

**SPOUSES OSCAR ARCENAS AND DOLORES ARCENAS, PETITIONER,
VS. QUEEN CITY DEVELOPMENT BANK AND COURT OF APPEALS
(NINETEENTH DIVISION), RESPONDENTS.**

G.R. No. 166819. June 16, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review on certiorari assailing the Resolution[2] dated May 18, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83357, which dismissed petitioner's petition for annulment of order, as well as its Resolution[3] dated January 20, 2005, which denied petitioner's motion for reconsideration.

The factual antecedents are as follows:

On January 23, 2002, the spouses Dolores and Oscar Arcenas filed with the Regional Trial Court (RTC) of Roxas City, an Action for Declaratory Relief against respondent Queen City Development Bank, docketed as Civil Case No. V-006-01-2002, and was raffled off to Branch 15. The Spouses Arcenas prayed for the declaration of their rights as lessors under the contract of lease.

Respondent bank filed an Answer with Affirmative Defenses and Counterclaim contending, among others, that the action for declaratory relief was not proper, since the contract of lease had already been violated. Respondent bank counterclaimed for the rescission of the contract of lease, actual damages for its relocation and attorney's fees.

In an Order dated May 23, 2002, the RTC dismissed the action for declaratory relief and set the hearing on respondent bank's counterclaim for damages. The Spouses Arcenas' motion for reconsideration was denied on June 23, 2002. Respondent bank later presented its evidence on its counterclaim.

On July 25, 2002, the Spouses Arcenas filed with RTC of Roxas City, another case against respondent bank, this time for breach of the same contract of lease, docketed as Civil Case No. V-072-07-2002 (the case subject of this petition), and was raffled off to the same branch where Civil Case No. 006-01-2002 was pending. The Spouses Arcenas filed in Civil Case No. V-006-01-2002 a motion for consolidation of the two civil cases which the RTC denied.

Respondent bank then filed in Civil Case No. V-072-07-2002 its Answer with Affirmative Defenses and Counterclaim. The RTC then set the case for pre-trial on April 30, 2003.

The Spouses Arcenas subsequently filed their Pre-Trial Brief[4] with the proposed amicable settlement which provided that respondent bank would continue to pay the agreed rentals until the time the parties could find a substitute lessee. During the scheduled pre-trial conference, respondent bank's counsel manifested its interest in the proposal but wanted to know the exact amount for settlement; thus, the pre-trial was reset.[5]

On August 18, 2003, the Spouses Arcenas filed, in Civil Case No. V-006-01-2002, a written Proposed Settlement

in the amount of P1,297,514.00. Respondent bank was asked to comment on the proposed settlement.[6]

During the September 9, 2003 pre-trial conference in Civil Case No. V-072-07-2002, respondent bank's counsel manifested that the parties were in the process of settling the case amicably. In an Order[7] dated September 9, 2003, the RTC ordered the resetting of the pre-trial conference to November 11, 2003, without prejudice to the filing of the compromise agreement that the parties may finally execute before the scheduled pre-trial conference.

Subsequently, respondent bank submitted its Formal Counter-Proposal for Settlement[8] in Civil Case No. V-006-01-2002 as follows:

X X X X

The defendant and the plaintiffs will simultaneously and mutually dismiss all of their claims and counterclaims in BOTH Civil Case No. V-006-01-2002 AND Civil Case No. V-072-07-2002, all of which cases are pending before this same Honorable Court.

In the hearing of Civil Case No. 006-01-2002 on October 8, 2003, the RTC ordered the resetting of the case to December 4, 2003, in view of the manifestation of both counsels that settlement was still possible.[9] However, during the October 17, 2003 hearing of the same case, the RTC noted that, from the contents of both proposals for settlement, there was no meeting of the minds between the parties; thus, the RTC ordered the parties to prepare one compromise agreement duly signed and submitted for the court's approval, which shall be made as basis for the judgment in both civil cases. The parties were given up to December 4, 2003 to submit the compromise agreement.[10]

On November 11, 2003 the date set for the continuation of the pre-trial conference in Civil Case No. V-072-07-2002 only respondent bank's counsel was present. On November 10, 2003, the counsel for the Spouses Arcenas filed a Motion for Postponement of the pre-trial conference because of conflict of schedule. Respondent bank's counsel objected to such postponement, as he was not furnished a copy of the motion and the filing of such motion violated the three-day notice rule on motions; thus, he moved that the Spouses Arcenas be declared non-suited. On the same day, November 11, 2003, the RTC issued an Order[11] declaring the Spouses Arcenas non-suited and set the presentation of respondent bank's evidence on its counterclaim on January 8, 2004. The Order was received by the secretary of the Spouses' counsel on November 17, 2003.

On the January 8, 2004 scheduled hearing, despite due notice, the Spouses Arcenas and their counsel failed to appear; thus, respondent bank presented evidence on its counterclaim, rested its case and submitted the same for decision. On the same day, the RTC issued an Order[12] submitting the case for decision. The Order was received by the Spouses Arcenas on January 14, 2004.

On January 14, 2004, the Spouses Arcenas filed a Manifestation with Motion[13] alleging that their failure to file a motion to reconsider the Order dated November 11, 2003, declaring them non-suited, and their failure to attend the January 8, 2004 hearing on respondent bank's counterclaim was due to their mistaken belief that respondent bank was earnestly seeking a settlement on both civil cases; that honest mistake and excusable negligence were grounds for lifting an order of non-suit; thus, they prayed that the Orders dated November 11, 2003 and January 8, 2004 be reconsidered and Civil Case No. V- 072-07-2002 be reset for further pre-trial conference. Respondent bank filed an Opposition to such Manifestation and Motion.

In an Order[14] dated March 9, 2004, the RTC denied the Manifestation and Motion to reconsider the order of non-suit and allowed respondent bank to present evidence on its counterclaim on March 25, 2004. The RTC found (1) that assuming there was an agreement between the counsels regarding a compromise affecting the civil cases, such an out of court agreement was not an excuse for the counsel of the Spouses Arcenas not to move for the

lifting of the order of default; (2) that counsel should not presume that his motion for postponement would be granted, specially since the scheduled proceeding was a pre-trial conference which was mandatory; (3) that a motion should abide by the three-day notice rule; and (4) that the January 8, 2004 Order submitting the case for decision had long become final and the Manifestation and Motion was filed beyond the reglementary period for filing a motion for reconsideration.

On March 29, 2004, the Spouses Arcenas, as petitioners, filed with the CA a Petition for annulment of order under Rule 47 seeking to annul the November 11, 2003 Order of non-suit issued by the RTC of Roxas City, Branch 15 in Civil Case No. V-072-07-2002 on the ground of extrinsic fraud.

On May 18, 2004, the CA dismissed the petition on the ground that petitioners, the Spouses Arcenas, failed to avail of the appropriate remedies without sufficient justification before resorting to the petition for annulment of order. The CA ruled that assuming that petitioners were able to substantiate their allegations of fraud, they could have filed a petition for relief under Rule 38 of the Rules of Court and prayed that the assailed Order be set aside, but they did not. Thus, they cannot benefit from their inaction.

In a Resolution dated January 20, 2005, the CA denied the Motion for Reconsideration filed by the Spouses Arcenas.

In the meantime, on August 18, 2004, the RTC rendered a Decision on the merits in Civil Case Nos. V-006-01-2002 and V-072-07-2002, wherein the contract of lease subject of the two cases was declared rescinded, and the Spouses Arcenas were ordered to pay respondent bank actual damages, attorney's fees and litigation expenses. On September 8, 2004, the Spouses Arcenas filed their Notice of Appeal.[15]

On July 19, 2004, Oscar Arcenas died. Thus, only petitioner Dolores filed the instant petition for review. Petitioner raises the following arguments, to wit:

Whether or not the Honorable Court of Appeals erred in dismissing the petition for annulment of order filed by therein petitioners, Spouses Oscar Arcenas and Dolores Arcenas, on the ground that they failed to take other appropriate remedies in assailing the questioned final order, since their inaction was not due to fault or negligence imputable to them.

Whether or not the Honorable Court of Appeals erred in failing to appreciate the clear existence of extrinsic fraud committed by the adverse party through its counsel, Atty. Manuel Miraflores.

Whether or not petitioners are guilty of forum shopping considering the difference in the nature of the remedies between the rule on appeal under Rule 41 and annulment of orders under Rule 47.[16]

We find no merit in the petition.

Sections 1 and 2 of Rule 47 of the Rules of Court impose the conditions for the availment of the remedy of annulment of judgment, viz.:

Section 1. Coverage.- This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

Section 2. Grounds for annulment. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Section 1, Rule 47 provides that it does not allow a direct recourse to a petition for annulment of judgment if other appropriate remedies are available, such as a petition for new trial, appeal or a petition for relief.[17] If petitioner fails to avail of these remedies without sufficient justification, she cannot resort to the action for annulment of judgment under Rule 47, for otherwise, she would benefit from her inaction or negligence.[18]

We found no reversible error committed by the CA in dismissing the petition for annulment of judgment.

The Spouses Arcenas were declared non-suited for failure to appear at the pre-trial conference of Civil Case No. 072-07-2002 on November 11, 2003, and respondent bank was allowed to present evidence on its counterclaim on January 8, 2004. Such Order was received by the secretary of petitioner's counsel on November 17, 2003. Petitioner did not move to set aside the RTC's order of non-suit. While petitioner's counsel claimed that he only learned of such Order of non-suit on December 4, 2003, yet no motion to lift the order of non-suit was filed. Notably, from December 4, 2003 to the scheduled hearing on January 8, 2004, petitioner did not take any remedial action to lift the order of non-suit when she had the opportunity to do so. In fact, petitioner and her counsel did not also appear on the scheduled January 8, 2004 hearing wherein respondent bank presented evidence on its counterclaim and submitted the case for decision.

It was only on January 14, 2004 when petitioner and her husband filed a pleading captioned as Manifestation and Motion, wherein they prayed for the reconsideration of the Orders dated November 11, 2003 and January 8, 2004 and for further pre-trial conference. The RTC denied such Manifestation and Motion in its Order dated March 9, 2004, as the same was filed beyond the reglementary period, and such Order was received by petitioner on March 12, 2004. Petitioner then filed with the CA a Petition for annulment of order of non-suit under Rule 47 of the Rules of Court on the ground of extrinsic fraud. The CA denied the petition as petitioner failed to avail of the appropriate remedies provided by the Rules to which we agree.

Petitioner argues that when respondent bank's counsel moved for the issuance of the Order of non-suit against her and her husband during the November 11, 2003 hearing, extrinsic fraud was committed on them since respondent bank's counsel concealed from the RTC that there was a gentleman's agreement for the settlement of the subject civil cases.

We are not persuaded.

It bears stressing that when petitioner's counsel filed the Manifestation and Motion asking for reconsideration of the Order declaring the Spouses Arcenas non-suited, the reason stated was honest mistake or excusable negligence. To show such mistake, he explained that since there was a pending negotiation for settlement in Civil Case Nos. V-006-01-2002 and V-072-07-2002, which were both pending in the same court, and the parties had to come up with a settlement for the hearing of Civil Case No. V-006-01-2002 scheduled on December 4, 2004, petitioner's counsel then asked for the postponement of the scheduled November 11, 2003 hearing set for the pre-trial conference of Civil Case No. V-072-07-2002 one day before the said date, because of conflict of schedule and since he had in mind the December 4, 2003 deadline to submit the settlement. Notably, petitioner's counsel admitted that the date set for the submission of settlement in Civil Case No. V-072-07-2002 was indeed November 11, 2003; and that his failure to attend the hearings and to file a motion for reconsideration of the declaration of petitioner as non-suited was because of his mistaken belief that respondent bank was earnestly seeking a settlement. There was nothing in the Manifestation and Motion which alluded the commission of extrinsic fraud to respondent bank's counsel.

Moreover, since petitioner claimed that there was extrinsic fraud committed by respondent bank's counsel, she could have filed a petition for relief under Rule 38 within the period provided for by the Rules of Court, but she did not. Section 2, Rule 47 clearly states that extrinsic fraud shall not be a valid ground for annulment of order if it

was availed of, or could have been availed of, in a motion for new trial or petition for relief. Thus, extrinsic fraud is effectively barred if it could have been raised as a ground in an available remedial measure.

Petitioner tries to justify her failure to avail of the appropriate remedies on a promise of settlement. However, such promise was not an excuse for petitioner's counsel not to lift the order of non-suit and to file a petition for relief.

Petitioner's claim that she was present when respondent bank's counsel moved for the issuance of the order of non-suit against her was not proven by any evidence.

There was indeed a failure to show, to our satisfaction, that petitioner could not have availed of the ordinary and appropriate remedies under the Rules. Thus, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.

Finally, we find no merit in respondent bank's claim that petitioner committed forum shopping. The issue brought before us is whether the CA correctly dismissed petitioner's petition for annulment of the Order dated November 11, 2003 declaring her non-suited for failure to appear at the pre-trial conference of Civil Case No. V-072-07-2002. On the other hand, petitioner's Notice of Appeal in Civil Case Nos. V-006-01-2002 and V-072-07-2002 pertained to the decision of the RTC rendered on the merits.

WHEREFORE, the petition is DENIED. The Resolutions dated May 18, 2004 and January 20, 2005 of the Court of Appeals in CA-G.R. SP No. 83357 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Perez,[*] JJ., concur.

[1] He died on July, 2004 per Certificate of Death attached; rollo, p. 46.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

[2] Penned by Justice Associate Ramon M. Bato, Jr., with Associate Justices Monina Arevalo-Zenarosa and Estela M. Perlas-Bernabe, concurring; rollo, pp. 44-45.

[3] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Mariflor Punzalan Castillo, concurring; rollo, p. 42.

[4] Id. at 64-67.

[5] Order dated June 4, 2003; id. at 68.

[6] Order dated August 26, 2003; id. at 73.

[7] Rollo, p. 74.

[8] Id. at 75-76.

[9] Id. at 77.

[10] Id. at 78.

[11] Id. at 79.

[12] Id. at 81.

[13] Id. at 82-87.

[14] Id. at 94-95.

[15] Id. at 125.

[16] Id. at 176.

[17] *Fraginal v. Heirs of Toribia Belmonte Parañal*, G.R. No. 150207, February 23, 2007, 516 SCRA 530, 539.

[18] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, 456 Phil. 414 (2003).

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