

## SECOND DIVISION

[ G.R. No. 175116, August 18, 2010 ]

**JERRY ONG, PETITIONER, VS. PHILIPPINE DEPOSIT INSURANCE  
CORP., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before us is a petition for review on *certiorari* filed by petitioner Jerry Ong seeking to annul and set aside the Decision<sup>[1]</sup> dated July 31, 2006 and the Resolution<sup>[2]</sup> dated October 5, 2006 issued by the Court of Appeals (CA) in CA-G.R. SP No. 93441.

Sometime in 1982 and 1983, petitioner Jerry Ong made some money market placements with Omnibus Finance Inc. (OFI), which later on suffered serious financial difficulties. As petitioner's money market placements matured, he demanded from OFI the return of the same. However, OFI's checks issued thereby were dishonored by the drawee bank. It was alleged that OFI sought the assistance of its sister companies which included the Rural Bank of Olongapo (RBO). On December 29, 1983, Jose Ma. Carballo, OFI President, and Cynthia Gonzales, Chairperson of the Board of Directors of RBO, executed in favor of petitioner a Deed of Real Estate Mortgage<sup>[3]</sup> over two parcels of land located in Tagaytay City covered by Transfer Certificates of Title Nos. T-13769 and T-13770, which are both registered in RBO's name, as collateral to guarantee the payment of OFI's money market obligations to petitioner in the amount of P863,517.02. The mortgage was executed by Gonzales by virtue of a Secretary's Certificate<sup>[4]</sup> issued by Atty. Efren L. Legaspi, RBO's alleged Assistant Corporate Secretary, showing that Gonzales was authorized by the RBO Board to execute such mortgage. The deed of mortgage was annotated on TCT Nos. T-13769 and T-13770 of the Register of Deeds of Tagaytay City on January 13, 1984.

As OFI failed to pay petitioner the obligation secured by the real estate mortgage, petitioner foreclosed the mortgage on March 18, 1984. A Certificate of Sale was correspondingly issued which was registered with the Register of Deeds of Tagaytay City on July 16, 1985. Petitioner alleged that representatives of the Central Bank of the Philippines (Central Bank) had approached him and borrowed TCT Nos. T-13769 and T-13770 for the on- going audit and inventory of the assets of the RBO; however, these titles were not returned despite petitioner's demand. Petitioner filed with the RTC of Tagaytay City, Branch 18, a case for the surrender of said titles, docketed as TC-803. The case was subsequently dismissed for being premature as the one year redemption period had not yet expired.

On May 22, 1984, RBO's Corporate Secretary and Acting Manager, Atty. Rodolfo C. Soriano, filed with the RTC of Tagaytay City, an action for the annulment of real estate mortgage, extrajudicial foreclosure of mortgage proceedings, sheriff's

certificate of sale with damages against petitioner, OFI, Cynthia Gonzales, the Sheriff and the Register of Deeds of Tagaytay City, raffled off to Branch 18, and was docketed as Civil Case No. TG-805. However, the case was later suspended due to OFI's pending application for rehabilitation with the Securities and Exchange Commission.

On May 9, 1985, the Central Bank, as petitioner, which was later substituted by respondent Philippine Deposit Insurance Corporation<sup>[5]</sup> (PDIC) filed with the RTC of Olongapo City a petition for assistance in the liquidation of RBO, docketed as Sp. Proc. No. 170-0-85 and was raffled off to Branch 73. Later, upon respondent's motion, Civil Case No. TG-805, *i.e.*, for annulment of mortgage, was consolidated with RBO's liquidation proceedings.

On February 5, 1991, petitioner filed with Branch 79 of the RTC of Quezon City<sup>[6]</sup> a petition for the surrender of the titles of the Tagaytay properties against RBO, which petition was eventually ordered dismissed by the CA after finding that the RTC lacked jurisdiction to try the case, but without prejudice to petitioner's right to file his claim in RBO's liquidation proceedings pending before Branch 73 of the RTC of Olongapo City.

Consequently, on February 16, 1996, petitioner filed in Sp. Proc. No. 170-0-85 a Motion to Admit Claim against RBO's assets as a secured creditor and the winning bidder and/or purchaser of the Tagaytay properties in the foreclosure sale. Respondent filed its Comment/Opposition to the motion. Trial, thereafter, ensued on petitioner's claim.

On June 25, 2001, Acting Presiding Judge Philbert I. Iturralde issued an Order<sup>[7]</sup> declaring petitioner's claim against RBO valid and legitimate, the dispositive portion of which reads:

WHEREFORE, under the foregoing circumstance, the claim of Jerry Ong is hereby declared valid and legitimate and therefore GRANTED. As prayed for, the two (2) parcels of land covered under TCT Nos. 13769 and 13770, with all its improvements be awarded to Claimant Jerry Ong. The titles subject matter of this claim allegedly in possession of the Central Bank or its appointed liquidator, or any person presently in possession of said Transfer Certificate of Title is directed and ordered to immediately surrender the same to the Claimant. Should the same be lost and/or upon proof of its loss the Register of Deeds is ordered to issue in the claimant's name new titles pursuant to the consolidation of property earlier made by the claimant over the property.

SO ORDERED.<sup>[8]</sup>

Respondent filed its motion for reconsideration. In a Resolution<sup>[9]</sup> dated June 27, 2002, Judge Renato J. Dilag reversed the June 25, 2001 Decision. The decretal portion of the Resolution reads:

WHEREFORE, foregoing considered, the Order of this Court dated June 25, 2001 is hereby reconsidered and set aside. The real estate mortgage executed on December 29, 1983 by and between Cynthia Gonzales representing RBO and Jose Ma. Carballo, representing OFI is hereby declared null and void. The Extrajudicial Proceedings conducted in March 1984 and the Sheriff's Certificate of Sale dated March 23, 1984 issued in the name of Jerry Ong are, likewise, declared null and void. And, for failure to substantiate his claim against RBO, Jerry Ong's claim is hereby denied.

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

Petitioner's motion for reconsideration was denied in an Order<sup>[11]</sup> dated May 26, 2003, a copy of which was received by petitioner on June 16, 2003.

On June 17, 2003, petitioner, thru counsel, filed a Notice of Appeal<sup>[12]</sup> which the RTC gave due course in an Order<sup>[13]</sup> dated July 14, 2004, after finding that the appeal had been filed within the reglementary period. The RTC also ordered the elevation of the entire records to the CA for further proceedings.

Respondent sought reconsideration of the Order giving due course to petitioner's appeal as the latter failed to file a record on appeal within the reglementary period; thus, the appeal was not perfected. Petitioner filed his Comment/Opposition to such motion and at the same time attaching the Record on Appeal dated August 25, 2004.

On May 31, 2005, the RTC issued an Order, <sup>[14]</sup> the dispositive portion of which reads:

FOREGOING CONSIDERED, the Order of this Court dated July 14, 2004 is hereby reconsidered and set aside. Consequently, as provided under Rule 41, Sec. 13 of the Revised Rules of Court, the appeal is hereby dismissed for having been taken out of time.

SO ORDERED.

Petitioner's motion for reconsideration was denied in an Order dated December 7, 2005.<sup>[15]</sup>

Petitioner then filed with the CA a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction assailing the RTC Orders dated May 31, 2005 and December 7, 2005 for having been issued with grave abuse of discretion.

After the parties submitted their respective pleadings, the CA issued its assailed Decision on July 31, 2006, dismissing the petition.

In so ruling, the CA found that since Sp. Proc. No. 170-0-85 was for the liquidation of RBO, it was a special proceeding and not an ordinary action; that liquidation

proceedings are considered special proceedings as held in *Pacific Banking Corporation Employees Organization v. Court of Appeals*,<sup>[16]</sup> that since multiple appeals are allowed in proceedings for liquidation of an insolvent corporation, a record on appeal was necessary in petitioner's case for the perfection of his appeal.

The CA found unpersuasive petitioner's plea to consider his failure to submit a record on appeal on time as excusable neglect saying that petitioner was fully aware that Sp. Proc No. 170-0-85 was a petition for liquidation, because he filed his claim as a preferred creditor of RBO, he participated in the trial thereof and filed the notice of appeal under the title of the said liquidation case; that petitioner's feigned ignorance and miscalculation cannot justify an exception to the strict rule on perfection of appeal within the reglementary period; that petitioner filed the record on appeal 426 days after the lapse of the reglementary period, and *certiorari* cannot be a substitute for a lost remedy of appeal. The CA ruled that petitioner's failure to perfect his appeal within the prescribed period rendered the RTC decision final and executory which deprived the appellate court of jurisdiction to alter the final judgment, much less entertain the appeal.

On petitioner's claim that there was a grave abuse of discretion committed by the RTC in giving credence to the testimonies of respondent's witnesses, the CA ruled that such matter was beyond the jurisdictional parameter of a special civil action of *certiorari* as such issue dwelt into questions of facts and evaluation of evidence.

Petitioner's motion for reconsideration was denied in a Resolution dated October 5, 2006.

Hence, the present petition on the following grounds:

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* BASED SOLELY ON TECHNICAL RULES OF PROCEDURE.

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* WITHOUT PASSING UPON THE MERIT OF PETITIONER'S APPEAL.<sup>[17]</sup>

Petitioner reiterates his argument raised before the CA that his counsel's failure to submit a record on appeal on time is an excusable neglect as the failure was due to the serious complications surrounding the case that led her to commit an error of judgment; that petitioner's counsel honestly believed that their claim filed against RBO in the special proceedings and the civil case filed by RBO against petitioner for the annulment of mortgage under Civil Case No. TG-805, which was eventually consolidated with the special proceedings, were ordinary civil actions since they sought the enforcement or protection of a right or prevention or redress of a wrong; thus, a mere notice of appeal would be sufficient to perfect petitioner's appeal. Petitioner argues that we have liberalized in some instances the rule on perfection of appeals and cites *Gregorio v. CA*<sup>[18]</sup> and *Gonzales-Orense v. Court of Appeals*,<sup>[19]</sup> thus, he asks for the same leniency in the interest of substantial justice so as to

give him the chance to ventilate his appeal on the merit.

Petitioner claims that the issue on the admissibility of the testimonies of respondent's witnesses is a question of law as its resolution calls for the application of the law on hearsay evidence and not the evaluation of evidence; that respondent's witnesses came only upon RBO's liquidation process and were not even connected with RBO at the time of the execution of the real estate mortgage among RBO, OFI and petitioner; thus, their testimonies are inadmissible for being hearsay evidence, and a special civil action of *certiorari* is the proper remedy to assail the admission of the same; that it would serve the ends of justice if the CA had taken a second look on the facts and evidence of the case to determine the merit of petitioner's appeal.

In its Comment, respondent avers that while the petition was denominated as a petition for review under Rule 45, the same imputes lack or excess of jurisdiction on the part of the CA in issuing its assailed decision; thus, petitioner availed of the wrong remedy. Petitioner filed his Reply thereto.

We first resolve the issue raised by respondent anent the mode of appeal availed of by petitioner. Petitioner filed a petition for review on *certiorari* assailing the Decision and Resolution of the CA which were final dispositions of the case on the merits, thus, a petition under Rule 45 of the Rules of Court is proper. Rule 45 provides that an appeal by *certiorari* from the judgments or final orders or resolutions of the appellate court is by a verified petition for review on *certiorari*. Contrary to respondent's claim that petitioner in this petition merely alleges that the CA abused its discretion in dismissing his appeal, we find that petitioner also imputes grave error committed by the CA in rendering its assailed decision finding that the appeal was not perfected.

As to the main issues raised by petitioner, we find the same unmeritorious.

Sections 2 (a) and 3 of Rule 41 of the Rules of Court provide:

SEC. 2. *Modes of Appeal* - x x x

(a) *Ordinary appeal*. -- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x x

SEC. 3. *Period of ordinary appeal*. • The appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a