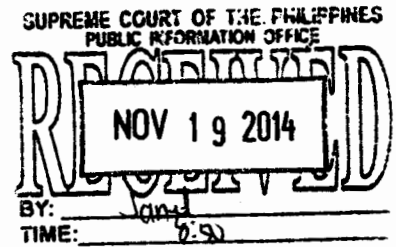




REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **12 November 2014** which reads as follows:

**G.R. No. 211956 – Spouses Albino Ng and Mary Ann Ng v. Philippine National Bank [formerly Allied Banking Corporation].**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the December 5, 2013 Decision<sup>1</sup> and the March 6, 2014 Resolution<sup>2</sup> of the Court of Appeals (CA), in CA-G.R. CV No. 99463 which affirmed with modification the March 25, 2012 decision of the Regional Trial Court, Branch 133, Makati City (RTC).

**The Facts:**

Petitioners, spouses Albino and Mary Ann Ng (*petitioners*), obtained a loan from respondent Allied Banking Corporation, now Philippine National Bank (*respondent*) in the amount of ₱23,070,000.00 at the interest rate of 14.125% per annum for the first interest period and the succeeding interest rates shall thereafter be negotiated. The loan was evidenced by a promissory note and a continuing guaranty/comprehensive surety. When petitioners failed to settle their obligation, respondent repeatedly demanded that they settle their obligation which amounted to ₱21,381,675.07 as of September 10, 2004, but to no avail. Consequently, on March 21, 2005, respondent filed a complaint for sum of money plus damages with the RTC.

In their answer,<sup>3</sup> petitioners averred that the payment of the loan was delegated to Jaime Manejero (*Manejero*), a consultant, whose untimely death caused confusion in their financial records; that the promissory note was simulated as the parties' real intention was that they were to pay a weekly amortization of ₱125,000.00 from the first week of July 2001 until its date of maturity; that because of the weekly payments, the balance of the loan at its maturity date should only be ₱6,000,000.00, which would presumably be restructured; that they paid the weekly amortizations but lost track of the payments thereof when Manejero died; that they were not aware of any communication sent by the respondent; and that they were willing to settle their obligation as soon as an accounting was made.

<sup>1</sup> *Rollo*, pp.117-134. Penned by Associate Justice Normandie B. Pizarro with Presiding Justices Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios, concurring.

<sup>2</sup> *Id.* at 144-145.

<sup>3</sup> *Id.* at 58-60.

- more -

(182 & 232[b])SR

The case was referred to Judicial Dispute Resolution (*JDR*) but the attempt to settle the same proved futile. Thus, the case was initially set for pre-trial.

During the pre-trial on September 8, 2011, Corinne R. Mendoza (*Mendoza*), a representative of Atty. Rizalina Lumbera (*Atty. Lumbera*), counsel for the petitioners, appeared and informed the court that the latter was not available. Consequently, the pre-trial was cancelled and the RTC issued the order<sup>4</sup> resetting the same to October 21, 2011. The September 28, 2011 Minutes<sup>5</sup> of the hearing, however, reflected that the pre-trial was reset to October 24, 2011.

On October 24, 2011, only respondent's counsel appeared. On respondent's motion, the RTC issued the Order<sup>6</sup> declaring petitioners in default and allowing respondent to adduce its evidence *ex parte*.

Thereafter, respondent filed its *ex parte* Manifestation and Motion to adopt the testimony of its lone witness, Eric Barilea (*Barilea*), and the documentary evidence previously offered and admitted by the court during the preliminary attachment hearing.

The RTC, in its Order, dated February 22, 2012, granted the Manifestation and Motion and considered the case submitted for decision.

On March 12, 2012, Atty. Lumbera filed a notice of withdrawal of appearance, which was granted by the RTC on March 15, 2012. Thereafter, Atty. Hector P. Teodosio, entered his appearance as counsel for the petitioners and filed the Motion to Lift Order of default, dated October 24, 2011.

Before the said motion could be resolved, the RTC rendered its decision on March 28, 2012, in favor of respondent. The dispositive portion of which reads:

WHEREFORE, premises considered, finding the plaintiff's cause of action to be meritorious being supported by evidence on record, judgment is hereby rendered in favor of the plaintiff and against the defendant-spouses Albino A. Ng and Mary Ann O. Ng, ordering the latter to pay jointly and severally, the plaintiff:

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<sup>4</sup> Id. at 90.

<sup>5</sup> Id. at 91.

<sup>6</sup> Id. at 92.

1. The sum of Php21,381,675.07 plus interest at the rate of 9.75% per annum;
2. Penalty charge at the rate of 12% per annum reckoned from September 10, 2004, until fully paid; and
3. Attorney's fees in the amount of Php100,000.00

No costs.

SO ORDERED.<sup>7</sup>

Petitioners then filed a motion for reconsideration of the RTC decision.

In its Consolidated Order,<sup>8</sup> the RTC denied the motion for reconsideration and the motion to lift the order of default. On the motion to lift the order of default, the RTC stated that the failure of petitioners' counsel to appear on the scheduled hearing despite due notice was a ground for their declaration of default and such negligence bound them. As to the motion for reconsideration, the RTC declared the same without basis as the decision was in consonance with the law and jurisprudence.

On appeal, the CA affirmed the RTC decision with modifications. The CA sustained the RTC in declaring petitioners in default for their failure to appear on the scheduled pre-trial despite notice. The CA held that when Mendoza signed the September 8, 2011 Minutes of the hearing, the same had the effect of notice to the petitioners and their counsel. Thus, the CA concluded that petitioners were remiss in exercising vigilance to protect their rights in the case when they did not take any action to verify the conflict in the schedule upon receipt of the September 8, 2011 Order.

Upon denial of their motion for reconsideration, petitioners are now before the Court *via* a petition for review anchored on the following:

#### GROUND FOR REVIEW:

A. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS WERE VALIDLY DECLARED IN DEFAULT FOR NOT APPEARING DURING THE PURPORTED PRETRIAL ON OCTOBER 24, 2011, ALTHOUGH THE PRETRIAL WAS SET ON OCTOBER 21, 2004 PER ORDER DATED SEPTEMBER 8, 2011.

<sup>7</sup> Id. at 113.

<sup>8</sup> Id. at 114-115.

*mlgt*

B. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE LOWER COURT ERRED IN SIMPLY ADOPTING THE EVIDENCE PRESENTED BY RESPONDENT APPELLEE DURING THE HEARING FOR THE APPLICATION OF PRELIMINARY ATTACHMENT, NOTWITHSTANDING THE FACT THAT AT THE TIME OF THE HEARING FOR THE APPLICATION FOR PRELIMINARY ATTACHMENT, THE SUMMONS AND COMPLAINT WERE NOT YET SERVED TO THE PETITIONERS;

C. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE DECISION OF THE LOWER COURT IS VOID AS THE EVIDENCE TO SUPPORT SUCH DECISION WERE RECEIVED BY THE COMMISSIONER AND NOT BY THE PRESIDING JUDGE, AND THE PROCEEDINGS BEFORE THE SO CALLED COMMISSIONER IS VOID.

D. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT NOTWITHSTANDING THE FACT THAT THE DECISION IS NOT SUPPORTED BY PREPONDERANCE OF EVIDENCE AND CONTRARY TO LAW.<sup>9</sup>

The issue to be resolved is whether or not petitioners were properly declared in default.

Petitioners averred that they were improvidently and illegally declared in default when they failed to attend the October 24, 2011 pre-trial conference, insisting that the pre-trial was re-scheduled to October 21, 2011 as evidenced by the order, dated September 8, 2011.<sup>10</sup> In fact, there was no subsequent order issued by the RTC rectifying the October 21, 2011 pre-trial schedule.

The Court finds merit in the petition.

Section 5, Rule 18 of the Rules of Court specifically provides that if the defendant fails to appear during the pre-trial conference, the plaintiff may be allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. The conduct of a pre-trial and its governing rules are not mere technicalities which the parties may ignore or trifle with.<sup>11</sup> Its main objective is to simplify, abbreviate and expedite the trial.<sup>12</sup> Owing to its mandatory character, a notice of pre-trial specifying the date, time and place of the pre-trial conference must be served to the party

<sup>9</sup> Id. at 18.

<sup>10</sup> Annex "E" of the Petition, *rollo*, p. 90.

<sup>11</sup> *Vera v. Rigor*, 556 Phil. 561, 565 (2007).

<sup>12</sup> *The Philippine American Life and General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010, 630 SCRA 607, 617.

affected through his counsel.<sup>13</sup> Otherwise, its absence will render the pre-trial and the subsequent proceedings void.<sup>14</sup>

In this case, petitioners never disputed the fact that they received the notice of pre-trial. The notice, however, indicated that the pre-trial would be held on October 21, 2011, not October 24, 2011, the date reflected in the minutes they signed. There was no showing either that petitioners were subsequently informed of the correct schedule of pre-trial. Under the circumstances, petitioners' absence on the October 24, 2011 pre-trial conference was not their fault. The order of default issued by the RTC ignored petitioners' right to procedural due process which requires that a party affected must be given notice.


In *Bank of the Philippine Islands v. Court of Appeals*,<sup>15</sup> the Court ruled that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules, the courts should decide to dispense rather than wield their authority to dismiss. Rules of procedure are mere tools designed to facilitate the attainment of justice. Its strict and rigid application must always be avoided when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice.<sup>16</sup> It is the well settled policy of the Court to afford every litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.<sup>17</sup>

Considering that the petitioners had manifested their willingness to pay their obligation after the appropriate accounting, the Court, in the interest of justice, deems it proper to remand the case to the RTC for the continuation of the proceedings and the final disposition of the case on the merits.

**WHEREFORE**, the petition is **GRANTED**. The December 5, 2013 Decision and the March 6, 2014 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 99463 is **REVERSED** and **SET ASIDE**. The Regional Trial Court, Branch 133, Makati City, is hereby **ORDERED** to set the case for pre-trial and notify the parties of the date and time to be scheduled and to proceed accordingly.

**SO ORDERED.**

Very truly yours,

  
MA. LOURDES C. PERFECTO  
Division Clerk of Court

<sup>13</sup> *Agulto v. Tecson*, 512 Phil. 760, 765 (2005).

<sup>14</sup> *Id.*; and *De Guia v. Ciriaco*, 408 Phil. 399, 407 (2001).

<sup>15</sup> 362 Phil. 362 (1999).

<sup>16</sup> *Dalton-Reyes v. Court of Appeals*, 493 Phil. 631, 641 (2005).

<sup>17</sup> *RN Development Corporation v. A.I. I. System, Inc.*, 578 Phil. 475, 484-485 (2008).

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HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 133  
Makati City  
Civil Case No. 05-251

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CA-G.R. CV No. 99463

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GR211956. 11/12/14 (182 & 232[b])SR *11/18*