ANA YBAÑEZ-HARROM, SUBSTITUTED BY JORGE B. YBAÑEZ, JR., PETITIONER, VS. HON. JUDGE LOIDA S. POSADAS-KAHULUGAN, SPOUSES PROCESO P. MACAPAZ AND ELIZABETH T. MACAPAZ, REPRESENTED B...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the following issuances of public respondent Regional Trial Court, Branch 10, Davao City: 1) Order[2] dated October 27, 2011 which granted private respondents' Motion for Summary Judgment[3] and directed the foreclosure of a portion of TCT No. T-112166 and 2) Order[4] dated May 31, 2012 which denied petitioner's Motion for Reconsideration[5] and Motion for Leave to Admit Amended Complaint.[6]

The pertinent facts are as follows:

On February 21, 1997, private respondents Spouses Proceso and Eliza Macapaz obtained a loan from petitioner Ana Ybañez-Harrom in the amount of P625,000.00 payable within a period of 6 months. As a security for the loan, a Deed of Mortgage[7] (First Deed for brevity) was executed by private respondents over a parcel of land known as Lot No. 1264-C with an area of 56,563 square meters covered by Transfer Certificate of Title (TCT for brevity) No. T-112166.[8] The First Deed also stated that should private respondents fail to pay the loan on its due date, they shall be liable to pay petitioner a penalty in the amount of P25,000.00 per month.

Private respondents however failed to pay the loan within the period agreed upon. Thus, on August 14, 1997, private respondents executed an Amended Deed of Mortgage[9] (Second Deed for brevity) where they secured an additional loan of P175,000.00 from petitioner which is payable within a period of 6 months. The Second Deed stated that the additional loan of P175,000.00 shall be made an integral part of the First Deed, that is, TCT No. T-112166 shall secure the payment of a total loan obligation of P800,000.00. Also, all the terms and conditions stated in the First Deed shall stand except that as a consequence of the execution of the Second Deed, the period of payment of the original loan is extended to 6 months from the execution of the Second Deed or on February 14, 1998.[10]

Again, private respondents failed to make good of their undertaking to pay the P800,000.00 in addition to the P25,000.00 monthly penalty. Thus, on March 10, 1998, private respondents executed an Amendment to an Amended Deed of Mortgage[11] (Third Deed for brevity). The Third Deed stated that in order to avoid foreclosure of TCT No. T-112166, private respondents requested petitioner to extend the "life of the mortgage" to another 6 months, and agreed by way of "compromise settlement" to pay petitioner the total amount of P2,000,000.00 which covers penalties, expenses and attorney's fees' to be paid on or before August 16, 1998. This time however, the property secured is only a 10,000-square meter portion of Lot No. 1264-C covered by the same TCT No. T-112166. The Third Deed in part stated:

> "WHEREFORE, the amended deed of mortgage (referring to the Second Deed) identified as Doc. No. 478,

> Page No. 96, Book No. 94, Series of 1997 of the Notarial Book of Camilo F.Naraval is further amended as amended, the finultimate (sic) paragraph of the deed of mortgage (referring to the First Deed) as well as the amended deed of mortgage shall read now as follows:
>
> 'NOW THEREFORE, for and in consideration of the sum of TWO MILLION PESOS (P2,000,000.00) Philippine Currency, the MORTGAGORS (referring to private respondents) do hereby cede, transfer, convey and relinquish by way of first mortgage a portion of TEN THOUSAND (10,000) SQAURE METERS of the above-described parcel of land in TCT No. T-112166 in favor of the MORTGAGEE (referring to petitioner), her heirs and assigns, free from lien and encumbrances, subject to the following conditions:
>
> - That this amendment to the amended mortgage shall be for a period of SIX (6) MONTHS counted (from) February 6, 1998 until August 16, 1998;
>
> - That upon failure to pay the loan of P2,000,000.00 on its due date (August 16, 1998), the MORTGAGORS agree to the judicial foreclosure of the mortgage;
>
> - That it is a condition of this amendment to the amended deed of mortgage that upon payment of the loan of P2,000,000.00 on or before the due date on August 16, 1998, then this mortgage shall be without further force and effect, otherwise it shall continue to be in full force and effect until the loan is fully paid;
>
> - That this agreement shall amend and supersede the two (2) previous Deed of Mortgage specifically Doc. No. 126, Page No. 26, Book No. 89, Series of 1997 and Doc. No. 478, Page No. 96, Book No, 94, Series of 1997, both entered in the Notarial Book.'" (Emphasis Supplied)

Despite the Third Deed however, private respondents still failed to pay their loan. This prompted petitioner to file a Complaint[12] for Foreclosure of Mortgage, Damages and Attorney's Fees. The case was docketed as Civil Case No. 31,952-07 and heard before public respondent Regional Trial Court, Branch 10, Davao City.

On August 14, 2007, private respondents filed an Answer[13] to the Complaint, to which petitioner filed a Reply[14] on September 20, 2007.

On March 2, 2010, private respondents filed a Motion for Summary Judgment.[15]

On October 27, 2011, public respondent issued the first assailed Order,[16] the dispositive portion of which reads:

> "Upon review of the arguments and the documentary evidence in this case and without any controverting evidence presented, this Court finds that the motion is tenable and GRANTS the same.
>
> ABOVE PREMISES CONSIDERED, a summary judgment is hereby rendered granting relief to the defendants and hereby ordering foreclosure of the subject property covered by TCT No. T-112166. The same shall involve and affect only the portion of 10,000 Square Meters (already adjudicated to defendant Elizabeth T. Macapaz) which is Lot No. 1264-C-1, and not its entire portion of 56,563 SQUARE METERS. Plaintiff who is in possession of the landowner's original copy of the title shall immediately return the same to defendants.
>
> SO ORDERED."[17]

On November 16, 2011, petitioner filed a Motion for Reconsideration[18] of the above Order.

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On January 17, 2012, petitioner filed a Motion[19] for Leave to Admit Amended Complaint with attached Amended Complaint.[20] The Amended Complaint sought, among others, to declare as void and without effect the Third Deed and ordering the foreclosure of the Second Deed covering the entire 56,563-square meter area of TCT No. T-112166.

On May 31, 2012, public respondent issued the second assailed Order[21] which denied petitioner's Motion for Reconsideration[22] and Motion for Leave to Admit Amended Complaint.[23]

Feeling aggrieved, petitioner is now before Us raising the following issues:

> "Public respondent Court committed grave abuse of discretion amounting to lack of jurisdiction when in issuing the Order dated 27 October 2011 granting private respondent's motion for summary judgment, public respondent court failed to consider that on its face, the 2nd Amended Mortgage dated March 10, 1998 the validity thereof was subject to the fulfillment of a condition precedent/resolutory condition for the payment of Php 2Million on August 16, 1998 which mortgagors Sps. Macapaz failed to pay;
>
> Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction when in its Order dated May 31, 2012, (denying petitioner's motion for reconsideration) respondent court failed to resolve the issue that the subject 2[nd] Amended Mortgage was null and void for being contrary to the provisions on contracts (including fraud) and human relations on unjust enrichment;
>
> Further, public respondent court failed to consider that in view of the invalidity of the 2[nd] Amended Mortgage dated March 10, 1998, it is the 1st Amended Mortgage dated August 14, 1997 which governs the rights and obligations of the parties and the mortgage which should be foreclosed;
>
> Respondent Court committed reversible error when in denying petitioner's motion to admit the amended complaint as it deprived petitioner of ventilating claims against private respondents not existing when the original complaint was filed."[24]

The Petition is bereft of merit.

First, as to procedure.

It bears stressing that the first assailed Order dated October 29, 2011 is a final order, not an interlocutory one. The difference between a final order or judgment and an interlocutory order is well established as discussed in the case of Jose v. Javellana:[25]

> "The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.
>
> And, secondly, whether an order is final or interlocutory determines whether appeal is the correct remedy or not. A final order is appealable, to accord with the final judgment rule enunciated in Section 1, Rule 41 of the Rules of Court to the effect that 'appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable;' but the remedy from an interlocutory one is not an appeal but a special civil action for certiorari. Xxx" (Emphasis Supplied)

Here, the first assailed Order dated October 27, 2011 leaves nothing more to be done by public respondent, hence it is a final order.[26] As public respondent correctly pointed out,[27] the said Order is a disposition on the merit

of the case; it already put an end to the particular matter involved therein. This being the case, the proper remedy to challenge such Order is via ordinary appeal pursuant to Section 2 (a),[28] Rule 41 of the Rules of Court, not the present special civil action for certiorari. Indeed, as ruled in Madrigal Transport, Inc. v Lapanday Holdings Corporation,[29] where appeal is available to the aggrieved party, certiorari will not be entertained even if the ground therefore is grave abuse of discretion. For having adopted an erroneous remedy therefore, this Petition should be dismissed.

Even if We consider the present Petition for Certiorari as the proper remedy, still, We cannot sustain petitioner's asseveration that public respondent committed grave abuse of discretion in denying her Motion for Leave to Admit Amended Complaint, along with her Motion for Reconsideration, in the second assailed Order dated May 31, 2012.[30]

For one, public respondent acted within her jurisdiction in denying petitioner's Motion for Reconsideration. The very purpose of a motion for reconsideration is to point out the findings and conclusions of public respondent which, in petitioner's view, are not supported by law or evidence.[31] Now, with public respondent's denial of petitioner's Motion for Reconsideration, it follows that her Motion for Leave should be denied for being rendered moot.

For another, it was too late in the day for petitioner to amend her Complaint. Notably, public respondent issued its first assailed Order on October 27, 2011 and the Motion for Leave was filed only on January 27, 2012. Clearly, the Motion for Leave is intended to delay the proceedings below. It was only after petitioner received the first assailed Order, which is a disposition of the case against her, that she sought to amend her Complaint. This cannot be allowed without violating Section 3, Rule 10 of the Rules of Court which provides:

> "Section 3. Amendments by leave of court.—Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard." (Emphasis Supplied)

With the foregoing, We find no grave abuse of discretion on the part of public respondent in denying petitioner's Motion for Leave. Grave abuse of discretion is defined as "xxx capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility,"32 which was not shown in the Petition to have been committed by public respondent here.

Granting even that petitioner availed of the proper remedy, which is an ordinary appeal under Section 2 (a),[33] Rule 41 of the Rules of Court, the same would likewise fail.

Petitioner claims that the Third Deed is a conditional instrument, being subject to a condition which is the payment of the loan obligation of P2,000,000.00. Hence, the validity of the Third Deed is subject to the fulfillment of such obligation. Consequently, the failure of private respondents to pay petitioner renders the Third Deed void for lack of consideration. It follows therefore that it is the Second Deed which should govern the rights and obligations of the parties and the mortgage which should be foreclosed.[34]

We do not agree.

We see the reason why petitioner insists on the foreclosure of the Second Deed and not on the Third Deed. The Second Deed covers the entire area of TCT No. T-112166 which is 56,563 square meters unlike the Third Deed

which only covers 10,000-square meter portion of TCT No. T-112166. Regrettably for petitioner however, she cannot choose which deed of mortgage should govern her relationship with private respondents.

It is worthy to stress that the Third Deed reflected the latest intention of petitioner and private respondents as shown by their express stipulation therein that the Third Deed "xxx shall amend and supersede the two (2) previous Deed(s) of Mortgage xxx". Undoubtedly thus, the parties intended the Third Deed to prevail over the two previous Deeds. Verily, the rule is basic that a contract is the law between the parties and obligations arising therefrom have the force of law between them.[35] Moreover, petitioner voluntarily entered into and signed the Third Deed, she cannot therefore choose to be relieved of the effects thereof simply because the same turned out to be unfavorable to her. The case of Norton Resources and Development Corporation v. All Asia Bank Corporation36 is instructive:

> "The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not." (Emphasis Supplied)

Also in Rivera v. Solidbank Corporation:[37]

> "The well-entrenched doctrine is that the law does not relieve a party from the effects of an unwise, foolish or disastrous contract, entered into with full awareness of what he was doing and entered into and carried out in good faith. Such a contract will not be discarded even if there was a mistake of law or fact. Courts have no jurisdiction to look into the wisdom of the contract entered into by and between the parties or to render a decision different therefrom. They have no power to relieve parties from obligation voluntarily assailed, simply because their contracts turned out to be disastrous deals." (Emphasis Supplied)

Furthermore, there is no truth in petitioner's contention that the Third Deed is void for lack of consideration. This is because the consideration in the Third Deed is the loaned amount itself which is P2,000,000.00, not the actual payment thereof as petitioner claimed.[38]

With the foregoing pronouncement, We find it unnecessary to discuss the other matters raised by petitioner.

WHEREFORE, the Petition for Certiorari is hereby DENIED. The assailed Orders dated October 27, 2011 and May 31, 2012 of public respondent Regional Trial Court, Branch 10, Davao City, are AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Camello, J., Ch., and Inting, JJ., concur.

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[1] Rollo, pp. 2-24

[2] Rollo, pp. 25-26

[3] Rollo, pp. 91-99

[4] Rollo, pp. 54-55

[5] Rollo, pp. 27-30

[6] Rollo, pp. 112-113

[7] Rollo, pp. 56-57

[8] Rollo, p. 66

[9] Rollo, pp. 58-59

[10] Rollo, p. 60

[11] Rollo, pp. 60-61

[12] Rollo, pp. 63-65

[13] Rollo, pp. 76-85

[14] Rollo, pp. 86-90

[15] Rollo, pp. 91-99

[16] Rollo, pp. 25-26

[17] Rollo, pp. 25-26

[18] Rollo, pp. 27-30

[19] Rollo, pp. 112-113

[20] Rollo, pp. 114-125

[21] Rollo, pp. 54-55

[22] Rollo, pp. 27-30

[23] Rollo, pp. 112-113

[24] Rollo, pp. 13-14

[25] G.R. No. 158239, January 25, 2012

[26] Rules of Court, Rule 41, Section 1. Subject of appeal.—An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

Xxx xxx xxx

[27] Rollo, p. 55

[28] Rules of Court, Rule 41, Section 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 thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record -on appeal shall be filed and served in like manner.
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> Xxx xxx xxx

[29] G.R. No. 156067, August 11, 2004

[30] Rollo, p. 181

[31] Continental Cement Corporation v. Court of Appeals, G.R. No. 88586, April 27, 1990

[32] Ganaden v. Court of Appeals, G.R. Nos. 170500 & 170510-11, June 1, 2011

[33] Rules of Court, Rule 41, Section 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 thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record -on appeal shall be filed and served in like manner.
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> Xxx xxx xxx

[34] Rollo, pp. 14-16

[35] Morla v. Belmonte, G.R. No. 171146, December 7, 2011

[36] G.R. No. 162523, November 25, 2009

[37] G.R. No. 163269, April 19, 2006

[38] Rollo, p. 17

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