Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

J.O.S. MANAGING BUILDERS, INC. and EDUARDO B. OLAGUER, Petitioners,	**G.R. No. 219815**
- versus -	Present: VELASCO, JR., *J.*, *Chairperson,* PERALTA, PEREZ, REYES, and JARDELEZA, ***JJ.***
UNITED OVERSEAS BANK PHILIPPINES (formerly known as Westmont Bank), EMMANUEL T. MANGOSING and DAVID GOH CHAI ENG, Respondents.	Promulgated: September 14, 2016

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DECISION

JARDELEZA, *J.*:

Before us is a Petition for Review[1] assailing the October 7, 2014[2] and July 20, 2015[3] Orders of the Regional Trial Court (RTC) of Quezon City (RTC-QC), Branch 87 (RTC Br. 87) in Civil Case No. Q-11-69413. The first Order dismissed the petition for contempt filed by J.O.S. Managing Builders, Inc. (J.O.S.) and Eduardo B. Olaguer[4] (collectively, petitioners) against United Overseas Bank Philippines (UOBP), Emmanuel T. Mangosing and David Goh Chai Eng[5] (collectively, respondents) on the ground of mootness. The second Order expunged petitioners' motion for reconsideration of the October 7, 2014 Order from the record of the case due to violation of the three-day notice rule on motions.

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1 *Rollo*, pp. 22-41.
2 *Id.* at 44-46; penned by Judge Aurora A. Hernandez-Calledo.
3 *Id.* at 50-51.
4 Olaguer is the President/Chief Executive Officer of J.O.S. *Id.* at 23.
5 Mangosing and Goh Chai Eng are the President/Chief Executive Officer and Vice-President/Deputy General Manager, respectively, of UOBP. *Id.*

Facts

On September 10, 1999, petitioners filed a Petition for Annulment of Extrajudicial Foreclosure Sale (annulment case) against UOBP and Atty. Ricardo F. De Guzman in RTC-QC.[6] The case was raffled to RTC-QC, Branch 98 (RTC Br. 98) and docketed as Civil Case No. Q-99-38701.[7] On May 17, 2000, RTC Br. 98 issued a writ of preliminary injunction (2000 writ) against respondents prohibiting them from: (a) consolidating title to the subject properties; and (b) committing any acts prejudicial to petitioners.[8] Eventually, on June 12, 2008, it also issued a decision annulling the extrajudicial foreclosure and public auction sale of the properties.[9] Respondents filed an appeal to the Court of Appeals (CA) docketed as CA-G.R. CV No. 92414.[10]

On May 5, 2008, while the annulment case was still pending, respondents sold the properties to Onshore Strategic Assets, Inc.[11] Thus, petitioners filed a Petition to Declare Respondents in Contempt of Court[12] (contempt case) in RTC-QC. The case was docketed as Civil Case No. Q-11-69413 and raffled to RTC, Branch 220 (RTC Br. 220). Petitioners averred that respondents' sale of the properties constitutes indirect contempt of court because it was done in violation of the 2000 writ issued by RTC Br. 98. Additionally, they prayed that respondents be ordered to pay actual, moral and exemplary damages including attorney's fees and cost of suit.

Respondents filed a Motion to Dismiss on the ground of failure to state a cause of action. They countered that the sale of the properties did not violate the 2000 writ because petitioners did not plead that the sale was prejudicial to them. Further, the petition did not allege that respondents consolidated title to the properties. RTC Br. 220 denied the motion to dismiss. Respondents moved for reconsideration, but it was denied.[13] They elevated the case to the CA via a petition for *certiorari*, but the CA also dismissed it.[14]

Respondents then filed an Answer *Ad Cautelam*[15] in RTC Br. 220, contending that the 2000 writ merely prohibited UOBP from consolidating title to the properties and did not enjoin it from selling or transferring them to any person or entity.[16] Respondents also asserted that the sale is not prejudicial to the interest of petitioners because the 1997 Rules of Civil

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[6] Atty. De Guzman was the notary public who conducted the auction sale of the subject properties. *Rollo*, p. 62.
[7] *Id.* at 72.
[8] *Id.*
[9] *Id.* at 55.
[10] *Id.* at 117.
[11] *Id.* at 62.
[12] *Id.* at 53-60.
[13] *Id.* at 64-65.
[14] *Id.* at 61-68. Docketed as CA-G.R. SP No. 128106; penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan-Castillo and Florita S. Macalino, concurring.
[15] *Id.* at 89-97.
[16] *Id.* at 93.

Procedure (the Rules) recognizes and allows transfers *pendente lite*.[17] By way of counterclaim, respondents prayed that petitioners be ordered to pay moral and exemplary damages and attorney's fees.[18]

In another turn of events, the contempt case was re-raffled to RTC Br. 87.[19] On May 8, 2014, respondents filed its second motion to dismiss.[20] They argued that the decision of RTC Br. 98 in the annulment case was reversed by the CA in its Decision dated November 28, 2013. They claimed that the CA's dismissal of the annulment case automatically dissolved or set aside the 2000 writ because a writ of preliminary injunction is merely ancillary to the main case.[21] Therefore, the contempt case which seeks to punish them for the alleged violation of the 2000 writ had become moot and academic.[22] Petitioners opposed the motion but RTC Br. 87, in its first assailed Order, granted respondent's motion and dismissed the case. It ruled that "the writ of preliminary injunction was rendered moot and academic with the [CA's dismissal of the annulment case] on the merits, which in effect automatically terminated the writ of preliminary injunction issued therein, even if an appeal is taken from said judgment."[23]

Petitioners filed a Motion for Reconsideration[24] (MR) of the order of dismissal. Respondents filed a Motion to Expunge[25] the MR on the ground that petitioners violated the three-day notice rule under Section 4, Rule 15 of the Rules. Respondents alleged that the hearing for petitioners' MR was set on November 7, 2014 but they received the notice only on November 6 or one (1) day before the scheduled hearing. In its second assailed Order, RTC Br. 87 granted respondent's motion to expunge.[26]

Petitioners now directly seek recourse to us via this petition for review on *certiorari* raising the following issues:

1. Whether RTC Br. 87 erred in expunging petitioners' MR from the record of the case;

2. Whether RTC Br. 87 erred in giving due course to respondents' motion to dismiss filed after their answer *ad cautelam*; and

3. Whether RTC Br. 87 erred in dismissing the contempt case on the ground of mootness.

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17 *Id.*
18 *Id.* at 95-96.
19 *Id.* at 114.
20 Opposition To Declare Respondents in Default with Motion to Dismiss. *Id.* at 115-120.
21 *Id.* at 117.
22 *Id.* at 117-118.
23 *Id.* at 46.
24 *Id.* at 11-12.
25 *Id.* at 128-132.
26 *Id.* at 50-51.

Petitioners pray that we set aside the October 7, 2014 and July 20, 2015 Orders of RTC Br. 87, declare respondents guilty of contempt of court, and order them to pay damages.[27]

Our Ruling

We partially grant the petition and reverse the challenged Orders of RTC Br. 87.

At the outset, we find no merit in the claim of respondents that petitioners' direct resort to us violates the hierarchy of courts. Section 2(c), Rule 41 of the Rules provides that in all cases where only questions of law are raised or involved, the appeal shall be before us.[28] Petitioners question the grant of due course to respondents' motion to dismiss filed after the filing of their Answer *Ad Cautelam*, the grant of respondents' motion to dismiss the contempt case on the ground of mootness, and the grant of respondents' motion to expunge petitioners' MR on the ground of violation of the three-day notice rule. In order to resolve these issues, we need not examine or evaluate the evidence of the parties, but rely solely on what the law provides on the given set of undisputed facts.[29] Consequently, petitioners' remedy for assailing the correctness of the Orders of RTC Br. 87, involving as it does a pure question of law, indeed lies with us.[30]

RTC Br. 87 erred when it granted respondent's motion to expunge petitioner's MR from the records.

Section 4, Rule 15 of the Rules, provides that:

> Sec. 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

The general rule is that the three-day notice requirement in motions under Section 4 of the Rules is mandatory. It is an integral component of procedural due process. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient

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27 *Id.* at 38.

28 See *Sevilleno v. Carilo*, G.R. No. 146454, September 14, 2007, 533 SCRA 385.

29 See *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 365.

30 See *Dio v. Subic Bay Marine Exploratorium, Inc.*, G.R. No. 189532, June 11, 2014, 726 SCRA 244.

time to study the motion and to enable it to meet the arguments interposed therein.[31]

In *Cabrera v. Ng*,[32] the facts of which are analogous to the present petition, we held that the three-day notice requirement is not a hard-and-fast rule. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.[33] We ruled:

> It is undisputed that the hearing on the motion for reconsideration filed by the spouses Cabrera was reset by the RTC twice with due notice to the parties; it was only on October 26, 2007 that the motion was actually heard by the RTC. At that time, more than two months had passed since the respondent received a copy of the said motion for reconsideration on August 21, 2007. The respondent was thus given sufficient time to study the motion and to enable him to meet the arguments interposed therein. Indeed, the respondent was able to file his opposition thereto on September 20, 2007.
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> Notwithstanding that the respondent received a copy of the said motion for reconsideration four days after the date set by the spouses Cabrera for the hearing thereof, his right to due process was not impinged as he was afforded the chance to argue his position. Thus, the RTC erred in denying the spouses Cabrera's motion for reconsideration based merely on their failure to comply with the three-day notice requirement.[34]

Thus, the test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[35] When the adverse party had been afforded such opportunity, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.[36]

Here, respondents claimed to have actually received the notice for the November 7, 2014 hearing only on November 6, 2014.[37] On the supposed day of hearing, however, RTC Br. 87 issued a *Constancia*[38] resetting the hearing to December 5, 2014. Thereafter, on November 11, 2014, respondent filed a motion to expunge petitioners' MR.[39] Clearly,

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31 See *Cabrera v. Ng*, G.R. No. 201601, March 12, 2014, 719 SCRA 199, 205.
32 G.R. No. 201601, March 12, 2014, 719 SCRA 199.
33 *Id.* at 206.
34 *Id.* at 207-208.
35 *Id.* at 207.
36 *Id.* at 206.
37 *Rollo*, p. 155.
38 *Id.* at 49.
39 *Id.* at 50.

respondents' right to due process was not violated as they were able to oppose petitioner's MR in the form of their motion to expunge.

RTC Br. 87 did not err in giving due course to respondents' motion to dismiss.

Petitioners fault RTC Br. 87 for giving due course to respondents' motion to dismiss. Respondents filed their second motion to dismiss almost one (1) year and six (6) months after they submitted their Answer *Ad Cautelam*.[40] Thus, petitioners aver that respondents violated Section 1, Rule 16 of the Rules, stating that a motion to dismiss must be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim."

Petitioners are incorrect. In *Obando v. Figueras*,[41] we held that the period to file a motion to dismiss depends upon the circumstances of the case:

> x x x Section 1 of Rule 16 of the Rules of Court requires that, in general, a motion to dismiss should be filed within the reglementary period for filing a responsive pleading. Thus, a motion to dismiss alleging improper venue cannot be entertained unless made within that period.
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> However, **even after an answer has been filed, the Court has allowed a defendant to file a motion to dismiss on the following grounds:** (1) lack of jurisdiction, (2) *litis pendentia*, (3) lack of cause of action, and **(4) discovery during trial of evidence that would constitute a ground for dismissal.** Except for lack of cause of action or lack of jurisdiction, the grounds under Section 1 of Rule 16 may be waived. If a particular ground for dismissal is not raised or if no motion to dismiss is filed at all within the reglementary period, it is generally considered waived under Section 1, Rule 9 of the Rules.
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> Applying this principle to the case at bar, the respondents did not waive their right to move for the dismissal of the civil case based on Petitioner Obando's lack of legal capacity. **It must be pointed out that it was only after he had been convicted of estafa through falsification that the probate court divested him of his representation of the Figueras estates. It was only then that this ground became available to the respondents. Hence, it could not be said that they waived it by raising it in a Motion to Dismiss filed after their Answer was submitted. Verily, if the plaintiff loses his capacity to sue during the pendency of the case, as in the present controversy, the defendant should be allowed to file a**

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[40] The Answer *Ad Cautelam* was filed on November 27, 2012 (*id.* at 37) while the second motion to dismiss was filed on May 8, 2014 (*id.* at 115).

[41] G.R. No. 134854, January 18, 2000, 322 SCRA 148.

> **motion to dismiss, even after the lapse of the reglementary period for filing a responsive pleading.**[42]
> (Emphasis supplied.)

In the same manner, respondents' motion to dismiss was based on an event that transpired **after** it filed its Answer *Ad Cautelam*. Consequently, there was no violation of Section 1, Rule 16 of the Rules as they could not have possibly raised it as an affirmative defense in their answer.

While RTC Br. 87 did not err in giving due course to respondents' motion to dismiss, the propriety of granting it is an entirely different matter.

RTC Br. 87 erred when it dismissed the contempt case for being moot and academic.

In their motion to dismiss, respondents advance that the CA's reversal of RTC Br. 98's ruling is a supervening event that renders the contempt case moot and academic. They argue that it would now be absurd to restrain UOBP from exercising its rights under the Deed of Real Estate Mortgage when it was found to have proceeded lawfully in the foreclosure proceedings. Respondents maintain that it would be illogical to hold them in contempt for a lawful act.[43]

RTC Br. 87 agreed,[44] citing the cases of *Golez v. Leonidas*[45] and *Buyco v. Baraquia,*[46] where we held that a writ of preliminary injunction is deemed lifted upon dismissal of the main case, its purpose as a provisional remedy having been served, despite the filing of an appeal.

We are not persuaded. A case is moot when it ceases to present a justiciable controversy by virtue of supervening events so that a declaration thereon would be of no practical value.[47] Courts decline jurisdiction over it as there is no substantial relief to which petitioner will be entitled and which will anyway be negated by the dismissal of the petition.[48] Here, the consequent dissolution of the 2000 writ did not render the contempt case moot and academic. Foremost, RTC Br. 87's reliance in *Golez* and *Buyco* is misplaced. As correctly pointed out by petitioners, the facts and circumstances in the two cases differ from the present petition. In *Golez* and *Buyco*, the alleged acts in violation of the writ of preliminary injunction were committed AFTER the writ was lifted upon the dismissal of the main

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42 *Id.* at 156-157.
43 *Rollo*, p. 118.
44 *Id.* at 45.
45 G.R. No. L-56587, August 31, 1981, 107 SCRA 187.
46 G.R. No. 177486, December 21, 2009, 608 SCRA 699.
47 *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 356-357, citing *Gunsi, Sr. v. Commissioners, The, Commission on Elections*, G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.
48 *Philippine Ports Authority v. Coalition of PPA Officers and Employees*, G.R. No. 203142, August 26, 2015, 768 SCRA 280, 293, citing *Korea Exchange Bank v. Gonzales,* G.R. No. 139460, March 31, 2006, 486 SCRA 166, 176.

action, such that a case for contempt on the ground of violation of the writ would be unavailing. In the case before us, the sale of the properties—which is the act alleged to be in violation of the 2000 writ—was conducted while the 2000 writ was still **subsisting**. In fact, the 2000 writ was issued on May 17, 2000, while the sale was made on May 5, 2008. RTC Br. 98 annulled the sale in favor of petitioners on June 12, 2008.[49]

The reversal by the CA of the ruling of RTC Br. 98 in the annulment case and the automatic dissolution of the 2000 writ will **not** protect respondents from an action ascribing a violation of the 2000 writ, which was committed while it was still in full force and effect. In *Lee v. Court of Appeals*,[50] we explained that:

> An injunction or restraining order which is not void must be obeyed while it remains in full force and effect, and has not been overturned, that is, in general, until the injunction or restraining order has been set aside, vacated, or modified by the court which granted it, or until the order or decree awarding it has been reversed on appeal or error. The injunction must be obeyed irrespective of the ultimate validity of the order, and no matter how unreasonable and unjust the injunction may be in its terms. Defendant cannot avoid compliance with the commands, or excuse his violation, of the injunction by simply moving to dissolve it, or by the pendency of a motion to modify it. The fact that an injunction or restraining order has been dissolved or terminated, or has expired, does not necessarily protect a person in a proceeding against him for a violation of the injunction or order while it was in force, as by acts between granting of the injunction and its termination, at least where the proceeding is one to punish for a criminal contempt.[51]

Notably, this is **not** to say that respondents are already guilty of indirect contempt. Whether respondents violated the 2000 writ is not for us to decide. Section 5, Rule 71 of the Rules provides that where the charge for indirect contempt has been committed against a Regional Trial Court or a court of equivalent or higher rank, or against an officer appointed by it, the charge may be filed with such court. Here, the petition for indirect contempt was correctly filed with the RTC. The contempt case was however dismissed while it was only in the pre-trial stage and clearly before the parties could present their evidence. Proceedings for indirect contempt of court require normal adversarial procedures. It is not summary in character. The proceedings for the punishment of the contumacious act committed outside the personal knowledge of the judge generally need the observance of all the elements of due process of law, that is, notice, written charges, and an

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49 *Rollo*, p. 55.
50 G.R. No. 147191, July 27, 2006, 496 SCRA 668.
51 *Id.* at 687-688.

opportunity to deny and to defend such charges before guilt is adjudged and sentence imposed.[52]

In this regard, we cannot grant petitioners' prayer to declare respondents guilty of contempt of court and order them to pay damages.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The October 7, 2014 and July 20, 2015 Orders of the Regional Trial Court of Quezon City, Branch 87 in Civil Case No. Q-11-69413 are hereby **REVERSED**. The case is **REMANDED** to the court *a quo* for continuance of the trial of the case.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

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.

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[52] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 345, citing *Provenzale v. Provenzale*, 90 N.E. 2d 115, 339 Ill. App. 345; *People ex rel. Andrews v. Hassakis*, 129 N.E. 2d 9, 6 Ill. 2d 463; *Van Sweringen v. Van Sweringen*, 126 A. 2d 334, 22 N.J. 440, 64 A.L.R. 2d 593; *Ex parte Niklaus*, 13 N.W. 2d 655, 144 Neb. 503; *People ex rel. Clarke v. Truesdell*, 79 N.Y.S. 2d 413.

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, it is hereby certified 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

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 01 2016