

THIRD DIVISION

[CA-G.R. SP NO. 131861, March 25, 2015]

MA. THERESA COMMERCIAL, INC., AS REPRESENTED BY ITS PRESIDENT, JOSE LIM ONG, AND JOSE LIM ONG, AS SURETY, PETITIONERS, VS. HON. OFELIA L. CALO, AS PRESIDING JUDGE OF THE RTC-BRANCH 211, MANDALUYONG CITY, AND BANCO DE ORO UNIVERSAL BANK, INC., RESPONDENTS.

DECISION

BARZA, J.:

Before this Court is a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court, filed by petitioners Ma. Theresa Commercial, Inc., as represented by its president and surety, Jose Lim Ong (hereinafter collectively referred to as "*petitioners*") seeking to annul and set aside the *Order*^[2] dated October 29, 2012, rendered by herein public respondent Hon. Ofelia L. Calo, presiding judge of the Regional Trial Court of Mandaluyong City, Branch 211, and her *Order*^[3] dated July 17, 2013, denying the Motion for Reconsideration thereof, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

THE FACTS

The present case stemmed from a complaint for a sum of money filed against petitioners by herein private respondent Banco De Oro Universal Bank, Inc. (BDO), on June 9, 2005 which it revised by filing an Amended Complaint with prayer for the issuance of a temporary restraining order on August 17, 2005. The said case was docketed as Civil Case No. MC08-2753 (*Civil Case MC08-2753*) and raffled to Branch 211 of the Regional Trial Court of Mandaluyong City (*RTC*), presided by herein public respondent Hon. Judge Ofelia L. Calo (*public respondent*).

The proceedings in the said case show that the RTC granted BDO's Motion to Allow Plaintiff to Cause Service of Alias Summons by Publication on May 19, 2010.

On May 28, 2010, the Clerk of Court of the RTC issued the Alias Summons by Publication including the order directing the publication of summons. Thereafter, BDO caused the publication of the summons in a newspaper of general circulation.

Instead of filing their Answer, petitioners filed a Motion to Dismiss before the RTC questioning the latter court's jurisdiction. The said motion was denied by the RTC in her *Order* dated April 12, 2011. Petitioners then filed a motion for reconsideration assailing the said Order but the same was denied by the RTC in her Order dated July 11, 2011.

Petitioners then filed a *Petition for Certiorari*^[4] dated August 1, 2011, before the Court of Appeals wherein they claimed public respondent committed grave abuse of

discretion in issuing the RTC's Orders dated April 12, 2011 and July 11, 2011, premised on the ground that BDO's Ex- Parte Motion to allow service of summons by publication was allegedly fatally defective.

On April 23, 2012, BDO filed a motion to declare petitioners in default due to their failure to file an answer to the complaint it filed way back in 2005.

Petitioners finally filed their *Answer* [5] on July 13, 2012 before the RTC. In the said pleading, petitioners explained the late filing of their Answer because of the pendency of their Petition for *Certiorari* they filed before the Court of Appeals.

BDO then filed before the RTC a motion to expunge from the records the Answer filed by petitioners.

In her presently assailed Order dated October 29, 2012, public respondent granted BDO's motion and declared petitioners in default for failing to file their answer within the required reglementary period. Public respondent also ordered the Answer filed by petitioners to be expunged from the records of Civil Case MC08-2753. The dispositive portion of the said order states, as follows:

"WHEREFORE, pursuant to Section 3, Rule 9 of the Rules of Court, defendants Ma. Theresa Commercial, Inc., as represented by its President Jose Lim Ong, and Jose Lim Ong as surety are declared in default for failing to file their Answer within the reglementary period. Consequently, plaintiff BDO is allowed to present its evidence ex parte before the Branch Clerk of Court.

Further, defendants' Manifestation and Answer is ordered expunged from the records of this case.

SO ORDERED."^[6]

Petitioners sought for a reconsideration^[7] of the above-mentioned decision but the same was denied by public respondent in the *Order* dated July 17, 2013.

Hence, the present petition.

ISSUES

Petitioners raise the following grounds for their petition to be granted, to *wit*:

I

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN NOT ADMITTING THE PETITIONERS' ANSWER AND DECLARING THE PETITIONER (sic) IN DEFAULT THUS ALLOWING THE PRIVATE RESPONDENTS (sic) TO PRESENT ITS EVIDENCE EX-PARTE.

II

THE COURT A QUO GRAVELY ABUSED ITS DISCRETION IN

DENYING THE MOTION FOR RECONSIDERATION OF THE PETITIONER (sic).^[8]

RULING OF THE COURT

Nature of a Special Civil Action for Certiorari

A petition for *certiorari* under Rule 65 of the Rules of Court, being an extraordinary remedy, is issued only under closely defined grounds and procedures.^[9] It is only proper if a tribunal, board or officer exercising judicial or quasi-judicial functions has been found to have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law available to the petitioner.^[10] The writ can be used only for the above-mentioned purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.^[11]

As held by the Supreme Court in *Reyes v. COMELEC*:^[12]

“A petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist. ‘Grave abuse of discretion,’ under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.”

It must be shown in the petition that the public respondent patently and grossly abused his discretion and that such abuse amounted to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law. In other words, the public respondent must be shown to have exercised his power arbitrarily and despotically by reason of passion or hostility.^[13] Otherwise, the petition for *certiorari* will be dismissed as the same is a remedy designed for the correction of errors of jurisdiction, not errors of judgment.^[14]

In this case, petitioners ascribe grave abuse of discretion on the part of public respondent in declaring them to be in default. They contend that an order of default will allow BDO to present its evidence *ex-parte* in Civil Case No. MC08-2753 and thereafter a judgment of default to be rendered. The policy of the law, however, according to petitioners, is to have every litigant's case be decided on the merits as much as possible and an order declaring them in default will prevent them from participating in the case and presenting their side of the story. The administration of justice would, therefore, be better served, according to petitioners, if they will be allowed to participate in Civil Case No. MC08-2753. They also point out that a substantial amount is involved in the said case and that they are in the verge of losing all their properties. Consequently, they claim there is justification for the relaxation of the rules in the present case. Lastly, they highlight the fact that