

SECOND DIVISION

[G.R. NO. 160976, June 08, 2005]

**SPOUSES ERNESTO ZARATE AND MA. ROSARIO ZARATE,
PETITIONERS, VS. MAYBANK PHILIPPINES, INC. AND PHILMAY
PROPERTY, INC., RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66321, dated May 22, 2003, as well as the Resolution^[2] dated October 8, 2003 denying the motion for reconsideration thereof.

The Antecedents

The spouses Ernesto and Ma. Rosario R. Zarate obtained a loan of P1,900,000.00 from the PNB Republic Bank (now the Maybank Philippines, Inc.). As security therefor, the spouses Zarate executed a Real Estate Mortgage^[3] dated July 28, 1993 over a parcel of land in Pasig covered by Transfer Certificate of Title No. 23717. Upon the failure of the spouses to pay their loan and its increments totaling P3,170,401.18, the bank had the mortgage extrajudicially foreclosed. The property was eventually sold at public auction where the bank was declared the highest bidder. The Sheriff then executed a Certificate of Sale which was registered with the Office of the Sheriff on November 27, 1996.^[4]

On October 13, 1997, the spouses Zarate received a notice from the bank, informing them that the period to redeem the property was about to expire on November 27, 1997. The bank then requested that the property be redeemed on or before the said date. The redemption price was pegged at for P4,593,752.96, inclusive of interests after foreclosure and exclusive of amounts receivables and interests thereon which amounted to P405,714.13.^[5] On November 7, 1997, the spouses Zarate replied that they had previously remitted P708,950.00 to stay the scheduled sale at public auction. They requested that the bank waive the penalty charges, attorney's fees, miscellaneous expenses and the interests imposed after the auction sale; they, likewise, requested for an extension of the redemption period.^[6] In a Letter^[7] dated February 12, 1998, the spouses Zarate again requested for a 90-day extension to redeem the property. As a sign of good faith, they promised to remit P200,000.00. The bank reiterated its request for the spouses to redeem the property in a Letter dated April 21, 1998. Ma. Rosario Zarate, thereafter, complained to the bank, through a Letter dated May 25, 1998, that their payment of P708,950.00 had not been reflected in their Statement of Account.^[8]

Before the bank could consolidate its title over the property, the spouses Zarate filed a Complaint^[9] for Injunction and Damages with prayer for temporary restraining

order/writ of preliminary injunction against the bank and its real estate subsidiary, Philmay Property, Inc. (PPI). The complaint was filed on October 27, 1998 before the Regional Trial Court (RTC) of Pasig City, Branch 261, and was docketed as Civil Case No. 67089. It contained the following prayer:

WHEREFORE, it is respectfully prayed that upon the filing of the complaint, a temporary restraining order be issued enjoining the defendants from making any attempt to consolidate title over the subject property and if they have already done so, that they be stopped from taking over possession thereof.

Further, after due hearing, for the Honorable Court to issue an order directing the defendants to issue a true and proper accounting of plaintiffs' accountability and to extend the period to redeem the subject property.

Further, after due hearing, for the Honorable Court to issue an order directing the defendants to pay, jointly and severally, the plaintiffs :

1. The amount of not less than PhP100,000.00 as and for moral damages;
2. The amount of not less than PhP50,000.00 as and for exemplary damages;
3. The amount of not less than PhP100,000.00 as and for attorney's fees;
4. The cost of suits

Other reliefs just and equitable in the premises are likewise prayed for.

[10]

The spouses Zarate alleged, *inter alia*, that their failure to redeem the property within the extension period granted by Maybank was due to the latter's failure to include their payment of P708,950.00 via PCIBank Manager's Check No. 33908 dated July 24, 1995. Such payment was not included in the statement of account which the bank furnished them. Moreover, according to the spouses, the interest charged by the bank on their loans exceeded those provided by law.

On October 30, 1998, the trial court received *ex parte* the testimony^[11] of Ma. Rosario Zarate in support of their plea for the issuance of a temporary restraining order. The spouses Zarate offered in evidence the receipt issued by the bank, dated November 18, 1997, and a Certification, of even date, also issued by the bank, acknowledging receipt of P1,000,000.00.^[12] Ma. Rosario Zarate admitted, however, that the bank had returned the amount.^[13] The trial court did not rule on the spouses' offer of documentary evidence, on their plea that they needed time to raise the money to redeem the property.

On November 19, 1998, the defendants filed their Answer^[14] to the complaint, traversing the material allegations thereof and interposing a counterclaim. They maintained that their transactions with the spouses Zarate were above-board, and that contrary to the couples' claim, the P708,950.00 payment was duly reflected on their November 27, 1997 statement of account. They explained that more than half of the P708,950.00 was applied to the outstanding interests and penalties, and what

remained was P223,593.00, the amount reflected on the statement of account opposite the column unpaid interest as of July 24, 1995.^[15] They prayed that the complaint be dismissed, and, by way of counterclaim, asked for the recovery of exemplary damages, attorney's fees, and costs of the suit.^[16]

The issues having been joined, the pre-trial conference was scheduled on January 18, 1999. It was, however, postponed several times due to the parties' attempts to settle the case amicably. Presiding Judge Benjamin V. Pelayo had likewise retired, and it was not until September 28, 1999 that the case was again set for a pre-trial conference by the new Presiding Judge, Agnes Reyes-Carpio.^[17]

On motion of the spouses Zarate, pre-trial was reset to their suggested date, October 26, 1999.^[18] On the said date, however, the spouses again moved for a resetting of the pre-trial conference, on the ground that there was no proof of service of the notice thereof on their counsel. The pre-trial was reset to December 7, 1999, then again to February 7, 2000, and thereafter to March 20, 2000 to enable the parties to settle the case.^[19] Upon the parties' failure to arrive at an amicable settlement, the trial was set on May 22, 2000 for the spouses Zarate to begin adducing their evidence, and their counsel was duly notified in open court of the setting.^[20] However, the said counsel filed a motion for the resetting of the trial on the ground that he had to attend the hearing of another case in the Quezon City RTC. Thus, trial was reset to July 10, 2000. During the said date, however, the spouses Zarate filed, through counsel, a motion for postponement, on the same ground that the latter had another hearing. The trial court again reset the trial to September 11, 2000, during which only the spouses' counsel appeared and asked for another resetting; he apparently found it difficult to get in touch with his clients and was intending to withdraw as their counsel.

The trial court again reset the hearing to October 23, 2000, with a warning that the spouses Zarate's failure to appear on the said date would warrant a dismissal of the case for their failure to prosecute for an unreasonable length of time. The spouses Zarate refused to receive the notices of the scheduled trial from their counsel, prompting the trial court to issue an Order on September 11, 2000 directing the process server to personally serve the said order on them, with the following warning:

Should the plaintiffs still fail to appear on the next scheduled hearing which is hereby set on October 23, 2000 at 8:30 o'clock (*sic*) in the morning, the Court shall have no alternative but to dismiss the case for their failure to prosecute the same.

SO ORDERED.^[21]

A copy of the trial court's September 11, 2000 Order was served on the spouses on September 15, 2000.

During the trial of October 23, 2000, the spouses and their counsel failed to appear. The spouses' nephew, Jovi Zarate, submitted before the trial court a Motion to Cancel the Hearing, as her aunt Ma. Rosario was advised by her doctor to rest. No reason, however, was offered to explain Ernesto Zarate's absence. The trial court granted the motion, and reset the hearing anew to 8:30 a.m. of November 28,

2000. The spouses were duly notified of the setting through their nephew, but again failed to appear for trial on the said date. The trial court forthwith issued an Order dismissing the complaint for lack of interest to prosecute the case. Upon the manifestation of the defendant banks' counsel that the counterclaims would no longer be pursued, the trial court dismissed the same.^[22]

On December 27, 2000, the spouses Zarate filed a motion for the reconsideration of the trial court's Order, which they claimed to have received on December 21, 2000. They alleged that there had been "a mix-up in the schedule of their counsel" and that the trial court's Order setting the case for trial on November 28, 2000 was received by their counsel in the afternoon of even date.^[23] The spouses further alleged that their counsel was also attending trial in Criminal Case No. 116124-H before Branch 163 of the RTC of Pasig.

On February 8, 2001, the trial court issued an Order^[24] denying the motion. The spouses filed another motion for the reconsideration of the November 28, 2000 and February 8, 2001 Orders of the trial court. They further manifested that they were adopting as their evidence-in-chief the evidence presented during the *ex parte* hearing of their plea for a writ of preliminary injunction.

On May 22, 2001, the trial court issued an Order^[25] denying the second motion for reconsideration for being *pro-forma*, declaring that its November 28, 2000 Order had become final and executory. The trial court, likewise, stated that the spouses' adoption of their evidence during the *ex parte* hearing of their application for injunctive relief was impermissible since the defendant banks were not able to cross-examine Ma. Rosario Zarate. The trial court pointed out that this was due to the suspension of the proceedings for the issuance of a writ of preliminary injunction on the spouses' plea for more time to raise money with which to redeem their property.^[26]

On August 28, 2001, the spouses filed a petition for *certiorari* with prayer for preliminary injunction and temporary restraining order before the CA, seeking the nullification of the Orders of the RTC, dated November 28, 2000, February 8, 2001 and May 22, 2001. The spouses relied on the following grounds:

I

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING PETITIONERS' COMPLAINT AND MOTIONS FOR RECONSIDERATION FOR FAILURE TO PROSECUTE FOR AN UNREASONABLE PERIOD OF TIME.

II

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY NOT ORDERING THE CASE TO PROCEED BY DIRECTING RESPONDENT TO CROSS-EXAMINE PETITIONERS' WITNESS.

III

THE COURT A *QUO* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION ON THE GROUND THAT THE SAME IS PRO-FORMA/SECOND MOTION FOR RECONSIDERATION.

[27]

On May 22, 2003, the CA rendered judgment dismissing the petition,[28] holding that the RTC did not commit grave abuse of its discretion in issuing the assailed Orders. The spouses Zarate filed a motion for reconsideration of the said decision, which the appellate court denied.[29]

The petitioners filed the present petition for review on *certiorari*, alleging the following:

I

THE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT AFFIRMED THE REGIONAL TRIAL COURT'S DISMISSAL OF PETITIONERS' COMPLAINT AND MOTIONS FOR RECONSIDERATION, FOR FAILURE TO PROSECUTE FOR AN UNREASONABLE PERIOD OF TIME.

II

THE COURT OF APPEALS COMMITTED AN ERROR IN LAW WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT INSTEAD OF ORDERING THE CASE TO PROCEED BY DIRECTING RESPONDENT TO CROSS-EXAMINE PETITIONERS' WITNESS.

III

THE COURT OF APPEALS COMMITTED AN ERROR IN LAW IN AFFIRMING THE DECISION OF THE TRIAL COURT DENYING PETITIONERS' MOTION FOR RECONSIDERATION ON THE GROUND THAT THE SAME IS PRO-FORMA/SECOND MOTION FOR RECONSIDERATION.[30]

The petitioners insist that their absence during the trial set for 8:30 a.m. of October 23, 2000 and November 28, 2000 were excusable. They aver that the trial court committed grave abuse of discretion amounting to excess of jurisdiction in failing to consider as their evidence-in-chief the evidence presented during the hearing of their plea for the issuance of a writ of preliminary injunction, and to order the respondents to cross examine the petitioner Ma. Rosario Zarate. The petitioners maintain that the CA erred in declaring their second motion for reconsideration was *pro forma*, and that the appellate court should have remanded the case to the RTC for cross-examination of petitioner Ma. Rosario Zarate.

The petition has no merit.

The ruling of the CA that the petitioners failed to establish that the RTC committed grave abuse of discretion in issuing the assailed orders is correct. Grave abuse of discretion means such capricious and whimsical exercise of judgment which is equivalent to excess or lack of jurisdiction. The abuse of discretion must be so