

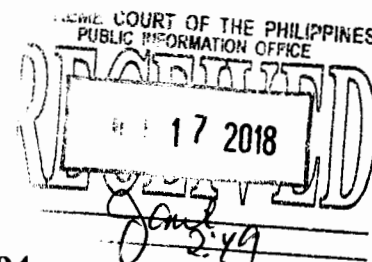


Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION



**NOEMI S. CRUZ and HEIRS OF
HERMENEGILDO T. CRUZ,**
represented by **NOEMI S. CRUZ,**
Petitioners,

G.R. No. 210894

Present:

- versus -

**CITY OF MAKATI, CITY
TREASURER OF MAKATI,
THE REGISTER OF DEEDS OF
MAKATI, LAVERNE REALTY
AND DEVELOPMENT
CORPORATION,**
Respondents.

**LEONARDO-DE CASTRO, C.J.,
BERSAMIN,
DEL CASTILLO,
JARDELEZA, and
TIJAM, JJ.**

Promulgated:
SEP 12 2018

X-----

DECISION

DEL CASTILLO, J.:

This Petition for Review on *Certiorari*¹ assails the July 22, 2013 Decision² of the Court of Appeals (CA) in CA-G.R. SP No. 128390 affirming the March 29, 2012 and December 27, 2012 Orders³ of the Regional Trial Court of Makati City, Branch 62 (Makati RTC Branch 62) in Civil Case No. 07-1155, and the CA's subsequent January 15, 2014 Resolution⁴ denying herein petitioners' Motion for Reconsideration.

Factual Antecedents

Petitioner Noemi Cruz and her husband, Hermenegildo T. Cruz, were the registered owners of a 124.38-square meter condominium unit, Unit 407, Cityland Condominium 10, Tower II, 146 H.V. Dela Costa Street, Makati City (subject property) which was levied upon by the respondent City of Makati for non-payment of real property taxes thereon after their designated employee-representative failed to remit the entrusted tax payments amounting

¹ *Rollo*, pp. 16-37.
² *Id.* at 39-48; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.
³ *Id.* at 94-95 and 97-98.
⁴ *Id.* at 50-53.

to ₱201,231.17 to the city and appeared to have absconded with the money instead. Eventually, the subject property was auctioned off and sold to respondent Laverne Realty and Development Corporation (Laverne) as the highest bidder for ₱370,000.00.

Petitioners failed to redeem the subject property, prompting Laverne to file in 2009, before the Makati RTC Branch 148, LRC Case No. M-5237 a petition to surrender the owner's duplicate copy of the title to the subject property (Condominium Certificate of Title No. 44793).

Previously, or in 2007, petitioners filed before Makati RTC Branch 62 Civil Case No. 07-1155, a Complaint⁵ for annulment of the Laverne sale with prayer for injunctive relief and damages and costs. Petitioners alleged that the levy and sale by the respondent city to Laverne were null and void because the notice of billing statements for real property were mistakenly sent to Unit 1407 instead of Unit 407; no warrant of levy was ever received by them; the notice of delinquency sale was not posted as required by the Local Government Code (LGC); the Makati Treasurer's Office did not notify petitioners of the warrant of levy as required by the LGC; and respondents did not remit the excess of the proceeds of the sale to petitioners as required by the LGC.

The Makati City government and the City Treasurer filed their answer, and petitioners filed their reply. Petitioners sought to declare Laverne and the Makati Registrar of Deeds in default for failure to file their respective responsive pleadings.

On August 26, 2009, the Makati RTC Branch 62 granted petitioners' application for injunctive relief but denied their motion to declare Laverne in default.

On November 18, 2011, petitioners filed an Omnibus Motion to consolidate Civil Case No. 07-1155 with LRC Case No. M-5237 and to declare Laverne in default. Laverne opposed the motion.

On November 25, 2011, the Makati RTC Branch 62 issued an Order,⁶ stating as follows:

Before this Court is an omnibus motion to approve the consolidation of a case pending in Branch 148 with this case pending in this Court. Before

⁵ Id. at 69-75.

⁶ Id. at 93.



the court rules on this motion, the court awaits the resolution of Branch 148 regarding the motion filed with this court.

On the other hand, before the Court rules on the motion to declare defendant in default, the court awaits the return on the summons sent by registered mail. The Court takes note of the service by publication attached to the omnibus motion of the plaintiff in compliance with the order of publication to form part of the case. Set this incident for hearing on December 15, 2011 at 8:30 a.m.

The petitioner is given the opportunity to inform the court if there are any developments prior to the same.

SO ORDERED.

The Assailed Orders of the Makati RTC Branch 62

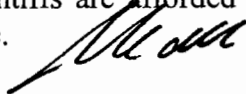
On March 29, 2012, the Makati RTC Branch 62 issued an Order⁷ denying petitioners' motion to consolidate and to declare Laverne in default. It held:

The Court noted that the answer for Laverne was filed without any motion asking leave for its belated admission contrary to Section 11, Rule 11 Revised Rules of Court. x x x

x x x x

Under this provision, the Court cannot simply admit an answer belatedly filed without any motion [for admission] accompanying the same x x x as evident from the wordings '**upon like terms**' which explicitly means '**upon motion and on such terms as may be just**'. x x x [S]ince it is within the discretion of the court to permit the filing of defendant's answer even beyond the reglementary period, the Court should be provided with justification for the belated action, and x x x the defendant must show that it intended no delay x x x. In fine, to admit or to reject an answer filed after the prescribed period is addressed to the sound discretion of the court. Admittedly, since the filing of the Answer was done [beyond the reglementary period, its filing cannot be considered as] a matter of right.

However, plaintiffs are not faultless either, [since] they have not complied with the order for them to inform this Court of the developments in their motion for consolidation [despite lapse of more than three (3) months]. The foregoing is more than sufficient reason for the Court to take severe sanction against the plaintiffs pursuant to Section 3 Rule 17 Revised Rules of Court, i.e., failure to prosecute for unreasonable length of time and comply with an order of the court. However, in the interest of justice, plaintiffs are afforded one last opportunity to continue prosecuting their case.



⁷ Id. at 94-95.

Anent the motion to Consolidate and Declare the defendant in default, the Court is constrained to deny the same for failure to comply with Section 6 Rule 15 in relation to Section 13 Rule 13 of the Revised Rules of Court. The instant motion failed to show any affidavit of personal service attesting the personal delivery of the motion to the adverse parties and of the affidavit of mailing to the other party which was served through registered mail service. Likewise, the Motion to Declare in Default Laverne Realty is denied on the basis of non-compliance with Section 19 Rule 14 Revised Rules of Court.

Anent the previous orders of this Court requiring the sheriff or process server of the Court to send a copy of the alias summons as well as a copy of the order granting leave to serve summons for publication, the same must be recalled pursuant to the declaration of the Supreme Court in *Santos v. PNOC Exploration*, that 'the rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail' under Section 19, Rule 14 of the Rules of Court 'is imposed on the party who resorts to service by publication.' The reason is plain, the affidavit referred to in the rules must be executed by the person who mailed the required documents in Section 19 Rule 14, Revised Rules of Court.

WHEREFORE, the Court hereby Orders that:

1) Laverne Realty's Answer with Compulsory [C]ounterclaim be **EXPUNGED** from the record pursuant to Section 12 Rule 8 Revised Rules of Court;

2) Plaintiffs' Motions to Consolidate and to Declare the Defendant in Default are both **DENIED**;

3) Any orders inconsistent with this, particularly [the] order dated September 19, 2011 are hereby recalled and/or modified accordingly;

4) No setting shall be given in the meantime, but the Court shall await further action to be taken by the concerned parties and shall act accordingly.

Furnish copies of this Order all the parties concerned, including defendant Laverne, through its retained counsel, Atty. De Belen who has voluntarily appeared in court.

SO ORDERED.⁸ (Emphasis in the original; citations omitted)

On June 26, 2012, the Makati RTC Branch 62 issued another Order⁹ dismissing Civil Case No. 07-1155 for petitioners' failure to comply with the

⁸ Id.

⁹ Id. at 96.



Order of November 25, 2011, and pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.¹⁰

Petitioners filed an omnibus motion for reconsideration and to declare Laverne in default. However, the Makati RTC Branch 62 denied the same in its Order¹¹ of December 27, 2012, ruling thus:

Plaintiff plead[ed] liberality but strongly asserted that their failure to comply with the orders of this Court was due to excusable negligence. They claim[ed] that ‘non-compliance’ with the Court’s orders ‘was brought about by mere mistake and excusable negligence of awaiting for the finality of the resolution of Branch 148 of the Regional Trial Court of Makati City regarding the approval of consolidation before informing this Court.’

The Court is not persuaded.

First. [P]laintiffs were afforded more than the required opportunity and were even guided through the Court’s orders for their prompt compliance. [They failed to comply] not only once but multiple [times].

Second. The Court finds it hard to understand why the ‘developments’ before the RTC Branch 148 would depend on the outcome of the motion for consolidation before this Court. Plainly, if plaintiffs would want the case before another branch consolidated with the pending case before this Court, all that they have to do is to ask such relief from the court trying the other case, x x x. This Court would only be confronted to rule (to refuse or grant consolidation) if and when the other case before another court [is] already ordered consolidated and transmitted in this Court. It would be premature for this Court to act on something that has not yet happened. This is how things [are] properly done.

Yet again, for failure of the plaintiff spouses Cruz’s Omnibus Motion to comply with Section 13 Rule 13¹² in relation to Section 6 Rule 15¹³ of the Revised Rules of Court, the same is hereby **DENIED**. It must be observed that these lapses (along with failure to comply with Section 19 Rule 14¹⁴) [were] the same grounds [relied upon by this Court] in its denial

¹⁰ Sec. 3. *Dismissal due to fault of plaintiff*. - If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

¹¹ *Rollo*, pp. 97-98.

¹² Sec. 13. *Proof of service*. - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

¹³ Sec. 6. *Proof of service necessary*. - No written motion set for hearing shall be acted upon by the court without proof of service thereof.

¹⁴ Sec. 19. *Proof of service by publication*. - If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager,

of the previous motion to default per its order dated March 29, 2012. Sadly, plaintiffs did not learn their lesson.

Plaintiffs also lament[ed] that the non-filing of defendant's answer should have prompted the Court to declare it in default. True, if the Court was provided by plaintiff with full compliance on proof of service by publication pursuant to Section 19 Rule 14 of the Revised Rules. Even in the present motion, the plaintiffs again have been oblivious of their duty under the rules. How can the Court declare the defendant in default?

x x x x

WHEREFORE, the Omnibus Motion: (i) For Reconsideration and (ii) Declare Defendant Laverne Realty and Development Corporation in Default is **DENIED** for utter lack of merit.

SO ORDERED.¹⁵ (Emphasis in the original; citations omitted)

Proceedings in LRC Case No. M-5237

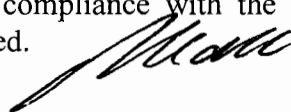
Meanwhile, in LRC Case No. M-5237 or Laverne's petition to surrender the owner's copy of the title to the subject property, petitioners filed a demurrer to evidence, which the Makati RTC Branch 148 granted in an Order¹⁶ dated May 26, 2015, where it was stated that –

x x x In the instant demurrer, respondents move for the dismissal of the present petition based on the following grounds:

- a) Billing Statements were not received by respondents Sps. Cruz[;]
- b) Notice of Tax Delinquency was defective or non-compliant[;]
- c) Warrant of Levy was likewise defective or non-compliant[;]
- d) The public auction was defective and non-compliant[.]

x x x x

Sections 254 and 260 of the Code¹⁷ [require] that the Notice of Tax Delinquency and Notice or Advertisement of Sale respectively be posted in the main entrance of the provincial, city or municipal building, and in publicly accessible and conspicuous place in the barangay where the real property is located. Proof of compliance with the said requirement is wanting in the evidence presented.



to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address.

¹⁵ Id.

¹⁶ *Rollo*, pp. 130-133; penned by Judge Andres Bartolome Soriano.

¹⁷ LGC, the Local Government Code or Republic Act No. 7160.

The actual notice of tax delinquency and the advertisement of public sale or public auction posted in the City of Makati and in a conspicuous place in the barangay where the property is located was not presented. There [was] no evidence presented that the Notice of Tax Delinquency was posted in the City Hall of Makati and in the barangay where the property is located in compliance with Section 254 of the Code. On the other hand, Exhibit "F" states that the City of Makati requested the Barangay where the property was located to issue a Certification indicating that the list of properties for public auction were posted in the said Barangay, but the Barangay Certification itself was not presented in court. Mere request for a Certification is not sufficient compliance with the law. Also, what was presented is the Certification issued by the City of Makati that the list of properties for public auction was posted in the bulletin Board of the City Hall. There [was] no showing that a notice of tax delinquency was posted. The Notice of Tax Delinquency under Section 254 is different from the Notice or Advertisement of Sale under Section 260 of R.A. 7160.

The law provides that the Notice of Tax Delinquency must be published twice in a newspaper of general circulation; the evidence presented shows that the Notice of Tax Delinquency was published only once on March 25, 2006. While the Notice of Public Auction was published thrice, it must be again remembered that the Notice of Public Auction is different from the Notice of Tax Delinquency.

The law provides that the advertisement for the public sale of the delinquent property must be made at least thirty days from the service of warrant of levy to the delinquent taxpayer. In the case at bar, the warrant of levy was mailed to the delinquent taxpayer, Noemi Cruz, as shown in the registry receipt attached to the warrant of levy. However, there [was] no showing that the same [was] actually served or received by the said taxpayer. The law requires service of the warrant of levy to the taxpayers. The registry receipt merely proves that the same was mailed but the actual service or receipt of the same by the delinquent taxpayer cannot be deduced therefrom. Likewise, there is also doubt as to whether the billings were sent to the correct address of the respondents as the notations in the upper portion of the billings pertain to a Unit "1407" instead of Unit "407".

Verily, the evidence presented [was] insufficient to establish compliance with the requirements laid out in Sections 254, 258 and 260 of the R.A. 7160. Be it noted that the aforesaid sections [use] the word 'shall' which [means] that compliance with the same is mandatory in character. x x x

x x x x

Further, considering that what is at stake here is a possible loss of private property, compliance with the above said requirements must be strictly complied with in order to ensure that petitioner is not deprived of property without due process of law.

In view thereof, the Court is of the view that petitioner failed to sufficiently establish the basis for the granting of the present petition.



Meanwhile, the records show that there is an action for Annulment of Sale pending before another Court relating to the same subject property. Hence, it should be clarified that the present resolution is only for the purpose of resolving the present Petition to surrender and/or cancellation of an owner's duplicate copy with prayer for a writ of possession.

WHEREFORE, premises considered, the Demurrer to Evidence is **GRANTED**.

Accordingly, the instant case is dismissed.

No costs.

SO ORDERED.¹⁸ (Emphasis in the original; citations omitted)

Laverne moved to reconsider, but the trial court denied the motion in a July 30, 2015 Order.¹⁹

Laverne filed an appeal before the CA which was docketed as CA-G.R. CV No. 105623. In a July 21, 2016 Resolution,²⁰ the appellate court dismissed the same for non-filing of the required brief. Laverne filed a motion for reconsideration but the CA denied the same in a January 27, 2017 Resolution.²¹

Ruling of the Court of Appeals

Reverting to the instant case, Civil Case No. 07-1155, petitioners filed an original petition for *certiorari* before the CA questioning the March 29, 2012 and December 27, 2012 Orders of the Makati RTC Branch 62. On July 22, 2013, the CA rendered the assailed Decision containing the following pronouncement:

In view of the foregoing, herein petitioners come before this Court contending that the lower court gravely abused its discretion in denying their Omnibus Motion.

We are not persuaded.

x x x x

[T]he trial court acted in the exercise of its sound judicial discretion in denying the motion of the petitioners for the consolidation of LRC Case No. M-5237 with Civil Case No. 07-1155. The proceedings in LRC Case

¹⁸ *Rollo*, pp. 130-133.

¹⁹ *Id.* at 134-135.

²⁰ *Id.* at 213-214; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Rosmari D. Carandang and Myra V. Garcia-Fernandez.

²¹ *Id.* at 241-242.



No. M-5237 is not, strictly speaking, a judicial process and is a non-litigious proceeding; it is summary in nature. In contrast, the action in Civil Case No. 07-1155 is an ordinary civil action and adversarial in character. The rights of the respondent Laverne in LRC Case No. M-5237 would be prejudiced if the said case were to be consolidated with Civil Case No. 07-1155, especially since it had already adduced its evidence.

X X X X

In the same manner, it is the Court's opinion that it was within the sound discretion of the trial court when it denied petitioners' motion to declare respondent Laverne in default. It is a hornbook rule that default judgments are generally disfavored as long as no prejudice was caused to plaintiff.

X X X X

Clearly, there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default, to wit: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare him in default; and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule.

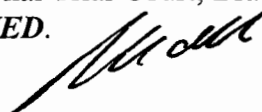
X X X X

Prior to the present rule on default introduced by the 1997 Rules of Civil Procedure, as amended, Section 1 of the former Rule 18 on default is silent on whether or not there is need for a notice of a motion to declare defendant in default. The Supreme Court then ruled that there is no need. However, *the present rule expressly requires that the motion of the claiming party should be with notice to the defending party.* The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments. The notice of a motion is required when the party has the right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard. Therefore, as the present rule on default requires the filing of a motion and notice of such motion to the defending party, it is not enough that the defendant failed to answer the complaint within the reglementary period to be a sufficient ground for declaration in default. The motion must also be heard.

In the case at bench, it was precisely because of petitioners' failure to show any proof or affidavit of personal service attesting the personal delivery to respondent Laverne of such Omnibus Motion to Declare in Default x x x.

X X X X

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Orders dated March 29, 2012 and December 27, 2012 of the Makati City Regional Trial Court, Branch 62 in Civil Case No. 07-1155 are hereby **AFFIRMED**.



Costs against petitioners.

SO ORDERED.²² (Emphasis in the original; citations omitted)

Petitioners filed their motion for reconsideration, which was denied by the CA *via* its January 15, 2014 Resolution. Hence, the instant Petition.

Issues

The issues for resolution are:

1) Whether the CA committed reversible error in affirming the March 29, 2012, and December 27, 2012 Orders of the trial court, dismissing the complaint for annulment of sale in Civil Case No. 07-1155 considering the gross and inexcusable negligence of their erstwhile counsel which led to the dismissal of their case and consequent deprivation of their property without due process of law.

2) Whether the CA erred in dismissing their petition for *certiorari* in CA-G.R. SP No. 128390 on the ground of erroneous mode of appeal, despite the fact that their case for annulment of sale is meritorious and thus should be decided on its merits rather than on technicalities.

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that the case be remanded to the trial court for consideration on its merits, petitioners essentially contend that their case deserves the Court's attention, considering that the delinquency sale of their property was null and void for failure to observe the procedure outlined in the LGC; that is, for lack of compliance with the LGC relative to the sending, publication, and posting of the notice of tax delinquency, the service of the warrant of levy, and the sending of billing statements; that the trial court dismissed Civil Case No. 07-1155 for their failure to comply with the order for them to inform the trial court of the developments in their pending motion for consolidation in LRC Case No. M-5237, for which they may not be faulted, as it was the result of gross and inexcusable negligence on the part of their counsel which could not bind them; that if the incompetence, ignorance or inexperience of counsel is so great and the error committed is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened

²² Id. at 43-47.



to give the client another chance to present his case;²³ that their case should be decided on its merits rather than on technicalities, as they have been deprived of their property without due process of law on account of the illegal sale of the same to Laverne; that the illegal sale of their property amounts to an injustice; and that the dismissal of their petition before the CA due to an erroneous mode of appeal and the gross negligence of their counsel is not commensurate with the illegal deprivation of their property.

Respondents' Arguments

In its Comment,²⁴ the City of Makati and Makati City Treasurer maintain that the mistake of petitioners' counsel binds the latter, and that the CA committed no reversible error in affirming the trial court's questioned orders, which were not arrived at with grave abuse of discretion.

On the other hand, Laverne argued in its Comment²⁵ that petitioners availed of the wrong remedy in filing an original petition for *certiorari* instead of taking an ordinary appeal; that as stated in Section 3, Rule 17 of the 1997 Rules, dismissal of the case shall have the effect of an adjudication on the merits, which thus merits the remedy of an appeal; that since petitioners failed to appeal, the questioned orders of the trial court attained finality; that Civil Case No. 07-1155 was dismissed not because of an invalidated claim, a misdiagnosed argument, or a mistaken appreciation of fact, but due to petitioners' repeated failure to comply with lawful orders of the trial court; that the right to appeal is not a natural right but one allowed by statute and the exercise of which must be in accordance with the requisites of law; and that for the foregoing reasons, the instant petition has no leg to stand on.

Our Ruling

The Petition must be granted.

The trial court's sole reason for dismissing Civil Case No. 07-1155 was petitioners' repeated failure to comply with the trial court's orders for them to inform it of the developments in their motion for consolidation filed before the Makati RTC Branch 148, in LRC Case No. M-5237. The trial court, per its June 26, 2012 Order of dismissal, relied upon Section 3, Rule 17 of the 1997 Rules using as ground for dismissal petitioners' repeated failure to comply with its directives to apprise it of the developments in LRC Case No. M-5237.

²³ Citing *Apex Mining, Inc. v. Court of Appeals*, 377 Phil. 482 (1999).

²⁴ *Rollo*, pp. 116-121.

²⁵ *Id.* at 172-192.

However, with the developments in LRC Case No. M-5237, that is, its dismissal by the Makati RTC Branch 148 for lack of compliance with the LGC relative to the sending, publication, and posting of the notice of tax delinquency, the service of the warrant of levy, and the sending of billing statements, and the corresponding dismissal of respondent's appeal before the CA, it has become obvious that there is nothing to consolidate with the case before Makati RTC Branch 62, or Civil Case No. 07-1155. There is no more ground to compel petitioners to comply with the Makati RTC Branch 62's orders; they have been overtaken by events. In other words, the mandate contained in those orders have lost relevance and petitioners' repeated failure to comply could no longer be used as ground for dismissal of the case.

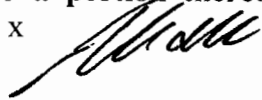
More importantly, with the disposition of the court in LRC Case No. M-5237, there is ground to believe that the levy by the City of Makati and subsequent auction sale to Laverne should be annulled. Petitioners are in danger of losing their property without benefit of due process of law owing to the apparently irregular conduct by the City of Makati of proceedings relative to the levy and sale of their property. In *Genato Investments, Inc. v. Barrientos*,²⁶ a case which involved the very same respondent (Laverne) in this case, this Court held that a buyer of real property, herein respondent Laverne, at a real property tax delinquency sale conducted by the City of Caloocan did not acquire any valid right to petition the trial court for the cancellation of the owner's title and take possession of the latter's property, on the ground, among others, that the notice and warrant of levy were sent by the city to the wrong address and the owner was thus never made aware of the levy and delinquency sale of its property by the city. Thus, the Court held therein that –

Petitioner not only puts in question the complete lack of due process in the conduct of the auction sale and the proceedings before the RTC Caloocan, but the absolute lack of basis for the declaration by the Office of the City Treasurer that it had been delinquent in the payment of real property taxes due on its property, particularly Lot 13-B-1.

Technicalities aside, we are particularly alarmed by the material allegations and serious charges brought up by petitioner in its pleadings, which go into the very core of the action for annulment of judgment and, more importantly, which none of the respondents dispute.

x x x x

It certainly is unallowable that petitioner be deprived of his property, or a portion thereof, without any lawful court order or process. x x x



²⁶ 739 Phil. 642 (2014).

x x x x

As mentioned above, the Notice of Levy and Warrant of Levy, were sent to an inexistent office of petitioner at Tondo, Manila and were, thus, returned unserved. Further, the Order dated 13 June 2011, setting the initial hearing on the petition, was neither posted nor properly served upon petitioner. Clearly, petitioner was deprived of its property without due process of law. Inasmuch as it had sufficiently shown that it fully paid its real estate taxes up to 2011, there was no basis to collect any tax liability, and no obligation arose on the part of petitioner to pay the amount of real property taxes sought to be collected. Consequently, petitioner should not have been declared delinquent in the payment of the said taxes to Caloocan City, and the latter did not acquire any right to sell Lot 13-B-1 in a public auction. Besides, it appears that private respondent acted hastily in filing LRC-Case No. C-5748 by failing to ascertain the actual principal office of petitioner to enable the RTC Caloocan to properly acquire jurisdiction over the person of petitioner.

Considering the foregoing, private respondent did not acquire any valid right to petition the RTC Caloocan for the cancellation of TCT No. 33341 and, more importantly, take possession of Lot 13-B-1, much less Lot 1-A. **We reiterate the principle that strict adherence to the statutes governing tax sales is imperative, not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws.**²⁷ (Emphasis supplied; citations omitted)

The Court must protect private property owners from undue application of the law authorizing the levy and sale of their properties for non-payment of the real property tax. This power of local government units is prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties for themselves and profit therefrom. These unscrupulous parties can commit a simple, seemingly irrelevant technicality such as deliberately sending billing statements, notices of delinquency and levy to wrong addresses under the guise of typographical lapses, as what happened here and in the *Genato Investments* case, and then proceed with the levy and auction sale of these valuable properties without the knowledge and consent of the owners. Before the owners realize it, their precious properties have already been confiscated and sold by the local government units or officials to so-called “innocent third parties” who are in fact their cohorts in the unscrupulous scheme. This is barefaced robbery that the Court cannot sanction.

Having disposed of the case in the foregoing manner, the Court finds unnecessary to tackle the procedural issues and the lapses committed by

²⁷ Id. at 652-657.



petitioners in the prosecution of their case. The public interest involved here mandates that technicalities should take a backseat to the substantive issues. There is a grave danger that taxpayers may unwittingly lose their real properties to unscrupulous local government units, officials, or private individuals or entities as a result of an irregular application of the LGC provisions authorizing the levy and delinquency sale of real property for non-payment of the real property tax. This is a reality that cannot be ignored. For this reason, the Court must excuse petitioners for their procedural lapses, as it must address instead the issue of irregular conduct of levies and delinquency sales of real properties for non-payment of the real property tax, which is alarming considering that of the two cases that this Court is made aware of, there appears to be one common denominator, and that is the respondent herein, Laverne Realty and Development Corporation. Needless to state, petitioners are liable to lose their property without due process of law to Laverne which was previously involved in an irregular sale conducted under similar circumstances.

The Court constantly warns of the possible abuse of this taxing power. The premise is that no presumption of regularity exists in any administrative action which results in depriving a taxpayer of his property; due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights.

The public auction of land to satisfy delinquency in the payment of real estate tax derogates or impinges on property rights and due process. Thus, the steps prescribed by law are mandatory and must be strictly followed; if not, the sale of the real property is invalid and does not make its purchaser the new owner. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws.²⁸

Under Section 254 of the LGC, it is required that the notice of delinquency must be posted at the main hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. It shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.

Section 258 of the LGC further requires that should the treasurer issue a warrant of levy, the same shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. At the same time, the written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate

²⁸ *Salva v. Magpile*, G.R. No. 220440, November 8, 2017.



the levy on the tax declaration and certificate of title of the property, respectively.

Section 260 of the LGC also mandates that within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. Such advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located.

Respondent utterly failed to show compliance with the aforesaid requirements. First, no evidence was adduced to prove that the notice of levy was ever received by the CSDC. There was no proof either that such notice was served on the occupant of the property. It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void although preceded by proper advertisement or publication. This proceeds from the principle of administrative proceedings for the sale of private lands for non-payment of taxes being *in personam*.

Second, the notice of tax delinquency was not proven to have been posted at the Makati City Hall and in Barangay Dasmariñas, Makati City, where the property is located. It was not proven either that the required advertisements were effected in accordance with law. x x x

x x x x

Respondent must be reminded that the requirements for a tax delinquency sale under the LGC are mandatory. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite notice, as in this case, is tantamount to a violation of the delinquent taxpayer's substantial right to due process.²⁹

We cannot overemphasize that strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite notice is tantamount to a violation of delinquent taxpayer's substantial right to due process. Administrative proceedings for the sale of private lands for nonpayment of taxes being *in personam*, it is essential that there be actual

²⁹ *Corporate Strategies Development Corporation v. Agojo*, 747 Phil. 607, 620-625 (2014).



notice to the delinquent taxpayer, otherwise the sale is null and void although preceded by proper advertisement or publication.

x x x x

There can be no presumption of the regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale. This is an exception to the rule that administrative proceedings are presumed to be regular. x x x

x x x x

As the tax sale was null and void, the title of the buyer therein (Mr. Puzon) was also null and void x x x.³⁰

The procedural faults committed by petitioners no longer deserve consideration. Their choice of remedy is irrelevant given the spectre of patent illegality that surrounds the levy and sale of petitioners' property by the City of Makati to Laverne. A fundamental characteristic of void or inexistent contracts is that the action for the declaration of their inexistence does not prescribe;³¹ nor may the right to set up the defense of their inexistence or absolute nullity be waived or renounced. Void contracts are equivalent to nothing and are absolutely wanting in civil effects; they cannot be validated either by ratification or prescription.

On the other hand, the court trying Civil Case No. 07-1155 is admonished to tread carefully and choose its actions with deliberate thought and consideration in light of the above disquisition. It would not have arrived at the conclusion it did if it placed petitioners' substantive rights ahead of the convenience of procedural rules. It is not beholden to the City of Makati, where its court sits; justice and truth are its only masters.

WHEREFORE, the Petition is **GRANTED**. The July 22, 2013 Decision and January 15, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 128390 are **REVERSED AND SET ASIDE**. The June 26, 2012 and December 27, 2012 Orders of the Regional Trial Court of Makati City, Branch 62 in Civil Case No. 07-1155 are likewise **REVERSED AND SET ASIDE**, except for its ruling denying petitioners' motion to declare Laverne in default, which remains.

Civil Case No. 07-1155 is hereby **REINSTATED** and the Regional Trial Court of Makati City, Branch 62 is ordered to continue with the proceedings therein with dispatch.

³⁰ *Sarmiento v. Court of Appeals*, 507 Phil. 101, 121-124 (2005).

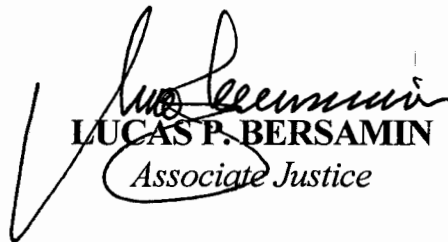
³¹ CIVIL CODE, Article 1410.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Chief Justice


LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

(On official leave)
NOEL GIMENEZ TIJAM
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


TERESITA J. LEONARDO-DE CASTRO
Chief Justice