

**MERCATOR FINANCE CORPORATION, PLAINTIFF-APPELLEE, VS.
GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),
DEFENDANT-APPELLANT.**

Ponente: CRUZ, J.

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CRUZ, J.:

Before the Regional Trial Court of Pasay City (Branch 117) was an action for specific performance and damages filed by Mercator Finance Corporation (or “appellee”) against the Government Service Insurance System (or “appellant”) for the surrender of the owner's duplicate of Condominium Certificate of Title (or “CCT”) No. 496 in the latter's name covering a condominium unit at Chanelay Towers (formerly Kanlaon Towers), designated as Unit No. 314 (or “Unit 314”), with an area of 78 square meters and located at Roxas Boulevard, Pasay City.

It appears that on May 8, 1984, RELCOM Development Corporation (or “RELCOM”) obtained a loan from appellee in the amount of P800,000.00 secured by a real estate mortgage over Unit 314. Because of RELCOM's default, appellee caused the extrajudicial foreclosure of the mortgage on May 26, 1987. Being the successful bidder, appellee was issued a certificate of sale on November 23, 1987.

Subsequently, appellee repeatedly asked appellant for the owner's duplicate of CCT No. 496 in order that the aforesaid mortgage and certificate of sale could be registered. As its demands were ignored, appellee filed the abovementioned action.

In answer, appellant averred that the complaint states no cause of action because it has no privity of contract with appellee; that RELCOM is not the owner of Unit 314 and, therefore, may not mortgage the same; and that, consequently, the mortgage in question and foreclosure thereof are null and void.

In reply, appellee asserted that RELCOM's ownership of Unit 314 and validity of the mortgage and foreclosure proceedings in question were recognized by appellant per (i) its Certification dated December 8, 1997, and (ii) its letter to the president of Chanelay Corporation (or “Chanelay”; a corporation with whom appellant allegedly entered into a joint venture agreement for the renovation of Kanlaon Tower II) dated December 10, 1997 acknowledging the validity of the extrajudicial foreclosure and instructing Chanelay to deliver to appellee the keys to, and to allow the latter to take over, said Unit. Appellee further pointed out that appellant billed RELCOM for telephone and electric bills and association dues for Unit 314; and that its purchase of said Unit gives it a cause of action against appellant.

Issues having been joined, the case was set for pre-trial for several times. However, appellant was declared in default while appellee was allowed to present its evidence ex-parte for three times due to non-appearance at the scheduled pre-trial pursuant to the orders dated October 7, 2000, February 12, 2001 and August 6, 2001.

The first two orders were set aside upon motion of appellant (orders dated October 31, 2000 and March 5, 2001). However, the lower court denied appellant's motion to set aside the third order per order dated August 16, 2001. In that motion, appellant's lawyer, Atty. Mario I. Molina, alleged that he belatedly arrived in court for the pre-trial

of August 6, 2001 on account of a vehicular accident in Balic-Balic, Manila. The reason for the denial of the motion was explained in the order dated August 16, 2001, which pertinently reads:

“Considering the track record of Atty. Molino (sic) as shown above, the Court takes his excuse for being absent during the August 6, 2001 pre-trial with a grain of salt. This Court has enough of Atty. Molino's (sic) inefficiency, and defendant must suffer for the inadequacy of its counsel.”

Appellant filed a motion for reconsideration of the order dated August 16, 2001 but it met the same fate in an order dated September 19, 2001.

On the basis of the evidence adduced by appellee, the trial court rendered a decision dated November 19, 2001, the decretal portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the (appellee) and against the (appellant) and ordering the latter to –

- a) deliver to the (appellee) the Condominium Certificate of Title No. 496;
- b) pay the (appellee) the amount of Two Hundred Thousand (P200,000.00) Pesos as exemplary damages;
- c) pay the (appellee) the amount of Fifty Thousand (P50,000.00) Pesos as and for attorney's fees; and
- d) pay the cost of suit.

SO ORDERED.”

Appellant filed a motion for reconsideration but it was denied pursuant to the order dated March 4, 2002.

Appealing the decision, appellant imputes errors to the trial court -

- “IN NOT DECLARING THAT THE MORTGAGE CONTRACT RELIED UPON BY (APPELLEE) AS THE ROOT OF ITS TITLE OVER THE MORTGAGED CONDOMINIUM UNIT IS NULL AND VOID BECAUSE THE MORTGAGOR IS NOT THE OWNER THEREOF”;
- “IN NOT DISMISSING THE INSTANT SUIT ON THE GROUND THAT THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION INASMUCH AS ON THE VERY FACE OF THE COMPLAINT THERE IS NO PRIVACY OF CONTRACT BETWEEN (APPELLEE) AND (APPELLANT)”;
- “IN GIVING CREDENCE TO THE SO-CALLED CERTIFICATION WHEREIN GSIS SUPPOSEDLY ACKNOWLEDGED AND RECOGNIZED RELCOM'S RIGHT OVER THE SUBJECT UNIT CONSIDERING THAT THE SAME HAS NOT BEEN PROPERLY AUTHENTICATED, AND THE AUTHORITY OF THE SIGNATORY THEREOF WAS NOT PROPERLY ESTABLISHED”; and
- “GIVEN THE PALPABLE STRENGTH AND MERIT OF (APPELLANT'S) CASE THEREFORE, IT IS PATENTLY WHIMSICAL AND CAPRICIOUS, BORDERING ON A GRAVE ABUSE OF DISCRETION, FOR THE TRIAL COURT TO REFUSE TO LIFT THE ASSAILED ORDERS OF DEFAULT AND RENDER THE APPEALED DEFAULT JUDGMENT DESPITE THE FACT THAT (APPELLANT'S) COUNSEL WAS ONLY FIVE (5) MINUTES LATE FOR PRE-TRIAL”.

We now resolve.

Appellant maintains that RELCOM was not the owner of Unit 314 and, therefore, the mortgage and foreclosure proceedings in question are void ab initio in accordance with Art. 2085(2) of the Civil Code.

There is no dispute that Unit 314 is registered in the name of appellant under CCT No. 496 which was issued on

July 9, 1991. Nevertheless, appellee claims ownership of said Unit on the theory that it was the successful bidder in the extrajudicial foreclosure of the mortgage in question.

However, the documentary evidence presented by appellee does not disclose how RELCOM acquired Unit 314. These are the (i) Deed of Absolute Sale dated April 23, 1975 (Exhs. “B” and “B-1”) executed by Kanlaon Broadcasting System (or “Kanlaon”) conveying Unit 123 to Claudio B. Altura (or “Altura”); (ii) Affidavit of Adverse Interest dated October 29, 1984 (Exhs. “C” and “C-1”) executed by Altura stating that he earlier executed a deed of assignment of Unit 123 in favor of Technosphere Consultants Group, Inc. (or “Technosphere”) which was misplaced and that, instead of another deed of assignment, he was executing said Affidavit by way of renouncing any and all claims in Unit 123; and (iii) Deed of Assignment dated January 2, 1976 (Exhs. “D” and “D-1”) executed by Technosphere in favor of RELCOM over Unit 123.

As shown above, the subject of the abovementioned deeds is Unit 123. But it does not appear that Units 123 and 314 are one and the same.

Curiously, appellee has not shown the nexus between appellant and Kanlaon as would prove the authority of the latter to sell Unit 314 (assuming it is the same as Unit 123) either in its own right or in behalf of appellant. In other words, it does not appear that appellant had been divested of ownership of Unit 314.

Nevertheless, appellee asserts that appellant is estopped from denying its ownership of Unit 314 on the strength of the (i) Certification dated December 8, 1997 (Exh. “L”) allegedly signed by appellant's Officer-in-Charge, Remedios Y. Perez (or “Ms. Perez”), recognizing RELCOM’s ownership thereof; (ii) letter dated December 10, 1997 (Exh. “M”), also purportedly signed by Ms. Perez, requesting the president of Chanelay to allow appellee to take over Unit 314; and (iii) Official Receipt No. 0808 dated January 16, 1996 (Exh. “N”) in the sum of P30,261.91 in payment of monthly dues.

However, the aforesaid Certification, letter and Official Receipt, all private documents, were not authenticated. Appellee did not present a witness who had seen Ms. Perez signing the Certification and letter and another who saw the signing of the Official Receipt or “has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person” (Sec. 22, Rule 132, Revised Rules of Court). Neither did appellee present a handwriting expert who made a comparison of those documents “with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge”. (id.)

On the other hand, for non-appearance at the pre-trial set on August 6, 2001 despite notice, appellant was declared in default and appellee was allowed to present its evidence ex-parte.

Non-appearance of a defendant at a pre-trial is not a ground for declaring him in default. Thus, Sec. 5, Rule 18 of the 1997 Rules on Civil Procedure, provides:

“SEC. 5. Effect of failure to appear. x x x A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.”

Nevertheless, pursuant to Sec. 5, Rule 18, id., the lower court properly allowed appellee to present its evidence ex-parte due to appellant's non-appearance at the pre-trial (order dated August 6, 2001). Appellant filed a motion for reconsideration of the order dated August 6, 2001. It was opposed by appellee on the ground that “(t)he excuse given by the (appellant) in seeking the reconsideration of the third Order of Default was too flimsy to be given credence. (Appellant’s) allegation of a purported vehicular accident should have been duly substantiated by a police report, otherwise, such assertion was merely hearsay and self-serving, devoid of any evidentiary value”. We agree with appellee.

The cited vehicular accident is a gratuitous allegation and can not be considered “accident” within the purview of Rules 37 and 38, id., as would excuse the absence of appellant's lawyer at the pre-trial. In any event, no explanation was given for appellant's own absence at the pre-trial.

Given the negligence of both parties, i.e., deficiency in appellee's evidence and appellant's unjustified absence at the pre-trial, this Court is confronted with a situation where a party may have to bear the consequences of the negligence of counsel, although the other party is not entirely blameless.

Dismissal of the appeal would mean affirmance of the appealed judgment even as appellee has not substantiated the complaint. Furthermore, the answer of appellant pleads valid and meritorious defenses, among which is that Unit 314 belongs to it per CCT No. 496.

On the other hand, reversal of the appealed judgment would result in the dismissal of the complaint despite appellant's failure to demonstrate error in the trial court's order authorizing appellee to present its evidence ex-parte and its refusal to reconsider said order.

The Court, in searching for truth, must strike a balance which addresses the conflicting claims of the parties but leaving them practically unscathed in order that they can wage a legal battle where merits of the case, rather than technicalities, shall be the lodestar. This objective can only be realized by setting aside the proceedings before the court a quo and remanding this case to it for new proceedings. Indeed, the higher interests of justice and equity demand that the parties be excused from the negligence or mistakes of counsel (*De Guzman vs. Sandiganbayan*, 256 SCRA 171).

In fine, the ends of substantial justice would be subserved if the case would be remanded to the trial court in order to afford the parties full opportunity to adduce their respective evidence.

WHEREFORE, the appealed decision of the Regional Trial Court of Pasay City (Branch 117), as well as the orders dated August 6 and 16, 2001 and the reception of evidence conducted pursuant thereto, are VACATED and SET ASIDE and the action REVERTED to the pre-trial stage. Let the case be remanded to that court for pre-trial and other proceedings.

SO ORDERED.

Reyes, Jr., and Lanzas, JJ., concur.

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