

SECOND DIVISION

[G.R. No. 149224, September 01, 2004]

**MILAGROS G. FLORES, PETITIONER, VS. TERESITA BERCASIO
AND JOVITA CASTILLANO, RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari to set aside the Resolution^[1] of the Court of Appeals dated April 27, 2001 in CA-G.R. SP No. 63887, denying the petitioner's motion for extension of time to file petition for certiorari and dismissing the petition, and the Resolution^[2] dated July 17, 2001, denying the motion for reconsideration thereon.

The Antecedents

Petitioner Milagros G. Flores, 50 years old, was a registered nurse based in New York, United States of America. She owned a parcel of land located at No. 16 Aguila St., Dizon Subdivision, Baguio City, covered by Transfer Certificate of Title (TCT) No. 44901.^[3]

On May 3, 1996, the petitioner executed a Deed of Sale in the United States in which she sold the property to respondents Teresita Bercasio and her sister Jovita Castellano for US\$75,000, with a downpayment of US\$38,000, the balance to be paid in thirty-six (36) monthly installments commencing on July 1, 1996. The respondents executed a deed of real estate mortgage over the property in favor of the petitioner as security for the payment of the balance of the purchase price.^[4] The respondents, thereafter, returned to the Philippines and took possession of the property.

On June 6, 1999, the petitioner and her husband Federico G. Flores filed a Complaint^[5] for Foreclosure of Mortgage and Damages against the respondents before the Regional Trial Court of Baguio City, Branch 7. The case was docketed as Civil Case No. 4410-R. In their complaint, the petitioner and her co-plaintiff alleged that they were the registered owners of the property, and that the respondents failed to pay the installments due thereon. Thus:

7. Defendants violated the terms of the installment payment stipulated in Annex "B" and that of the balance of \$37,000 and the stipulated 10% interest per year they have only paid the plaintiffs US\$8,300.00 as follows: \$500.00 in March 1997, \$5,800.00 in September 1997, \$2,000.00 in September 1997, and refused without just cause to pay the balance.

8. As of June 1, 1999, defendants are indebted to the plaintiffs in the total sum of US\$39,800.00 computed as follows which they have refused to pay without just cause:

a)Principal -----	\$37,000.00
b)Interest: \$37,000 x 10% = \$3,700	
x 3 years -	11,100.00

	\$48,100.00
Less payments -----	8,300.00

	Balance\$39,800.00

plus legal interest on the unpaid installments from their respective due dates.

9. For having been compelled to institute this suit by defendants' refusal, in gross and evident bad faith, to perform their just, valid, and demandable obligation, plaintiffs engaged the services of counsel for a fee of ₱85,000.00 plus ₱1,500.00 per court appearance of their counsel and will spend for litigation in [an] estimated sum of ₱200,000.00 which the defendants should be ordered to pay.^[6]

The petitioner and her husband prayed that, after due proceedings, judgment be rendered in their favor, as follows:

1. [O]rdering the defendants, jointly and severally, to pay unto the Honorable Court within the reglementary period the sum of US\$39,800.00 with legal interest on the unpaid installments on their respective due dates, until the same is fully paid, plus the additional sums of ₱85,000.00 as attorney's fees, plus whatever appearance fees plaintiffs would be paying their counsel at ₱1,500.00 per court appearance, and ₱200,000.00 or which may be proved during the trial as litigation expenses, plus costs of this suit; and
2. [I]n default of such payment, the above-described property and the house and all other improvements existing thereon be ordered sold to pay off the above-mentioned mortgaged debt and its accumulated legal interests, attorney's fees, litigation expenses and costs.

Plaintiffs further pray for such other reliefs as are just and equitable in the premises.^[7]

Refuting the petitioner's allegations, the respondents averred in their answer to the complaint that they had already paid the balance of US\$37,000 and, in fact, even made an overpayment amounting to US\$6,704.^[8] As counterclaim, the respondents sought moral damages, attorney's fees and costs.

At the pre-trial, the petitioner averred that she was the sole registered owner of the

property and amended the complaint by dropping her husband as plaintiff.^[9] Thereafter, trial ensued in due course.

On December 11, 2000, the trial court rendered judgment ordering the dismissal of the case for the petitioner's failure to implead her husband, an indispensable party. The *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, the instant case is hereby ordered DISMISSED on the ground that the plaintiff, Milagros G. Flores, has no legal capacity to bring the action without joining her husband Federico G. Flores.

SO ORDERED.^[10]

The petitioner's counsel received on January 3, 2001 a copy of the trial court's decision and, on January 11, 2001, filed a Notice of Appeal^[11] of the decision to the Court of Appeals. The trial court issued an Order on January 25, 2001 giving due course to the appeal.^[12]

On March 20, 2001, while the case was pending appeal in the CA, the petitioner filed in the same court a motion for leave and extension of time to file petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.^[13] She alleged therein that she made a mistake in filing an ordinary appeal, in lieu of a petition for certiorari, the decision of the court *a quo* being "not appealable." The petitioner prayed for a fifteen-day extension, reckoned from receipt of the CA's resolution granting her leave of court to file the petition, or up to March 31, 2001, whichever came first.^[14]

In the meantime, on April 4, 2001, the CA received the petitioner's petition for certiorari (*ex abundanti cautela*) which the petitioner filed *via* registered mail on March 26, 2001.^[15]

On April 27, 2001, the CA issued a Resolution^[16] denying the petitioner's motion for extension. The petition for certiorari was, likewise, dismissed on the ground that even if the motion for extension of time to file her petition was granted, such extension could not exceed fifteen (15) days, or only up to March 19, 2001. The appellate court ruled that the petition was filed out of time since it was filed only on March 26, 2001.

The petitioner's motion for reconsideration of the resolution was denied by the CA on July 17, 2001.

The petitioner assails the resolution of the CA, contending that:

THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND CONTRAVENED APPLICABLE RULES AND JURISPRUDENCE IN:

1. DENYING PETITIONER'S MOTION FOR LEAVE AND EXTENSION OF TIME TO FILE PETITION FOR CERTIORARI UNDER RULE 65 OF THE