

SECOND DIVISION

[G.R. No. 139067, November 23, 2004]

**SPS. MA. CARMEN L. JAVELLANA AND VICTOR JAVELLANA,
PETITIONERS, VS. HON. PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH 30, MANILA AND BENITO LEGARDA,
RESPONDENTS.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari filed by petitioners spouses Ma. Carmen and Victor Javellana, assailing the Resolution dated April 30, 1999^[1] of the Court of Appeals dismissing their petition for certiorari, docketed as CA-G.R. SP No. 51833, for being filed out of time; and the Resolution dated June 9, 1999^[2] denying petitioners' motion for reconsideration.

The factual background of the case is as follows:

On December 6, 1996, private respondent Benito Legarda filed before the Regional Trial Court of Manila, Branch 30, a complaint for *Accion Publiciana* and sum of money^[3] against petitioners, portions of which read:

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3. On December 11, 1992, defendants MA. CARMEN L. JAVELLANA and VICTOR C. JAVELLANA entered into a Contract To Sell with plaintiff whereby subject to the terms and conditions therein provided, plaintiff agreed to sell to them its property identified as Lot No. 44, Plan 15 with an area of 139.4 square meters situated in the District of Sampaloc, Manila and covered by Transfer Certificate of Title No. 131305 of the Registry of Deeds of Manila in plaintiff's name for the total sum of P836,400.00 which after a down payment of P83,640.00 the balance of P752,760.00 was to be paid within five (5) years by means of 60 equal monthly installments of P19,943.57 each which included the stipulated interest of 20% per annum. The installments were to be paid every 30th of each month beginning February, 1993.

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4. Upon the execution of the Contract To Sell, ANNEX "A", defendants MA. CARMEN L. JAVELLANA and VICTOR C. JAVELLANA were placed in possession of the aforementioned lot.

5. Nevertheless, since February, 1995 defendants spouses have defaulted in the payment of the monthly installments.
6. After the grace period allowed and provided in the Contract To Sell, ANNEX "A", plaintiff exercised its right to cancel the contract by executing a "RESCISSION OF CONTRACT" on October 16, 1996..... Formal notice and copy of the "RESCISSION OF THE CONTRACT," Annex "B", have(sic) duly received by defendants.
7. As defendants have made total payments in the sum of P546,453.18 on the "CONTRACT TO SELL", ANNEX "A", up to its rescission on October 16, 1996, ANNEX "B", defendants spouses are entitled to the refund of the cash surrender value equivalent to fifty percent (50%) of the total payments or the sum of P270,726.59 in accordance with the provisions of Section 3(b) of Republic Act No. 6552 (the MACEDA LAW).
8. Plaintiff is ready to pay to defendants spouses the said cash surrender value in the sum of P270,726.59 immediately after the restoration to plaintiff of the possession of Lot No. 44, Plan 15, District of Sampaloc, Manila.
9. Restoration of possession of the lot to plaintiff should be effected not later than thirty (30) days from the date of service upon defendants spouses of the Honorable Court's judgment---
 - a. directing plaintiff to pay defendant spouses the sum of P270,726.59 representing the cash surrender value of the total payments made by them;
 - b. ordering defendants to vacate forthwith Lot No. 44, Plan 15, District of Sampaloc, Manila and restore possession to plaintiff.^[4]

On March 16, 1998, petitioners filed a motion to dismiss^[5] alleging that the trial court has no jurisdiction over the case. Private respondent filed an opposition thereto^[6] and a reply was filed by petitioners.^[7]

In an Order dated September 30, 1998,^[8] the trial court denied petitioners' motion to dismiss, a copy of which was received by petitioners on November 3, 1998. Petitioners' motion for reconsideration was likewise denied in an Order dated December 28, 1998,^[9] and received by petitioners on January 18, 1999. Subsequently, petitioners filed their *Answer Ad Abundante Cautelam* with Compulsory Counterclaim for damages and attorney's fees.^[10]

Petitioners then filed the subject petition for *certiorari* under Rule 65^[11] with the Court of Appeals raising this issue:

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE REGIONAL TRIAL COURT OF MANILA (BRANCH 30)

HAS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT
FILED BY THE PRIVATE RESPONDENT.

On April 30, 1999, the Court of Appeals issued its assailed Resolution dismissing CA-G.R. SP No. 51833 for being filed out of time. Petitioners' motion for reconsideration was denied in a Resolution dated June 9, 1999.

Hence, the present petition which raises the following issues:

- I. WHETHER OR NOT THE FAILURE OF THE PETITIONERS TO TIMELY FILE THE PETITION FOR CERTIORARI AMOUNTS TO ESTOPPEL DESPITE THE FACT THAT THE ISSUE TO BE RESOLVED INVOLVES THE JURISDICTION OF THE RESPONDENT COURT.
- II. WHETHER OR NOT THE REGIONAL TRIAL COURT OF MANILA (BRANCH 30) HAS JURISDICTION OVER THE SUBJECT MATTER OF THE COMPLAINT FILED BY PRIVATE RESPONDENT.

Petitioners submit that there is a need to reconsider the resolutions of the Court of Appeals since the controversy involves the jurisdiction of the trial court; that rules of procedure should not be applied in a very rigid and technical sense so as not to override substantial justice; that the subject property is a subdivision lot as expressly stipulated in their Contract to Sell; that the dispute between petitioners and respondent involves a subdivision project as defined under Section 2 of P.D. No. 957, hence it is cognizable by the National Housing Authority, now Housing and Land Use Regulatory Board (HLURB),^[12] which has exclusive jurisdiction to regulate the real estate trade and business,^[13] that HLURB has jurisdiction even over complaints instituted by developers against subdivision buyers.

In his Comment, private respondent alleges: The title of the case given by petitioners is misleading since it should be Benito Legarda, Inc. and not Benito Legarda; that nowhere in their petition did petitioners challenge the findings of the Court of Appeals that they filed their petition six days late; that they are estopped from questioning the jurisdiction of the trial court since after their motion to dismiss was denied by the trial court, they filed their (1) Answer *Ad Abundante Cautelam* with Compulsory Counterclaim for damages and attorney's fees; and (2) Pre-trial brief where their counterclaim for damages and attorney's fees were also enumerated; that respondent being the lot owner seeking to enforce the terms and conditions of the Contract To Sell with petitioners is not one of those instances that would fall within the jurisdiction of the HLURB. Petitioners filed their Reply.

We gave due course to the petition and as required, the parties submitted their respective memoranda.

There is no question that at the time petitioners filed CA-G.R. SP No. 51833 on March 19, 1999, the applicable law was Section 4, Rule 65 of the 1997 Rules of Civil Procedure, as amended by the Resolution of July 21, 1998, which provides:

Sec. 4. *Where petition filed.* - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person in the Regional Trial Court exercising jurisdiction over the territorial area as

defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days. (Emphasis ours.)

On the basis thereof, the Court of Appeals found the petition belatedly filed, thus:

Applying the aforequoted provision of the rule, since petitioners received a copy of the Order dated September 30, 1998 on NOVEMBER 3, 1998 and they filed a Motion for Reconsideration thereof on NOVEMBER 9, 1998, six (6) days had elapsed; hence petitioners have a remaining period of FIFTY-FOUR (54) DAYS from receipt of the denial of their Motion for Reconsideration within which to file petition for certiorari with this Court.

They received a copy of the Order dated December 28, 1998, denying their Motion for Reconsideration on January 18, 1999; hence, they have until MARCH 13, 1999 within which to file a petition for certiorari. However, the present petition for certiorari was filed only on MARCH 19, 1999, or six (6) days late.^[14]

However, during the pendency of this case, A.M. No. 00-2-03-SC amended Section 4, Rule 65 which took effect on September 1, 2000, as follows:

Sec. 4. When and where petition filed. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for