

## SECOND DIVISION

[ G.R. No. 147417, July 08, 2005 ]

**SPS. VICTOR & MILAGROS PEREZ AND CRISTINA AGRAVIADOR  
AVISO, PETITIONERS, VS. ANTONIO HERMANO, RESPONDENT.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Resolution<sup>[1]</sup> of the Court of Appeals dismissing petitioners' original action for *certiorari* under Rule 65 for being filed out of time. Assailed as well is the Resolution<sup>[2]</sup> dismissing petitioners' motion for reconsideration.

The pertinent facts of the case are as follows:

On 27 April 1998, petitioners Cristina Agraviador Aviso and spouses Victor and Milagros Perez filed a civil case for Enforcement of Contract and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction against Zescon Land, Inc. and/or its President Zenie Sales-Contreras, Atty. Perlita Vitan-Ele and against respondent herein Antonio Hermano before the Regional Trial Court (RTC) of Quezon City, Branch 224.<sup>[3]</sup> On 15 May 1998, respondent (then defendant) Hermano filed his Answer with Compulsory Counterclaim. On 17 January 2000, respondent Hermano filed a "Motion with Leave to Dismiss the Complaint or Ordered Severed for Separate Trial" which was granted by the trial court in an Order dated 28 February 2000.

This Order was received by petitioners on 21 March 2000. On 23 March 2000, petitioners moved for reconsideration which was denied by the trial court on 25 May 2000 and received by petitioners on 18 June 2000. On 17 August 2000, petitioners filed an original action for *certiorari* before the Court of Appeals imputing grave abuse of discretion on the part of the trial court in dismissing the complaint against respondent Hermano.

On 19 October 2000, the Court of Appeals rendered the first assailed Resolution dismissing the petition for *certiorari* "for having been filed beyond the reglementary period pursuant to Section 4, Rule 65 of the 1997 Rules on Civil Procedure, as amended." On 02 March 2001, the second assailed Resolution was promulgated dismissing petitioners' motion for reconsideration, the Court of Appeals holding that:

From the time petitioners received the assailed Order on March 21, 2000 and filed their motion for reconsideration, four (4) days had elapsed. On June 18, 2000, petitioners received the denial of their motion for reconsideration. When the instant petition was filed on August 17, 2000, a total of 63 days had elapsed.

A.M. No. 00-2-03-50 further amending Section 4, Rule 65 of the New Rules on Civil Procedure states that the petition shall be filed not later than sixty (60) days from notice of the judgment, Order or Resolution and in case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the 60-day period shall be counted from notice of the denial of said motion.

Viewed from its light, the assailed Orders had already attained finality, and are now beyond the power of this Court to review.<sup>[4]</sup>

Aggrieved by the foregoing ruling, petitioners are now before us assigning the following -

MANIFEST AND/OR SERIOUS ERROR COMMITTED BY THE HONORABLE COURT OF APPEALS IN THE COMPUTATION OF THE PERIOD WITHIN WHICH THE PETITIONERS FILED THEIR PETITION FOR CERTIORARI BEFORE IT AND CONSEQUENTLY COMMITTED GRAVE ABUSE OF DISCRETION IN THE APPRECIATION OF FACTS AND/OR MISAPPREHENSION OF FACTS, WITH ITS FINDING OF FACT NOT BEING BORNE BY THE RECORD OR EVIDENCE, AND THUS ITS CONCLUSION IS ENTIRELY BASELESS.<sup>[5]</sup>

According to petitioners, following the amendment introduced by A.M. No. 00-2-03-SC to Section 4, Rule 65 of the 1997 Rules on Civil Procedure, their petition was filed on the 60<sup>th</sup> day, thus, within the reglementary period. Respondent insists, on the other hand, that the petition was filed on the 61<sup>st</sup> day while the Court of Appeals had declared that the petition was filed on the 63<sup>rd</sup> day.

We agree in the position taken by petitioners.

Admittedly, at the time petitioners filed their petition for *certiorari* on 17 August 2000, the rule then prevailing was Section 4, Rule 65 of the 1997 Rules on Civil Procedure, as amended by Circular No. 39-98 effective 01 September 1998, which provides:

Sec. 4. Where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court, or if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order, or resolution, the period herein fixed shall be interrupted. **If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from**

**notice of such denial.** No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied)

However, on 01 September 2000, during the pendency of the case before the Court of Appeals, Section 4 was amended anew by A.M. No. 00-2-03-SC<sup>[6]</sup> which now provides:

Sec. 4. When and where petition filed. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.**

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis supplied)

Under this amendment, the 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed.<sup>[7]</sup>

In *Narzoles v. National Labor Relations Commission*,<sup>[8]</sup> we described this latest amendment as curative in nature as it remedied the confusion brought about by Circular No. 39-98 because, "historically, *i.e.*, even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*." Curative statutes, which are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements, by their very essence, are retroactive.<sup>[9]</sup> And, being a procedural rule, we held in *Sps. Ma. Carmen and Victor Javellana v. Hon. Presiding Judge Benito Legarda*<sup>[10]</sup> that "procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent."

Consequently, petitioners had a fresh period of 60 days from the time they received the Order of the trial court denying their motion for reconsideration on 18 June 2000. When they filed their petition with the Court of Appeals on 17 August 2000, exactly 60 days had elapsed following the rule that in computing a period, the first day shall be excluded and the last day included.<sup>[11]</sup> Hence, there can be no doubt

that the petition was filed within the reglementary period for doing so and it was reversible error on the part of the Court of Appeals in not giving said petition due course. However, instead of remanding the case to the Court of Appeals which would only unduly prolong the disposition of the substantive issue raised, we shall resolve the petition originally filed therein.

Petitioners brought to the Court of Appeals on petition for *certiorari* under Rule 65 the lone issue of:

WHETHER OR NOT THE PUBLIC RESPONDENT [Hon. Emilio L. Leachon, Jr., Presiding Judge, RTC, Branch 224, Quezon City] HAD PLAINLY AND MANIFESTLY ACTED WITH GRAVE ABUSE OF DISCRETION, IN EXCESS OF JURISDICTION, TANTAMOUNT TO LACK OF JURISDICTION, IN DISMISSING THE COMPLAINT AS AGAINST RESPONDENT ANTONIO HERMANO IN CIVIL CASE NO. Q-98-34211.<sup>[12]</sup>

Petitioners assert that respondent Hermano should not have been dismissed from the complaint because: (1) He did not file a motion to dismiss under Rule 16 of the Rules of Court and, in fact, his "Motion with Leave to Dismiss the Complaint or Ordered Severed for Separate Trial" was filed almost two years after he filed his Answer to the complaint; (2) There was no misjoinder of causes of action in this case; and (3) There was no misjoinder of parties.

The case filed by petitioners against respondent Hermano and the other defendants, namely Zescon Land, Inc. and/or its President Zenie Sales-Contreras and Atty. Perlita Vitan-Ele, was one for "Enforcement of Contract and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction" docketed as Civil Case No. Q-98-34211 and raffled to Branch 224.

Petitioners presented three causes of action in their complaint, the first for enforcement of contract to sell entered into between petitioners and Zescon Land, Inc., the second for annulment or rescission of two contracts of mortgage entered into between petitioners and respondent Hermano and the third for damages against all defendants.

For the first cause of action, petitioners allege that sometime in November 1997, they entered into a Contract to Sell with Zescon Land, Inc., through Zenie Sales-Contreras, for the purchase of five (5) parcels of land in the total amount of Nineteen Million One Hundred Four Thousand Pesos (P19,104,000.00). As part of their agreement, a portion of the purchase price would be paid to them as down payment, another portion to be given to them as cash advance upon the execution of the contract and another portion to be used by the buyer, Zescon Land, Inc., to pay for loans earlier contracted by petitioners which loans were secured by mortgages.

Re-pleading the foregoing in their second cause of action, petitioners contend that "in a tricky machination and simultaneous with the execution of the aforesaid Contract to Sell," they were made to sign other documents, two of which were Mortgage deeds over the same five properties in favor of respondent Hermano, whom they had never met. It was allegedly explained to them by Sales-Contreras that the mortgage contracts would merely serve to facilitate the payment of the price as agreed upon in their Contract to Sell. Petitioners claim that it was never

their intention to mortgage their property to respondent Hermano and that they have never received a single centavo from mortgaging their property to him. Petitioners acknowledge, however, that respondent Hermano was responsible for discharging their obligations under the first mortgage and for having the titles over the subject lands released, albeit not to them but to respondent Hermano. They seek a TRO against respondent Hermano who had informed them that he would be foreclosing the subject properties.

In their third cause of action, petitioners pray for damages against all the defendants alleging that:

Due to the failure and refusal, without any valid justification and reason, by defendants Zescon and Contreras to comply with their obligations under the Contract to Sell, including their failure and refusal to pay the sums stipulated therein, and in misleading and misrepresenting the plaintiffs into mortgaging their properties to defendant Antonio Hermano, who in turn had not paid the plaintiffs the proceeds thereof, putting them in imminent danger of losing the same, plaintiffs had suffered, and continue to suffer, sleepless nights ....

By reason of defendants Zescon and Contreras's failure and refusal to pay the sums stipulated in the Contract to Sell, and of defendant Antonio Hermano's not having paid plaintiffs the proceeds of the mortgage agreements, plaintiffs had been deprived of the beneficial use of the proceeds and stood to lose, as they continue to lose, by way of unearned profits at least P1,000,000.00.<sup>[13]</sup>

In his Answer with (Compulsory) Counterclaim dated 15 May 1998, respondent Hermano denied petitioners' allegations.<sup>[14]</sup> Then, on 19 February 1999, respondent Hermano filed a civil case entitled "Judicial Foreclosure of Real Estate Mortgage" against petitioner Aviso docketed as Civil Case No. Q-99-36914 and raffled to Branch 216 of the RTC of Quezon City. On 17 January 2000, respondent Hermano filed a "Motion With Leave To Dismiss The Complaint Against Defendant Antonio Hermano, Or Ordered Severed For Separate Trial" before Branch 224. In said motion, respondent Hermano argued that there was a mis-joinder of causes of action under Rule 2, Section 6 of the Rules of Court. To quote respondent Hermano:

3. In the instant case, the plaintiffs' action for the Enforcement of Contract and Damages with Prayer for The Issuance of a Temporary Restraining Order And/Or Preliminary Injunction against Zescon Land, Inc., and/or its President Zenie Sales Contreras, may not, under Rule 2, Section 6 of the 1997 Rules of Civil Procedure, join defendant Hermano as party defendant to annul and/or rescind the Real Estate Mortgages of subject properties. There is a misjoinder of parties defendants under a different transaction or cause of action; that under the said Rule 2, Section 6, upon motion of defendant Hermano in the instant case, the complaint against defendant Hermano can be severed and tried separately; . . . .<sup>[15]</sup>

Over petitioners' opposition to said motion, the same was granted by the trial court in its Order dated 28 February 2000 on the justification that: