# SPOUSES JEFFREY AND JOSEPHINE KHONGHUN, PETITIONERS, VS. UNITED COCONUT PLANTERS BANK, RESPONDENT.

*G.R. NO. 154334. July 31, 2006*

Ponente: CORONA, J.

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**CORONA, J.:**

This is an appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure (Rules) which seeks to set aside the decision[1] of the Court of Appeals (CA) in CA-G.R. No. 65358[2] and its resolution[3] dismissing the petition for certiorari and prohibition filed by petitioners herein.

In October 1984, petitioner spouses Jeffrey and Josephine Khonghun obtained certain loans from respondent United Coconut Planters Bank (UCPB) ranging from P200,000 to P1,000,000.[4] They executed promissory notes which they, however, eventually failed to pay, prompting UCPB to file a case for a sum of money with preliminary attachment[5] with the Regional Trial Court (RTC) of Makati City, Branch 41. The case was raffled to Judge Manuel Victorio.

In February 2000 or by the time the complaint was filed, petitioners' loan had already ballooned to P4,428,041.47.

In their answer, petitioners admitted the material allegations in UCPB's complaint. They did not dispute the genuineness and due execution of their promissory notes although they claimed they did not agree to the stipulated interest stated therein.

At the pre-trial conference on February 23, 2001, petitioners and their counsel failed to appear. They had also failed to submit a pre-trial brief. As a result, Judge Victorio issued an order allowing respondent UCPB to present its evidence ex parte on February 26, 2001.[6]

On that date, respondent bank presented its evidence ex parte and, on the same day, Judge Victorio rendered judgment on UCPB's complaint and ordered petitioners to pay their obligations, as well as attorney's fees, to the bank.[7]

Petitioners filed a motion for reconsideration (MR) of the RTC order of February 26, 2001, claiming that their non-appearance was occasioned by the interment of the wife of petitioners' counsel two days before the pre-trial and Mr. Khonghun's debilitating health condition at that time.[8] Petitioners prayed that they be allowed to present their evidence and cross-examine respondent's witnesses.

The RTC denied petitioners' MR in an order dated April 23, 2001, a copy of which was received by petitioners on May 10, 2001. On May 21, 2001, petitioners filed their notice of appeal but the trial court denied it for having been filed three days after the lapse of the reglementary period.[9]

Via a petition for certiorari under Rule 65 of the Rules, petitioners argued before the CA that Judge Victorio committed grave abuse of discretion when he conducted the trial ex parte and later dismissed their notice of appeal. During the pendency of their petition in the CA, petitioners also filed a motion in the RTC seeking

reconsideration of its order dismissing their notice of appeal.

The CA dismissed the petition on the following grounds: (1) petitioners resorted to the extraordinary civil action of certiorari instead of an appeal (the period for which had already expired); (2) petitioners were guilty of forum-shopping for simultaneously pursuing two separate remedies, that is, a petition for certiorari in the CA and an MR in the RTC, and (3) the trial court judge correctly conducted the ex parte trial for failure of petitioners and their counsel to appear at the scheduled pre-trial and to submit a pre-trial brief.[10]

Later, the CA also dismissed petitioners' MR, hence, this appeal.

Petitioners fault the CA in affirming the RTC decision although it violated Rule 18, Section 4[11] of the Rules (which excuses litigants from appearing at the pre-trial for valid cause) and deciding respondent's complaint based merely on ex-parte evidence.

On the first issue, petitioners insist that the trial court should have accepted the interment of their counsel's wife and Mr. Khonghun's illness as justifiable reasons for their absence at the trial.

We disagree.

What constitutes a valid ground to excuse litigants and their counsels at the pre-trial under Rule 18, Section 4 of the Rules is subject to the sound discretion of a judge.[12] Petitioners could not question Judge Victorio's discretion absent any showing that he did so whimsically or capriciously. His decision to allow respondent to present its evidence ex parte was prompted by the fact that petitioners and their counsel failed to appear at the pre-trial without informing the court of the reasons for their absence. They did not even file any motion for postponement of the pre-trial. Neither did they send their representatives to apprise the court of their predicament. Worse, they failed to file a pre-trial brief.

Under Rule 18, Sections 5 and 6 of the Rules, Judge Victorio's action was correct. These provisions clearly state:

> Section 5. Effect of failure to appear. - The failure of the plaintiff to appear when so required pursuant to the next receding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. 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.
>
> Section 6. Pre-trial brief. - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of pre-trial, their respective pre-trial briefs which shall contain among others:
>
> xxx xxx xxx
>
> Failure to file the trial brief shall have the same failure to appear at the pre-trial.[13] (italics supplied)

On the second issue, petitioners contend that it was error for the RTC to decide UCPB's complaint based merely on the latter's evidence. According to them, the RTC should have afforded them the opportunity to cross-examine respondent's witnesses and to present their own evidence, considering that they previously assailed the interest specified in the promissory notes.

Again, we disagree.

Rule 18, Section 5 mandates that, in case of defendant's (petitioners') failure to attend the pre-trial, the court shall render judgment based on the evidence presented ex parte by the plaintiff (respondent UCPB).

It should likewise be stressed that in their answer, not only did petitioners admit the material allegations in respondent UCPB's complaint but they also failed to controvert the genuineness and due execution of the


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promissory notes. Clearly, there was no longer any issue with respect to their unpaid loans to respondent bank. Cross-examining respondent's witnesses and presenting evidence on their behalf would have been an exercise in futility as it would serve no other purpose but delay the proceedings in the trial court.

Lastly, we see no issue regarding the interest imposed by UCPB on petitioners' loans. We quote with approval the disquisition of the trial court (as affirmed by the CA):

> ...A review of the answer filed by [petitioners] clearly indicated that they have not disputed the genuineness and due execution of the promissory notes as well as the fact that they have not paid the amount thereof. [Petitioners] alleged in their answer that they signed the disclosure statements at the back of the promissory notes in blank, impliedly suggesting that they have not stipulated on the rate of interest. During the hearing on the motion for reconsideration, the Court asked [petitioner] Jeffrey Khonghun what actually was the rate of interest agreed upon by them and [respondent], and he admitted that it was 32% which is the rate of interest appearing on the promissory notes...[14] (italics supplied)

With Jeffrey Khonghun's admission, the trial court and the CA had no other option but to disregard petitioners' claim that they never agreed to the interest rate imposed by respondent. Well-settled is the rule that judicial admissions are conclusive on the party making them.[15]

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

**SO ORDERED.**

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*] RTC Judge Manuel D. Victorio was impleaded as public respondent in this case. However, under Rule 45 of the 1997 Rules of Court, the petition for review on certiorari shall be filed without impleading the lower courts or judges thereof either as petitioners or respondents. Hence, Judge Manuel D. Victorio's name was deleted from the title.

[1] Penned by Associate Justice Rebecca de Guia Salvador and concurred in by Associate Justices Eugenio S. Labitoria (now retired) and Teodoro P. Regino (now retired) of the Sixth Division of the Court of Appeals; dated January 24 2002, rollo, pp. 17- 26.

[2] Spouses Jeffrey and Josephine Khonghun v. Hon. Manuel D. Victorio and United Coconut Planters Bank.

[3] Dated July 10, 2002, rollo, p. 28.

[4] Petitioners borrowed a total of P2,000,000 from respondent.

[5] Docketed as Civil Case No. 00-470.

[6] Issued by Judge Manuel D. Victorio.

[7] Rollo, p. 101.

[8] Mr. Khonghun claimed he suffered acute bronchitis.

[9] Petitioners received the assailed decision on March 15, 2001. On March 22, 2001, or seven days thereafter, they filed a motion for reconsideration, thereby interrupting the running of the 15-day reglementary period under Rule 41, Section 3 of the Rules of Court. On May 10, 2001, petitioners received the order of Judge Victorio

denying their motion for reconsideration. Consequently, from May 10, 2001, petitioners had only a period of eight days, or until May 18, 2001, to perfect their appeal. Petitioners filed their notice of appeal only on May 21, 2001, or three days after the lapse of the reglementary period. (see CA decision; supra note 1).

In Neypes v. Court of Appeals (G.R. No. 141524, 14 September 2005), however, parties now have a fresh period of 15 days within which to file a notice of appeal in the RTC, counted from the receipt of the order dismissing a motion for new trial or for reconsideration.

[10]Supra.

[11]Sec. 4. Appearance of Parties. It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorizing in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[12]Fountainhead International Philippines, Inc. v. Court of Appeals, G.R. No. 86505, 11 February 1991, 194 SCRA 12.

[13] Rule 18, supra.

[14] Rollo, p. 25.

[15] Rule 129, Section 4, Rules of Court.


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