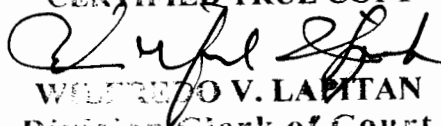




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPID
 Division Clerk of Court
 Third Division

FEB 15 2016

THIRD DIVISION

METROPOLITAN BANK AND TRUST COMPANY,

Petitioner,

- versus -

FADCOR, INC. or THE FLORENCIO CORPORATION, LETICIA D. FLORENCIO, RACHEL FLORENCIO-AGUSTIN, MA. MERCEDES FLORENCIO and ROSENDO CESAR FLORENCIO, JR.,

Respondents.

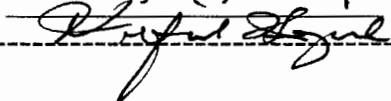
G.R. No. 197970

Present:

VELASCO, JR., J., *Chairperson*,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

Promulgated:

January 25, 2016,



X-----X

DECISION

PERALTA, J.:

This is to resolve the Petition for Review on *Certiorari*,¹ under Rule 45 of the Rules of Court, dated September 19, 2011 of petitioner Metropolitan Bank and Trust Company (Metrobank) that seeks to reverse the Decision² dated May 17, 2011 and Resolution³ dated August 5, 2011, both of the Court of Appeals (CA) that set aside the Decision⁴ dated March 8, 2006 of the Regional Trial Court (RTC), Branch 59, Makati City ordering respondents to pay petitioner ₱17,479,371.86 representing deficiency obligation plus 12 percent interest per annum and ₱50,000.00 as attorney's fees.

¹ Rollo, pp. 15-190.

² Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Ramon A. Cruz concurring; *id* at 42-53.

³ *Id.* at 54-55.

⁴ Penned by Judge Winlove M. Dumayas, *id.* at 174-176.



The facts follow.

Metrobank granted five (5) loans in the aggregate amount of ₱32,950,000.00 to respondent Fadcor, Inc. or The Florencio Corporation (Fadcor), represented by its President Ms. Leticia D. Florencio and its Executive Vice-President, Ms. Rachel D. Florencio-Agustin. As such, Fadcor executed five (5) Non-negotiable Promissory Notes in favor of Metrobank. In addition, Fadcor through individual respondents President, Ms. Leticia D. Florencio; Exec. Vice-President, Ms. Rachel D. Florencio-Agustin; Treasurer, Ms. Ma. Cecilia D. Florencio; Corporate Secretary, Ms. Ma. Mercedes D. Florencio; and Director, Mr. Rosendo Cesar D. Florencio, Jr., executed two (2) Real Estate Mortgages in favor of Metrobank over ten (10) parcels of land as collateral for the loans obtained on August 2, 1995, in the amount of ₱18,000,000.00; ₱10,000,000.00, obtained on September 14, 1995, and an Amendment of Real Estate Mortgage to secure a loan of ₱22,000,000.00, obtained on October 26, 1995. Furthermore, the same respondents executed two (2) Continuing Surety Agreements in favor of Metrobank, binding themselves jointly and severally liable to pay any existing or future obligation in favor of Metrobank up to a maximum amount of Ninety Million Pesos (₱90,000,000.00) only.

Thereafter, respondents defaulted in the payment of their loan amortizations in the total aggregate sum of ₱32,350,594.12, hence, after demands for payment of the arrears were ignored, Metrobank filed on April 20, 2001 an extra-judicial petition for foreclosure of mortgage before the Notary Public for and in the Province of Rizal, of the ten (10) mortgaged parcels of land in accordance with Act No. 3135, as amended. On July 31, 2001, the foreclosed properties were sold at public auction in the amount of ₱32,961,820.72 to Metrobank as the highest bidder. Consequently, the corresponding Certificate of Sale was issued to Metrobank and the proceeds of sale were applied to Fadcor's indebtedness and expenses of foreclosure. Nonetheless, the amount of ₱17,479,371.86 remained unpaid as deficiency obligation, prompting Metrobank to demand from respondents payment of such deficiency obligation. Respondents, on the other hand, failed to pay. Hence, on September 23, 2003, Metrobank filed a Complaint against Fadcor for recovery of the deficiency obligation.

Respondents failed to appear at the scheduled pre-trial. The RTC, therefore, issued an Order directing Metrobank to present its evidence *ex parte*. Metrobank presented as lone witness its Senior Assistant Manager, Ms. Irene Sih-Tan and, thereafter, on September 4, 2004, it filed its Formal Offer of Evidence. Respondents filed a Motion for Reconsideration of the same Order, but on September 21, 2004, the RTC denied the said motion.

The RTC, on March 8, 2006, rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Metropolitan Bank and Trust Company ordering defendants jointly and severally to pay plaintiff the amount of ₱17,479,371.86 representing deficiency obligation plus interest thereon at the legal rate of 12% per annum computed from August 1, 2001 until the obligation is fully paid, plus the amount of ₱50,000.00 as and for reasonable attorney's fees.

SO ORDERED.⁵

After the denial of its motion for reconsideration, Metrobank appealed the case to the CA and the latter, on May 17, 2011, granted the appeal, thus, reversing and setting aside the decision of the RTC, thus:

WHEREFORE, premises considered, the instant appeal is GRANTED. The Decision dated March 8, 2006 of the Regional Trial Court, Branch 59, Makati City, in Civil Case No. 03-1262 ordering defendants to pay plaintiff ₱17,479,371.86 representing deficiency obligation plus 12% interest per annum and ₱50,000.00 as attorney's fees is REVERSED and SET ASIDE,

No pronouncement as to costs.

SO ORDERED.⁶

In reversing the RTC, the CA ruled that during the *ex parte* hearing held on August 24, 2004, the petitioner's lone witness, Irene Sih-Tan identified and marked Exhibits "A" to "DD-4" only as shown in the TSN, however, the RTC admitted Exhibits "A" to "MM," contrary to this Court's resolution in Administrative Matter (A.M.) No. 03-1-09-SC⁷ which provides that no evidence shall be allowed to be presented and offered during the trial in support of the party's evidence-in-chief other than those that have been identified below and pre-marked during the trial.

The CA, in its Resolution dated August 5, 2011, denied the motion for reconsideration filed by Metrobank, hence, the present petition.

Petitioner argues that the CA erred in reversing the decision of the RTC. It claims that A.M. No. 03-1-09-SC has no application to the proceedings before the RTC because there was no pre-trial conducted as the respondents failed to appear nor filed their pre-trial brief.

⁵ *Id.* at 176.

⁶ *Id.* at 52-53.

⁷ Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, En Banc Resolution, August 16, 2004.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law.⁸ However, jurisprudence has recognized several exceptions to this rule. In *Spouses Almendrala v. Spouses Ngo*,⁹ we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.¹⁰ In the present case, the RTC and the CA have conflicting findings of fact. Hence, the need to rule on the matter.

The petition is impressed with merit.

One must not deviate from the fact that this case involves an *ex parte* presentation of evidence allowed by the RTC after the respondents herein failed to appear at the scheduled pre-trial conference and submit a pre-trial brief despite receipt of the Order of the same court. Section 5, Rule 18 of the Rules of Court, states:

Section 5. *Effect of failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The "next preceding" section mandates that:

⁸ *Triumph International (Phils.), Inc. v. Ramon L. Apostol and Ben M. Opulencia*, 607 Phil. 157, 168 (2009).

⁹ 508 Phil. 305 (2005).

¹⁰ *Spouses Almendrala v. Spouses Ngo*, *supra*, at 316, citing *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals*, 466 Phil. 32, 42-43 (2004), and *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 288 (2002).

Section 4. *Appearance of parties.* - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

The RTC, therefore, did not commit an error in allowing the petitioner herein to present its evidence *ex parte* and rendering a judgment on the basis thereof. The CA, however, found an error in the RTC's admission of the evidence presented or offered by the petitioner. According to the CA, there is no showing in the Transcript of Stenographic Notes (*TSN*) whatsoever that Exhibits "EE" to "MM" were presented and identified by the petitioner's witness during the proceeding. Exhibits "EE" to "MM" were the basis of the RTC in awarding petitioner the amount of ₱17,479,371.86 equivalent to the deficiency obligation of respondents as of July 31, 2001, plus legal interest thereon from August 1, 2001, until fully paid, and attorney's fees in the amount of ₱50,000.00. By admitting those evidence that were not identified or testified to by the petitioner's witness, the CA ruled that the RTC did not follow the provisions of A.M. No. 03-1-09-SC. This is a wrong interpretation.

The pertinent provisions of A.M. No. 03-1-09-SC, read as follows:

GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND
CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE
OF DEPOSITION-DISCOVERY MEASURES

The use of pre-trial and the deposition-discovery measures are undeniably important and vital components of case management in trial courts. To abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99 dated January 15, 1999 and except as otherwise specifically provided for in other special rules, the following guidelines are issued for the observance and guidance of trial judges and clerks of court:

I. PRE-TRIAL

A. Civil Cases

1. Within one day from receipt of the complaint:

1.1 Summons shall be prepared and shall contain a reminder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defenses in the Answer, in conformity with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. A copy of the summons is hereto attached as Annex "A;" and

1.2 The court shall issue an order requiring the parties to avail of interrogatories to parties under Rule 25 and request for admission by adverse party under Rule 26 or at their discretion make use of depositions under Rule 23 or other measures under Rules 27 and 28 within five days from the filing of the answer.

A copy of the order shall be served upon the defendant together with the summons and upon the plaintiff.

Within five (5) days from date of filing of the reply, the plaintiff must promptly move *ex parte* that the case be set for pre-trial conference.

If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial.

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

a. A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;

b. A summary of admitted facts and proposed stipulation of facts;

c. The issues to be tried or resolved;

d. The documents or exhibits to be presented, stating the purpose thereof. **(No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown);**

x x x¹¹

Under the present case, it is as if there was no pre-trial because the respondents did not appear nor file their pre-trial briefs despite due notice causing the RTC, on August 9, 2004 to allow petitioner, after the latter filed its motion, to present its evidence *ex parte* in accordance with Section 5, Rule 18 of the Rules of Court. In effect, the respondents were declared in default. Respondents, therefore, filed their Motion for Reconsideration¹² on the RTC's Order allowing petitioner to present its evidence *ex parte* but it was denied in an Order¹³ dated September 21, 2004. Respondents, thereafter, filed a petition for *certiorari* under Rule 65 of the Rules of Court questioning the Orders dated August 9, 2004 and September 21, 2004 of the RTC. The CA, in its Resolution¹⁴ dated January 12, 2005, dismissed the

¹¹ Emphasis ours.

¹² *Rollo*, pp. 159-162.

¹³ *Id.* at 168.

¹⁴ *Id.* at 169-171.

petition of the respondents. Meanwhile, an *ex parte* hearing was conducted on August 24, 2004 and on September 7, 2004, petitioner filed its Formal Offer of Evidence¹⁵ and the RTC, in its Order dated October 25, 2005 resolved the formal offer stating as follows:

Acting on the plaintiff's Formal Offer of Evidence, Exhibits "A to Z," "AA to MM" their sub-markings and the testimony of witness Irene Tan are admitted for the purposes for which they are being offered.¹⁶

Clearly, from the above recital of the facts leading to the rendering of the RTC judgment on March 8, 2006, the proper procedure was followed, to which the RTC, in its decision, narrated as follows:

x x x x

Records further show that defendants did not file their pre-trial brief and failed to appear during the pre-trial conference despite receipt of the Order of the Court. Hence, upon motion, plaintiff was allowed to present evidence *ex-parte*.

During the presentation of evidence, Irene Tan, Assistant Senior Manager of the plaintiff bank, was presented as lone witness. Together with her testimony, Exhibits A to Z, AA to MM, and their sub-markings were offered in evidence.

x x x¹⁷

The records, therefore, show that the documentary evidence being questioned by respondents in its appeal before the CA (Exhibits "EE" to "MM") were marked during the *ex parte* presentation of evidence and were formally offered and admitted by the RTC before the latter rendered its decision. Thus, the CA's ruling that Exhibits "EE" to "MM" should not have been considered simply because the TSN does not reflect that those evidence were presented and identified is mind-boggling because they could not have been marked had they not been presented during the *ex parte* hearing where the lone witness for the petitioner was able to testify. The fact that the questioned pieces of evidence were formally offered and admitted by the RTC should be the foremost consideration.

Unfortunately, when respondents failed to appear during the pre-trial despite due notice, they have already acquired the risk of not being able to dispute the evidence presented *ex parte* by petitioner. In *The Philippine American Life and General Insurance Company v. Joseph Enario*,¹⁸ this Court ruled that, "[t]he legal ramification of defendant's failure to appear for

¹⁵ *Id.* at 148-153.

¹⁶ *Id.* at 173.

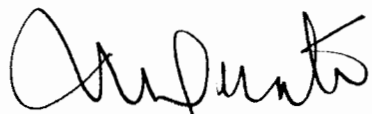
¹⁷ *Id.* at 174-175.

¹⁸ 645 Phil. 166 (2010).


pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.”¹⁹

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated September 19, 2011 of petitioner Metropolitan Bank and Trust Company is **GRANTED**. Consequently, the Decision dated May 17, 2011 and Resolution dated August 5, 2011 of the Court of Appeals are **REVERSED** and **SET ASIDE**, and the Decision dated March 8, 2006 of the Regional Trial Court, Makati City, Branch 59 is **AFFIRMED** *in toto*.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


JOSE PORTUGAL PEREZ
Associate Justice

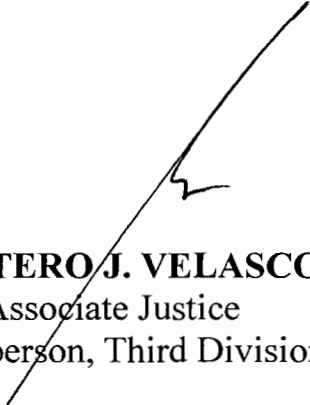

BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

¹⁹ *The Philippine American Life & General Insurance Company v. Enario, supra*, at 175.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



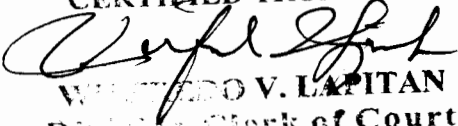
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WENCESLAO V. LAPITAN
Division Clerk of Court
Third Division
FEB 15 2016