

THIRD DIVISION

[G.R. No. 150918, August 17, 2007]

**NEGROS MERCHANTS ENTERPRISES, INC., PETITIONER, VS.
CHINA BANKING CORPORATION, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This Petition for Review on *Certiorari* ^[1] assails the September 7, 2001 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 65127, which annulled and set aside the September 22, 2000 and March 19, 2001 Orders^[3] of the Regional Trial Court of Bacolod City, Branch 41 in Civil Case No. 99-10707, as well as the November 12, 2001 Resolution^[4] denying the Motion for Reconsideration.

The facts of the case are as follows:

On August 23, 1993, petitioner Negros Merchants Enterprises, Inc. (NMEI), through its President and General Manager, Jacinto Y. Tan, Jr., applied for an P8 million Credit Accommodation with respondent China Banking Corporation (CBC), with terms "ONE YEAR LOAN LINE, RENEWABLE AND RE-AVAILABLE ANNUALLY THEREAFTER."^[5] The loan was secured by a real estate mortgage^[6] over its properties covered by Transfer Certificate of Title (TCT) Nos. T-139095^[7] and T-139096.^[8] On December 21, 1994, petitioner, through Tan, applied for an additional Case-to-Case Loan worth P1,500,000.00.^[9] Both loans were respectively paid on January 31 and March 27, 1996.

Meanwhile, beginning March 19, 1996, petitioner allegedly re-availed the P8 million credit line under the original Credit Accommodation through promissory notes executed by Tan.^[10] Petitioner failed to settle the obligation, hence respondent sent a demand letter^[11] with warning to foreclose on the real estate mortgage. Petitioner, through its counsel Atty. Raphael A. Diaz, sent two letters^[12] to respondent requesting a detailed statement of account and to hold in abeyance any legal action. The latter replied that said statement could not be released without proper board resolution or authorization.^[13] Subsequently, petitioner's properties were extrajudicially foreclosed and sold in public auction, with respondent as the highest bidder. On March 6, 1998, the Ex-Officio Provincial Sheriff of Negros Occidental issued the corresponding Certificate of Sale^[14] in favor of respondent.

On March 16, 1999, petitioner filed a Complaint for Annulment of Foreclosure Sale with Damages and Preliminary Injunction.^[15] Respondent moved to dismiss^[16] the same on the ground that petitioner failed to show by clear and convincing evidence that it is entitled to the relief sought in the complaint. Petitioner later filed an Amended Complaint^[17] impleading Tan and his spouse, Corazon V. Tan, as well as

respondent's Bacolod Branch Manager Ainalea Lim-Cortez. Respondent again sought to dismiss^[18] the amended complaint for failure to state cause of action and for failure to comply with the rules on non-forum shopping.^[19]

Meanwhile, title over TCT Nos. T-139095 and T-139096 were consolidated^[20] in favor of respondent. On September 15, 1999, the Regional Trial Court of Bacolod City, Branch 46, granted respondent's Petition for Issuance of a Writ of Possession for the said properties.^[21]

On September 22, 2000, the Regional Trial Court of Bacolod City, Branch 41, denied respondent's Motion to Dismiss. Respondent moved for reconsideration^[22] but was likewise denied.

Thereafter, respondent filed a petition for certiorari before the Court of Appeals assailing the Orders of the trial court denying the motion to dismiss and the motion for reconsideration. On September 7, 2001, the Court of Appeals rendered the assailed Decision, the dispositive portion of which provides:

WHEREFORE, premises considered, the present petition is GIVEN DUE COURSE and the writs prayed for, accordingly GRANTED. The Orders dated September 22, 2000 and March 19, 2001 which were both issued by respondent Judge RAY ALAN T. DRILON of Branch 41 of the Regional Trial court of Bacolod City in **Civil Case No. 99-10707**, entitled "*Negros Merchants Enterprises, Inc. v. China Banking Corporation, Spouses Jacinto Y. Tan, Jr. and Corazon V. Tan and Ex-Officio Provincial Sheriff of Negros Occidental*" are hereby ANNULLED and SET ASIDE. Respondent Judge, who is hereby permanently ENJOINED from enforcing the said Orders dated September 22, 2000 and March 19, 2001, is hereby ORDERED to dismiss **Civil Case No. 99-10707** insofar as petitioner China Banking Corporation is concerned.

Costs against private respondent.

SO ORDERED.^[23]

The Court of Appeals held that the Amended Complaint should have been dismissed because the accompanying certification against forum shopping which was signed by petitioner's corporate secretary, Amelito Lizares, was defective, for lack of authorization from the board of directors; that the allegations in the amended complaint were insufficient to establish a cause of action; that petitioner defaulted in paying the loan, thus respondent rightfully foreclosed the mortgaged properties; that petitioner cannot validly claim ignorance of the foreclosure proceedings; that the alleged collusion between Tan and respondent's Bacolod branch manager lacks basis because petitioner expressly authorized Tan to enter into loan transactions in its behalf with the latter; and that the trial judge acted with grave abuse of discretion in denying respondent's Motion to Dismiss.

The motion for reconsideration filed by petitioner was denied for lack of merit; hence, the present petition for review on *certiorari*.

Petitioner insists that the Court of Appeals departed from jurisprudential and

procedural law when it entertained respondent's petition for certiorari questioning the two interlocutory orders issued by the trial court as the same shall be reviewed only when an appeal is taken from the judgment of the trial court; that since no actual hearing was yet conducted, there is no evidence which the appellate court could use as basis to resolve the case on the merits or to determine whether the trial judge acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

Petitioner also argues that trial courts have the authority to determine whether the allegations in a complaint are sufficient to support a cause of action and that they have the discretion to resolve a motion to dismiss on the ground of failure to state a cause of action based only on the complaint or based on other pleadings submitted by the parties. Thus, petitioner concludes that the trial judge acted within his discretion and authority in denying the motion to dismiss.

Petitioner likewise claims that the amended complaint cannot be considered an initiatory pleading which requires an accompanying certification against forum shopping. Since respondent's first motion to dismiss did not raise in issue the alleged defective certification, it is deemed to have waived any objection thereto, in accordance with Section 8, Rule 15 of the Rules of Court.^[24] However, in the event the certification is found to be defective, petitioner maintains that it substantially complied with the rules and that the substance of the complaint should not be subordinated to procedural lapses.

Finally, petitioner asserts that the full payment of the P8 million loan accommodation on January 31, 1996 rendered the mortgage contract and other documents connected thereto without force or effect. Accordingly, the mortgage contract should be deemed cancelled, and the properties subject thereto deemed released, instead of using them as security for the loans fraudulently obtained by Tan, and subsequently foreclosing them when the latter failed to pay. Petitioner, thus, prays for the reinstatement of the complaint against respondent for further proceedings.

The petition lacks merit.

In *España, Sr. v. Court of Appeals*,^[25] the Court held that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the subject of a petition for review on *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.^[26]

Thus, when the trial court denied respondent's motion to dismiss, its next course of action would have been to file an answer and proceed with the trial of the case. It therefore erred when it filed instead a petition for certiorari before the Court of Appeals.

Nevertheless, while indeed respondent erred in filing a petition for *certiorari* before the appellate court, we agree with the Court of Appeals that petitioner's Amended Complaint should have been dismissed due to its defective verification and certification against forum shopping.