

B.E. SAN DIEGO, INC., PETITIONER, VS. ROSARIO T. ALZUL, RESPONDENT.

G.R. No. 169501. June 08, 2007

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This Petition for Review on Certiorari[1] under Rule 45 questions the February 18, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 81341, which granted respondent Alzul the right to pay the balance of the purchase price within five (5) days from receipt of the CA Decision despite the lapse of the original period given to said party through the final Resolution of this Court in an earlier case. The CA ruling reversed the September 18, 2003 Resolution[3] and December 2, 2003 Order[4] of the Office of the President (OP) in O.P. Case No. 01-1-097, which upheld the dismissal of respondent Alzul's complaint for consignment and specific performance before the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. REM-A-99097-0167. Likewise challenged is the August 31, 2005 CA Resolution[5] rejecting petitioner's Motion for Reconsideration.

The Facts

The facts culled by the CA are as follows:

On February 10, 1975, [respondent] Rosario T. Alzul purchased from [petitioner] B.E. San Diego, Inc. four (4) subdivision lots with an aggregate area of 1,275 square meters located at Aurora Subdivision, Maysilo, Malabon. These lots, which are now subject of this petition, were bought through installment under Contract to Sell No. 867 at One Hundred Pesos (P100.00) per square meter, with a downpayment [sic] of Twelve Thousand Seven Hundred Fifty Pesos (P12,750.00), and monthly installments of One Thousand Two Hundred Forty-Nine Pesos (P1,249.50). The interest agreed upon was 12 percent (12%) per annum until fully paid, thus, the total purchase price was Two Hundred Thirty Seven Thousand Six Hundred Sixty Pesos (P237,660.00).

[Respondent] took immediate possession of the subject property, setting up a perimeter fence and constructing a house thereon.

On July 25, 1977, [respondent] signed a "Conditional Deed of Assignment and Transfer of Rights" which assigned to a certain Wilson P. Yu her rights under the Contract to Sell. [Petitioner] was notified of the execution of such deed. Later on, the Contract to Sell in [respondent's] name was cancelled, and [petitioner] issued a new one in favor of Yu although it was also denominated as "Contract to Sell No. 867".

On July 4, 1979, [respondent] informed [petitioner] about Yu's failure and refusal to pay the amounts due under the conditional deed. She also manifested that she would be the one to pay the installments due to respondent on account of Yu's default.

On August 25, 1980, [respondent] commenced an action for rescission of the conditional deed of assignment against Yu before the Regional Trial Court of Caloocan City. Subsequently, on September 30, 1985, [respondent] caused the annotation of notices of lis pendens on the titles covering the subject lots.

The trial court ruled in [respondent's] favor in the rescission case. The decision was even affirmed by this [appellate] Court. Yu brought his cause before the Supreme Court in a Petition for Review, but this was likewise denied.

On February 17, 1989, [petitioner] notified [respondent] that Contract to Sell No. 867 was declared rescinded and cancelled. On April 28, 1989, the subject lots were sold to spouses Carlos and Sandra Ventura who were allegedly surprised to find the annotation of lis pendens in their owner's duplicate title.

On May 8, 1990, the Ventura spouses filed an action for Quieting of Title with Prayer for Cancellation of Annotation and Damages before the Regional Trial Court of Malabon. The trial court ruled in favor of the Ventura spouses. On appeal before this [appellate] Court, however, the decision was reversed on November 27, 1992, as follows:

"WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE, and the complaint therein is ordered dismissed. Transfer Certificates of Title Nos. N-1922, N-1923, N-1924, and N-1925, all of the Register of Deeds of Metro Manila, District III, Malabon Branch, in the names of plaintiffs-appellees Carlos N. Ventura and Sandra L. Ventura are hereby declared null and void, and the titles of ownership reinstated in the name of B.E. San Diego, Inc. with the corresponding notices of lis pendens therein annotated in favor of defendant-appellant until such time that ownership of the subject parcels of land is transferred to herein defendant-appellant Rosario Alzul. Costs against plaintiff-appellees.

SO ORDERED."

Upon filing of an appeal to the Supreme Court docketed as GR No. 109078, the above decision was affirmed on December 26, 1995. A motion for reconsideration was filed, but this was denied by the Highest Tribunal on February 5, 1996.

On June 17, 1996, a resolution was issued by the Supreme Court, ordering, as follows:

"We, however, agree with the observation made by movants that no time limit was set by the respondent Court of Appeals in its assailed Decision for the private respondent herein, Rosario Alzul, to pay B.E. San Diego, Inc. the original owner of the properties in litigation. To rectify such oversight, private respondent Rosario T. Alzul is hereby given a non- extendible period of thirty (30) days from entry of judgment, within which to make full payment for the properties in question. xxx" (Emphasis supplied.)

On July 12, 1996, an Entry of Judgment was issued. In an attempt to comply with the Supreme Court's directive, herein [respondent] tried to serve payment upon [petitioner] on August 29, 1996, August 30, 1996 and September 28, 1996. On all these dates, however, [petitioner] allegedly refused to accept payment from [respondent].

On November 11, 1996, [respondent] filed a Manifestation in GR No. 109078 informing the Supreme Court that [petitioner], on three (3) occasions, refused to accept [her] payment of the balance in the amount of P187,380.00. On January 29, 1997, a Resolution was issued by the Supreme Court referring the case to the court of origin for appropriate action, on account of [respondent's] manifestation.

On October 21, 1997, [respondent's] counsel wrote a letter to [petitioner] citing the latter's refusal to accept her payment on several occasions. It was also mentioned therein that due to its refusal, [respondent] would just consign the balance due to [petitioner] before the proper judicial authority.

On January 14, 1998, a reply was sent by [petitioner] through a certain Flora San Diego. [Respondent's] request was rejected on account of the following:

- We have long legally rescinded the sale in her favor in view of her failure to pay the monthly amortization as per contract.

- She sold her rights to Mr. Wilson Yu who failed to pay his monthly amortizations, too.
- We are not and have never been a part of the case you are alluding to hence we cannot be bound by the same.
- The property in question is now under process to be reconveyed to us as ordered by the court by virtue of a compromised (sic) agreement entered into in Civil Case No. 2655 MN of the Malabon RTC Branch entitled Spouses Carlos Ventura and Sandra Ventura vs. B.E. San Diego, Inc. xxx

Thinking that an action for consignation alone would not be sufficient to allow for the execution of a final judgment in her favor, [respondent] decided to file an action for consignation and specific performance against [petitioner] before the Housing and Land Use Regulatory Board on March 12, 1998. The complaint, docketed as REM-031298-10039, prayed that a) [respondent] be considered to have fully paid the total purchase price of the subject properties; b) TCT Nos. N-155545 to 48 which were declared void in CA GR No. L-109078 be cancelled; c) new certificates of title over the subject properties be issued in the name of [respondent]; and d) [petitioner] be ordered to reimburse [respondent] the sum of Fifty Thousand Pesos (P50,000.00) as attorney's fees and litigation expenses.

On July 12, 1999, a decision was rendered by the HLURB through Housing and Land Use Arbiter Dunstan T. San Vicente. It was held, thus:

"The purported "consignation" in this case is thus of no moment, inasmuch as the amount allegedly due was not even deposited or placed at the disposal of this Office by the complainant.

In any event, we agree with [petitioner] that even if the complainant had actually made the consignation of the amount, such consignation is still ineffective and void for having been done long after the expiration of the non-extendible period set forth in the 17 June 1996 Supreme Court Resolution that expired on 20 September 1996.

WHEREFORE, Premises Considered, a judgment is hereby rendered DISMISSING the complaint. Cost against complainant.

IT (sic) SO ORDERED."

Aggrieved by the above decision, [respondent] filed a Petition for Review before the HLURB's First Division. On March 17, 2000, a decision was rendered dismissing the petition for lack of merit, and affirming the decision dated July 12, 1999. [Respondent] filed a Motion for Reconsideration, but this was denied on July 31, 2001.

[Respondent] then filed an appeal to the Office of the President. This was, however, dismissed on June 2, 2003 for having been filed out of time. Again, [respondent] moved for its reconsideration. On September 18, 2003, the Office of the President gave due course to [respondent's] motion, and resolved the motion according to its merits. The single question resolved was whether or not [respondent's] offer of consignation was correctly denied by the HLURB. Said office ruled in the affirmative, and We quote:

"From the foregoing, it is evident that there was no valid consignation of the balance of the purchase price. The 30-day non-extendible period set forth in the 17 June 1996 resolution had already expired on 20 September 1996. The HLURB is therefore justified in refusing the consignation, otherwise it would be accused of extending the period beyond that provided by the Supreme Court. A valid consignation is effected when there is an actual consignation of the amount due within the prescribed period (St. Dominic Corporation vs. Intermediate Appellate Court, 138 SCRA 242). x x x

WHEREFORE, premises considered, the appeal is hereby DISMISSED for lack of merit. x x x"

[Respondent] filed a Motion for Reconsideration [of] the above Resolution, but this was denied with finality on

December 2, 2003.[6]

The Ruling of the Court of Appeals

Respondent Alzul brought before the CA a petition for certiorari docketed as CA-G.R. SP No. 67637, ascribing grave abuse of discretion to the OP in dismissing her appeal in O.P. Case No. 01-1-097 and affirming the March 17, 2000 Decision[7] and July 31, 2001 Resolution[8] of the HLURB First Division in HLURB Case No. REM-A-990907-0167.

On February 18, 2005, the CA rendered its assailed Decision reversing the September 18, 2003 Resolution and December 2, 2003 Order of the OP, the fallo of which reads:

WHEREFORE, in the higher interest of justice, the assailed Decision, Resolution and Order dated March 17, 2000, September 18, 2003 and December 2, 2003, respectively, are hereby REVERSED and SET ASIDE. Accordingly, [respondent Alzul] is hereby ordered to payh [petitioner B.E. San Diego, Inc.] the balance due for the sale of the subject four parcels of land within five (5) days from receipt of this decision. [Petitioner B.E. San Diego, Inc.], on the other hand, is ordered to accept such payment from [respondent Alzul], after which, the corresponding Deed of Sale must be issued.

SO ORDERED.[9]

The CA agreed with the HLURB that no valid consignation was made by respondent but found that justice would be better served by allowing respondent Alzul to effect the consignation, albeit belatedly. It cited the respondent's right over the disputed lots as confirmed by this Court in G.R. No. 109078, which, if taken away on account of the delay in completing the payment, would amount to a grave injustice.

Moreover, the CA pointed out that respondent's counsel concededly lacked the vigilance and competence in defending his client's right when he failed to consign the balance on time; nonetheless, such may be disregarded in the interest of justice. It considered the failure of respondent's counsel to avail of the remedy of consignation as a procedural lapse, citing the principle that where a rigid application of the rules will result in a manifest failure or miscarriage of justice, technicalities can be ignored.

A copy of the February 18, 2005 CA Decision was received by respondent Alzul through her counsel on February 24, 2005.

On March 4, 2005, respondent filed a Compliance and Motion for Extension of Time to Comply with the Decision of the [CA][10] praying that she be given an extension of ten (10) days or from March 2 to 11, 2005 to comply with the CA Decision. On the other hand, on March 8, 2005, petitioner filed its Motion for Reconsideration with Opposition to Petitioner's "Motion for Extension of Time to Comply with the Decision of the [CA]."[11]

Through its assailed August 31, 2005 Resolution, the CA denied petitioner's Motion for Reconsideration, and finding that respondent duly exerted efforts to comply with its Decision and a valid consignation was made by respondent, it granted the requested 10-day extension of time to comply with the February 18, 2005 Decision and her motion for consignation. The fallo of said Resolution reads:

IN VIEW OF THE FOREGOING, the motion for extension to comply with the Decision is hereby GRANTED, the motion for reconsideration is DENIED and the motion for consignation is GRANTED. [Petitioner] B.E. San Diego, Inc. is hereby ordered to receive the payment of [respondent] Rosario T. Alzul and to issue, in her favor, the corresponding Deed of Sale.[12]

The Issues

Hence, before us is the instant petition with the following issues:

- Whether or not the Court of Appeals, in issuing the assailed 18 February 2005 Decision and 31 August 2005 Resolution in CA-G.R. SP No. 81341, has decided questions of law in a way not in accord with law and with the applicable decisions of the Honorable Court;
- Whether or not the Court of Appeals committed patent grave abuse of discretion and/or acted without or in excess of jurisdiction in granting respondent Alzul's subsequent motion for extension of time to comply with the 18 February 2005 decision and motion for consignation; and
- Whether or not the 18 February 2005 Decision and 31 August 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 81341 ought to be annulled and set aside, for being contrary to law and jurisprudence.[13]

The Court's Ruling

On the procedural issue, petitioner B.E. San Diego, Inc. assails the sufficiency of respondent Alzul's CA petition as the latter, in violation of the rules, allegedly lacked the essential and relevant pleadings filed with the HLURB and the OP.

Section 6 of Rule 43, 1997 Rules of Civil Procedure pertinently provides:

SEC. 6. Contents of the petition.—The petition for review shall x x x (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; x x x (Emphasis supplied.)

The above proviso explicitly requires the following to be appended to a petition: 1) clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution appealed from; 2) certified true copies of such material portions of the record referred to in the petition; and 3) other supporting papers.

Obviously, the main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the CA all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court. The rule is the reviewing court can determine the merits of the petition solely on the basis of the submissions by the parties[14] without the use of the records of the court a quo. It is a fact that it takes several months before the records are elevated to the higher court, thus the resulting delay in the review of the petition. The attachment of all essential and necessary papers and documents is mandatory; otherwise, the petition can be rejected outright under Sec. 7 of Rule 43 of the Rules of Court, which provides:

Effect of failure to comply with requirements.—The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

To prevent premature dismissals, the requirements under Sec. 6 on the contents of the petition have to be elucidated.

First, there can be no question that only the award, judgment, or final order or resolution issued by the lower court or agency and appealed from has to be certified as true.

The second set of attachments refers to the "certified true copies of such material portions of the record referred to therein."

Material is defined as "important; more or less necessary; having influence or effect; going to the merits; having to do with matter, as distinguished from form." [15] Thus, material portions of the records are those parts of the

records that are relevant and directly bear on the issues and arguments raised and discussed in the petition. They may include any of the pleadings that are subject of any issue, documentary evidence, transcripts of testimonial evidence, and parts of the records pertinent and relevant to the grounds supporting the petition. The attachment of the material portions is subject to the qualification that these are referred to or cited in the petition. Thus, only the material parts specified in the petition have to be appended and that would be sufficient compliance with the rule as to form.

It would be prudent however for the petitioner to attach all parts of the records which are relevant, necessary, or important in whatever way to be able to reach the resolution of the issues of the petition. The availability of such documents to the ponente and members of a Division can easily provide the substance and support to the merits of the grounds put forward by the petitioner. Moreover, the processing time for the review and resolution of the petition is greatly abbreviated, thereby obviating intolerable delays.

Lastly, it has to be explained whether the material portions of the records have to be certified as true by the clerk of court or his/her duly authorized representative as provided in Sec. 6 of Rule 43. If strictly required, the rule to require attachment of certified true copies of the material portions will surely make the preparation of the petition more tedious, cumbersome, and expensive. It should therefore be construed that merely clear and legible copies of the material portions will suffice. The rules on the different modes of appeal from the lower courts or quasi-judicial agencies to the CA reveal that it is only Rule 43 that specifically states that the material portions to be appended to the petition should be certified true copies. Rule 41 of course does not require attachment of the pertinent records since the entire records are elevated to the CA. Rule 42 on petition for review from the trial court in aid of its appellate jurisdiction to the CA speaks of plain copies of the material portions of the record as would support the allegations of the petition.^[16] Even Rule 45 on appeal by certiorari from the CA to this Court simply speaks of material portions of the records without indicating that these should be certified true copies. Rule 46 on original cases to this Court only requires plain copies of the material portions of the records. Finally, Rule 65 on special civil actions requires only copies of relevant and pertinent pleadings and documents.

From the foregoing premises, the inescapable conclusion is that only plain and clear copies of the material portions of the records are required under Sec. 3 of Rule 43. This finding is buttressed by our ruling in *Cadayona v. CA*, where it was held that only judgments or final orders of the lower courts are needed to be certified true copies or duplicate originals.^[17] There is no plausible reason why a different treatment or stricter requirement should be applied to petitions under Rule 43.

The last requirement is the attachment of "other supporting papers." Again, it is only in Rule 43 that we encounter the requirement of annexing "supporting papers" to the petition. This can be interpreted to mean other documents, pictures, and pieces of evidence not forming parts of the records of the lower court or agency that can bolster and shore up the petition. While not so specified in Sec. 3 of Rule 43, it is inarguable that said papers must also be relevant and material to the petition; otherwise, the attachments would be mere surplusages and devoid of use and value.

Petitioner claims respondent's petition in CA-G.R. SP No. 81341 failed to attach material documents of the records of the HLURB and the OP. They cry foul that none of the pleadings filed with the HLURB and the OP found their way into the CA petition. It prays that the CA petition should have been dismissed under Sec. 7 of Rule 43 due to the lack of needed attachments.

Petitioner's postulation must fail.

Sec. 7 of Rule 43 does not prescribe outright rejection of the petition if it is not accompanied by the required documents but simply gives the discretion to the CA to determine whether such breach constitutes a "sufficient

ground" for dismissal. Apparently, petitioner was not able to convince the CA that the alleged missing attachments deprived said court of the full opportunity and facility in examining and resolving the petition. It has not been satisfactorily shown that the pleadings filed by petitioner with the quasi-judicial agencies have material bearing or importance to the CA petition. Such pleadings could have been attached to the comment of respondent and hence, no prejudice would be suffered. Thus, the CA did not exercise its discretion in an arbitrary or oppressive manner by giving due course to the petition.

In addition, it was noted in *Cusi-Hernandez v. Diaz* that the CA Revised Internal Rules provide certain flexibility in the submission of additional documents:

When a petition does not have the complete annexes or the required number of copies, the Chief of the Judicial Records Division shall require the petitioner to complete the annexes or file the necessary number of copies of the petition before docketing the case. Pleadings improperly filed in court shall be returned to the sender by the Chief of the Judicial Records Division.[18]

In *Paras v. Baldado* the Court preferred the determination of cases on the merits over technicality or procedural imperfections so that the ends of justice would be served better, thus:

At the same time, the Rules of Court encourage a reading of the procedural requirements in a manner that will help secure and not defeat justice. Thus:

Section 6. Construction.—These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

As expressed in *Alberto vs. Court of Appeals*, "(w)hat should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. x x x (T)he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed." [19]

Now we will address the main issue—whether respondent Alzul is still entitled to consignation despite the lapse of the period provided by the Court in G.R. No. 109078 entitled *Yu v. Court of Appeals*.

Petitioner stresses the fact that respondent Alzul did not comply with this Court's June 17, 1996 Resolution[20] which gave a non-extendible period of thirty (30) days from entry of judgment within which to make full payment for the subject properties. The entry of judgment shows that the December 26, 1995 Resolution[21] in G.R. No. 109078 became final and executory on July 2, 1996. Respondent Alzul received through counsel a copy of the entry of judgment on August 21, 1996. Thus, respondent had until September 20, 1996 within which to make the full payment.

After three (3) unsuccessful tenders of payment, respondent Alzul made no consignation of the amount to the court of origin. It was only on March 12, 1998 or about a year and a half later that respondent offered to consign said amount in an action for consignment before the HLURB. Relying on the case of *St. Dominic Corporation v. Intermediate Appellate Court*, [22] petitioner strongly asserts that upon its refusal to accept the tendered payment, respondent ought to have consigned it with the court of origin also within the 30-day period or within a reasonable time thereafter. Respondent failed to do this as she waited for a year and a half before instituting the instant action for specific performance and consignment before the HLURB.

Moreover, petitioner argues that respondent's delay of a year and a half to pursue full payment must be regarded as a waiver on her part to claim whatever residual remedies she might still have for the enforcement of the June

17, 1996 Resolution in G.R. No. 109078.

Petitioner further contends that even if the action before the HLURB was made on time, that is, within the 30-day period, still it is fatally defective as respondent did not deposit any amount with the HLURB which violated the rules for consignment which require actual deposit of the amount allegedly due with the proper judicial authority.

Premised upon these considerations, petitioner faults the appellate court for its grant of respondent's petition for review which nullified the denial by the HLURB Arbiter, HLURB First Division, and the OP of respondent's action.

On the other hand, respondent contends that the June 17, 1996 Resolution of this Court should not be construed against her inability to effect payment due to the obstinate and unjust refusal by petitioner—a supervening circumstance beyond her control. Respondent underscores that within the 30-day period, she repeatedly attempted to effect the payment to no avail. Moreover, the much delayed response of petitioner embodied in its January 14, 1998 letter[23] confirming its refusal was based on untenable, baseless, and contrived grounds.

Moreover, she argues that the December 26, 1995 Resolution in G.R. No. 109078 granting her proprietary rights over the subject lots has long become final and executory.

Anent the issue of laches and estoppel, respondent strongly contends that such do not apply in the instant case as incontrovertible circumstances show that she has relentlessly pursued the protection and enforcement of her rights over the disputed lots for over a quarter of a century.

After a careful study of the factual milieu, applicable laws, and jurisprudence, we find the petition meritorious.

Respondent Alzul was accorded legal rights over subject properties

In G.R. No. 109078, finding no reversible error on the part of the CA, we denied Wilson P. Yu's petition and affirmed the appellate court's ruling that as between Wilson P. Yu, the Ventura spouses, petitioner B.E. San Diego, Inc., and respondent Alzul, respondent has inchoate proprietary rights over the disputed lots. We upheld the CA ruling declaring as "null and void" the titles issued in the name of the Ventura spouses and reinstating them in the name of B.E. San Diego, Inc., with the corresponding notices of lis pendens annotated on them in favor of respondent until such time that ownership of the subject parcels of land is transferred to respondent Rosario Alzul.

It is thus clear that we accorded respondent Alzul expectant rights over the disputed lots, but such is conditioned on the payment of the balance of the purchase price. Having been conceded such rights, respondent had the obligation to pay the remaining balance to vest absolute title and rights of ownership in his name over the subject properties.

In our June 17, 1996 Resolution, we clearly specified thirty (30) days from entry of judgment for respondent to promptly effect the full payment of the balance of the purchase price for the subject properties, thus:

We however agree with the observation made by movants that no time limit was set by the respondent Court of Appeals in its assailed Decision for the private respondent herein, Rosario Alzul, to pay B.E. San Diego, Inc., the original owner of the properties in litigation. To rectify such oversight, private respondent Rosario T. Alzul is hereby given a non-extendible period of thirty (30) days from entry of judgment, within which to make full payment for the properties in question.[24] (Emphasis supplied.)

The non-compliance with our June 17, 1996 Resolution is fatal to respondent Alzul's action for consignment and specific performance

Unfortunately, respondent failed to effect such full payment of the balance of the purchase price for the subject properties.

No consignment within the 30-day period or at a reasonable time thereafter

It is clear as day that respondent did not attempt nor pursue consignment within the 30- day period given to her in accordance with the prescribed legal procedure. She received a copy of the entry of judgment on August 21, 1996 and had 30 days or until September 20, 1996 to pay the balance of the purchase price to petitioner. She made a tender of payment on August 29, 1996, August 30, 1996, and September 28, 1996, all of which were refused by petitioner possibly because the latter is of the view that it is not bound by the November 27, 1992 Decision in CA-G.R. CV No. 33619 nor the December 26, 1995 Resolution in G.R. No. 109078, and the fact that respondent has forfeited her rights to the lots because of her failure to pay the monthly amortizations.

It must be borne in mind however that a mere tender of payment is not enough to extinguish an obligation. In *Meat Packing Corporation of the Philippines v. Sandiganbayan*, we distinguished consignment from tender of payment and reiterated the rule that both must be validly done in order to effect the extinguishment of the obligation, thus:

Consignment is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and it generally requires a prior tender of payment. It should be distinguished from tender of payment. Tender is the antecedent of consignment, that is, an act preparatory to the consignment, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignment is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignment. Tender and consignment, where validly made, produces the effect of payment and extinguishes the obligation.[25] (Emphasis supplied.)

There is no dispute that a valid tender of payment had been made by respondent. Absent however a valid consignment, mere tender will not suffice to extinguish her obligation and consummate the acquisition of the subject properties.

In *St. Dominic Corporation* involving the payment of the installment balance for the purchase of a lot similar to the case at bar, where a period has been judicially directed to effect the payment, the Court held that a valid consignment is made when the amount is consigned with the court within the required period or within a reasonable time thereafter. We ruled as follows:

First of all, the decision of the then Court of Appeals which was promulgated on October 21, 1981, is quite clear when it ordered the payment of the balance of the purchase price for the disputed lot within 60 days "from receipt hereof" meaning from the receipt of the decision by the respondents. It is an admitted fact that the respondents received a copy of the decision on October 30, 1981. Hence, they had up to December 29, 1981 to make the payment. Upon refusal by the petitioner to receive such payment, the proper procedure was for the respondent to consign the same with the court also within the 60-day period or within a reasonable time thereafter.[26] (Emphasis supplied.)

The records also reveal that respondent failed to effect consignment within a reasonable time after the 30-day period which expired on September 20, 1996. Instead of consigning the amount with the court of origin, respondent filed her November 11, 1996 Manifestation informing this Court of petitioner's unjust refusal of the tender of payment. We acted favorably to it by issuing our January 28, 1997 Resolution which ordered, thus:

Considering the manifestation, dated November 11, 1996, filed by counsel for private respondent Rosario T. Alzul, stating that private respondent tendered to B.E. San Diego, Inc. the payment of the sum of P187,380.00

representing the balance of the purchase price of the properties which are the subject of this litigation, but B.E. San Diego, Inc., refused to accept the same, the Court resolved to REFER the case to the court of origin, for appropriate action.[27](Emphasis supplied)

Respondent still failed to take the cue by her inaction to consign the amount with the court of origin. Undoubtedly, pursuing the action for consignment on March 12, 1998 or over a year after the Court issued its January 28, 1997 Resolution is way beyond a "reasonable time thereafter." Indeed, we have accorded respondent, through said Resolution, all the opportunity to pursue consignment with the court of origin and yet, respondent failed to make a valid consignment. This is already inexcusable neglect on the part of respondent.

No valid consignment made

We agree with petitioner's assertion that even granting *arguendo* that the instant case for consignment was instituted within the 30-day period or within a reasonable time thereafter, it would still not accord respondent relief as no valid consignment was made. Certainly, the records show that there was no valid consignment made by respondent before the HLURB as she did not deposit the amount with the quasi-judicial body as required by law and the rules.

Pertinently, the first paragraph of Article 1258 of the Civil Code provides that "[c]onsignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignment in other cases (emphasis supplied)."

It is true enough that respondent tendered payment to petitioner three (3) times through a Solidbank Manager's Check No. 1146 in the amount of PhP 187,380[28] on August 29 and 30, 1996 and September 28, 1996. It is true likewise that petitioner refused to accept it but not without good reasons. Petitioner was not impleaded as a party by the Ventura spouses in the Malabon City RTC case for quieting of title against Wilson Yu nor in the appealed case to the CA nor in G.R. No. 109078.

Petitioner is of the view that there was no jurisdiction acquired over its person and hence, it is not bound by the final judgment and June 17, 1996 Resolution in G.R. No. 109078. Secondly, petitioner believed that respondent Alzul has lost her rights over the subject lot by the rescission of the sale in her favor due to the latter's failure to pay the installments and also as a result of her transferee's failure to pay the agreed amortizations. And even in the face of the refusal by petitioner to accept tender of payment, respondent is not left without a remedy. It is basic that consignment is an available remedy, and respondent, with the aid of her counsel, could have easily availed of such course of action sanctioned under the Civil Code.

Considering the tenor of our June 17, 1996 Resolution, respondent ought to have consigned the amount with the court of origin within the non-extendible period of 30 days that was accorded her or within a reasonable time thereafter.

As cited earlier, consignment is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.[29] It is of no moment if the refusal to accept payment be reasonable or not. Indeed, consignment is the remedy for an unjust refusal to accept payment. The first paragraph of Art. 1256 of the Civil Code precisely provides that "[i]f the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due (emphasis supplied)."

The proper and valid consignment of the amount due with the court of origin, which shall judicially pronounce the validity of the consignment and declare the debtor to be released from his/her responsibility, shall extinguish the corresponding obligation.

Moreover, in order that consignation may be effective, the debtor must show that: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because s/he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due or because the title to the obligation had been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made, the person interested was notified of the action.[30]

Respondent did not comply with the provisions of law particularly with the fourth and fifth requirements specified above for a valid consignation. In her complaint for consignation and specific performance, respondent only prayed that she be allowed to make the consignation without placing or depositing the amount due at the disposal of the court of origin. Verily, respondent made no valid consignation.

The rights of petitioner and respondent over the 1,275 square meter lot subject of this petition will be determined by the significance and effects of the December 26, 1995 Resolution rendered in G.R. No. 109078 entitled *Yu v. Court of Appeals*. [31]

The subject matter of G.R. No. 109078 is the November 27, 1992 Decision rendered in CA-G.R. CV No. 33619 entitled *Carlos N. Ventura and Sandra L. Ventura v. Rosario T. Alzul, et al.*, the fallo of which reads:

WHEREFORE, the appealed decision is hereby REVERSED AND SET ASIDE, and the complaint therein is ordered dismissed. Transfer Certificates of Title Nos. N-1922, N-1923, N-1924, and N-1925, all of the Register of Deeds of Metro Manila, District III, Malabon Branch, in the names of plaintiffs-appellees Carlos N. Ventura and Sandra L. Ventura are hereby declared null and void, and the titles of ownership reinstated in the name of B.E. San Diego, Inc., with the corresponding notices of lis pendens therein annotated in favor of defendant-appellant until such time that ownership of the subject parcels of land is transferred to herein defendant-appellant Rosario Alzul. Costs against plaintiff-appellees.

SO ORDERED.[32]

On December 26, 1995, this Court issued the Resolution in G.R. No. 109078 wherein it found no reversible error in the actions of the CA in its aforequoted disposition in CA- G.R. CV No. 33619, and resolved to deny the petition for lack of merit. On February 5, 1996, this Court denied with finality the Motion for Reconsideration filed by petitioner Wilson Yu.

However, on June 17, 1996, this Court, in resolving the Motion for Reconsideration of private respondents Spouses Carlos and Sandra Ventura, granted respondent Alzul "a non-extendible period of thirty (30) days from entry of judgment, within which to make full payment for the properties in question." [33]

The question is—can the Court, the CA, or the Malabon City RTC order petitioner B.E. San Diego, Inc. to accept the tender of payment made by respondent Alzul?

Definitely, they cannot. The reason is that petitioner was not impleaded as a party in the Malabon City RTC civil case, CA-G.R. CV No. 33619, nor in G.R. No. 109078 and hence is not under the jurisdiction of said courts. What were determined and decided in the CA Decision in CA-G.R. CV No. 33619 were the annulment of the titles of spouses Carlos and Sandra Ventura, the reinstatement of said titles to the name of petitioner, and the declaration that the ownership of the lots subject of said titles will be transferred to respondent. There is no directive to respondent granting her the right to pay the balance of the price to petitioner and, more importantly, there is no order for petitioner to accept the payment. The dispositive or fallo of the decision is what actually constitutes the judgment or resolution of the court that can be the subject of execution. Where there is a conflict between the dispositive portion of the decision and its body, the dispositive portion controls irrespective of what appears in the

body of the decision.[34] Such being the case, petitioner is not duty bound to accept any tender of payment from respondent precisely because such diktat is absent in the fallo of the CA Decision which was affirmed by this Court in its December 26, 1995 Resolution in G.R. No. 109078.

The lacuna in the CA Decision was sought to be corrected in its June 17, 1996 Resolution in G.R. No. 109078 where respondent was given "a non-extendible period of thirty (30) days from entry of judgment, within which to make full payment for the properties in question." Pursuant to this Resolution, what was established was the right of respondent to pay the balance of the purchase price within 30 days. Again, the query is—can this Court, the CA, or the trial court compel petitioner to accept the tender of payment from respondent?

The answer is no. The reason is obvious as jurisdiction was never acquired over the person of petitioner. The action for quieting of title is characterized as quasi in rem. In *Realty Sales Enterprise, Inc. v. Intermediate Appellate Court*, it was held that:

Suits to quiet title are not technically suits in rem, nor are they, strictly speaking, in personam, but being against the person in respect of the res, these proceedings are characterized as quasi in rem. (*McDaniel v. McElvy*, 108 So. 820 [1926].) The judgment in such proceedings is conclusive only between the parties. (Emphasis supplied.)[35]

Not being impleaded as a necessary or indispensable party, petitioner is not bound by the dispositions in the CA Decision in CA-G.R. CV No. 33619 and the Resolutions of this Court in G.R. No. 109078. Moreover, there is no explicit and clear directive for petitioner to accept the payment of the balance of the price.

It is for this reason that respondent cannot ask for a writ of execution from the trial court where the complaint was originally instituted as said court has no jurisdiction over the person of petitioner. Even if a writ is issued, it should conform to the judgment, and the fallo of the CA Decision does not impose the duty or obligation on the part of petitioner to accept the payment from respondent. It is the settled doctrine that a writ of execution must conform to the judgment and if it is different from or exceeds the terms of the judgment, then it is a nullity.[36]

In addition, Sec. 10, Rule 39 provides the procedure for execution of judgments for specific acts, thus:

Sec. 10. Execution of judgments for specific act.—(a) Conveyance, delivery of deeds, or other specific acts; vesting title.—If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

The rule mentions the directive to a "party." It is therefore essential that the person tasked to perform the specific act is impleaded as a party to the case. Otherwise, the judgment cannot be executed. In the case at bar, petitioner should have been impleaded as a party so as to compel it to accept payment and execute the deed of sale over the disputed lots in favor of respondent. As petitioner was not impleaded as a party, then the CA Decision in CA-G.R. CV No. 33619 as affirmed in G.R. No. 109078 cannot be enforced against it.

The cause of action available to respondent is to file an action for consignment against petitioner which she did by registering a complaint for consignment before the HLURB on March 12, 1998. Unfortunately, it was filed way beyond the 30-day period which lapsed on September 20, 1996 or immediately thereafter. Because of the failure of respondent to effect payment to petitioner within the 30-day period or soon thereafter, her rights to buy the disputed lots have been forfeited, lost, and extinguished.

In *St. Dominic Corporation*, which is substantially similar to the case at bar, we explained the procedure when a party is directed to pay the balance of the purchase price based on a court decision, thus:

First of all, the decision of the then Court of Appeals which was promulgated on October 21, 1981, is quite clear when it ordered the payment of the balance of the purchase price for the disputed lot within 60 days "from receipt hereof," meaning from the receipt of the decision by the respondents. It is an admitted fact that the respondents received a copy of the decision on October 30, 1981. Hence, they had up to December 29, 1981 to make the payment. Upon refusal by the petitioner to receive such payment, the proper procedure was for the respondent to consign the same with the court also within the 60-day period or within a reasonable time thereafter. The fact that efforts were made by the petitioner to reach an agreement with the respondents after the promulgation of the decision did not in anyway affect the finality of the judgment. This was clearly emphasized in the order of the appellate court on May 6, 1982.

Secondly, even if we reckon the 60-day period from the date of the finality of the decision as interpreted by the appellate court, such finality should be counted from March 5, 1982, which was the date the decision became final as indicated in the entry of judgment and not from August 26, 1982 which is the date the entry was made. The date of a finality of a decision is entirely distinct from the date of its entry and the delay in the latter does not affect the effectivity of the former as such is counted from the expiration of the period to appeal.[37] x x x

In the *aforecited* case, the lot owner was made a party to the case and the judgment of the court was for the plaintiff to pay to the lot owner the balance of the purchase price within 60 days from receipt of the Decision. Even assuming *arguendo* that petitioner *B.E. San Diego, Inc.*, though not a party in the complaint for quieting of title, can be compelled to receive the purchase price, still, the refusal to receive the money requires respondent *Alzul* to follow the procedure in *St. Dominic Corporation* and consign the money with the court of origin. Having failed in this respect, respondent's rights to the property have been forfeited as a result of non-payment within the prescribed time frame.

The CA relied on justice and equity in granting an additional period of five (5) days from receipt of the February 18, 2005 Decision in CA-G.R. SP No. 81341 to pay the balance due for the sale of the four lots.[38] While we commiserate with the plight of respondent, the CA ruling will not prevail over the established axiom that equity is applied only in the absence of and never against statutory law or judicial rules of procedure.[39] For all its conceded merits, equity is available only in the absence of law and not as its replacement.[40] Equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent. This Court will not allow a party, in guise of equity, to benefit from respondent's own negligence.[41]

In the light of the foregoing considerations, we find that the grant of respondent's petition in CA-G.R. SP No. 81341 and the recognition of the belated consignment of the amount find no support nor basis in law, rule, or jurisprudence. The CA's holding that the non- consignment of the amount due is merely a procedural lapse on the part of respondent's counsel is misplaced and is contrary to settled jurisprudence. Plainly, respondent's rights over the subject property are now lost and forfeited.

Having resolved the core issue on the validity of the consignment, the Court sees no further need to discuss the remaining issues raised in the petition.

Petitioner to reimburse payments

However, respondent had made payments over the subject properties based on her agreement with petitioner. So as not to enrich itself at the expense of respondent, petitioner is obliged to reimburse respondent whatever amount was paid by her in form of monthly amortizations. On the other hand, if respondent is in possession of the subject properties, she and all persons claiming under her should surrender the possession to petitioner.

WHEREFORE, the petition is GRANTED, the February 18, 2005 Decision and August 31, 2005 Resolution of the CA are REVERSED and SET ASIDE, and the September 18, 2003 Resolution and December 2, 2003 Order of the OP are hereby REINSTATED. Petitioner is ORDERED to reimburse respondent whatever amount the latter has paid for the subject properties per the Contract to Sell No. 867. Petitioner is DECLARED to be the true and legal owner of Lots Nos. 5, 6, 7, and 8, Block 18, Aurora Subdivision, Maysilo, Malabon City. The Register of Deeds of Manila, District III, Malabon City Branch is ORDERED to cancel Transfer Certificates of Title Nos. N-1922, N-1923, N-1924, and N-1925 in the names of spouses Carlos N. Ventura and Sandra L. Ventura and register the same in the name of petitioner. The lis pendens in favor of respondent annotated on the Transfer Certificates of Title over the subject properties is hereby LIFTED, and the Register of Deeds for Metro Manila, District III is DIRECTED to CANCEL said lis pendens. Respondent and all persons claiming under her are ORDERED to vacate the subject properties and surrender them to petitioner within sixty (60) days from finality of this judgment. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 3-37.

[2] Id. at 44-57. The Decision was penned by Associate Justice Eugenio S. Labitoria (Chairperson) and concurred in by Associate Justices Eliezer R. Delos Santos and Arturo D. Brion.

[3] Id. at 97-99.

[4] Id. at 100.

[5] Id. at 59-62. The Resolution was penned by Associate Justice Eliezer R. de los Santos (Acting Chairperson) and concurred in by Associate Justices Arturo D. Brion and Vicente Q. Roxas.

[6] Supra note 2, at 45-51.

[7] Rollo, pp. 162-168.

[8] Id. at 262-263.

[9] Supra note 2, at 56.

[10] Rollo, pp. 340-344.

[11] Id. at 345-364.

[12] Supra note 5, at 62.

[13] Rollo, pp. 467-468.

[14] *Atillo v. Bombay*, G.R. No. 136096, February 7, 2001, 351 SCRA 361, 369; cited in *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392.

[15] H. Black, *Black's Law Dictionary* 976 (6th ed., 1990).

[16] Sec. 2.

[17] G.R. No. 128772, February 3, 2000, 324 SCRA 619, 625.

- [18] G.R. No. 140436, July 18, 2000, 336 SCRA 113, 120; citing the CA Revised Internal Rules, Rule 3, Sec. 3(d).
- [19] G.R. No. 140713, March 8, 2001, 354 SCRA 141, 145; citing the Revised Rules of Court, Rule 1.
- [20] Rollo, pp. 131-132.
- [21] Yu v. Court of Appeals, 251 SCRA 509.
- [22] No. L-67207, August 26, 1985, 138 SCRA 242.
- [23] Rollo, p. 140.
- [24] Supra note 20, at 131.
- [25] G.R. No. 103068, June 22, 2001, 359 SCRA 409, 421.
- [26] Supra note 22, at 250-251.
- [27] Rollo, p. 134.
- [28] Id. at 136.
- [29] Supra note 25.
- [30] Banco Filipino Savings and Mortgage Bank v. Diaz, G.R. No. 153134, June 27, 2006, 493 SCRA 248, 263, citing Pabugais v. Sahijwani, G.R. No. 156846, February 23, 2004, 423 SCRA 596, 601.
- [31] Supra note 21.
- [32] Rollo, p. 119.
- [33] Id. at 131.
- [34] 1 Regalado, Remedial Law Compendium 371.
- [35] No. L-67451, September 28, 1987, 154 SCRA 328, 348.
- [36] Villoria v. Piccio, etc., et al., 95 Phil. 802, 805-806 (1954).
- [37] Supra note 22.
- [38] Supra note 2, at 56.
- [39] Mendiola v. Court of Appeals, G.R. No. 122807, July 5, 1996, 258 SCRA 492, 502.
- [40] Aguila v. Court of First Instance of Batangas, Branch I, No. L-48335, April 15, 1988, 160 SCRA 352, 359-360.
- [41] Mesina v. Meer, G.R. No. 146845, July 2, 2002, 383 SCRA 625, 635.

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