

SECOND DIVISION

[G.R. No. 166819, June 16, 2010]

**SPOUSES OSCAR ARCENAS^[1] AND DOLORES ARCENAS,
PETITIONER, VS. QUEEN CITY DEVELOPMENT BANK AND COURT
OF APPEALS (NINETEENTH DIVISION), RESPONDENTS.**

DECISION

PERALTA, J.:

Before us is a petition for review on *certiorari* assailing the Resolution^[2] dated May 18, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83357, which dismissed petitioner's petition for annulment of order, as well as its Resolution^[3] dated January 20, 2005, which denied petitioner's motion for reconsideration.

The factual antecedents are as follows:

On January 23, 2002, the spouses Dolores and Oscar Arcenas filed with the Regional Trial Court (RTC) of Roxas City, an Action for Declaratory Relief against respondent Queen City Development Bank, docketed as Civil Case No. V-006-01-2002, and was raffled off to Branch 15. The Spouses Arcenas prayed for the declaration of their rights as lessors under the contract of lease.

Respondent bank filed an Answer with Affirmative Defenses and Counterclaim contending, among others, that the action for declaratory relief was not proper, since the contract of lease had already been violated. Respondent bank counterclaimed for the rescission of the contract of lease, actual damages for its relocation and attorney's fees.

In an Order dated May 23, 2002, the RTC dismissed the action for declaratory relief and set the hearing on respondent bank's counterclaim for damages. The Spouses Arcenas' motion for reconsideration was denied on June 23, 2002. Respondent bank later presented its evidence on its counterclaim.

On July 25, 2002, the Spouses Arcenas filed with RTC of Roxas City, another case against respondent bank, this time for breach of the same contract of lease, docketed as Civil Case No. V-072-07-2002 (the case subject of this petition), and was raffled off to the same branch where Civil Case No. 006-01-2002 was pending. The Spouses Arcenas filed in Civil Case No. V-006-01-2002 a motion for consolidation of the two civil cases which the RTC denied.

Respondent bank then filed in Civil Case No. V-072-07-2002 its Answer with Affirmative Defenses and Counterclaim. The RTC then set the case for pre-trial on April 30, 2003.

The Spouses Arcenas subsequently filed their Pre-Trial Brief^[4] with the proposed amicable settlement which provided that respondent bank would continue to pay the agreed rentals until the time the parties could find a substitute lessee. During the scheduled pre-trial conference, respondent bank's counsel manifested its interest in the proposal but wanted to know the exact amount for settlement; thus, the pre-trial was reset.^[5]

On August 18, 2003, the Spouses Arcenas filed, in Civil Case No.V-006-01-2002, a written Proposed Settlement in the amount of P1,297,514.00. Respondent bank was asked to comment on the proposed settlement.^[6]

During the September 9, 2003 pre-trial conference in Civil Case No. V-072-07-2002, respondent bank's counsel manifested that the parties were in the process of settling the case amicably. In an Order^[7] dated September 9, 2003, the RTC ordered the resetting of the pre-trial conference to November 11, 2003, without prejudice to the filing of the compromise agreement that the parties may finally execute before the scheduled pre-trial conference.

Subsequently, respondent bank submitted its Formal Counter-Proposal for Settlement^[8] in Civil Case No. V-006-01-2002 as follows:

x x x x

The defendant and the plaintiffs will simultaneously and mutually dismiss all of their claims and counterclaims in BOTH Civil Case No. V-006-01-2002 AND Civil Case No. V-072-07-2002, all of which cases are pending before this same Honorable Court.

In the hearing of Civil Case No. 006-01-2002 on October 8, 2003, the RTC ordered the resetting of the case to December 4, 2003, in view of the manifestation of both counsels that settlement was still possible.^[9] However, during the October 17, 2003 hearing of the same case, the RTC noted that, from the contents of both proposals for settlement, there was no meeting of the minds between the parties; thus, the RTC ordered the parties to prepare one compromise agreement duly signed and submitted for the court's approval, which shall be made as basis for the judgment in both civil cases. The parties were given up to December 4, 2003 to submit the compromise agreement.^[10]

On November 11, 2003 the date set for the continuation of the pre-trial conference in Civil Case No. V-072-07-2002 only respondent bank's counsel was present. On November 10, 2003, the counsel for the Spouses Arcenas filed a Motion for Postponement of the pre-trial conference because of conflict of schedule. Respondent bank's counsel objected to such postponement, as he was not furnished a copy of the motion and the filing of such motion violated the three-day notice rule on motions; thus, he moved that the Spouses Arcenas be declared non-suited. On the same day, November 11, 2003, the RTC issued an Order^[11] declaring the Spouses Arcenas non-suited and set the presentation of respondent bank's evidence on its counterclaim on January 8, 2004. The Order was received by the secretary of the Spouses' counsel on November 17, 2003.

On the January 8, 2004 scheduled hearing, despite due notice, the Spouses Arcenas and their counsel failed to appear; thus, respondent bank presented evidence on its counterclaim, rested its case and submitted the same for decision. On the same day, the RTC issued an Order^[12] submitting the case for decision. The Order was received by the Spouses Arcenas on January 14, 2004.

On January 14, 2004, the Spouses Arcenas filed a Manifestation with Motion^[13] alleging that their failure to file a motion to reconsider the Order dated November 11, 2003, declaring them non-suited, and their failure to attend the January 8, 2004 hearing on respondent bank's counterclaim was due to their mistaken belief that respondent bank was earnestly seeking a settlement on both civil cases; that honest mistake and excusable negligence were grounds for lifting an order of non-suit; thus, they prayed that the Orders dated November 11, 2003 and January 8, 2004 be reconsidered and Civil Case No. V- 072-07-2002 be reset for further pre-trial conference. Respondent bank filed an Opposition to such Manifestation and Motion.

In an Order^[14] dated March 9, 2004, the RTC denied the Manifestation and Motion to reconsider the order of non-suit and allowed respondent bank to present evidence on its counterclaim on March 25, 2004. The RTC found (1) that assuming there was an agreement between the counsels regarding a compromise affecting the civil cases, such an out of court agreement was not an excuse for the counsel of the Spouses Arcenas not to move for the lifting of the order of default; (2) that counsel should not presume that his motion for postponement would be granted, specially since the scheduled proceeding was a pre-trial conference which was mandatory; (3) that a motion should abide by the three-day notice rule; and (4) that the January 8, 2004 Order submitting the case for decision had long become final and the Manifestation and Motion was filed beyond the reglementary period for filing a motion for reconsideration.

On March 29, 2004, the Spouses Arcenas, as petitioners, filed with the CA a Petition for annulment of order under Rule 47 seeking to annul the November 11, 2003 Order of non-suit issued by the RTC of Roxas City, Branch 15 in Civil Case No. V-072-07-2002 on the ground of extrinsic fraud.

On May 18, 2004, the CA dismissed the petition on the ground that petitioners, the Spouses Arcenas, failed to avail of the appropriate remedies without sufficient justification before resorting to the petition for annulment of order. The CA ruled that assuming that petitioners were able to substantiate their allegations of fraud, they could have filed a petition for relief under Rule 38 of the Rules of Court and prayed that the assailed Order be set aside, but they did not. Thus, they cannot benefit from their inaction.

In a Resolution dated January 20, 2005, the CA denied the Motion for Reconsideration filed by the Spouses Arcenas.

In the meantime, on August 18, 2004, the RTC rendered a Decision on the merits in Civil Case Nos. V-006-01-2002 and V-072-07-2002, wherein the contract of lease subject of the two cases was declared rescinded, and the Spouses Arcenas were ordered to pay respondent bank actual damages, attorney's fees and litigation expenses. On September 8, 2004, the Spouses Arcenas filed their Notice of Appeal.