

## TENTH DIVISION

[ CA-G.R. CV. NO.82325, August 10, 2006 ]

**BIA C. TENEFRANCIA, PLAINTIFF-APPELLEE, VS. ELAINE B. MANGAWANG, DEFENDANT-APPELLANT.**

### DECISION

**REYES, JR., A. J.:**

In this ordinary appeal, defendant-appellant Elaine B. Mangawang seeks to nullify and set aside the 1 April 2004 *Decision*<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 33 in Civil Case No. 01-100297, the *fallo* of which states:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff ordering the defendant to pay plaintiff the following:

1. the amount of P8,000,000.00 representing the remaining unpaid balance of the purchase price of the subject properties plus interest of 6% until full payment is made.
2. the amount of P100,000.00 for moral and another P100,000.00 for exemplary damages;
3. ordering the defendant to pay plaintiff the amount of P50,000.00 as and for attorney's fees.

SO ORDERED.

xxx xxx xxx."

The antecedent facts: On 6 March 2001, plaintiff-appellee filed a *Complaint for Specific Performance with Damages*<sup>[2]</sup> before the trial court wherein she specifically alleges that: (1) she is the registered owner of two (2) parcels of lot covered by TCT No. 218156 and 218165 both situated in Sta. Ana, Manila; (2) she sold the said lots to herein defendant-appellant for P16 Million on 19 September 2000; (3) after paying P8 Million, defendant-appellant took possession of the subject properties; and (4) defendant-appellant reneged on her promise to settle the remaining unpaid balance of the consideration.

On 4 June 2001, defendant-appellant, instead of filing a responsive pleadings, interposed a *Motion To Dismiss* on the ground that the venue was improperly laid.

After the denial of her motion to dismiss and of its subsequent motion for reconsideration by the lower court, defendant-appellant elevated the case before this Court via petition for certiorari docketed as CA-GR SP. No. 69239.

During the 9 July 2002 hearing for the issuance of a Temporary Restraining Order,

plaintiff-appellee moved to declare defendant-appellant in default. On the other hand, defendant-appellant reiterated her prayer for the outright dismissal of the *Complaint*.

In an *Order* dated 22 July 2002, the trial court denied the prayers of the litigants and instructed defendant-appellant to file a responsive pleading.<sup>[3]</sup>

Undeterred, defendant-appellant interposed a partial reconsideration of the 22 July 2002 *Order* theorizing that "if and when an answer would be filed and she participates in the trial, her objection as to the correctness of venue (the subject matter of CA-GR SP No. 69239), which was not yet resolved at that time, would become moot and academic."<sup>[4]</sup>

As defendant-appellant's partial motion for reconsideration was also denied, the lower court calendared the case for pre-trial on 19 September 2002.

During the 19 September 2002, plaintiff-appellee manifested to the trial court that she will file a new motion to declare defendant-appellant in default.

On 3 January 2003, as plaintiff-appellee failed to lodge any motion to declare defendant-appellant in default, the trial court issued an *Order* <sup>[5]</sup> dismissing the *Complaint*.

On **17 January 2003**, plaintiff-appellee filed an *Urgent Motion for Reconsideration and To Reinstate the Case to the Active Calendar of this Honorable Court*<sup>[6]</sup> wherein she categorically requested the Clerk of Court to "Kindly submit the foregoing motion for reconsideration and approval by the Honorable Court on the **24th day of January**, 2003 at 8:30 in the morning."<sup>[7]</sup>

The requested scheduled, which was only seven (7) days from the filing of the action, was granted by the lower court. During the 24 January 2003 hearing, defendant-appellant failed to appear as the latter received her copy of plaintiff-appellee's motion only on **27 January 2003**. Despite of the defendant-appellant's absence, the trial court proceeded with the hearing and decreed the reinstatement of the case in an *Order*<sup>[8]</sup> issued on same day of 24 January 2003.

As defendant-appellant's motion for reconsideration of the *Order* dated 24 January 2003 was denied by the trial court in another *Order* dated 17 February 2003,<sup>[9]</sup> she again elevated said *Order* before this Court, docketed as CA-GR SP. No. 157879.

On **24 July 2003**, the trial court declared defendant-appellant in default and allowed plaintiff-appellee to proffer evidence ex-parte.

On 1 April 2004, the trial court issued the herein assailed decision, the *fallo* of which was quoted at the outset.

Aggrieved, defendant-appellant elevated the case before this Tribunal, theorizing:

"A.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ISSUING ITS