

## FIRST DIVISION

[ G.R. No. 210894, September 12, 2018 ]

**NOEMI S. CRUZ AND HEIRS OF HERMENEGILDO T. CRUZ,  
REPRESENTED BY NOEMI S. CRUZ, PETITIONERS, V. CITY OF  
MAKATI, CITY TREASURER OF MAKATI, THE REGISTER OF DEEDS  
OF MAKATI, LAVERNE REALTY AND DEVELOPMENT  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the July 22, 2013 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 128390 affirming the March 29, 2012 and December 27, 2012 Orders<sup>[3]</sup> of the Regional Trial Court of Makati City, Branch 62 (Makati RTC Branch 62) in Civil Case No. 07-1155, and the CA's subsequent January 15, 2014 Resolution<sup>[4]</sup> denying herein petitioners' Motion for Reconsideration.

#### ***Factual Antecedents***

Petitioner Noemi Cruz and her husband, Hermenegildo T. Cruz, were the registered owners of a 124.38-square meter condominium unit, Unit 407, Cityland Condominium 10, Tower II, 146 H.V. Dela Costa Street, Makati City (subject property) which was levied upon by the respondent City of Makati for non-payment of real property taxes thereon after their designated employee-representative failed to remit the entrusted tax payments amounting to P201,231.17 to the city and appeared to have absconded with the money instead. Eventually, the subject property was auctioned off and sold to respondent Laverne Realty and Development Corporation (Laverne) as the highest bidder for P370,000.00.

Petitioners failed to redeem the subject property, prompting Laverne to file in 2009, before the Makati RTC Branch 148, LRC Case No. M-5237 a petition to surrender the owner's duplicate copy of the title to the subject property (Condominium Certificate of Title No. 44793).

Previously, or in 2007, petitioners filed before Makati RTC Branch 62 Civil Case No. 07-1155, a Complaint<sup>[5]</sup> for annulment of the Laverne sale with prayer for injunctive relief and damages and costs. Petitioners alleged that the levy and sale by the respondent city to Laverne were null and void because the notice of billing statements for real property were mistakenly sent to Unit 1407 instead of Unit 407; no warrant of levy was ever received by them; the notice of delinquency sale was not posted as required by the Local Government Code (LGC); the Makati Treasurer's Office did not notify petitioners of the warrant of levy as required by the LGC; and respondents did not remit the excess of the proceeds of the sale to petitioners as required by the LGC.

The Makati City government and the City Treasurer filed their answer, and petitioners filed their reply. Petitioners sought to declare Laverne and the Makati Registrar of Deeds in default for failure to file their respective responsive pleadings.

On August 26, 2009, the Makati RTC Branch 62 granted petitioners' application for injunctive relief but denied their motion to declare Laverne in default.

On November 18, 2011, petitioners filed an Omnibus Motion to consolidate Civil Case No. 07-1155 with LRC Case No. M-5237 and to declare Laverne in default. Laverne opposed the motion.

On November 25, 2011, the Makati RTC Branch 62 issued an Order,<sup>[6]</sup> stating as follows:

Before this Court is an omnibus motion to approve the consolidation of a case pending in Branch 148 with this case pending in this Court. Before the court rules on this motion, the court awaits the resolution of Branch 148 regarding the motion filed with this court.

On the other hand, before the Court rules on the motion to declare defendant in default, the court awaits the return on the summons sent by registered mail. The Court takes note of the service by publication attached to the omnibus motion of the plaintiff in compliance with the order of publication to form part of the case. Set this incident for hearing on December 15, 2011 at 8:30a.m.

The petitioner is given the opportunity to inform the court if there are any developments prior to the same.

SO ORDERED.

### ***The Assailed Orders of the Makati RTC Branch 62***

On March 29, 2012, the Makati RTC Branch 62 issued an Order<sup>[7]</sup> denying petitioners' motion to consolidate and to declare Laverne in default. It held:

The Court noted that the answer for Laverne was filed without any motion asking leave for its belated admission contrary to Section 11, Rule 11 Revised Rules of Court. x x x

x x x x

Under this provision, the Court cannot simply admit an answer belatedly filed without any motion [for admission] accompanying the same x x x as evident from the wordings 'upon like terms' which explicitly means '**upon motion and on such terms as may be just**'. x x x [S]ince it is within the discretion of the court to permit the filing of defendant's answer even beyond the reglementary period, the Court should be provided with justification for the belated action, and x x x the defendant must show that it intended no delay x x x. In fine, to admit or to reject an answer filed after the prescribed period is addressed to the sound discretion of the court. Admittedly, since the filing of the Answer was done [beyond the reglementary period, its filing cannot be considered as] a matter of right.

However, plaintiffs are not faultless either, [since] they have not complied with the order for them to inform this Court of the developments in their motion for consolidation [despite lapse of more than three (3) months]. The foregoing is more than sufficient reason for the Court to take severe sanction against the plaintiffs pursuant to Section 3 Rule 17 Revised Rules of Court, i.e., failure to prosecute for unreasonable length of time and comply with an order of the court. However, in the interest of justice, plaintiffs are afforded one last opportunity to continue prosecuting their case.

Anent the motion to Consolidate and Declare the defendant in default, the Court is constrained to deny the same for failure to comply with Section 6 Rule 15 in relation to Section 13 Rule 13 of the Revised Rules of Court. The instant motion failed to show any affidavit of personal service attesting the personal delivery of the motion to the adverse parties and of the affidavit of mailing to the other party which was served through registered mail service. Likewise, the Motion to Declare in Default Laverne Realty is denied on the basis of non-compliance with Section 19 Rule 14 Revised Rules of Court.

Anent the previous orders of this Court requiring the sheriff or process server of the Court to send a copy of the alias summons as well as a copy of the order granting leave to serve summons for publication, the same must be recalled pursuant to the declaration of the Supreme Court in *Santos v. PNOC Exploration*, that 'the rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail' under Section 19, Rule 14 of the Rules of Court 'is imposed on the party who resorts to service by publication.' The reason is plain, the affidavit referred to in the rules must be executed by the person who mailed the required documents in Section 19 Rule 14, Revised Rules of Court.

**WHEREFORE**, the Court hereby Orders that:

- 1) Laverne Realty's Answer with Compulsory [C]ounterclaim be **EXPUNGED** from the record pursuant to Section 12 Rule 8 Revised Rules of Court;
- 2) Plaintiffs' Motions to Consolidate and to Declare the Defendant in Default are both **DENIED**;
- 3) Any orders inconsistent with this, particularly [the] order dated September 19, 2011 are hereby recalled and/or modified accordingly;
- 4) No setting shall be given in the meantime, but the Court shall await further action to be taken by the concerned parties and shall act accordingly.

Furnish copies of this Order all the parties concerned, including defendant Laverne, through its retained counsel, Atty. De Belen who has voluntarily appeared in court.

**SO ORDERED.**<sup>[8]</sup> (Emphasis in the original; citations omitted)

On June 26, 2012, the Makati RTC Branch 62 issued another Order<sup>[9]</sup> dismissing Civil Case No. 07-1155 for petitioners' failure to comply with the Order of November 25, 2011, and pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.<sup>[10]</sup>

Petitioners filed an omnibus motion for reconsideration and to declare Laverne in default. However, the Makati RTC Branch 62 denied the same in its Order<sup>[11]</sup> of December 27, 2012, ruling thus:

Plaintiff plead[ed] liberality but strongly asserted that their failure to comply with the orders of this Court was due to excusable negligence. They claim[ed] that 'non-compliance' with the Court's orders 'was brought about by mere mistake and excusable negligence of awaiting for the finality of the resolution of Branch 148 of the Regional Trial Court of Makati City regarding the approval of consolidation before informing this Court.'

The Court is not persuaded.

First. [P]laintiffs were afforded more than the required opportunity and were even guided through the Court's orders for their prompt compliance. [They failed to comply] not only once but multiple [times].

Second. The Court finds it hard to understand why the 'developments' before the RTC Branch 148 would depend on the outcome of the motion for consolidation before this Court. Plainly, if plaintiffs would want the case before another branch consolidated with the pending case before this Court, all that they have to do is to ask such relief from the court trying the other case, x x x. This Court would only be confronted to rule (to refuse or grant consolidation) if and when the other case before another court [is] already ordered consolidated and transmitted in this Court. It would be premature for this Court to act on something that has not yet happened. This is how things [are] properly done.

Yet again, for failure of the plaintiff spouses Cruz's Omnibus Motion to comply with Section 13 Rule 13<sup>[12]</sup> in relation to Section 6 Rule 15<sup>[13]</sup> of the Revised Rules of Court, the same is hereby **DENIED**. It must be observed that these lapses (along with failure to comply with Section 19 Rule 14<sup>[14]</sup> [were] the same grounds [relied upon by this Court] in its denial of the previous motion to default per its order dated March 29, 2012. Sadly, plaintiffs did not learn their lesson.

Plaintiffs also lament[ed] that the non-filing of defendant's answer should have prompted the Court to declare it in default. True, if the Court was provided by plaintiff with full compliance on proof of service by publication pursuant to Section 19 Rule 14 of the Revised Rules. Even in the present motion, the plaintiffs again have been oblivious of their duty under the rules. How can the Court declare the defendant in default?

x x x x

**WHEREFORE**, the Omnibus Motion: (i) For Reconsideration and (ii) Declare Defendant Laverne Realty and Development Corporation in Default is **DENIED** for utter lack of merit.

**SO ORDERED.**<sup>[15]</sup> (Emphasis in the original; citations omitted)

***Proceedings in LRC Case No. M-5237***

Meanwhile, in LRC Case No. M-5237 or Laverne's petition to surrender the owner's copy of the title to the subject property, petitioners filed a demurrer to evidence, which the Makati RTC Branch 148 granted in an Order<sup>[16]</sup> dated May 26, 2015, where it was stated that –

x x x In the instant demurrer, respondents move for the dismissal of the present petition based on the following grounds:

- a) Billing Statements were not received by respondents Sps. Cruz[;]
- b) Notice of Tax Delinquency was defective or non-compliant[;]
- c) Warrant of Levy was likewise defective or non-compliant[;]
- d) The public auction was defective and non-compliant[.]

x x x x

Sections 254 and 260 of the Code<sup>[17]</sup> [require] that the Notice of Tax Delinquency and Notice or Advertisement of Sale respectively be posted in the main entrance of the provincial, city or municipal building, and in publicly accessible and conspicuous place in the barangay where the real property is located. Proof of compliance with the said requirement is wanting in the evidence presented.

The actual notice of tax delinquency and the advertisement of public sale or public auction posted in the City of Makati and in a conspicuous place in the barangay where the property is located was not presented. There [was] no evidence presented that the Notice of Tax Delinquency was posted in the City Hall of Makati and in the barangay where the property is located in compliance with Section 254 of the Code. On the other hand, Exhibit "F" states that the City of Makati requested the Barangay where the property was located to issue a Certification indicating that the list of properties for public auction were posted in the said Barangay, but the Barangay Certification itself was not presented in court. Mere request for a Certification is not sufficient compliance with the law. Also, what was presented is the Certification issued by the City of Makati that the list of properties for public auction was posted in the bulletin Board of the City Hall. There [was] no showing that a notice of tax delinquency was posted. The Notice of Tax Delinquency under Section 254 is different from the Notice or Advertisement of Sale under Section 260 of R.A. 7160.

The law provides that the Notice of Tax Delinquency must be published twice in a newspaper of general circulation; the evidence presented shows that the Notice of Tax Delinquency was published only once on