

## THIRD DIVISION

[ G.R. No. 219815, September 14, 2016 ]

**J.O.S. MANAGING BUILDERS, INC. AND EDUARDO B. OLAGUER, PETITIONERS, VS. UNITED OVERSEAS BANK PHILIPPINES (FORMERLY KNOWN AS WESTMONT BANK), EMMANUEL T. MANGOSING AND DAVID GOH CHAI ENG, RESPONDENTS.**

### DECISION

**JARDELEZA, J.:**

Before us is a Petition for Review<sup>[1]</sup> assailing the October 7, 2014<sup>[2]</sup> and July 20, 2015<sup>[3]</sup> Orders of the Regional Trial Court (RTC) of Quezon City (RTC-QC), Branch 87 (RTC Br. 87) in Civil Case No. Q-11-69413. The first Order dismissed the petition for contempt filed by J.O.S. Managing Builders, Inc. (J.O.S.) and Eduardo B. Olaguer<sup>[4]</sup> (collectively, petitioners) against United Overseas Bank Philippines (UOBP), Emmanuel T. Mangosing and David Goh Chai Eng<sup>[5]</sup> (collectively, respondents) on the ground of mootness. The second Order expunged petitioners' motion for reconsideration of the October 7, 2014 Order from the record of the case due to violation of the three-day notice rule on motions.

#### Facts

On September 10, 1999, petitioners filed a Petition for Annulment of Extrajudicial Foreclosure Sale (annulment case) against UOBP and Atty. Ricardo F. De Guzman in RTC-QC.<sup>[6]</sup> The case was raffled to RTC-QC, Branch 98 (RTC Br. 98) and docketed as Civil Case No. Q-99-38701.<sup>[7]</sup> On May 17, 2000, RTC Br. 98 issued a writ of preliminary injunction (2000 writ) against respondents prohibiting them from: (a) consolidating title to the subject properties; and (b) committing any acts prejudicial to petitioners.<sup>[8]</sup> Eventually, on June 12, 2008, it also issued a decision annulling the extrajudicial foreclosure and public auction sale of the properties.<sup>[9]</sup> Respondents filed an appeal to the Court of Appeals (CA) docketed as CA-G.R. CV No. 92414.<sup>[10]</sup>

On May 5, 2008, while the annulment case was still pending, respondents sold the properties to Onshore Strategic Assets, Inc.<sup>[11]</sup> Thus, petitioners filed a Petition to Declare Respondents in Contempt of Court<sup>[12]</sup> (contempt case) in RTC-QC. The case was docketed as Civil Case No. Q-11-69413 and raffled to RTC, Branch 220 (RTC Br. 220). Petitioners averred that respondents' sale of the properties constitutes indirect contempt of court because it was done in violation of the 2000 writ issued by RTC Br. 98. Additionally, they prayed that respondents be ordered to pay actual, moral and exemplary damages including attorney's fees and cost of suit.

Respondents filed a Motion to Dismiss on the ground of failure to state a cause of action. They countered that the sale of the properties did not violate the 2000 writ because petitioners did not plead that the sale was prejudicial to them. Further, the

petition did not allege that respondents consolidated title to the properties. RTC Br. 220 denied the motion to dismiss. Respondents moved for reconsideration, but it was denied.<sup>[13]</sup> They elevated the case to the CA via a petition for *certiorari*, but the CA also dismissed it.<sup>[14]</sup>

Respondents then filed an Answer *Ad Cautelam*<sup>[15]</sup> in RTC Br. 220, contending that the 2000 writ merely prohibited UOBP from consolidating title to the properties and did not enjoin it from selling or transferring them to any person or entity.<sup>[16]</sup> Respondents also asserted that the sale is not prejudicial to the interest of petitioners because the 1997 Rules of Civil Procedure (the Rules) recognizes and allows transfers *pendente lite*.<sup>[17]</sup> By way of counterclaim, respondents prayed that petitioners be ordered to pay moral and exemplary damages and attorney's fees.<sup>[18]</sup>

In another turn of events, the contempt case was re-raffled to RTC Br. 87.<sup>[19]</sup> On May 8, 2014, respondents filed its second motion to dismiss.<sup>[20]</sup> They argued that the decision of RTC Br. 98 in the annulment case was reversed by the CA in its Decision dated November 28, 2013. They claimed that the CA's dismissal of the annulment case automatically dissolved or set aside the 2000 writ because a writ of preliminary injunction is merely ancillary to the main case.<sup>[21]</sup> Therefore, the contempt case which seeks to punish them for the alleged violation of the 2000 writ had become moot and academic.<sup>[22]</sup> Petitioners opposed the motion but RTC Br. 87, in its first assailed Order, granted respondent's motion and dismissed the case. It ruled that "the writ of preliminary injunction was rendered moot and academic with the [CA's dismissal of the annulment case] on the merits, which in effect automatically terminated the writ of preliminary injunction issued therein, even if an appeal is taken from said judgment."<sup>[23]</sup>

Petitioners filed a Motion for Reconsideration<sup>[24]</sup> (MR) of the order of dismissal. Respondents filed a Motion to Expunge<sup>[25]</sup> the MR on the ground that petitioners violated the three-day notice rule under Section 4, Rule 15 of the Rules. Respondents alleged that the hearing for petitioners' MR was set on November 7, 2014 but they received the notice only on November 6 or one (1) day before the scheduled hearing. In its second assailed Order, RTC Br. 87 granted respondent's motion to expunge.<sup>[26]</sup>

Petitioners now directly seek recourse to us via this petition for review on *certiorari* raising the following issues:

1. Whether RTC Br. 87 erred in expunging petitioners' MR from the record of the case;
2. Whether RTC Br. 87 erred in giving due course to respondents' motion to dismiss filed after their answer *ad cautelam*; and
3. Whether RTC Br. 87 erred in dismissing the contempt case on the ground of mootness.

Petitioners pray that we set aside the October 7, 2014 and July 20, 2015 Orders of RTC Br. 87, declare respondents guilty of contempt of court, and order them to pay damages.<sup>[27]</sup>

## Our Ruling

We partially grant the petition and reverse the challenged Orders of RTC Br. 87.

At the outset, we find no merit in the claim of respondents that petitioners' direct resort to us violates the hierarchy of courts. Section 2(c), Rule 41 of the Rules provides that in all cases where only questions of law are raised or involved, the appeal shall be before us.<sup>[28]</sup> Petitioners question the grant of due course to respondents' motion to dismiss filed after the filing of their *Answer Ad Cautelam*, the grant of respondents' motion to dismiss the contempt case on the ground of mootness, and the grant of respondents' motion to expunge petitioners' MR on the ground of violation of the three-day notice rule. In order to resolve these issues, we need not examine or evaluate the evidence of the parties, but rely solely on what the law provides on the given set of undisputed facts.<sup>[29]</sup> Consequently, petitioners' remedy for assailing the correctness of the Orders of RTC Br. 87, involving as it does a pure question of law, indeed lies with us.<sup>[30]</sup>

*RTC Br. 87 erred when it granted respondent's motion to expunge petitioner's MR from the records.*

Section 4, Rule 15 of the Rules, provides that:

*Sec. 4. Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

The general rule is that the three-day notice requirement in motions under Section 4 of the Rules is mandatory. It is an integral component of procedural due process. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.<sup>[31]</sup>

In *Cabrera v. Ng*,<sup>[32]</sup> the facts of which are analogous to the present petition, we held that the three-day notice requirement is not a hard-and-fast rule. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.<sup>[33]</sup> We ruled:

It is undisputed that the hearing on the motion for reconsideration filed by the spouses Cabrera was reset by the RTC twice with due notice to the parties; it was only on October 26, 2007 that the motion was actually heard by the RTC. At that time, more than two months had passed since the respondent received a copy of the said motion for reconsideration on August 21, 2007. The respondent was thus given sufficient time to study the motion and to enable him to meet the arguments interposed therein.

Indeed, the respondent was able to file his opposition thereto on September 20, 2007.

Notwithstanding that the respondent received a copy of the said motion for reconsideration four days after the date set by the spouses Cabrera for the hearing thereof, his right to due process was not impinged as he was afforded the chance to argue his position. Thus, the RTC erred in denying the spouses Cabrera's motion for reconsideration based merely on their failure to comply with the three-day notice requirement.<sup>[34]</sup>

Thus, the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.<sup>[35]</sup> When the adverse party had been afforded such opportunity, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.<sup>[36]</sup>

Here, respondents claimed to have actually received the notice for the November 7, 2014 hearing only on November 6, 2014.<sup>[37]</sup> On the supposed day of hearing, however, RTC Br. 87 issued a *Constancia*<sup>[38]</sup> resetting the hearing to December 5, 2014. Thereafter, on November 11, 2014, respondent filed a motion to expunge petitioners' MR.<sup>[39]</sup> Clearly, respondents' right to due process was not violated as they were able to oppose petitioner's MR in the form of their motion to expunge.

*RTC Br. 87 did not err in giving due course to respondents' motion to dismiss.*

Petitioners fault RTC Br. 87 for giving due course to respondents' motion to dismiss. Respondents filed their second motion to dismiss almost one (1) year and six (6) months after they submitted their Answer *Ad Cautelam*.<sup>[40]</sup> Thus, petitioners aver that respondents violated Section 1, Rule 16 of the Rules, stating that a motion to dismiss must be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim."

Petitioners are incorrect. In *Obando v. Figueras*,<sup>[41]</sup> we held that the period to file a motion to dismiss depends upon the circumstances of the case:

x x x Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained unless made within that period.

However, **even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following grounds:** (1) lack of jurisdiction, (2) *litis pendentia*, (3) lack of cause of action, and **(4) discovery during trial of evidence that would constitute a ground for dismissal.** Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules.