

THIRD DIVISION

[G.R. NO. 162270, April 06, 2005]

**ABACUS REAL ESTATE DEVELOPMENT CENTER, INC.,
PETITIONER, VS. THE MANILA BANKING CORPORATION,
RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Thru this appeal by way of a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner **Abacus Real Estate Development Center, Inc.** seeks to set aside the following issuances of the Court of Appeals in **CA-G.R. CV No. 64877**, to wit:

1. **Decision dated May 26, 2003,**^[1] reversing an earlier decision of the Regional Trial Court at Makati City, Branch 59, in an action for specific performance and damages thereat commenced by the petitioner against the herein respondent **Manila Banking Corporation**; and
2. **Resolution of February 17, 2004,**^[2] denying petitioner's motion for reconsideration.

The petition is casts against the following factual backdrop:

Respondent Manila Banking Corporation (**Manila Bank**, for brevity), owns a 1,435-square meter parcel of land located along Gil Puyat Avenue Extension, Makati City and covered by Transfer Certificate of Title (TCT) No. 132935 of the Registry of Deeds of Makati. Prior to 1984, the bank began constructing on said land a 14-storey building. Not long after, however, the bank encountered financial difficulties that rendered it unable to finish construction of the building.

On May 22, 1987, the Central Bank of the Philippines, now *Bangko Sentral ng Pilipinas*, ordered the closure of Manila Bank and placed it under receivership, with Feliciano Miranda, Jr. being initially appointed as Receiver. The legality of the closure was contested by the bank before the proper court.

On November 11, 1988, the Central Bank, by virtue of Monetary Board (MB) Resolution No. 505, ordered the liquidation of Manila Bank and designated Atty. Renan V. Santos as Liquidator. The liquidation, however, was held in abeyance pending the outcome of the earlier suit filed by Manila Bank regarding the legality of its closure. Consequently, the designation of Atty. Renan V. Santos as Liquidator was amended by the Central Bank on December 22, 1988 to that of Statutory Receiver.

In the interim, Manila Bank's then acting president, the late Vicente G. Puyat, in a

bid to save the bank's investment, started scouting for possible investors who could finance the completion of the building earlier mentioned. On August 18, 1989, a group of investors, represented by Calixto Y. Laureano (hereafter referred to as **Laureano group**), wrote Vicente G. Puyat offering to lease the building for ten (10) years and to advance the cost to complete the same, with the advanced cost to be amortized and offset against rental payments during the term of the lease. Likewise, the letter-offer stated that in consideration of advancing the construction cost, the group wanted to be given the "exclusive option to purchase" the building and the lot on which it was constructed.

Since no disposition of assets could be made due to the litigation concerning Manila Bank's closure, an arrangement was thought of whereby the property would first be leased to **Manila Equities Corporation (MEQCO**, for brevity), a wholly-owned subsidiary of Manila Bank, with MEQCO thereafter subleasing the property to the Laureano group.

In a letter dated August 30, 1989, Vicente G. Puyat accepted the Laureano group's offer and granted it an "exclusive option to purchase" the lot and building for One Hundred Fifty Million Pesos (P150,000,000.00). Later, or on October 31, 1989, the building was leased to MEQCO for a period of ten (10) years pursuant to a contract of lease bearing that date. On March 1, 1990, MEQCO subleased the property to petitioner **Abacus Real Estate Development Center, Inc. (Abacus**, for short), a corporation formed by the Laureano group for the purpose, under identical provisions as that of the October 31, 1989 lease contract between Manila Bank and MEQCO.

The Laureano group was, however, unable to finish the building due to the economic crisis brought about by the failed December 1989 coup attempt. On account thereof, the Laureano group offered its rights in Abacus and its "*exclusive option to purchase*" to **Benjamin Bitanga (Bitanga** hereinafter), for Twenty Million Five Hundred Thousand Pesos (P20,500,000.00). Bitanga would later allege that because of the substantial amount involved, he first had to talk with Atty. Renan Santos, the Receiver appointed by the Central Bank, to discuss Abacus' offer. Bitanga further alleged that, over lunch, Atty. Santos then verbally approved his entry into Abacus and his take-over of the sublease and option to purchase.

On March 30, 1990, the Laureano group transferred and assigned to Bitanga all of its rights in Abacus and the "exclusive option to purchase" the subject land and building.

On September 16, 1994, Abacus sent a letter to Manila Bank informing the latter of its desire to exercise its "*exclusive option to purchase*". However, Manila Bank refused to honor the same.

Such was the state of things when, on November 10, 1995, in the Regional Trial Court (RTC) at Makati, Abacus Real Estate Development Center, Inc. filed a complaint^[3] for specific performance and damages against Manila Bank and/or the Estate of Vicente G. Puyat. In its complaint, docketed as Civil Case No. 96-1638 and raffled to Branch 59 of the court, plaintiff Abacus prayed for a judgment ordering Manila Bank, *inter alia*, to sell, transfer and convey unto it for P150,000,000.00 the land and building in dispute "*free from all liens and encumbrances*", plus payment of damages and attorney's fees.

Subsequently, defendant Manila Bank, followed a month later by its co-defendant Estate of Vicente G. Puyat, filed separate motions to dismiss the complaint.

In an Order dated April 15, 1996, the trial court granted the motion to dismiss filed by the Estate of Vicente G. Puyat, but denied that of Manila Bank and directed the latter to file its answer.

Before plaintiff Abacus could adduce evidence but after pre-trial, defendant Manila Bank filed a *Motion for Partial Summary Judgment*, followed by a *Supplement to Motion for Partial Summary Judgment*. While initially opposed, Abacus would later join Manila Bank in submitting the case for summary judgment.

Eventually, in a **decision dated May 27, 1999**,^[4] the trial court rendered judgment for Abacus in accordance with the latter's prayer in its complaint, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff as follows:

1. Ordering the defendant [Manila Bank] to immediately sell to plaintiff the parcel of land and building, with an area of 1,435 square meters and covered by TCT No. 132935 of the Makati Registry of Deeds, situated along Sen. Gil J. Puyat Ave. in Makati City, at the price of One Hundred Fifty Million (P150,000,000.00) Pesos in accordance with the said exclusive option to purchase, and to execute the appropriate deed of sale therefor in favor of plaintiff;
2. Ordering the defendant [Manila Bank] to pay plaintiff the amount of Two Million (P2,000,000.00) Pesos representing reasonable attorney's fees;
3. Ordering the DISMISSAL of defendant's counterclaim, for lack of merit; and
4. With costs against the defendant.

SO ORDERED.

Its motion for reconsideration of the aforementioned decision having been denied by the trial court in its Order of August 17, 1999,^[5] Manila Bank then went on to the Court of Appeals whereat its appellate recourse was docketed as **CA-G.R. CV No. 64877**.

As stated at the threshold hereof, the Court of Appeals, in a **decision dated May 26, 2003**,^[6] reversed and set aside the appealed decision of the trial court, thus:

WHEREFORE, finding serious reversible error, the appeal is **GRANTED**.

The Decision dated May 27, 1999 of the Regional Trial Court of Makati City, Branch 59 is **REVERSED** and **SET ASIDE**.

Cost of the appeal to be paid by the appellee.

SO ORDERED.

On June 25, 2003, Abacus filed a Motion for Reconsideration, followed, with leave of court, by an Amended Motion for Reconsideration. Pending resolution of its motion for reconsideration, as amended, Abacus filed a Motion to Dismiss Appeal,^[7] therein praying for the dismissal of Manila Bank's appeal from the RTC decision of May 27, 1999, contending that said appeal was filed out of time.

In its **Resolution of February 17, 2004**,^[8] the appellate court denied Abacus' aforementioned motion for reconsideration.

Hence, this recourse by petitioner Abacus Real Estate Development Center, Inc.

As we see it, two (2) issues commend themselves for the resolution of the Court, namely:

WHETHER OR NOT RESPONDENT BANK'S APPEAL TO THE COURT OF APPEALS WAS FILED ON TIME; and

WHETHER OR NOT PETITIONER ABACUS HAS ACQUIRED THE RIGHT TO PURCHASE THE LOT AND BUILDING IN QUESTION.

We rule for respondent Manila Bank on both issues.

Addressing the first issue, petitioner submits that respondent bank's appeal to the Court of Appeals from the adverse decision of the trial court was belatedly filed. Elaborating thereon, petitioner alleges that respondent bank received a copy of the May 27, 1999 RTC decision on June 22, 1999, hence, petitioner had 15 days, or only up to July 7, 1999 within which to take an appeal from the same decision or move for a reconsideration thereof. Petitioner alleges that respondent furnished the trial court with a copy of its Motion for Reconsideration only on July 7, 1999, the last day for filing an appeal. Under Section 3, Rule 41 of the 1997 Rules of Civil Procedure, "*the period of appeal shall be interrupted by a timely motion for new trial or reconsideration*". Since, according to petitioner, respondent filed its Motion for Reconsideration on the last day of the period to appeal, it only had one (1) more day within which to file an appeal, so much so that when it received on August 23, 1999 a copy of the trial court's order denying its Motion for Reconsideration, respondent bank had only up to August 24, 1999 within which to file the corresponding appeal. As respondent bank appealed the decision of the trial court only on August 25, 1999, petitioner thus argues that respondent's appeal was filed out of time.

As a counterpoint, respondent alleges that it sent the trial court a copy of its Motion for Reconsideration on July 6, 1999, through registered mail. Having sent a copy of its Motion for Reconsideration to the trial court with still two (2) days left to appeal, respondent then claims that its filing of an appeal on August 25, 1999, two (2) days after receiving the Order of the trial court denying its Motion for Reconsideration, was within the reglementary period.

Agreeing with respondent, the appellate court declared that respondent's appeal