

## FIRST DIVISION

[ G.R. No. 151215, April 05, 2010 ]

**PCI LEASING AND FINANCE, INC., PETITIONER, VS. ANTONIO C. MILAN, DOING BUSINESS UNDER THE NAME AND STYLE OF "A. MILAN TRADING," AND LAURA M. MILAN, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court is directed against the Resolutions of the Court of Appeals dated September 20, 2001<sup>[2]</sup> and December 20, 2001<sup>[3]</sup> in CA-G.R. SP No. 66546. The Resolution dated September 20, 2001 of the Court of Appeals dismissed the Petition for *Certiorari* filed by herein petitioner, which assailed the Resolution<sup>[4]</sup> dated August 3, 2001 of the Regional Trial Court (RTC) of Quezon City, Branch 226, in Civil Case No. Q-00-40010, dismissing the appeal of herein petitioner for having been taken out of time. The Motion for Reconsideration of the September 20, 2001 Resolution was denied by the Court of Appeals in the Resolution dated December 20, 2001. Furthermore, the instant petition seeks the reversal of the Order<sup>[5]</sup> dated October 13, 2000 of the RTC in Civil Case No. Q-00-40010, which dismissed the complaint filed by petitioner against the herein respondents.

The instant case was commenced on February 18, 2000, upon the filing of a Complaint for Sum of Money<sup>[6]</sup> by petitioner PCI Leasing and Finance, Inc. (PCI Leasing) against herein respondents Antonio C. Milan (Antonio) and Laura M. Milan. The complaint was docketed as **Civil Case No. Q-00-40010** in the RTC of Quezon City, Branch 226.

PCI Leasing alleged that it extended loans to respondents on September 4, 1997, September 26, 1997 and November 5, 1997, for which Deeds of Assignment<sup>[7]</sup> were duly executed by respondents. Under the terms of the Deeds, respondents sold, assigned and transferred to PCI Leasing the former's rights to various checks for and in consideration of the various amounts obtained. In case of default or nonpayment of the checks, respondents were obligated to pay the face value of the checks, interests and late payment charges. Subsequently, when PCI Leasing presented the checks for payment, the same were dishonored for different reasons, *i.e.*, Payment Stopped,<sup>[8]</sup> Drawn Against Insufficient Funds,<sup>[9]</sup> and Account Closed.<sup>[10]</sup> Despite repeated demands, respondents failed to settle their obligation, which amounted to P2,327,833.33 as of January 15, 2000. PCI Leasing was then compelled to litigate to enforce payment of the total loan obligation, plus interests, penalties, attorney's fees, expenses of litigation and costs of suit.

On March 2, 2000, the RTC issued summons<sup>[11]</sup> to respondents, addressed to their place of residence as stated in the complaint, which is at No. 47 San Ildefonso

Drive, Torres Village, Novaliches, Quezon City.

On March 10, 2000, the process server of the RTC filed his Officer's Return,<sup>[12]</sup> stating that he went to the aforementioned address on two occasions to serve the summons and the copy of the complaint to the respondents. At both times, however, the process server was told by the people he encountered there that respondents had already transferred to an unknown location. The summons and the copy of the complaint were, thus, returned unserved.

In view of the above situation, PCI Leasing filed on April 10, 2000 a Motion to Archive<sup>[13]</sup> Civil Case No. Q-00-40010, asserting that it was then conducting an investigation in order to ascertain the whereabouts of the respondents. PCI Leasing prayed that the case be archived, subject to its reinstatement after the whereabouts of the respondents was determined.

In an Order<sup>[14]</sup> dated April 13, 2000, the RTC denied the Motion to Archive given that the circumstances of the case were not within the purview of the provisions of paragraph II (c) of Administrative Circular No. 7-A-92 (Guidelines in the Archiving of Cases),<sup>[15]</sup> which read:

In civil cases, the court may *motu proprio* or upon motion, order that a civil case be archived only in the following instances:

x x x x

"c) When defendant, without fault or neglect of plaintiff, cannot be served with summons within six (6) months from issuance of original summons.

Subsequently, on July 13, 2000, the RTC issued an Order,<sup>[16]</sup> directing PCI Leasing "to take the necessary steps to actively prosecute the instant case within ten days from receipt" under pain of dismissal of the case "for lack of interest."

On July 31, 2000, PCI Leasing filed a Motion for Issuance of Alias Summons.<sup>[17]</sup> Said motion was, however, denied by the RTC *via* an Order<sup>[18]</sup> dated August 3, 2000 on the ground that the same was "a mere scrap of paper" for apparently containing a defective notice of hearing.<sup>[19]</sup>

On September 5, 2000, PCI Leasing filed another Motion for Issuance of Alias Summons,<sup>[20]</sup> which the RTC scheduled for hearing on October 13, 2000.<sup>[21]</sup> During the hearing of the motion on said date, there was no appearance from both counsels of PCI Leasing and respondents.<sup>[22]</sup> Accordingly, the RTC issued an Order dated October 13, 2000 in Civil Case No. Q-00-40010, declaring thus:

When this case was called for hearing on the Motion for Issuance of Alias Summons, there was no appearance for [PCI Leasing]. It should be recalled that as early as July 13, 2000, [PCI Leasing] had been ordered to take the necessary steps to actively prosecute this case, otherwise, the same shall be dismissed. **In view of the absence of the counsel**

**for [PCI Leasing] today, the case is hereby DISMISSED.**<sup>[23]</sup>  
(Emphasis ours.)

PCI Leasing sought a reconsideration<sup>[24]</sup> of the above Order, explaining that its counsel was already in the courtroom when Judge Leah S. Domingo-Regala of the RTC was dictating the order of dismissal. Allegedly, the counsel of PCI Leasing even expressed profuse apologies to the trial court for his late appearance. PCI Leasing prayed that the order of dismissal be reconsidered and the second Motion for Issuance of Alias Summons be considered submitted for resolution.

In a Resolution<sup>[25]</sup> dated January 4, 2001, the RTC denied the Motion for Reconsideration. After briefly summarizing the incidents of the case before it, the trial court declared that:

[I]t is clear that [PCI Leasing] had been remiss in its duty to prosecute this case diligently.

The Court has already given [PCI Leasing] several chances within a span of almost one (1) year to prosecute the instant case but [PCI Leasing] failed to do so.

**If only to serve as a lesson to [PCI Leasing] to be more considerate of the time and resources of the Court, the Court resolves to DENY the instant motion for reconsideration.**

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED**, for lack of merit." (Emphases ours.)

On January 26, 2001, PCI Leasing filed an *Ex Parte* Motion for Reconsideration,<sup>[26]</sup> once more seeking a reconsideration of the dismissal of its case. Given the alleged amount of the respondents' liability, PCI Leasing stressed that it had a valid cause of action against the former and it never lost interest in the prosecution of its case. PCI Leasing then implored the RTC to revisit the Order dated October 13, 2000 and the Resolution dated January 4, 2001 to make the dismissal without prejudice, in order for PCI Leasing to maintain its right to re-file its legal claim against respondents.

The RTC denied the *Ex Parte* Motion for Reconsideration in a Resolution<sup>[27]</sup> dated April 6, 2001. The trial court observed, *inter alia*, that the *Ex Parte* Motion was already the second motion for reconsideration filed by PCI Leasing. Also, the RTC made mention of the provisions of Section 3, Rule 17<sup>[28]</sup> of the Rules of Court relating to the dismissal of a case due to the fault of a plaintiff.

On May 11, 2001, PCI Leasing filed a Notice of Appeal<sup>[29]</sup> in an attempt to challenge the Order dated October 13, 2000 of the RTC, as well as the Resolutions dated January 4, 2001 and April 6, 2001. The Notice of Appeal recited, thus:

Plaintiff, through counsel, to this Honorable Court respectfully gives notice that it is appealing to the Honorable Court of Appeals its **13 October 2000 Order** received on 13 November 2000 which dismissed the case, its **04 January 2001 Resolution** received on 17 January 2001 denying the Motion for Reconsideration dated 17 October 2000 and its **06 April 2001 Resolution** received on 03 May 2001 denying the Ex-parte Motion for Reconsideration dated 23 January 2001, on the ground that said Order and Resolutions are **contrary to the applicable laws and jurisprudence on the matter**. (Emphases ours.)

On August 3, 2001, the RTC rendered a Resolution dismissing the Notice of Appeal, given that the same was filed beyond the reglementary period, to wit:

At any rate, the Notice of Appeal was filed late. Record shows that the Resolution of January 4, 2001 [which denied the Motion for Reconsideration of the Order dated October 13, 2000, dismissing Civil Case No. Q-00-40010] was received by [the counsel of PCI Leasing] on **January 17, 2001**. On January 26, 2001 (or on the 9<sup>th</sup> day from receipt of the Resolution of January 4, 2001), [PCI Leasing] filed its '*Ex-Parte* Motion for Reconsideration'. On April 6, 2001, the Court issued a Resolution denying the Ex-Parte Motion for Reconsideration. The Resolution of April 6, 2001 was received by [the counsel of PCI Leasing] on **May 3, 2001**.

Thus [PCI Leasing] had only seven (7) days from receipt of the Resolution of April 6, 2001 within which to file the Notice of Appeal, or up to **May 10, 2001**. The Notice of Appeal was filed on **May 11, 2001**.<sup>[30]</sup> (Emphases ours.)

Quoting the pertinent doctrines on the finality of judgments, the RTC underlined that:

On this score, the Hon. Supreme Court has time and again emphasized that an award or judgment becomes final and executory upon the expiration of the period to appeal and no appeal was made within the reglementary period. The basic rule of finality of judgment is applicable indiscriminately to one and all since the rule is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. (Alto Sales Corporation vs. IAC, 197 SCRA 618)

Although in a few instances, the court had disregarded procedural lapses so as to give due course to appeals beyond the reglementary period, the court did so on the basis of strong and compelling reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. (Vide Retoni, Jr. vs. CA, 218 SCRA 468)

Thus, the perfection of an appeal within the reglementary period fixed by the rules is mandatory and jurisdictional and the failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal. (De Castro, Jr. vs. CA, 158 SCRA 288.)<sup>[31]</sup>

The RTC decreed, thus:

WHEREFORE, the Notice of Appeal is **DISMISSED, for having been taken out of time.**<sup>[32]</sup> (Emphasis ours.)

Without filing a Motion for Reconsideration, PCI Leasing assailed the above Resolution before the Court of Appeals through a Petition for *Certiorari* under Rule 65 of the Rules of Court, which was docketed as **CA-G.R. SP No. 66546.**

The appellate court, however, dismissed outright the aforesaid petition in a Resolution dated September 20, 2001, holding:

This is a petition for certiorari seeking to set aside the Resolutions of respondent Judge dismissing the appeal of [PCI Leasing] for having been taken out of time.

Section 13, Rule 41 of the 1997 Rules of Civil Procedure provides that the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time.

Settled is the rule that the perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but jurisdictional and **the failure to perfect that appeal renders the judgment of the court final and executory.** Moreover, the notice of appeal filed by [PCI Leasing] states that it is appealing the assailed Order and resolutions to the Court of Appeals on the ground that the same are contrary to the applicable laws and jurisprudence on the matter. In *Reyes vs. Zamora*, it was pointed out that when one alleges that an order is *contrary to law and jurisprudence*, plain common sense dictates that the order is being attacked *on question of law*. Section 2(c), Rule 41 of the 1997 Rules of Civil Procedure provides that **in all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.** (Emphases ours.)

**WHEREFORE**, the petition is **DISMISSED** for lack of merit.<sup>[33]</sup> (Emphases ours, citations omitted.)

Petitioner filed a Motion for Reconsideration<sup>[34]</sup> of the aforementioned Court of Appeals Resolution but the same was denied in a Resolution issued on December 20,