 10, 1993, upon petitioners' filing of a petition for *certiorari* and *mandamus* assailing the said order. Petitioners argued that the February 23, 1993 Order, which granted *ex parte* the Second Motion for the Lifting of Preliminary Injunction, denied them the right to due process as they were deprived their chance to be heard on said motion considering that the service of the copy of the motion was not given to their counsel of record. On the allegation that they were guilty of forum shopping, petitioners countered that the causes of actions in the complaints filed with the Manila RTC were different from each other and vary as well from the cause of action with the injunction case (Civil Case No. 91-2495) pending with the Makati City RTC.

The Court of Appeals ruled in favor of petitioners and declared the February 23, 1993 Order null and void in its decision dated August 13, 1993.

On May 2, 1994, PCIB elevated the Court of Appeals' decision to this Court, the case was docketed as G.R. No. 114951.<sup>[15]</sup>

The instant controversy came to fore when, during the pendency of G.R. No. 114951, the Makati City RTC rendered the questioned Order dated July 28, 1994, dismissing Civil Case No. 91-2495, on the ground of failure to prosecute. The pertinent portion of the Order reads:

It appearing that this case was instituted way back on September 10, 1991 and that since then until the present time, plaintiffs have not taken proper steps for the early disposition of this case, the Court hereby dismisses this case for failure to prosecute.<sup>[16]</sup>

On September 12, 1994, petitioners filed a motion for reconsideration of the foregoing Order. Petitioners contended that the RTC committed reversible error in dismissing the complaint on the ground of failure to prosecute.<sup>[17]</sup> Petitioners insisted that to constitute "failure to prosecute," there must be an unwillingness or lack of interest in prosecuting the action. According to petitioners, there was no failure to prosecute on their part since they had actively pursued their cause and had fought tooth and nail throughout the injunction proceedings at the trial court level all the way up to this Court. Besides, petitioners argued, length of time alone is not a gauge in the staleness of the claim, but such delay can only be appreciated if the same reasonably justifies the belief that the action had been abandoned, which was not the case here since petitioners had pursued their action up until the RTC rendered the questioned order. Petitioners likewise invoked liberal construction of the rules in order to promote justice. Petitioners attempted to justify the delay of the main case on account of the pendency of G.R. No. 114951.

The said motion was denied in an Order dated August 22, 2001.

On September 13, 2001, petitioners received the August 22, 2001 Order denying

their motion for reconsideration.

On September 20, 2001, six days late, petitioners filed a notice of appeal.<sup>[18]</sup>

When the case had reached the Court of Appeals, the appellate court, without dealing on the merits, dismissed the same on the ground that petitioners' appeal was filed beyond the 15-day reglementary period, thereby rendering the appealed decision of the RTC final. The pertinent portion of the assailed decision reads:

IN VIEW OF ALL THE FOREGOING, the instant appeal is ordered  
DISMISSED. No cost.<sup>[19]</sup>

In a parallel proceeding, on July 18, 2003, this Court rendered a decision in G.R. No. 114951 dismissing Civil Case No. 91-2495 with prejudice on the grounds of forum shopping and violation of judicial stability by filing another case in a different court and venue, *i.e.*, in Civil Case Nos. 93-65135 and 93-65757 in Manila, despite the pendency of Civil Case No. 91-2495, and with the objective of defeating the February 23, 1993 Order in the latter case. The Court also ruled that petitioners therein were accorded their right to due process, since they were served with a copy of the PCIB's Second Motion to Lift Writ of Preliminary Injunction. G.R. No. 114951 became final and executory on February 23, 2004.

Reverting to the instant proceedings, petitioners, in their Manifestation<sup>[20]</sup> dated March 5, 2004, enunciated the fact that this Court had rendered a decision in G.R. No. 114951, dismissing Civil Case No. 91-2495. Petitioners, however, averred that while the proceedings in G.R. No. 114951 and the instant petition both originated from Civil Case No. 91-2495, the issues raised in the two cases are different. It is petitioners' conviction that the issue in G.R. No. 114951 is the propriety of the trial court's Order dated February 23, 1993, a mere incident of Civil Case No. 91-2495, while the issue in the instant petition is the propriety of the trial court's Order dated July 28, 1994, dismissing the main case, Civil Case No. 91-2495.

In their Memorandum, petitioners stress that the six-day delay in filing their notice of appeal is a mere slight negligence and an excusable one, since they lost track of the case occasioned by the Makati City RTC's seven-year inaction before it resolved their motion for reconsideration of the Order dated July 28, 1994. Petitioners then likened their situation to that of the petitioner in *Trans International v. Court of Appeals*,<sup>[21]</sup> where the Court allegedly held that a delay in the perfection of appeal does not warrant a dismissal. <sup>[22]</sup> They also reiterated their contention that they could not have been guilty of failure to prosecute their case, since they had been actively participating in the proceedings of the same.

PCIB counters that the instant petition, which is intended to revive Civil Case No. 91-2495, has been rendered moot by the earlier dismissal of the same in G.R. No. 114951. It further argues that the fact that the RTC resolved petitioners' motion for reconsideration after seven years is not a valid and excusable ground for them not to file their notice of appeal on time.

We deny the petition.