

THIRD DIVISION

[G.R. No. 197970, January 25, 2016]

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. FADCOR, INC. OR THE FLORENCIO CORPORATION, LETICIA D. FLORENCIO, RACHEL FLORENCIO-AGUSTIN, MA. MERCEDES FLORENCIO AND ROSENDO CESAR FLORENCIO, JR., RESPONDENTS.

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari*,^[1] under Rule 45 of the Rules of Court, dated September 19, 2011 of petitioner Metropolitan Bank and Trust Company (Metrobank) that seeks to reverse the Decision^[2] dated May 17, 2011 and Resolution^[3] dated August 5, 2011, both of the Court of Appeals (CA) that set aside the Decision^[4] dated March 8, 2006 of the Regional Trial Court (RTC), Branch 59, Makati City ordering respondents to pay petitioner P17,479,371.86 representing deficiency obligation plus 12 percent interest per annum and P50,000.00 as attorney's fees.

The facts follow.

Metrobank granted five (5) loans in the aggregate amount of P32,950,000.00 to respondent Fadcor, Inc. or The Florencio Corporation (Fadcor), represented by its President Ms. Leticia D. Florencio and its Executive Vice-President, Ms. Rachel D. Florencio-Agustin. As such, Fadcor executed five (5) Non-negotiable Promissory Notes in favor of Metrobank. In addition, Fadcor through individual respondents President, Ms. Leticia D. Florencio; Exec. Vice-President, Ms. Rachel D. Florencio-Agustin; Treasurer, Ms. Ma. Cecilia D. Florencio; Corporate Secretary, Ms. Ma. Mercedes D. Florencio; and Director, Mr. Rosendo Cesar D. Florencio, Jr., executed two (2) Real Estate Mortgages in favor of Metrobank over ten (10) parcels of land as collateral for the loans obtained on August 2, 1995, in the amount of P18,000,000.00; P10,000,000.00, obtained on September 14, 1995, and an Amendment of Real Estate Mortgage to secure a loan of P22,000,000.00, obtained on October 26, 1995. Furthermore, the same respondents executed two (2) Continuing Surety Agreements in favor of Metrobank, binding themselves jointly and severally liable to pay any existing or future obligation in favor of Metrobank up to a maximum amount of Ninety Million Pesos (P90,000,000.00) only.

Thereafter, respondents defaulted in the payment of their loan amortizations in the total aggregate sum of P32,350,594.12, hence, after demands for payment of the arrears were ignored, Metrobank filed on April 20, 2001 an extra-judicial petition for foreclosure of mortgage before the Notary Public for and in the Province of Rizal, of the ten (10) mortgaged parcels of land in accordance with Act No. 3135, as amended. On July 31, 2001, the foreclosed properties were sold at public auction in

the amount of P32,961,820.72 to Metrobank as the highest bidder. Consequently, the corresponding Certificate of Sale was issued to Metrobank and the proceeds of sale were applied to Fadcor's indebtedness and expenses of foreclosure. Nonetheless, the amount of P17,479,371.86 remained unpaid as deficiency obligation, prompting Metrobank to demand from respondents payment of such deficiency obligation. Respondents, on the other hand, failed to pay. Hence, on September 23, 2003, Metrobank filed a Complaint against Fadcor for recovery of the deficiency obligation.

Respondents failed to appear at the scheduled pre-trial. The RTC, therefore, issued an Order directing Metrobank to present its evidence *ex parte*. Metrobank presented as lone witness its Senior Assistant Manager, Ms. Irene Sih-Tan and, thereafter, on September 4, 2004, it filed its Formal Offer of Evidence. Respondents filed a Motion for Reconsideration of the same Order, but on September 21, 2004, the RTC denied the said motion.

The RTC, on March 8, 2006, rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Metropolitan Bank and Trust Company ordering defendants jointly and severally to pay plaintiff the amount of P17,479,371.86 representing deficiency obligation plus interest thereon at the legal rate of 12% per annum computed from August 1, 2001 until the obligation is fully paid, plus the amount of P50,000.00 as and for reasonable attorney's fees.

SO ORDERED.^[5]

After the denial of its motion for reconsideration, Metrobank appealed the case to the CA and the latter, on May 17, 2011, granted the appeal, thus, reversing and setting aside the decision of the RTC, thus:

WHEREFORE, premises considered, the instant appeal is GRANTED. The Decision dated March 8, 2006 of the Regional Trial Court, Branch 59, Makati City, in Civil Case No. 03-1262 ordering defendants to pay plaintiff P17,479,371.86 representing deficiency obligation plus 12% interest per annum and P50,000.00 as attorney's fees is REVERSED and SET ASIDE,

No pronouncement as to costs.

SO ORDERED.^[6]

In reversing the RTC, the CA ruled that during the *ex parte* hearing held on August 24, 2004, the petitioner's lone witness, Irene Sih-Tan identified and marked Exhibits "A" to "DD-4" only as shown in the TSN, however, the RTC admitted Exhibits "A" to "MM," contrary to this Court's resolution in Administrative Matter (A.M.) No. 03-1-09-SC^[7] which provides that no evidence shall be allowed to be presented and offered during the trial in support of the party's evidence-in-chief other than those that have been identified below and pre-marked during the trial.

The CA, in its Resolution dated August 5, 2011, denied the motion for

reconsideration filed by Metrobank, hence, the present petition.

Petitioner argues that the CA erred in reversing the decision of the RTC. It claims that A.M. No. 03-1-09-SC has no application to the proceedings before the RTC because there was no pre-trial conducted as the respondents failed to appear nor filed their pre-trial brief.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law.^[8] However, jurisprudence has recognized several exceptions to this rule. In *Spouses Almendrala v. Spouses Ngo*,^[9] we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[10] In the present case, the RTC and the CA have conflicting findings of fact. Hence, the need to rule on the matter.

The petition is impressed with merit.

One must not deviate from the fact that this case involves an *ex parte* presentation of evidence allowed by the RTC after the respondents herein failed to appear at the scheduled pre-trial conference and submit a pre-trial brief despite receipt of the Order of the same court. Section 5, Rule 18 of the Rules of Court, states:

Section 5. *Effect of failure to appear.* - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The "next preceding" section mandates that:

Section 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.