

THIRD DIVISION

[G.R. No. 163988, November 17, 2005]

**VALENTINA A. NUÑEZ, FELIX A. NUÑEZ, FELIXITA A. NUÑEZ,
LEONILO A. NUÑEZ, JR., ELIZA A. NUÑEZ, EMMANUEL A. NUÑEZ
AND DIVINA A. NUÑEZ AS HEIRS OF LEONILO S. NUÑEZ,**
PETITIONERS, VS. GSIS FAMILY BANK (FORMERLY COMSAVINGS
BANK) AND THE COURT OF APPEALS, RESPONDENTS.**

DECISION

CARPIO MORALES, J.:

The facts are not disputed:

Petitioners are the heirs of Leonilo S. Nuñez (Leonilo) who, during his lifetime, obtained three loans from the GSIS Family Bank, formerly ComSavings Bank which in turn was formerly known as Royal Savings and Loan Association (the bank).

The first loan, contracted on April 6, 1976 in the amount of P55,900.00, was secured by a mortgage over a parcel of land covered by TCT NT-139575-A whereon the mortgage was annotated on April 8, 1976.^[1]

The second loan, obtained on July 7, 1976 in the amount of P127,000.00, was secured by mortgage of properties covered by TCT Nos. NT-143002, 143003 and 139575.^[2]

The third loan, obtained also on July 7, 1976 in the amount of P105, 900.00, actually amended the first loan of P55,900.00 to secure which amended loan the same property covered by TCT No. NT-139575-A^[3] was mortgaged. The amended loan, no copy of which forms part of the records, was admitted by the parties during the pre-trial.^[4]

On June 30, 1978, when the three loans were maturing, Leonilo purportedly obtained a "fourth loan" in the amount of P1,539,135.00 to secure which he executed a Real Estate Mortgage antedated June 28, 1978 over properties covered by TCT Nos. NT-145734, 143001, 143004, 143005, 143006, 143007.^[5]

On the maturity of the three loans or on June 30, 1978, Leonilo executed a Promissory Note^[6] in the amount of P1,539,135.00, due and payable on December 27, 1978.

The details of the loans secured by Leonilo including the purported "fourth loan" are shown in the following table:

Loan	Date	Amount	Maturity	Titled
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Contracted				subject of the Real Estate Mortgages
First Loan	April 6, 1976	P 55,900.00	June 30, 1978	NT- 139575-A
Second Loan	July 7, 1976	P 127,000.00	June 30, 1978	NT- 143002; NT- 143003; NT- 139575
Third Loan (amended the first loan)	July 7, 1976	P 105,900.00	June 30, 1978	NT- 139575-A
Fourth Loan	June 30, 1978	P1,539,135.00	December 27, 1978	NT- 145734; NT- 143001; NT- 143004; NT- 143005; NT- 143006; NT- 143007;

More than **nineteen (19) years after Leonilo's June 30, 1978 Promissory Note matured** or on December 11, 1997, the bank undertook to extrajudicially foreclose^[7] the properties covered by TCT Nos. NT-143002, 143003, 139575 and 139575-A which secured the first two loans.

In its petition for extrajudicial foreclosure, the bank alleged that Leonilo violated the terms and conditions of the loans secured by the Real Estate Mortgages since June 30, 1978 when he failed, despite repeated demands, to pay his principal obligations, and interest due thereon from December 27, 1978, up to the time that the petition was filed.^[8]

Acting on the bank's petition for Extra-judicial Foreclosure of Mortgage, the Ex-Officio Sheriff of Gapan, Nueva Ecija issued a Notice of Extra-judicial Sale^[9] setting the sale of the properties involved at public auction on January 9, 1998.

The auction took place as scheduled, with the bank as the highest and only bidder in the amount of P33,026,100.00. A Certificate of Sale^[10] was thus issued in favor of the bank.

On September 1, 1999, on petition of the bank, the mortgage over properties

covered by TCT Nos. 143001 and 143007, two of the six parcels of land which secured the "fourth loan" that matured on December 27, 1978, was extrajudicially foreclosed. At the public auction, the bank was the highest bidder and a Certificate of Sale^[11] dated February 18, 2000 was issued in its name.

Leonilo later filed on June 20, 2000 before the Regional Trial Court (RTC) of Gapan, Nueva Ecija a complaint against the GSIS Family Bank,^[12] docketed as Civil Case No. 2269, for Annulment of Extrajudicial Foreclosure Sale, Reconveyance and Cancellation of Encumbrances.

In his complaint, Leonilo denied securing a "fourth loan" but nevertheless alleged that "for purposes of the action, the same shall be assumed to have been validly secured."

Invoking prescription, he citing Articles 1142^[13] and 1144^[14] of the Civil Code, Leonilo contended that his first three loans and the "fourth loan" matured on June 30, 1978 and December 27, 1978, hence, they had prescribed on June 28, 1988 and December 25, 1988, respectively.^[15] When, on December 11, 1997 and September 1, 1999 then, the bank filed the Petitions for Extrajudicial Foreclosure of Mortgage, Leonilo concluded that it no longer had any right as prescription had set in.

Leonilo invited the attention of the court to the fact that although six titles secured the purported "fourth loan" of P1,539, 135.00, only two, TCT Nos. NT-143001 and NT-143007, were the subject of foreclosure sale on September 1, 1999 and the mortgage was not annotated on the four other mortgaged titles, TCT Nos. NT-143004, 143005, 143006 and 145734.^[16] Moreover, he pointed out that the record^[17] shows that the Real Estate Mortgage dated June 28, 1978 purportedly securing the "fourth loan" was annotated on NT-143001 and NT-143007 subject of the September 1, 1999 foreclosure only on August 31, 1999 or more than 11 years after the prescriptive period to foreclose had set in.^[18]

By Decision dated August 9, 2002, Branch 34 of the Gapan RTC found for Leonilo who died during the pendency of the trial of the case, hence, his substitution by his heirs - herein petitioners, declaring that the bank's cause of action over the loans had prescribed and, therefore, the proceedings for extrajudicial foreclosure of real estate mortgages were null and void.

The bank filed a motion for reconsideration^[19] on September 20, 2002, the last of the 15-day period within which it could interpose an appeal, but it did not comply with the provision of Section 4, Rule 15^[20] of the Rules of Court on notice of hearing, prompting herein petitioners to file a Motion to Strike Out Motion for Reconsideration with Motion for the issuance of a writ of execution.^[21]

The bank filed an Opposition with Motion to Admit^[22] (the Motion for Reconsideration), attributing its failure to incorporate the notice of hearing to inadvertent deletion from its computer file of standard clauses for pleadings the required notice of hearing and to the heavy workload of the handling counsel, Atty. George Garvida.

The trial court denied the bank's Motion for Reconsideration by Order^[23] of November 18, 2002 and accordingly ordered it stricken off the record:

After a serious evaluation of the arguments for/and against the instant Motion for Reconsideration, the Court believes and so-holds that, while it is true that the high Court has set aside technicality in order not to defeat the ends of justice in appropriate cases, it is likewise true that litigations at some point of time must end otherwise, litigation of cases will be endless.

WHEREFORE, given the foregoing, the instant Motion for Reconsideration is hereby DENIED, for failure to comply with Rule 15, Section 4, of the 1997 Rules on Civil Procedures (*sic*).

x x x^[24]

The bank filed a Notice of Appeal^[25] to which petitioners filed a Motion to Dismiss for being filed late,^[26] which motion was granted by the trial court by Order^[27] of February 10, 2003.

The bank thereupon elevated via petition for certiorari^[28] the case before the Court of Appeals (CA) faulting the trial court to have

I. . . . COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE HEREIN ASSAILED ORDER DATED 10 FEBRUARY 2003 CONSIDERING THAT THE TRIAL COURT HAD ALREADY LOST JURISDICTION OF THE CASE IN VIEW OF THE PERFECTION OF THE PETITIONER'S APPEAL ON DECEMBER 11, 2002.

II. . . . COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT DENIED HEREIN PETITIONER'S MOTION FOR RECONSIDERATION IN ITS ORDER DATED 18 NOVEMBER 2002, THERE BEING STRONG AND COMPELLING REASONS TO ADMIT SAID MOTION AND TO CONSIDER THE ERRONEOUS CONCLUSIONS OF FACT AND LAW ON WHICH THE DECISION OF THE TRIAL COURT WAS BASED.^[29]

The bank, which is owned by the Government Service Insurance System, argued that to rigidly and strictly apply the rules of procedure would result to injustice and irreparable damage to the government as it stands to lose a substantial amount if not allowed to recover the proceeds of the loans.^[30]

The appellate court, by February 23, 2004 Decision,^[31] found for the bank. Citing *Labad v. University of Southeastern Philippines*,^[32] it ruled that while the right to appeal is a statutory and not a natural right, it is nevertheless an essential part of the judicial system, hence, courts should be cautious not to deprive a party of the right to appeal; and in the exercise of its equity jurisdiction, the trial court should have given the bank's Notice of Appeal due course to better serve the ends, and prevent a miscarriage of justice.

Petitioners' Motion for Reconsideration having been denied by Resolution^[33] of May 25, 2004, the present Petition for Certiorari under Rule 65 was filed, raising these issues:

1. Whether or not the public respondent committed grave abuse of discretion in reversing the order of the Regional Trial Court denying the notice of appeal and in giving due course to the notice of appeal.
2. Whether the private respondent could still appeal a judgment which has become final and executory.^[34]

At the outset, clarification on petitioners' mode of appeal is in order. Petitioners and counsel confuse their petition as one Petition for Review under Rule 45^[35] with a Petition for Certiorari under Rule 65.^[36] For while they treat it as one for Review on Certiorari, they manifest that it is filed "**pursuant to Rule 65** of the 1997 Rules of Civil Procedure **in relation to Rule 45** of the New Rules of Court."^[37]

In *Ligon v. Court of Appeals*^[38] where the therein petitioner described her petition as "**an appeal under Rule 45 and at the same time as a special civil action of certiorari under Rule 65 of the Rules of Court,**" this Court, in frowning over what it described as a "chimera," reiterated that the remedies of appeal and certiorari are mutually exclusive and not alternative nor successive.^[39]

To be sure, the distinctions between Rules 45 and 65 are far and wide. However, the most apparent is that errors of jurisdiction are best reviewed in a special civil action for certiorari under Rule 65 while errors of judgment can only be corrected by appeal in a petition for review under Rule 45.^[40]

This Court, however, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice may treat a petition for certiorari as having filed under Rule 45, more so if the same was filed within the reglementary period for filing a petition for review.^[41]

The records show that the petition was filed on time both under Rules 45 and 65.^[42] Following *Delsan Transport*, the petition, stripped of allegations of "grave abuse of discretion," actually avers errors of judgment which are the subject of a petition for review.^[43]

This Court finds the petition impressed with merit.

Rule 41 of the 1997 Rules of Civil Procedure which governs appeals from Regional Trial Courts provides:

SEC. 2. Modes of appeal.–

(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