

VALENTINA A. NUÑEZ, FELIX A. NUÑEZ, FELIXITA A. NUÑEZ, LEONILO A. NUÑEZ, JR., ELIZA A. NUÑEZ, EMMANUEL A. NUÑEZ AND DIVINA A. NUÑEZ AS HEIRS OF LEONILO S. NUÑEZ, PETITIONERS, VS...

G.R. No. 163988. November 17, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The facts are not disputed:

Petitioners are the heirs of Leonilo S. Nuñez (Leonilo) who, during his lifetime, obtained three loans from the GSIS Family Bank, formerly ComSavings Bank which in turn was formerly known as Royal Savings and Loan Association (the bank).

The first loan, contracted on April 6, 1976 in the amount of P55,900.00, was secured by a mortgage over a parcel of land covered by TCT NT-139575-A whereon the mortgage was annotated on April 8, 1976.[1]

The second loan, obtained on July 7, 1976 in the amount of P127,000.00, was secured by mortgage of properties covered by TCT Nos. NT-143002, 143003 and 139575.[2]

The third loan, obtained also on July 7, 1976 in the amount of P105, 900.00, actually amended the first loan of P55,900.00 to secure which amended loan the same property covered by TCT No. NT-139575-A[3] was mortgaged. The amended loan, no copy of which forms part of the records, was admitted by the parties during the pre-trial.[4]

On June 30, 1978, when the three loans were maturing, Leonilo purportedly obtained a "fourth loan" in the amount of P1,539,135.00 to secure which he executed a Real Estate Mortgage antedated June 28, 1978 over properties covered by TCT Nos. NT-145734, 143001, 143004, 143005, 143006, 143007.[5]

On the maturity of the three loans or on June 30, 1978, Leonilo executed a Promissory Note[6] in the amount of P1,539,135.00, due and payable on December 27, 1978.

The details of the loans secured by Leonilo including the purported "fourth loan" are shown in the following table:

Loan Date Contracted Amount Maturity Titled subject of the Real Estate Mortgages

First Loan April 6, 1976 P 55,900.00 June 30, 1978 NT-139575-A

Second Loan July 7, 1976

P 127,000.00

June 30, 1978

NT-143002; NT-143003; NT-139575

Third Loan (amended the first loan)

July 7, 1976

P 105,900.00

June 30, 1978

NT-139575-A

Fourth Loan

June 30, 1978

P1,539,135.00

December 27, 1978

NT-145734; NT-143001; NT-143004; NT-143005; NT-143006; NT-143007;

More than nineteen (19) years after Leonilo's June 30, 1978 Promissory Note matured or on December 11, 1997, the bank undertook to extrajudicially foreclose[7] the properties covered by TCT Nos. NT-143002, 143003, 139575 and 139575-A which secured the first two loans.

In its petition for extrajudicial foreclosure, the bank alleged that Leonilo violated the terms and conditions of the loans secured by the Real Estate Mortgages since June 30, 1978 when he failed, despite repeated demands, to pay his principal obligations, and interest due thereon from December 27, 1978, up to the time that the petition was filed.[8]

Acting on the bank's petition for Extra-judicial Foreclosure of Mortgage, the Ex-Officio Sheriff of Gapan, Nueva Ecija issued a Notice of Extra-judicial Sale[9] setting the sale of the properties involved at public auction on

January 9, 1998.

The auction took place as scheduled, with the bank as the highest and only bidder in the amount of P33,026,100.00. A Certificate of Sale[10] was thus issued in favor of the bank.

On September 1, 1999, on petition of the bank, the mortgage over properties covered by TCT Nos. 143001 and 143007, two of the six parcels of land which secured the "fourth loan" that matured on December 27, 1978, was extrajudicially foreclosed. At the public auction, the bank was the highest bidder and a Certificate of Sale[11] dated February 18, 2000 was issued in its name.

Leonilo later filed on June 20, 2000 before the Regional Trial Court (RTC) of Gapan, Nueva Ecija a complaint against the GSIS Family Bank,[12] docketed as Civil Case No. 2269, for Annulment of Extrajudicial Foreclosure Sale, Reconveyance and Cancellation of Encumbrances.

In his complaint, Leonilo denied securing a "fourth loan" but nevertheless alleged that "for purposes of the action, the same shall be assumed to have been validly secured."

Invoking prescription, he citing Articles 1142[13] and 1144[14] of the Civil Code, Leonilo contended that his first three loans and the "fourth loan" matured on June 30, 1978 and December 27, 1978, hence, they had prescribed on June 28, 1988 and December 25, 1988, respectively.[15] When, on December 11, 1997 and September 1, 1999 then, the bank filed the Petitions for Extrajudicial Foreclosure of Mortgage, Leonilo concluded that it no longer had any right as prescription had set in.

Leonilo invited the attention of the court to the fact that although six titles secured the purported "fourth loan" of P1,539, 135.00, only two, TCT Nos. NT-143001 and NT-143007, were the subject of foreclosure sale on September 1, 1999 and the mortgage was not annotated on the four other mortgaged titles, TCT Nos. NT-143004, 143005, 143006 and 145734.[16] Moreover, he pointed out that the record[17] shows that the Real Estate Mortgage dated June 28, 1978 purportedly securing the "fourth loan" was annotated on NT-143001 and NT-143007 subject of the September 1, 1999 foreclosure only on August 31, 1999 or more than 11 years after the prescriptive period to foreclose had set in.[18]

By Decision dated August 9, 2002, Branch 34 of the Gapan RTC found for Leonilo who died during the pendency of the trial of the case, hence, his substitution by his heirs - herein petitioners, declaring that the bank's cause of action over the loans had prescribed and, therefore, the proceedings for extrajudicial foreclosure of real estate mortgages were null and void.

The bank filed a motion for reconsideration[19] on September 20, 2002, the last of the 15-day period within which it could interpose an appeal, but it did not comply with the provision of Section 4, Rule 15[20] of the Rules of Court on notice of hearing, prompting herein petitioners to file a Motion to Strike Out Motion for Reconsideration with Motion for the issuance of a writ of execution.[21]

The bank filed an Opposition with Motion to Admit[22] (the Motion for Reconsideration), attributing its failure to incorporate the notice of hearing to inadvertent deletion from its computer file of standard clauses for pleadings the required notice of hearing and to the heavy workload of the handling counsel, Atty. George Garvida.

The trial court denied the bank's Motion for Reconsideration by Order[23] of November 18, 2002 and accordingly ordered it stricken off the record:

After a serious evaluation of the arguments for/and against the instant Motion for Reconsideration, the Court believes and so-holds that, while it is true that the high Court has set aside technicality in order not to defeat the ends of justice in appropriate cases, it is likewise true that litigations at some point of time must end

otherwise, litigation of cases will be endless.

WHEREFORE, given the foregoing, the instant Motion for Reconsideration is hereby DENIED, for failure to comply with Rule 15, Section 4, of the 1997 Rules on Civil Procedures (sic).

x x x[24]

The bank filed a Notice of Appeal[25] to which petitioners filed a Motion to Dismiss for being filed late,[26] which motion was granted by the trial court by Order[27] of February 10, 2003.

The bank thereupon elevated via petition for certiorari[28] the case before the Court of Appeals (CA) faulting the trial court to have

- . . . COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE HEREIN ASSAILED ORDER DATED 10 FEBRUARY 2003 CONSIDERING THAT THE TRIAL COURT HAD ALREADY LOST JURISDICTION OF THE CASE IN VIEW OF THE PERFECTION OF THE PETITIONER'S APPEAL ON DECEMBER 11, 2002.

- . . . COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT DENIED HEREIN PETITIONER'S MOTION FOR RECONSIDERATION IN ITS ORDER DATED 18 NOVEMBER 2002, THERE BEING STRONG AND COMPELLING REASONS TO ADMIT SAID MOTION AND TO CONSIDER THE ERRONEOUS CONCLUSIONS OF FACT AND LAW ON WHICH THE DECISION OF THE TRIAL COURT WAS BASED.[29]

The bank, which is owned by the Government Service Insurance System, argued that to rigidly and strictly apply the rules of procedure would result to injustice and irreparable damage to the government as it stands to lose a substantial amount if not allowed to recover the proceeds of the loans.[30]

The appellate court, by February 23, 2004 Decision,[31] found for the bank. Citing *Labad v. University of Southeastern Philippines*,[32] it ruled that while the right to appeal is a statutory and not a natural right, it is nevertheless an essential part of the judicial system, hence, courts should be cautious not to deprive a party of the right to appeal; and in the exercise of its equity jurisdiction, the trial court should have given the bank's Notice of Appeal due course to better serve the ends, and prevent a miscarriage of justice.

Petitioners' Motion for Reconsideration having been denied by Resolution[33] of May 25, 2004, the present Petition for Certiorari under Rule 65 was filed, raising these issues:

- Whether or not the public respondent committed grave abuse of discretion in reversing the order of the Regional Trial Court denying the notice of appeal and in giving due course to the notice of appeal.

- Whether the private respondent could still appeal a judgment which has become final and executory.[34]

At the outset, clarification on petitioners' mode of appeal is in order. Petitioners and counsel confuse their petition as one Petition for Review under Rule 45[35] with a Petition for Certiorari under Rule 65.[36] For while they treat it as one for Review on Certiorari, they manifest that it is filed "pursuant to Rule 65 of the 1997 Rules of Civil Procedure in relation to Rule 45 of the New Rules of Court."[37]

In *Ligon v. Court of Appeals*[38] where the therein petitioner described her petition as "an appeal under Rule 45 and at the same time as a special civil action of certiorari under Rule 65 of the Rules of Court," this Court, in frowning over what it described as a "chimera," reiterated that the remedies of appeal and certiorari are mutually exclusive and not alternative nor successive.[39]

To be sure, the distinctions between Rules 45 and 65 are far and wide. However, the most apparent is that errors

of jurisdiction are best reviewed in a special civil action for certiorari under Rule 65 while errors of judgment can only be corrected by appeal in a petition for review under Rule 45.[40]

This Court, however, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice may treat a petition for certiorari as having filed under Rule 45, more so if the same was filed within the reglementary period for filing a petition for review.[41]

The records show that the petition was filed on time both under Rules 45 and 65.[42] Following *Delsan Transport*, the petition, stripped of allegations of "grave abuse of discretion," actually avers errors of judgment which are the subject of a petition for review.[43]

This Court finds the petition impressed with merit.

Rule 41 of the 1997 Rules of Civil Procedure which governs appeals from Regional Trial Courts provides:

SEC. 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.

x x x

SEC. 3. Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, on appeal in habeas corpus cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (Underscoring supplied).

On the other hand, Rule 22 provides for the manner of computing time and the effect of interruption:

SEC. 1. How to compute time. – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day.

SEC. 2. Effect of interruption. – Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded in the computation of the period. (Emphasis and underscoring supplied).

The requirement of notice under Sections 4 and 5[44] of Rule 15 in connection with Section 2, Rule 37 of the Rules of Court is mandatory.[45] Absence of the mandatory requirement renders the motion a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.[46] Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.[47]

When the bank then filed its Motion for Reconsideration on the last of the 15-day period for taking an appeal and it was subsequently denied, the bank had only one (1) day from December 9, 2002 when it received a copy of the order denying the motion or until December 10, 2002 within which to perfect its appeal.[48]

It filed the Notice of Appeal, however, on December 11, 2002, hence, out of time, and the decision of the trial court had become final and executory.

While Rules may be relaxed when the party invoking liberality adequately explains his failure to abide therewith, the bank failed to do so.

The explanations[49] proffered by the bank behind its failure to incorporate a notice of hearing of the Motion for Reconsideration — inadvertent deletion from its computer file of the standard clauses for pleadings during the printing of the finalized draft of the motion and the handling counsel's heavy workload — are unsatisfactory.

To credit the foregoing explanations would render the mandatory rule on notice of hearing meaningless and nugatory as lawyers would simply invoke these grounds should they fail to comply with the rules.

As to the claim that the government would suffer loss of substantial amount if not allowed to recover the proceeds of the loans, this Court finds that any loss was caused by respondent's own doing or undoing.

In fine, the failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[50]

Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal. The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time. As we held in *Pedrosa v. Hill*, the requirement of an appeal fee is by no means a mere technicality of law or procedure, but an essential requirement without which the decision appealed from would become final and executory. The same can be said about the late filing of a notice of appeal. (Emphasis and underscoring supplied).[51]

Jurisdictional issue aside, upon the ground of prescription, the bank's case would just the same fail. An action to foreclose a real estate mortgage prescribes in ten years.[52] The running of the period, however, may be interrupted.[53]

A review of the records of the case shows that, as correctly claimed by petitioners, no letter of demand, court action, or foreclosure proceeding was undertaken prior to December 11, 1997 and September 1, 1999.

While the bank included in its Formal Offer of Evidence[54] Exhibits "E" and "H" which are the Petitions for Extra-Judicial Foreclosure alleging that "repeated demands" for payment were made after Leonilo defaulted and failed to pay the loan

obligations, allegations are not proofs. Unless a demand is proven, one cannot be held in default.[55]

In justifying its failure to file a collection suit, the bank contended that it would have amounted to a waiver of its right to foreclose. But if early on it opted to foreclose the mortgages, why it waited until 1997 and 1999, more than nineteen years after the right to do so arose, the bank is glaringly mute.

Clutching at straws, the bank argues that the applicable provision is Article 1141,[56] not Article 1142[57] of the Civil Code.

Article 1141 of the Civil Code speaks of real actions over immovables or rights. Article 1142 of the Civil Code speaks of a mortgage action which prescribes in ten years. The strategic location of Article 1142 immediately right after Article 1141 of the same Code, which speaks of real actions, indicates that it is an exception to the rule in the previous article.

That an action for foreclosure of mortgage over real property prescribes in ten years is in fact settled. In *Buhat, et al. v. Besana, etc., et al.*[58] where an action was instituted on December 6, 1952 for the foreclosure of mortgage over real property to secure an obligation payable on or before May 31, 1930, this Court affirmed the dismissal of the action by the then Court of First Instance as the action was filed more than ten years from May 31, 1930 or some 22 years after the obligation had become due and demandable.

WHEREFORE, the petition is GRANTED. The assailed Court of Appeals decision dated February 23, 2004 and Resolution dated May 25, 2004 are REVERSED and SET ASIDE. The Decision dated August 9, 2002 of the Regional Trial Court of Gapan, Nueva Ecija, Branch 34, which had become final and executory, stands.

SO ORDERED.

Panganiban, (Chairman), Corona, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[**] In some pleadings and motions filed, Leonilo was identified as LEONITO. Hence, in some orders issued by the Regional Trial Court, the Court of Appeals Rollo cover, and the Resolution dated May 25, 2004 of the Court of Appeals Leonilo is erroneously typed as LEONITO.

[1] Annex "A" of the Complaint, RTC Records at 9-12.

[2] Annex "B" of the Complaint, RTC Records at 13-16.

[3] Petition, Rollo at 6; CA Decision, Rollo at 22.

[4] RTC Records at 97-99.

[5] Annex "D" of the Complaint, RTC Records at 18-24.

[6] Annex "C" of the Complaint, RTC Records at 17.

[7] Re: Petition for Extra-Judicial Foreclosure of Real Estate Mortgage of Leonilo S. Nuñez, under Act No. 3135 as amended by Act 4118, RTC Records at 25-28.

[8] RTC Records at 27.

[9] Id. at 29-32.

[10] Id. at 33-34.

[11] Annex "I", RTC Records at 38-39.

[12] RTC Records at 1-8.

[13] Art. 1142. A mortgage action prescribes after ten years.

[14] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) upon a written contract;

x x x

[15] RTC Records at 3.

[16]Id. at 5.

[17]Id. at 41 for TCT No. NT-143001 and 49 for TCT No. NT-143007.

[18] Id. at 5.

[19] Id. at 139-148.

[20]SECTION 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[21] Rollo at 57-60.

[22] Id. at 61-65.

[23]RTC Records at 165-166.

[24] Id. at 166.

[25] Id. at 168-169.

[26]Id. at 172-175.

[27] Id. at 189.

[28] CA Rollo at 2-25.

[29] Id. at 13-14.

[30] Id. at 17-18.

[31]Rollo at 21-27.

[32] 362 SCRA 510 (2001).

[33] Rollo at 33.

[34] Id. at 11.

[35]SECTION 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[36] SECTION 1. Petition for Certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such

tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x

[37]Rollo at 3.

[38] 294 SCRA 73 (1998).

[39]Id. at 84 (1998).

[40] Riviera Filipina, Inc. v. Court of Appeals, 380 SCRA 245 (2003).

[41]Delsan Transport Lines, Inc. v. Court of Appeals, 268 SCRA 597 (1997).

[42]The petition was filed on June 30, 2004. If treated as Petition for Review on certiorari under Rule 45, the reglementary period expires on July 3, 2004 while if the petition is treated as Petition for certiorari under Rule 65, the period expires on August 17, 2004.

[43] On page 12 of the Rollo, petitioners restated the grounds but termed them as "issues." Thus, the "issues" in the petition are: (1) whether a motion for reconsideration which contains no setting of the date of hearing interrupt the period to appeal; and (2) assuming for the sake of arguments that the motion for reconsideration filed by the respondent stopped the running of the period to appeal though it did not comply with the provision of Rule 15, Section 4 of the New Rules of Court, still the judgment has already become final and could no longer be the subject of an appeal.

[44] SECTION 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[45] National Commercial Bank of Saudi Arabia v. Court of Appeals, 396 SCRA 541 (2003).

[46]Pallada v. Regional Trial Court of Kalibo, Aklan, Branch 1, 304 SCRA 440 (1999).

[47] Bank of the Philippine Islands v. Far East Molasses Corp., 198 SCRA 689 (1991).

[48]Vide, Manila Memorial Park Cemetery, Inc. v. Court of Appeals, 344 SCRA 769 (2000).

[49]Rollo at 61-62.

[50]Delgado v. Court of Appeals, 447 SCRA 402 (2004); Fukuzumi v. Sanritsu Great International Corporation, 436 SCRA 228 (2004).

[51]Republic v. Court of Appeals, 322 SCRA 81, 90 (2000).

[52]Art. 1142, Civil Code. A mortgage action prescribes after ten years; Benedicto v. Court of Appeals, 182 SCRA 45 (1990); Buhat, et al. v. Besana, etc. et al., 95 Phil. 721 (1954).

[53]Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

[54]RTC Records at 121-125.

[55]Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x

[56] Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[57] Art. 1142. A mortgage action prescribes after ten years.

[58]95 Phil. 721 (1954).

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