

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

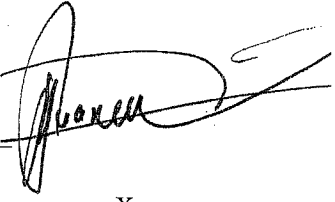
**SPOUSES AGERICO ABROGAR and G.R. No. 221046**  
**CARMELITA ABROGAR,**

*Petitioners,* Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
REYES, A., JR.,\*  
HERNANDO,\*\*  
INTING, and  
DELOS SANTOS, JJ.

- versus -

**LAND BANK OF THE PHILIPPINES,**  
*Respondent.*

Promulgated:  
22 JAN 2020 

X-----X

RESOLUTION

INTING, J.:

The Court resolves the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assailing the Resolutions dated June 23, 2014<sup>2</sup> and October 22, 2015<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 134435.

*The Antecedents*

On October 14, 1996, Spouses Agerico and Carmelita Abrogar (petitioners) obtained a loan amounting to ₱11,250,000.00 from respondent Land Bank of the

\* On official leave.  
\*\* On official leave.  
<sup>1</sup> *Rollo*, pp. 3-18.  
<sup>2</sup> *Id.* at 49-54; penned by Associate Justice Michael P. Elbinias with Associate Justices Isaias P. Dicedican and Victoria Isabel A. Paredes, concurring.  
<sup>3</sup> *Id.* at 61-63; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Danton Q. Bueser and Edwin D. Sorongon, concurring.

Philippines (Land Bank). The loan was secured by a real estate and chattel mortgage<sup>4</sup> executed by petitioners in Land Bank's favor.<sup>5</sup>

Petitioners, however, eventually defaulted in the payment of their loan. This prompted Land Bank to commence extra-judicial foreclosure proceedings on the mortgaged properties.<sup>6</sup> To stop the foreclosure proceedings, petitioners filed a Complaint<sup>7</sup> against Land Bank before Branch 51, Regional Trial Court (RTC), Puerto Princesa City for specific performance and damages with application for a writ of preliminary injunction and/or temporary restraining order. Petitioners prayed, among others, that the RTC order Land Bank to allow them to settle their obligation pursuant to the Letter<sup>8</sup> dated October 5, 1998 which contained the bank's proposed terms and conditions for the restructuring of their loan.<sup>9</sup>

### *Ruling of the RTC*

In its Decision<sup>10</sup> dated April 1, 2011, the RTC dismissed the Complaint for lack of a cause of action.<sup>11</sup> It explained that:

[Petitioners'] lawful obligation is to settle its delinquent account with [Land Bank] in order that the latter may perform its mandate of extending financial assistance to those who are qualified.

x x x [Petitioners] ought to bear in mind that restructuring their loan is not part of their original contract. It is merely a privilege accorded to them by [Land Bank]. They cannot invoke that as a demandable right. When [Land Bank] refused to adopt their own interpretation, they should have taken that as being equivalent to a denial of their request for restructuring. x x x<sup>12</sup>

The RTC likewise denied petitioners' Motion for Reconsideration<sup>13</sup> in its Order<sup>14</sup> dated November 25, 2013. Petitioners thereafter elevated the case *via* a Petition for *Certiorari*<sup>15</sup> under Rule 65 of the Rules of Court before the CA.

<sup>4</sup> *Id.* at 68-69.

<sup>5</sup> *Id.* at 21.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 102-114.

<sup>8</sup> *Id.* at 75-76.

<sup>9</sup> *Id.* at 113.

<sup>10</sup> *Id.* at 21-23; penned by Acting Presiding Judge Perfecto E. Pe.

<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* at 22-23.

<sup>13</sup> *Id.* at 24-27.

<sup>14</sup> *Id.* at 28-29; penned by Presiding Judge Ambrosio B. De Luna.

<sup>15</sup> *Id.* at 30-48.

*Ruling of the CA*

In its Resolution<sup>16</sup> dated June 23, 2014, the CA dismissed the Petition for *Certiorari* for: (a) being the wrong mode of appeal;<sup>17</sup> and (b) lack of an affidavit of service, pursuant to Section 13, Rule 13 of the Rules of Court.<sup>18</sup>

The CA stressed that the proper recourse for petitioners was to file an ordinary appeal under Section 2(a), Rule 41 and *not* to resort to the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court.<sup>19</sup> Moreover, the CA noted that even if the Petition for *Certiorari* was treated as an ordinary appeal, it would still be dismissed for having been filed beyond the 15-day reglementary period provided under Rule 41.<sup>20</sup>

Petitioners moved for reconsideration,<sup>21</sup> but the CA denied the motion in its Resolution<sup>22</sup> dated October 22, 2015. Consequently, petitioners filed the present Petition for Review on *Certiorari*<sup>23</sup> before the Court assailing the CA Resolutions.

*The Issue*

The sole issue for the Court's resolution is whether the CA correctly dismissed the Petition for *Certiorari* outright for being the wrong mode of appeal.

*The Court's Ruling*

The petition is without merit.

It is settled that a special civil action for *certiorari* may only be resorted to in cases where there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.<sup>24</sup> "The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse."<sup>25</sup> As the remedies of appeal and

<sup>16</sup> *Id.* at 49-54.

<sup>17</sup> *Id.* at 50.

<sup>18</sup> *Id.* at 53.

<sup>19</sup> *Id.* at 50-52.

<sup>20</sup> *Id.* at 53.

<sup>21</sup> *Id.* at 55-58.

<sup>22</sup> *Id.* at 61-63.

<sup>23</sup> *Id.* at 3-18.

<sup>24</sup> RULES OF COURT, Rule 65, Section 1.

<sup>25</sup> *Villalon v. Lirio*, 765 Phil. 474, 481 (2015).

*certiorari* are *mutually exclusive*, *certiorari* will *not* prosper if appeal is an available remedy to a litigant, even if the ground is grave abuse of discretion.<sup>26</sup>

In this case, the proper recourse for petitioners was to appeal the Decision dated April 1, 2011, which was rendered by the RTC in the exercise of its original jurisdiction, under Section 2(a)<sup>27</sup> of Rule 41 and *not* to resort to *certiorari* under Rule 65 of the Rules of Court. Since the remedy of an ordinary appeal was undeniably available to petitioners, the CA correctly dismissed their Petition for *Certiorari* for being the wrong mode of appeal.

In an attempt to justify their plea for the liberal application of the Rules, petitioners insist that they should not be bound by their former counsel's negligence in choosing to file the wrong remedy because it would deprive them of their property without due process of law.<sup>28</sup>

This argument, however, is untenable. After all, "the negligence of the counsel binds the client, even mistakes in the application of procedural rules."<sup>29</sup> The only exception to this doctrine is "when the reckless or gross negligence of the counsel deprives the client of due process of law."<sup>30</sup> In such a case, the counsel's error must be so *palpable* and *maliciously exercised* that it would viably be the basis for disciplinary action.<sup>31</sup> Thus, "for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests."<sup>32</sup>

Here, petitioners clearly failed to allege and prove that their former counsel was motivated by malice in choosing to file a *certiorari* petition instead of an ordinary appeal before the CA. For clarity and precision, the pertinent portion of their petition is quoted below:

The petitioners herein appear to be deprived of the benefits of the [P6,000,000.00] appraisal of their property by [Land Bank], arising from the gross negligence of their former counsel on record. The error of the former

<sup>26</sup> *Id.*

<sup>27</sup> SEC. 2. *Modes of appeal.* –

(a) *Ordinary appeal.* – The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appeal from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

<sup>28</sup> *Rollo*, p. 13.

<sup>29</sup> *Ong Lay Hin v. Court of Appeals, et al.*, 752 Phil. 15, 23 (2015), citing *Bejarasco, Jr. v. People*, 656 Phil. 337, 340 (2011).

<sup>30</sup> *Id.* at 24.

<sup>31</sup> *Id.* at 25.

<sup>32</sup> See *Baclaran Mktg. Corp. v. Nieva, et al.*, 809 Phil. 92, 104 (2017).

counsel on record in choosing [to file a] petition for [*certiorari*] under [R]ule 65 of the 1997 Revised Rules of Civil Procedure, rather than ordinary appeal, must be considered gross negligence on the part of the counsel, and such gross negligence will cause the petitioners deprivation of property without due process of law. x x x<sup>33</sup>

Petitioners' mere allegation of gross negligence, *without* any showing of malicious intent on the part of their former counsel, does not suffice for the exception to apply.<sup>34</sup> To be sure, "malice is never presumed but must be proved as a fact."<sup>35</sup> This, petitioners evidently failed to do.


Based on these considerations, the Court finds no basis to relax the rules of procedure in this case. The Court notes that the RTC Decision dated April 1, 2011 has long attained finality, given petitioners' failure to interpose an appeal within the reglementary period provided under the Rules. Consequently, the Court can no longer exercise its appellate jurisdiction to review this Decision, even *if* it is meant to correct erroneous conclusions of fact and law.

**WHEREFORE**, the Petition for Review on *Certiorari* is **DENIED**. The Resolutions dated June 23, 2014 and October 22, 2015 of the Court of Appeals in CA-G.R. SP No. 134435 are **AFFIRMED**.

**SO ORDERED.**

  
HENRIGAN PAUL B. INTING  
*Associate Justice*

WE CONCUR:

  
ESTELA M. PERLAS-BERNABE  
*Senior Associate Justice*  
*Chairperson*

<sup>33</sup> *Rollo*, p. 13.

<sup>34</sup> See *Baclaran Mktg. Corp. v. Nieva, et al.*, *supra* note 32.

<sup>35</sup> *Id.*



(On official leave)  
**ANDRES B. REYES, JR.**  
*Associate Justice*


(On official leave)  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*



**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

**ATTESTATION**

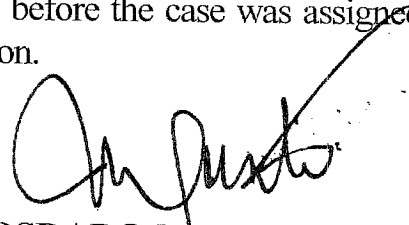
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

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



**DIOSDADO M. PERALTA**  
*Chief Justice*

