

## **EIGHTH DIVISION**

**[ CA-G.R. SP NO. 119351, October 31, 2014 ]**

**DEBRA ANN KLEIPS-ILAGAN, PETITIONER, VS. HON. CEDRICK O. RUIZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY (BRANCH 61), AND EARTH & SHORE LEISURE COMMUNITIES CORPORATION, RESPONDENTS.**

### **DECISION**

**GARCIA-FERNANDEZ, J.:**

This is a petition for certiorari under Rule 65 of the Rules of Court, as amended, seeking to annul and set aside the resolution dated December 23, 2010<sup>[1]</sup> and resolution dated February 23, 2011<sup>[2]</sup> issued by the public respondent judge of the Regional Trial Court of Makati City, Branch 61, in Civil Case No. 10-787.

The factual antecedents are as follows:

On August 10, 2010 private respondent Earth and Shore Leisure Communities Corporation filed a complaint with the RTC Makati City for damages with prayer for temporary restraining order and preliminary injunction<sup>[3]</sup> against petitioner Debra Ann Kleips-Ilagan, seeking to enjoin the latter from meddling with the affairs of private respondent.

On August 25, 2010 petitioner filed a motion for extension of time to file a responsive pleading to the complaint<sup>[4]</sup> from August 25, 2010 to September 9, 2010.

On September 9, 2010 petitioner filed a final motion for additional time to file a responsive pleading to the complaint<sup>[5]</sup>, praying for an additional ten (10) days from September 9, 2010, or until September 19, 2010.

On September 15, 2010, petitioner received from the respondent judge a resolution dated September 3, 2010<sup>[6]</sup> granting the motion for time until September 9, 2010 to file a responsive pleading to the complaint dated August 10, 2010. However, public respondent denied the second motion for additional time to file responsive pleading in a resolution dated September 13, 2010<sup>[7]</sup>. The reason for the denial was based on the non-extendible period of 15 days granted by the public respondent until September 9, 2010 within which to file the responsive pleading.

On October 7, 2010 petitioner filed a motion to admit attached *ad cautelam* answer<sup>[8]</sup>, alleging that said motion should be granted since she was not yet declared in default.

Acting on said motion, public respondent issued a resolution dated December 23, 2010 denying the motion to admit attached *ad cautelam* answer, stating that "the glaring failure of Ms. Ilagan to register her responsive pleading on time can be attributed to the inexcusable negligence of her counsel which now binds and she has [to] suffer the consequences of such negligence."<sup>[9]</sup>

Petitioner moved for to reconsider<sup>[10]</sup> the resolution dated December 23, 2010, but public respondent judge resolved to deny the motion in the resolution dated February 23, 2011<sup>[11]</sup> for lack of merit.

Hence, this petition.

Petitioner alleges that public respondent judge committed grave abuse of discretion when he arbitrarily denied admission of petitioner's answer even if established judicial precedents allow the filing of an answer filed beyond the reglementary period as long as there is no declaration of default.

The petition is impressed with merit.

Record shows that petitioner failed to file her answer within the reglementary period. She may not use the allegedly belated sending<sup>[12]</sup> of the resolution dated September 3, 2010 as an excuse for the failure to file her answer on time. Settled is the rule that motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted the length of time they pray for. Due diligence requires that they should conduct a timely inquiry with the division clerks of court of the action on their motions and the lack of notice thereof will not make them any less accountable for their omission.<sup>[13]</sup> Corollary to the principle that the allowance or denial of a motion for extension of time is addressed to the sound discretion of the court, moreover, lawyers cannot expect that their motions for extension or postponement will be granted as a matter of course.<sup>[14]</sup>

However, record also shows that despite petitioner's failure to file her answer within the period provided, she was not yet declared in default<sup>[15]</sup> at the time she filed the motion to admit *ad cautelam answer* on October 7, 2010<sup>[16]</sup>. In the interest of substantial justice, there is no compelling reason to depart from the principle laid down by the Supreme Court in *Guillerma S. Sablas, et al. vs. Esterlita S. Sablas, et al.*, to quote:

"It is within the sound discretion of the trial court to permit the defendant to file his answer and to be heard on the merits even after the reglementary period for filing the answer expires. The Rules of Court provides for discretion on the part of the trial court not only to extend the time for filing an answer but also to *allow an answer to be filed after the reglementary period*.

Thus, the appellate court erred when it ruled that the trial court had no recourse but to declare petitioner spouses in default when they failed to