

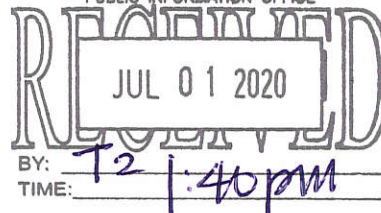


Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **January 20, 2020**, which reads as follows:

“G.R. No. 249627 (*Cityland Wack Wack Royal Mansion, Inc. v. The Heirs of Florentino Z. Vicente, represented by their Attorney-in-Fact, Mr. Henry Albert R. Fadullon*). – This Petition for Review on *Certiorari*¹ assails the Resolution² dated December 13, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 158141 which dismissed the Petition for *Certiorari*³ filed by petitioner Cityland Wack Wack Royal Mansion, Inc. (Cityland) because of procedural infirmities. Likewise assailed is the Resolution⁴ dated September 24, 2019 of the CA, which denied Cityland’s Omnibus Motion for Reconsideration and to Admit Attached Additional Documents⁵ for lack of merit.

Antecedents

This case stemmed from an Amended Complaint for annulment of extrajudicial foreclosure and auction sale with damages filed by respondents Heirs of Florentino Z. Vicente, represented by their Attorney-in-Fact, Mr. Henry Albert R. Fadullon (respondents) against Cityland before the Regional Trial Court of (RTC), Mandaluyong City, Branch 213.⁶

The late Florentino Z. Vicente (Florentino) is the owner of Unit 2001 (Unit) located at the 20th floor of Cityland Wack Wack Mansion Condominium Cityland covered by Condominium Certificate of Title No. 11264 registered under the name of Florentino, married to Araceli L. Vicente (Araceli). Sometime in 1998, the Unit was leased to Jane Ampeloquio

¹ *Rollo*, pp. 3-31.

² Penned by Associate Justice Rodil V. Zalameda (now Member of this Court), with Associate Justices Fernanda Lampas Peralta and Henri Jean Paul B. Inting (now Member of this Court), concurring; *id.* at 37-40.

³ Not attached to the *rollo*.

⁴ Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Danton Q. Bueser and Ronaldo Roberto B. Martin, concurring; *rollo*, pp. 42-43.

⁵ Not attached to the *rollo*.

⁶ *Rollo*, pp. 7-8.

(Ampeloquio), whose obligation as lessee included payment of the condominium/association fees. However, Ampeloquio had not been paying the condominium/association dues. She was, likewise, delinquent in paying rentals to the owners thereof.⁷

In 2007, Cityland sent a demand letter (copy furnished to Florentino) with regard to their outstanding obligation. Despite receipt thereof, no association dues were paid for the Unit. Cityland, thereafter, caused the annotation of its adverse claim/lien on the title of the Unit. Another demand letter was sent to Ampeloquio and Florentino sometime in 2009, but they continuously failed and refused to pay the said dues. A statement of account dated May 1, 2010 was sent to Ampeloquio and Florentino, yet no payment was made.⁸ Thus, Cityland filed on June 22, 2010 a Petition for Extrajudicial Foreclosure⁹ of the Unit. A Notice of Sheriff's Sale dated July 29, 2010 was issued by the Office of the Clerk of Court and Ex-Officio Sheriff of Mandaluyong City scheduling the auction sale on August 9, 2010, wherein Cityland emerged as the highest bidder. A Certificate of Sale dated August 20, 2010 was thereafter issued.¹⁰

Sometime in August 2010, respondents filed the instant case to set aside and annul the extrajudicial foreclosure of the Unit with damages before the RTC.¹¹ Respondents alleged that Florentino, paralyzed and bedridden because of stroke, had no knowledge of the circumstances surrounding the case. Araceli, his wife, was independently managing their finances. She had knowledge that Ampeloquio was behind with payments but she did not act upon the notices she received upon assurances by Ampeloquio that the latter will settle everything. It was only in April 2010 that Araceli realized that Ampeloquio failed to settle the arrears with Cityland. Ampeloquio could not be contacted anymore. After the death of Florentino, Araceli wrote a letter dated May 25, 2010 to the Board of Directors (BOD) of Cityland for the restructuring of the accountabilities due the Unit. She asked for approval to pay the amount of ₱200,000.00 with a waiver of penalties. This request was denied by the BOD thru Ms. Marivic C. Baguio, Property Manager, in the letter dated June 26, 2010. Respondents later learned of the petition for extrajudicial foreclosure of the Unit. In an attempt to save the property from foreclosure, Araceli wrote another letter explaining the unfortunate circumstances that befell their family, and requesting for the withdrawal of the Unit from the auction sale and offering to pay the principal amount of ₱200,000.00. Her request, however, was denied. Instead, as a condition for it to withdraw the Unit from the impending auction, Cityland asked Araceli to immediately pay the full principal amount – ₱700,000.00 plus lawyer's fees of ₱250,000.00 – submit 12 monthly post-dated checks representing interest, and make another appeal for the BOD to reconsider her request for

⁷ Id. at 44-45.

⁸ Id. at 6.

⁹ Not attached to the *rollo*.

¹⁰ *Rollo*, pp. 6-7.

¹¹ Id. at 7.

condonation of interests and penalties. In her letter, Araceli stated that she was willing and capable of paying the principal amount but was not in a financial position to pay the interest and penalties over ₱700,000.00. As such, Araceli was not able to comply with the conditions imposed by Cityland.¹²

Respondents averred that they were not able to participate in the auction sale as there was no sufficient time to come up with the amount being collected. They further claimed that Cityland has no special power to extrajudicially foreclose the Unit.¹³

Cityland filed its Answer with Motion to Dismiss and Counterclaims asserting that it was duly authorized to extrajudicially foreclose the Unit by virtue of the restrictions annotated on the title of Florentino while the latter has to abide to its Amended Master Deed with Declaration of Restrictions and Amended House Rules and Regulations (Master Deed). The Master Deed empowered it to foreclose judicially or extrajudicially a delinquent unit of the condominium in accordance with Circular No. 7-2002, implementing Supreme Court Administrative Matter No. 99-10-05-0.¹⁴ Cityland further averred that the alleged unconscionable interest was not a ground to annul the foreclosure sale. The House Rules provide for a four percent interest per month on top of the association dues in case of delinquent payments.¹⁵ This applies to all unit owners/members and even to its officers.¹⁶ It would be unjust enrichment on the part of respondents if the interest would not apply to them while it was to others.¹⁷

RTC Ruling

After a trial on the merits, the RTC issued a Decision¹⁸ dated June 22, 2018 granting respondents' complaint – (1) nullifying the extrajudicial foreclosure of the Unit as well as the subsequent sale thereof; (2) nullifying the collection of the amount of ₱1,066,783.36 as stated in the statement of account dated September 1, 2014; and (3) ordering Cityland to pay respondent the amount of ₱500,000.00 as exemplary damages, ₱500,000.00 as moral damages, ₱50,000.00 plus ₱2,000.00 for each court appearance and/or before a mediator as attorney's fees, and to pay the cost of suit.¹⁹

The RTC ruled that the extrajudicial foreclosure and the auction sale of the Unit is flawed; hence, the same must be annulled, including the subsequent sale thereof. The RTC held that Cityland effected the extrajudicial foreclosure of the Unit despite lack of a Special Power of Authority (SPA) to do so, as required under Circular No. 7-2002, implementing Supreme Court

¹² Id. at 45-52.

¹³ Id. at 53.

¹⁴ Id. at 48.

¹⁵ Id. at 49.

¹⁶ Id. at 56-61.

¹⁷ Id. at 70.

¹⁸ Id. at 44-76.

¹⁹ Id. at 74-75.

Administrative Matter No. 99-10-05-0. Cityland relied on Section 5(c) of its Master Deed in claiming that it has special power to do so. However, the RTC declared that the provision was neither signed by the late Florentino nor duly notarized or attached in the petition for extrajudicial foreclosure. Assuming that the required SPA is complied with the incorporation of such provision, it was revoked by the death of Florentino on January 6, 2010. Since there was no SPA authorizing Cityland to foreclose the Unit, it was erroneous for the Ex-Officio Sheriff to take cognizance of the petition, much less continue with the auction sale. Also, Araceli is an indispensable party to the extrajudicial foreclosure proceedings, and failure to implead her as a party-rullifies voids any subsequent actions of the court. Further, the RTC declared that the four percent monthly interest or 48% *per annum* is unconscionable. The principal amount is only ₱245,529.42 but because of the high interest imposed, the liability increase to ₱772,937,000.00. As it appeared that respondents were willing, and in fact offered to pay the principal amount without interest, the RTC held that foreclosing the property to apply for the unpaid dues is clearly premature. Lastly, because of the unjustified and arbitrary acts of Cityland, respondents are entitled to damages and other costs.²⁰

Cityland moved for reconsideration but its motion was denied for lack of merit in the Order²¹ dated August 22, 2018 of the RTC.

A petition for *certiorari* under Rule 65 was thereafter filed by Cityland before the CA.

CA Ruling

In the Resolution²² dated December 13, 2018, the CA dismissed the petition for being fraught with the following procedural infirmities: (1) Affidavit of Service is not appended to the petition as required under Section 13, Rule 13 of the Rules; and (2) the petition is not accompanied by copies of pertinent and relevant documents and/or pleadings to support the allegation of the petition, such as, but not limited to, complaint, answer with motion to dismiss and counterclaim, notice of *lis pendens*, judicial affidavit, petition for extrajudicial foreclosure sale, notice of sheriffs sale and certificate of sale, and opposition to the motion for reconsideration, pursuant to Section 2, Rule 65 of the Rules.²³

²⁰ See id. at pp 62-70.

²¹ Id. at 77-78.

²² Id. at 37-40.

²³ RULES OF COURT, Rule 65

X X X X

Sec. 2. *Petition for prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

Cityland moved for reconsideration but its motion was denied for lack of merit in the Resolution²⁴ dated September 24, 2019.

Hence, this petition for review under Rule 45.

Cityland argues that the CA committed a reversible error when it dismissed its petition for non-submission of pertinent documents, which it subsequently submitted, and for failure to attach an affidavit of service even when the service was personally served to parties and with written admissions of the parties served. Also, Cityland claims that the RTC has no jurisdiction over the annulment of extrajudicial foreclosure of a condominium unit, which is lodged with the Housing and Land Use Regulatory Board (HLURB). Likewise, under Republic Act No. (RA) 4726, otherwise known as the Condominium Law, in relation act 3135, an SPA is not required in extrajudicial foreclosure proceedings of a condominium unit. Cityland further assails the award of unconscionable damages and respondents' exoneration of their debt.

Issue

The sole issue for resolution is whether the CA properly dismissed Cityland's petition for *certiorari* due to procedural infirmities.

The Court's Ruling

The petition is denied.

At the outset, the CA should have dismissed Cityland's petition for *certiorari* for being the wrong remedy. It should be noted that the RTC rendered a decision after trial on the merits of the case. To assail the decision, Cityland's remedy is an ordinary appeal under Rule 41 of the Rules of Court. It should have filed a notice of appeal with the RTC within 15 days from its receipt of the order dated August 22, 2018 of the RTC denying the Motion for Reconsideration.²⁵ However, records show that Cityland filed the petition for *certiorari* before the CA on October 30, 2018, which is clearly more than 15 days from its receipt of the order RTC.

The Court ruled in *Guzman v. Guzman*²⁶ that "*certiorari*, by its very nature, is proper only when appeal is not available to the aggrieved party; the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. It cannot substitute for a lost appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse."²⁷

²⁴ Id. at 42-43.

²⁵ Id. at 9.

²⁶ 706 Phil. 319 (2013).

²⁷ Id. at 327.

Consequently, having availed of the wrong remedy, the decision and order of the RTC sought to be nullified had become final and executory. It is elementary that once a decision becomes final and executory, it is immutable and unalterable, and can no longer be modified in any respect.²⁸ Thus, Cityland can no longer resurrect its case via this petition before this Court.

As the Court said, “it is incumbent upon x x x appellants to utilize the correct mode of appeal of the decisions of trial courts to the appellate courts. In the mistaken choice of their remedy, they can blame no one but themselves.”²⁹

Besides, there is no merit in Cityland’s contention that the RTC acted with grave abuse of discretion in deciding respondents’ complaint for annulment of extrajudicial foreclosure and auction sale with damages because it has no jurisdiction over the case. Cityland insists that it is the HLURB that has jurisdiction over the annulment of extrajudicial foreclosure of a condominium unit.

The RTC has jurisdiction over the case.

Contrary to Cityland’s argument, respondents’ complaint does not involve the annulment of mortgage. There was no mortgage involved. What respondents assail is the validity of the extrajudicial foreclosure of their condominium unit as a result of their non-payment of association dues. They anchor their claim on the validity of the extrajudicial foreclosure despite the lack of an SPA on the part of Cityland to foreclose the unit as well as the correctness of the assessment of the association dues due them, specifically the exorbitant interests added to the principal outstanding obligation.

Considering that the annulment of extrajudicial foreclosure is an action incapable of pecuniary estimation, the RTC has jurisdiction over the same. The RTC has jurisdiction to determine whether the extrajudicial foreclosure complied with the requirements prescribed by law and the rules. A determination of the correctness of the association dues which were not paid by Florentino, the unit owner, is also a part of the resolution of the validity of the foreclosure.

WHEREFORE, the instant petition is **DENIED**. Considering that Cityland availed of the wrong remedy by filing a petition for *certiorari* under Rule 65 instead of an appeal under Rule 41, the Decision dated June 22, 2018 and the Order dated August 22, 2018 of the Regional Trial Court are deemed final and executory.

²⁸ Id.

²⁹ *Maslag v. Monzon*, 711 Phil. 274, 276 (2013), citing *Southern Negros Dev’t. Bank, Inc. v. Court of Appeals*, 303 Phil. 483, 487 (1994).

SO ORDERED.” (J. Reyes, Jr., J., designated Additional Member per Raffle dated November 20, 2019 vice Zalameda, J.)

Very truly yours,

Misael D C Batt
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
gmc 1/20/20

Atty. Cleto E. Monsanto, Jr.
Counsel for Petitioner
MACKAY LAW OFFICE
Mack Building, No. 9 Masunurin St.
Brgy. Sikatuna, 1100 Quezon City

COURT OF APPEALS
CA G.R. No. 158141
1000 Manila

Atty. Reynaldo Destura
Counsel for Respondents
DESTURA & ASSOCIATES LAW OFFICES
Unit 3004-3005 Cityland, Pasong Tamo
Tower, 2210 Chino Roces Avenue
1231 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 213, 1550 Mandaluyong City
(Civil Case No. MC10-4817)

PUBLIC INFORMATION OFFICE
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

LIBRARY SERVICES
Supreme Court, Manila

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

G.R. No. 249627

**(249)
URES**

/jay

