

## SECOND DIVISION

[ G.R. NO. 154334, July 31, 2006 ]

**SPOUSES JEFFREY AND JOSEPHINE KHONGHUN, PETITIONERS,  
VS. UNITED COCONUT PLANTERS BANK,\* RESPONDENT.**

### D E C I S I O N

**CORONA, J.:**

This is an appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure (Rules) which seeks to set aside the decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. No. 65358<sup>[2]</sup> and its resolution<sup>[3]</sup> dismissing the petition for certiorari and prohibition filed by petitioners herein.

In October 1984, petitioner spouses Jeffrey and Josephine Khonghun obtained certain loans from respondent United Coconut Planters Bank (UCPB) ranging from P200,000 to P1,000,000.<sup>[4]</sup> They executed promissory notes which they, however, eventually failed to pay, prompting UCPB to file a case for a sum of money with preliminary attachment<sup>[5]</sup> with the Regional Trial Court (RTC) of Makati City, Branch 41. The case was raffled to Judge Manuel Victorio.

In February 2000 or by the time the complaint was filed, petitioners' loan had already ballooned to P4,428,041.47.

In their answer, petitioners admitted the material allegations in UCPB's complaint. They did not dispute the genuineness and due execution of their promissory notes although they claimed they did not agree to the stipulated interest stated therein.

At the pre-trial conference on February 23, 2001, petitioners and their counsel failed to appear. They had also failed to submit a pre-trial brief. As a result, Judge Victorio issued an order allowing respondent UCPB to present its evidence *ex parte* on February 26, 2001.<sup>[6]</sup>

On that date, respondent bank presented its evidence *ex parte* and, on the same day, Judge Victorio rendered judgment on UCPB's complaint and ordered petitioners to pay their obligations, as well as attorney's fees, to the bank.<sup>[7]</sup>

Petitioners filed a motion for reconsideration (MR) of the RTC order of February 26, 2001, claiming that their non-appearance was occasioned by the interment of the wife of petitioners' counsel two days before the pre-trial and Mr. Khonghun's debilitating health condition at that time.<sup>[8]</sup> Petitioners prayed that they be allowed to present their evidence and cross-examine respondent's witnesses.

The RTC denied petitioners' MR in an order dated April 23, 2001, a copy of which was received by petitioners on May 10, 2001. On May 21, 2001, petitioners filed

their notice of appeal but the trial court denied it for having been filed three days after the lapse of the reglementary period.<sup>[9]</sup>

Via a petition for certiorari under Rule 65 of the Rules, petitioners argued before the CA that Judge Victorio committed grave abuse of discretion when he conducted the trial *ex parte* and later dismissed their notice of appeal. During the pendency of their petition in the CA, petitioners also filed a motion in the RTC seeking reconsideration of its order dismissing their notice of appeal.

The CA dismissed the petition on the following grounds: (1) petitioners resorted to the extraordinary civil action of certiorari instead of an appeal (the period for which had already expired); (2) petitioners were guilty of forum-shopping for simultaneously pursuing two separate remedies, that is, a petition for certiorari in the CA and an MR in the RTC, and (3) the trial court judge correctly conducted the *ex parte* trial for failure of petitioners and their counsel to appear at the scheduled pre-trial and to submit a pre-trial brief.<sup>[10]</sup>

Later, the CA also dismissed petitioners' MR, hence, this appeal.

Petitioners fault the CA in affirming the RTC decision although it violated Rule 18, Section 4<sup>[11]</sup> of the Rules (which excuses litigants from appearing at the pre-trial for valid cause) and deciding respondent's complaint based merely on *ex-parte* evidence.

On the first issue, petitioners insist that the trial court should have accepted the interment of their counsel's wife and Mr. Khonghun's illness as justifiable reasons for their absence at the trial.

We disagree.

What constitutes a valid ground to excuse litigants and their counsels at the pre-trial under Rule 18, Section 4 of the Rules is subject to the sound discretion of a judge.<sup>[12]</sup> Petitioners could not question Judge Victorio's discretion absent any showing that he did so whimsically or capriciously. His decision to allow respondent to present its evidence *ex parte* was prompted by the fact that petitioners and their counsel failed to appear at the pre-trial without informing the court of the reasons for their absence. They did not even file any motion for postponement of the pre-trial. Neither did they send their representatives to apprise the court of their predicament. Worse, they failed to file a pre-trial brief.

Under Rule 18, Sections 5 and 6 of the Rules, Judge Victorio's action was correct. These provisions clearly state:

Section 5. *Effect of failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next receding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. *A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.*

Section 6. *Pre-trial brief.* - The parties shall file with the court and serve