

## SPECIAL SECOND DIVISION

[ CA-G.R. SP No. 125851, June 25, 2014 ]

**SPOUSES ALEXANDER SAN GABRIEL AND MYRNA GO SAN GABRIEL, PETITIONERS, V. REGIONAL TRIAL COURT, PASIG CITY, BRANCH 264, HON. JUDGE LEONCIO M. JANOLO, JR., SPOUSES ARTURO J. DE GUZMAN<sup>[1]</sup> AND JOSEFINA S. DE GUZMAN, RESPONDENTS.**

### DECISION

**BRUSELAS, JR. J.:**

This pertains to a *Petition for Certiorari* filed by the petitioners pursuant to Rule 65 against the Order<sup>[2]</sup> issued by the Regional Trial Court (RTC), the dispositive portion of which reads:

"WHEREFORE, defendant's Notice of Appeal is hereby DENIED.

The clerk of court is hereby ordered to enter this Court's decision dated June 22, 2010 in this Court's book of entries of judgment.

In accordance with section 1, rule 39 of the Revised Rules of Civil Procedure, this Court grants the plaintiff's motion for issuance of a writ of execution.

The Register of Deeds of Baguio City is hereby ordered to cause the cancellation of transfer certificate of title no. T-93190 issued to the spouses Alexander San Gabriel and Myrna Go San Gabriel and to issue a new one in the name of the spouses Arturo J. de Guzman and Josefina S. de Guzman.

SO ORDERED."<sup>[3]</sup>

Likewise assailed is the Order<sup>[4]</sup> dated 24 May 2012 which denied the petitioners' motion for reconsideration.

The pertinent facts and the antecedent proceedings in this case are as follows:

On 20 July 2003, the respondents Spouses Arturo J. De Guzman and Josefina S. De Guzman ("Spouses De Guzman") obtained a loan from the petitioners Spouses Alexander San Gabriel and Myrna Go San Gabriel ("Spouses San Gabriel") in the amount of P500,000.00, allegedly payable within one (1) year with a monthly interest rate of 5%. To secure the loan, the Spouses De Guzman mortgaged<sup>[5]</sup> in favor of the Spouses San Gabriel a parcel of land situated in Baguio City. The said land is covered by Original Certificate of Title (OCT) No. P-2402 and registered in the Registry of Deeds of Baguio City.

Because Arturo De Guzman failed to settle his obligation in the amount of P1,085,000.00 despite demand from the Spouses San Gabriel, the latter filed on 31 March 2006 a petition for extrajudicial foreclosure<sup>[6]</sup> of the real estate mortgage with the RTC of Baguio City which was docketed as Foreclosure Case No. 429- 06-B ("foreclosure case"). For their part, the Spouses De Guzman filed a complaint<sup>[7]</sup> with the RTC of Pasig City for annulment of the real estate mortgage<sup>[8]</sup>, accounting with prayer for preliminary injunction and temporary restraining order. The said case was docketed as Civil Case No. 70828 ("annulment case").

In the foreclosure case, the property was sold at a public auction and Alexander San Gabriel emerged as the highest bidder. The Spouses De Guzman subsequently amended their complaint to include the annulment of the foreclosure sale and the certificate of sale.<sup>[9]</sup> The Spouses San Gabriel filed their answer to the amended complaint.

Meanwhile, an *ex-parte* motion for the issuance of a writ of possession was filed by the Spouses San Gabriel in the foreclosure case which was granted by the RTC of Baguio City and the issuance of a writ of possession was accordingly ordered.<sup>[10]</sup> The one-year period had lapsed but the Spouses De Guzman failed to redeem the subject property. Consequently, a new Transfer Certificate of Title No. T-93190 covering the subject property was issued in favor of the Spouses San Gabriel.

On 22 June 2010, the RTC of Pasig City upheld the validity of the real estate mortgage and modified the interest rate but the foreclosure proceedings, auction sale and certificate of sale conducted and issued by the Office of the City Sheriff of Baguio City on 14 June 2006 were declared null and void.<sup>[11]</sup> The said decision was received by the Spouses San Gabriel on 06 July 2010.

A motion for reconsideration dated 21 July 2010<sup>[12]</sup> was filed by the Spouses San Gabriel and asserted that the trial court erred in ruling that the 5% monthly interest rate stipulated in the real estate mortgage was usurious and unconscionable. They further asserted that the annulment of the foreclosure sale and certificate of sale had no basis. The said motion was received by the RTC on 28 July 2010 as can be gleaned from the date of receipt stamped on the upper portion of the motion<sup>[13]</sup>. In the 17 January 2011 order of the RTC, the motion of the Spouses San Gabriel was denied for lack of merit. The trial court ratiocinated that the arguments in support of the motion had been discussed and passed upon by the court. The said order was received by the Spouses San Gabriel on 21 January 2011.

Consequently, on 31 January 2011 the Spouses San Gabriel filed a notice of appeal<sup>[14]</sup> with the RTC to elevate their case to us. An opposition<sup>[15]</sup> to the notice of appeal and motion to execute judgment dated 16 September 2010 was filed by the Spouses De Guzman and asseverated that the 22 June 2010 decision of the RTC was received by the Spouses San Gabriel on 06 July 2010 but their motion for reconsideration was belatedly filed on 28 July 2010 or 22 days after the receipt of the decision of the RTC. Because the motion for reconsideration was filed beyond the reglementary period of 15 days, the Spouses De Guzman claimed that the Spouses San Gabriel had no time left to file their notice of appeal. The Spouses De Guzman thus insisted that the 22 June 2010 decision of the RTC of Pasig City consequently became final and executory.

The Spouses San Gabriel filed a reply<sup>[16]</sup> and countered that their motion for reconsideration was timely filed, by registered mail, on 21 July 2010 and was received by the RTC on 28 July 2010. They argued that the date of mailing should be considered as the date of filing; thus, the said motion was filed within the reglementary period. Upon receipt of the 17 January 2011 order which denied their motion for reconsideration, the Spouses San Gabriel still had a fresh period of 15 days within which to file their notice of appeal. Because their notice of appeal was filed on 31 January 2011 or 10 days after the receipt of the order, the Spouses San Gabriel claimed that their appeal was timely filed.

On 16 December 2011, the RTC dismissed the notice of appeal of the Spouses San Gabriel. It ratiocinated as follows:

"To prove that they filed their motion for reconsideration within the reglementary period, defendants presented a Certification dated April 11, 2011 from Makati Central Post Office which states that the defendants, through their former counsel of record, Ponce Enrile Reyes & Manalastas, mailed the motion for reconsideration on July 21, 2010 under mail matter with registry receipt no. 3677. The mail matter referred to in the Certification is not mail matter corresponding to the motion for reconsideration in the affidavit of service. The affidavit of service attached to the motion for reconsideration received by this Court on July 28, 2010 states that the motion for reconsideration was filed by the defendants via registered mail under mail matter covered by registry receipt number 141, the number issued by Pasig Central Postal office.

xxx xxx xxx

The Court also takes note of the observations made by the plaintiffs that the second copy of the motion for reconsideration mailed by the defendants did not contain any proof of service to the plaintiffs' counsel nor any affidavit of service. A clear violation of the provisions of Section 4, Section 11 and Section 13, Rule 13 of the 1997 Revised Rules of Civil Procedure was committed herein.

Henceforth, the second copy of defendants' motion for reconsideration mailed thru Makati Central Post Office cannot be considered as filed and may be disregarded, the first copy being complete in requirements.

Likewise, this Court agrees with the observations of the plaintiffs that it is illogical for the defendants to return all the way to Makati Central Post Office after mailing the plaintiff's copy of the motion for reconsideration in Pasig Central Post Office which is located within the Pasig City Hall Compound. And although the Pasig City Hall of Justice is also within said compound RTC Branch 264 never stayed there. This Court used to stay in Rizal Capitol Compound at Shaw Blvd., before moving at Santolan Road, San Juan City. Common sense dictates that the defendants' process server would complete the mailing of all copies of the Motion for Reconsideration in one post office, with this case, Pasig Central Post Office, more so because mailing was resorted to by the defendants for lack of material time, as stated in the explanation in the Motion for Reconsideration.

Given the discrepancy of the evidence presented by the defendants to prove that they filed, via registered mail their motion for reconsideration on July 21, 2010, this Court is faced with accepting the veracity of the Certification dated April 11, 2011 issued by the Pasig Central Post Office presented by the plaintiffs that it has no record of any matter mailed under registry receipt no. 141 on July 21, 2010.

This Court finds, and so holds, that the Certification dated April 11, 2011 issued by the Pasig Central Post Office is more credible than the Certification issued by Makati Central Post Office because the Certification dated April 11, 2011 issued by the Pasig Central Post Office corresponds to the declaration made by Jonathan Mioten that he filed the motion for reconsideration via registered mail under mail matter bearing registry receipt no. 141 at the Pasig Central Post Office."

Aggrieved with the foregoing disquisition, the Spouses San Gabriel moved for the reconsideration<sup>[17]</sup> of the order of the RTC. Their counsel's messenger, Mr. Jonathan Mioten, stated that he was not able to mail the subject motion for reconsideration at the Pasig City Post Office after he found out that Branch 264, RTC of Pasig City was sitting at San Juan City and not at the Pasig City Hall of Justice. Consequently, he returned to his office in Makati City and mailed the subject motion at the Makati Post Office. The Spouses San Gabriel asserted that the registry receipt number 141 was actually an internal control number pre-assigned by their counsel's law office for the subject motion. When the same was deposited with the Makati Post Office for mailing, the said post office modified the registry receipt number from 141 to 3677<sup>[18]</sup>. By inadvertence, Mr. Mioten failed to change the registry receipt number in his Affidavit of Service<sup>[19]</sup>. Therefore, they claimed that the subject motion was filed on 21 July 2010 through registered mailed to the RTC, Branch 264 of Pasig City.

In the 24 May 2012 order of the RTC, the motion of the Spouses San Gabriel was denied for lack of compelling reason to set aside its 16 December 2011 order. Prejudiced by the ruling, the Spouses San Gabriel come to us via this petition for certiorari which ascribes to the respondent RTC of Pasig City the sole act of grave abuse of discretion, to wit:

"PUBLIC RESPONDENT RTC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING PETITIONERS' NOTICE OF APPEAL"

In support of the instant petition, the petitioners raised the following grounds:

- (a) The registry receipt and the affidavit of service are the conclusive proof of the filing of the subject motion for reconsideration;
- (b) The Bureau of Posts return card shows that the subject motion was posted for mailing to the Pasig City RTC on 21 July 2010 and was actually received by the court on 28 July 2010;
- (c) The mailing envelope which contained the subject motion was stamped by the Makati City Post Office as having been mailed on 21 July 2010. The same mailing envelope had a registry receipt no. 3677