

## THIRD DIVISION

[ G.R. No. 186175, August 25, 2010 ]

**3A APPAREL CORPORATION AND RAY SHU, PETITIONERS, VS.  
METROPOLITAN BANK AND TRUST CO., JAIME T. DEE,  
ENRIQUETO MAGPANTAY, REGISTER OF DEEDS FOR SAN JUAN,  
METRO MANILA, SHERIFF VICTOR S. STA. ANA, EX-OFFICIO  
SHERIFF GRACE S. BELVIS AND SEVERAL JOHN DOES,  
RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

The present petition for review on certiorari dwells on what remedy a litigant, whose complaint was dismissed by the trial court for failure to prosecute, has to challenge the same.

Petitioner 3A Apparel Corporation (the corporation) mortgaged its condominium unit to respondent Metropolitan Bank and Trust Company (MBTC) to secure a loan. For failure to settle its obligation, MBTC extrajudicially foreclosed the mortgage, drawing the corporation, represented by its president Ray Shu, to file a complaint for petition for annulment of real estate mortgage, promissory note, foreclosure of sale, and related documents<sup>[1]</sup> before the Regional Trial Court (RTC) of Pasig against MBTC and its officers.

After almost two years from the time the case was scheduled for presentation of the corporation's evidence, without it having presented any evidence, Branch 264 of the Pasig, RTC, upon motion of MBTC, dismissed<sup>[2]</sup> the corporation's complaint for failure to prosecute.

The corporation's motion for reconsideration<sup>[3]</sup> having been denied<sup>[4]</sup> by the trial court, it filed a petition for certiorari before the Court of Appeals, positing that substantial justice must prevail over mere technicalities. By Decision<sup>[5]</sup> of July 18, 2008, the appellate court dismissed the petition, it holding that dismissal on the ground of failure to prosecute has, citing Section 3 of Rule 17, the effect of an adjudication on the merits, unless otherwise declared by the court.

The appellate court went on to hold:

The Order of September 29, 2003 is couched in such a way as to show that the dismissal of herein petitioners' complaint was an adjudication upon the merits. The dismissal of the complaint is **appealable**. The remedy of appeal being available to petitioners, resort to . . . petition [for certiorari] is precluded. (emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration<sup>[6]</sup> having been denied,<sup>[7]</sup> the present petition for review on certiorari was filed, the corporation raising the following issues:

1. Whether the appellate court erred when it dismissed the petition for certiorari for being the wrong remedy; and
2. Whether the appellate court erred when it upheld the trial court's dismissal of Civil Case No. 67416 for failure to prosecute under Section 3, Rule 17 of the Rules of Court.

The petition fails.

Section 3 of Rule 17 of the Rules of Court<sup>[8]</sup> is indeed clear that a dismissal for failure to prosecute is an adjudication upon the merits, unless otherwise declared by the court. No such declaration was made by the trial court, hence, its dismissal of the corporation's petition should be challenged by appeal within the reglementary period.<sup>[9]</sup>

The invocation of "justice and fair play" by the corporation does not impress.

. . . In order to perfect an appeal all that is required is a *pro forma* notice of appeal. Perhaps due to failure to file a notice of appeal within the remaining two days of the appeal period, petitioner's counsel instead filed the instant petition. The rules of procedure, however, do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by mere expedience of invoking "substantial justice."<sup>[10]</sup> (underscoring supplied)

Even on the merits, the petition just the same fails.

To justify the delay in the presentation of its evidence, the corporation recites the following schedules of hearings and what transpired therein before the trial court:

10 October 2001 - both parties were not ready for hearing and agreed for a resetting;

25 October 2001 - witness, Ray Shu was not available to testify because of "Acute Viral Gastroenteritis";

22 November 2001 - hearing was reset by agreement of both parties;

17 January 2002 - petitioners' witness, Ray Shu was present but Atty. Caraan was not present as he had an emergency at home according to his representative Jaime Fellicen;