

**MA. THERESA COMMERCIAL, INC., AS REPRESENTED BY ITS
PRESIDENT, JOSE LIM ONG, AND JOSE LIM ONG, AS SURETY,
PETITIONERS, VS. HON. OFELIA L. CALO, AS PRESIDING JUDGE OF
THE RTC-BRA...**

Ponente: BARZA, J.

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BARZA, J.:

Before this Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, filed by petitioners Ma. Theresa Commercial, Inc., as represented by its president and surety, Jose Lim Ong (hereinafter collectively referred to as “petitioners”) seeking to annul and set aside the Order[2] dated October 29, 2012, rendered by herein public respondent Hon. Ofelia L. Calo, presiding judge of the Regional Trial Court of Mandaluyong City, Branch 211, and her Order[3] dated July 17, 2013, denying the Motion for Reconsideration thereof, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE FACTS

The present case stemmed from a complaint for a sum of money filed against petitioners by herein private respondent Banco De Oro Universal Bank, Inc. (BDO), on June 9, 2005 which it revised by filing an Amended Complaint with prayer for the issuance of a temporary restraining order on August 17, 2005. The said case was docketed as Civil Case No. MC08-2753 (Civil Case MC08-2753) and raffled to Branch 211 of the Regional Trial Court of Mandaluyong City (RTC), presided by herein public respondent Hon. Judge Ofelia L. Calo (public respondent).

The proceedings in the said case show that the RTC granted BDO's Motion to Allow Plaintiff to Cause Service of Alias Summons by Publication on May 19, 2010.

On May 28, 2010, the Clerk of Court of the RTC issued the Alias Summons by Publication including the order directing the publication of summons. Thereafter, BDO caused the publication of the summons in a newspaper of general circulation.

Instead of filing their Answer, petitioners filed a Motion to Dismiss before the RTC questioning the latter court's jurisdiction. The said motion was denied by the RTC in her Order dated April 12, 2011. Petitioners then filed a motion for reconsideration assailing the said Order but the same was denied by the RTC in her Order dated July 11, 2011.

Petitioners then filed a Petition for Certiorari[4] dated August 1, 2011, before the Court of Appeals wherein they claimed public respondent committed grave abuse of discretion in issuing the RTC's Orders dated April 12, 2011 and July 11, 2011, premised on the ground that BDO's Ex- Parte Motion to allow service of summons by publication was allegedly fatally defective.

On April 23, 2012, BDO filed a motion to declare petitioners in default due to their failure to file an answer to the

complaint it filed way back in 2005.

Petitioners finally filed their Answer [5] on July 13, 2012 before the RTC. In the said pleading, petitioners explained the late filing of their Answer because of the pendency of their Petition for Certiorari they filed before the Court of Appeals.

BDO then filed before the RTC a motion to expunge from the records the Answer filed by petitioners.

In her presently assailed Order dated October 29, 2012, public respondent granted BDO's motion and declared petitioners in default for failing to file their answer within the required reglementary period. Public respondent also ordered the Answer filed by petitioners to be expunged from the records of Civil Case MC08-2753. The dispositive portion of the said order states, as follows:

“WHEREFORE, pursuant to Section 3, Rule 9 of the Rules of Court, defendants Ma. Theresa Commercial, Inc., as represented by its President Jose Lim Ong, and Jose Lim Ong as surety are declared in default for failing to file their Answer within the reglementary period. Consequently, plaintiff BDO is allowed to present its evidence ex parte before the Branch Clerk of Court.

Further, defendants' Manifestation and Answer is ordered expunged from the records of this case.

SO ORDERED.”[6]

Petitioners sought for a reconsideration[7] of the above-mentioned decision but the same was denied by public respondent in the Order dated July 17, 2013.

Hence, the present petition.

ISSUES

Petitioners raise the following grounds for their petition to be granted, to wit:

I

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN NOT ADMITTING THE PETITIONERS' ANSWER AND DECLARING THE PETITIONER (sic) IN DEFAULT THUS ALLOWING THE PRIVATE RESPONDENTS (sic) TO PRESENT ITS EVIDENCE EX-PARTE.

II

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN DENYING THE MOTION FOR RECONSIDERATION OF THE PETITIONER (sic).[8]

RULING OF THE COURT

Nature of a Special Civil

Action for Certiorari

A petition for certiorari under Rule 65 of the Rules of Court, being an extraordinary remedy, is issued only under closely defined grounds and procedures.[9] It is only proper if a tribunal, board or officer exercising judicial or quasi-judicial functions has been found to have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law available to the petitioner.[10] The writ can be used only for the above-mentioned purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.[11]

As held by the Supreme Court in *Reyes v. COMELEC*: [12]

“A petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist. ‘Grave abuse of discretion,’ under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.”

It must be shown in the petition that the public respondent patently and grossly abused his discretion and that such abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law. In other words, the public respondent must be shown to have exercised his power arbitrarily and despotically by reason of passion or hostility.[13] Otherwise, the petition for certiorari will be dismissed as the same is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.[14]

In this case, petitioners ascribe grave abuse of discretion on the part of public respondent in declaring them to be in default. They contend that an order of default will allow BDO to present its evidence ex-parte in Civil Case No. MC08-2753 and thereafter a judgment of default to be rendered. The policy of the law, however, according to petitioners, is to have every litigant's case be decided on the merits as much as possible and an order declaring them in default will prevent them from participating in the case and presenting their side of the story. The administration of justice would, therefore, be better served, according to petitioners, if they will be allowed to participate in Civil Case No. MC08-2753. They also point out that a substantial amount is involved in the said case and that they are in the verge of losing all their properties. Consequently, they claim there is justification for the relaxation of the rules in the present case. Lastly, they highlight the fact that although they were late in the filing of their Answer, public respondent nevertheless has not yet declared them to be in default when they filed the said pleading. Citing the case of *Spouses Ampeloquio v. Court of Appeals*,^[15] they claim it is within the discretion of the trial court to permit the filing of an Answer even beyond the reglementary period provided (a) there is justification for the belated action and that (b) there is no showing that the defendant intended to delay the case.

We are not persuaded.

Petitioners filed their Answer more than six years from the filing of the complaint it was intended for

A perusal of the allegations by petitioners shows that their petition rests solely on their plea for the liberal application of the rules of procedure.

Based on the record, petitioners filed their Answer only on July 13, 2012, more than 6 years from the filing of BDO's Amended Complaint on August 17, 2005. This is clearly beyond the reglementary period prescribed under Section 1 of Rule 11 of the Rules of Court which requires a defendant to file his answer to the complaint within 15 days after service of summons unless a different period is prescribed by the court.^[16] While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Pursuant thereto, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.^[17]

Here, there are no persuasive reasons to justify a relaxation of the rules.

The filing of petitioners'
Petition for Certiorari did
not interrupt the
proceedings before the
court a quo

In trying to justify the late filing of their Answer, petitioners argue that they deferred the submission of their Answer as they awaited the Court of Appeals' resolution on their Petition for Certiorari which they filed on August 1, 2011, assailing the Orders of the RTC dated April 12, 2011 and July 11, 2011.

Again, We are not persuaded.

Section 65 of the Rules of Court, however, is clear in stating that a petition for certiorari shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.[18] This was explained by the Supreme Court in the case of *Juliano-Llave v. Republic*[19] when it held:

“Estrellita invokes *Judge Macias v. Macias* to justify the suspension of the period to file an answer and of the proceedings in the trial court until her petition for certiorari questioning the validity of the denial of her Motion to Dismiss has been decided by this Court. In said case, we affirmed the following reasoning of the CA which, apparently, is Estrellita’s basis for her argument, to wit:

However, she opted to file, on April 10, 2001, a ‘Motion to Dismiss,’ instead of filing an Answer to the complaint. The filing of said motion suspended the period for her to file her Answer to the complaint. Until said motion is resolved by the Respondent Court with finality, it behooved the Respondent Court to suspend the hearings of the case on the merits. The Respondent Court, on April 19, 2001, issued its Order denying the ‘Motion to Dismiss’ of the Petitioner. Under Section 6, Rule 16 of the 1997 Rules of Civil Procedure [now Section 4], the Petitioner had the balance of the period provided for in Rule 11 of the said Rules but in no case less than five (5) days computed from service on her of the aforesaid Order of the Respondent Court within which to file her Answer to the complaint: x x x (Emphasis supplied.)

x x x

Estrellita argues that the trial court prematurely issued its judgment, as it should have waited first for the resolution of her Motion to Dismiss before the CA and, subsequently, before this Court. However, in upholding the RTC, the CA correctly ruled that the pendency of a petition for certiorari does not suspend the proceedings before the trial court. 'An application for certiorari is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of.' Rule 65 of the Rules of Court is explicit in stating that '[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.' In fact, the trial court respected the CA’s temporary restraining order and only after the CA rendered judgment did the RTC again require Estrellita to present her evidence.”

In this case, no restraining order was issued by the Court of Appeals in petitioners' petition for certiorari.

Petitioners' other contention that being declared in default will allow BDO to present its evidence ex-parte in Civil Case No. MC08-2753 and thereafter a judgment of default be rendered against them is also unfounded.

In *Gajudo v. Traders Royal Bank*,[20] the Supreme Court explained:

“The mere fact that a defendant is declared in default does not automatically result in the grant of the prayers of the plaintiff. To win, the latter must still present the same quantum of evidence that would be required if the defendant were still present. A party that defaults is not deprived of its rights, except the right to be heard and

to present evidence to the trial court. If the evidence presented does not support a judgment for the plaintiff, the complaint should be dismissed, even if the defendant may not have been heard or allowed to present any countervailing evidence.”

Finally, as We have explained above, grave abuse of discretion is characterized as the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power. Inasmuch as there are valid grounds for the public respondent to withhold from petitioners the leniency they pray for, We cannot hold that the latter gravely abused her discretion in issuing its presently assailed orders.

WHEREFORE, the foregoing considered, the instant petition is hereby DENIED. The Orders of public respondent, Judge Ofelia L. Calo, dated October 29, 2012 and July 17, 2013, in Civil Case MC08-2753, are hereby AFFIRMED.

SO ORDERED.

Carandang, R. D., Chairperson and Reyes-Carpio, A., JJ., concur.

[1] Rollo, pp. 3-19.

[2] Rollo, pp. 27-33.

[3] Rollo, pp. 20-26.

[4] Rollo, pp. 75-94.

[5] Rollo, pp. 62-74.

[6] Rollo, pp. 32-33.

[7] Rollo, pp. 34-48.

[8] Rollo, p. 8.

[9] *Salvacion v. Palawan Council For Sustainable Development*, G.R. No.178347, February 25, 2013. 101997 Rules on Civil Procedure, sec. 1; *Manila Midtown Hotel and Land Corp. vs. National Labor Relations Commission*, G.R. No. 118397, March 27, 1998.

[11] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003.

[12] G.R. No. 207264, June 25, 2013.

[13] *Aggabao v. Commission on Elections*, G.R. No. 163756, January 26, 2005.

[14] *Microsoft Corporation v. Best Deal Computer Center Corporation*, G.R. No. 148029, September 24, 2002.

[15] G.R. No. 124243, June 15, 2000.

[16] Section 1. Answer to the complaint. — The defendant shall file his answer to the complaint within fifteen (15) days after service of summons, unless a different period is fixed by the court. (la)

[17] *Philippine National Bank v. Deang Marketing Corporation*, G.R. No. 177931, December 8, 2008.

[18] Section 7. Expediting proceedings; injunctive relief. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary

injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.

[19] G.R. No. 169766, March 30, 2011.

[20] G.R. No. 151098, March 21, 2008.

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