

SECOND DIVISION

[G.R. No. 201021, March 04, 2019]

PILLARS PROPERTY CORPORATION, PETITIONER, V. CENTURY COMMUNITIES CORPORATION, RESPONDENT.

DECISION

CAGUIOA, J:

This is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Resolution^[2] dated December 15, 2011 (2011 Resolution) and Resolution^[3] dated March 13, 2012 (2012 Resolution) of the Court of Appeals^[4] (CA) in CA-G.R. SP No. 122276. The 2011 Resolution dismissed the Rule 65 *certiorari* petition filed by petitioner Pillars Property Corporation (PPC) while the 2012 Resolution denied the motion for reconsideration filed by petitioner PPC.

Facts and Antecedent Proceedings

The Petition alleges that on December 1, 2009, PPC filed a Complaint^[5] for sum of money against respondent Century Communities Corporation (CCC) in the amount of P6.7 million for unpaid progress billings in connection with a construction contract where PPC agreed to deliver 210 housing units at "Canyon Ranch" in Cavite, among others to CCC at an agreed total consideration of P77.5 million.^[6] The case was docketed as Civil Case No. 09-0450 and assigned to the Regional Trial Court, Branch 257 of Parañaque City (RTC).^[7]

PPC also sued People's General Insurance Corporation (PGIC), which issued the bonds in favor of CCC to guarantee the performance of PPC's obligations, to exculpate PPC from any liability under the bonds since PPC intended to prove that it was not at fault in the performance of its obligations under the construction contract.^[8]

CCC filed a Motion to Dismiss^[9] dated December 17, 2009, averring that paragraph 6 of the "CONTRACT (Construction of Typical Housing Units)"^[10] (Contract) under the title SPECIAL PROVISIONS states:

6. Venue of Action. In case of litigation, the Parties hereby agree that the venue of each action as the Proper Court of Makati to the exclusion of others.^[11]

CCC moved for the dismissal of the Complaint on the ground that the venue was improperly laid pursuant to Section 1 (c), Rule 16 of the Rules because the filing of the instant case before the court of Parañaque City was in contravention of the express and exclusive agreement of the parties that in case of litigation, the case should be filed in the court of Makati to the exclusion of other courts.^[12]

PPC filed an Opposition to Motion to Dismiss^[13] dated March 1, 2010, arguing that the inclusion of PGIC as co-defendant of CCC took away the case from the jurisdiction of Makati courts because the general rule on venue (Section 2, Rule 4 of the Rules) should then apply, PGIC not being a party to the Contract.^[14]

PGIC filed its Answer (With Special and Affirmative Defenses And Counter-claim)^[15] dated February 8, 2010. PGIC alleged therein that PPC had no cause of action and failed to state a cause of action against PGIC.^[16] PGIC alleged that PPC would only be released from liability under all the bonds that were issued by PGIC in favor of CCC if PPC could prove that CCC was in default of its obligations under the Contract between PPC and CCC, and that PPC duly performed its terms and conditions.^[17] PGIC also alleged that PPC executed in favor of PGIC indemnity agreements to answer whatever liability that PGIC might have under the performance bonds it issued such that if there would be a claim by CCC under the bonds, then PPC would be liable to PGIC under the indemnity agreements for all payments, damages, costs, losses, penalties, charges and expenses which the RTC might adjudge in favor of CCC against PGIC.^[18] Further, PGIC alleged that under the principle of subrogation, PPC was obliged to reimburse PGIC whatever amount or liability that might be incurred by the latter or adjudged against it in favor of CCC.^[19]

After CCC filed a Comment (To the Opposition to Motion to Dismiss)^[20] dated March 4, 2010 and PPC filed a Reply To Century's Comment (On Plaintiffs Opposition to Motion to Dismiss)^[21] dated April 1, 2010, the RTC issued its Order^[22] dated March 9, 2011, granting the Motion to Dismiss filed by CCC.^[23] The RTC reasoned that:

Since the Contract (Construction of Typical Housing units) of plaintiff [PPC] and defendant [CCC] provides "**that in case of litigation, the parties hereby agree that the venue of said action as the Proper Court of Makati to the exclusion of others**[" Sec. 4, Rule 4 on exclusive venue is applicable, not the general rule on venue which is the place of residence of plaintiff or defendant at the election of plaintiff under Sec. 2, Rule 4.^[24]

The dispositive portion of the RTC Order states:

WHEREFORE, the Motion to Dismiss filed by defendant [CCC] is her[e]by granted and the instant case is dismissed for improper venue.

IT IS SO ORDERED.^[25]

PPC filed a Motion for Reconsideration^[26] dated April 29, 2011, which was opposed by CCC in its Comment/Opposition^[27] dated June 6, 2011. The RTC denied the Motion for Reconsideration in its Order^[28] dated August 22, 2011.

PPC then filed before the CA a Petition for *Certiorari*^[29] dated November 29, 2011 under Rule 65 of the Rules seeking the setting aside of the Orders dated March 9, 2011 and August 22, 2011 of the RTC for having been issued with grave abuse of discretion amounting to lack and/or excess of jurisdiction and there being no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law.^[30]

The CA in its 2011 Resolution dismissed PPC's petition outright.^[31] The CA reasoned that PPC availed of the wrong remedy since it is the settled rule that an order of dismissal, whether correct or not, is a final order and the remedy of the plaintiff is to appeal the order.^[32]

PPC sought the reconsideration of the 2011 Resolution of the CA but its motion was denied in the 2012 Resolution.^[33]

Not satisfied, PPC filed the instant Petition. CCC filed an Opposition (To the Petition for Review dated 26 April 2012)^[34] dated March 18, 2013. A Reply to Opposition^[35] dated August 18, 2014 was then filed by PPC. Subsequently, CCC filed its Memorandum^[36] dated September 29, 2016 and PPC filed its Memorandum^[37] dated March 23, 2018.

Issue

The Petition raises the sole issue of whether the CA erred in concluding that the remedy availed of by PPC is erroneous.

The Court's Ruling

The Petition is partly meritorious.

The Court agrees with PPC that the CA was not correct when it dismissed outright PPC's Rule 65 *certiorari* petition to question the grant by the RTC of CCC's Motion to Dismiss and its dismissal of PPC's Complaint. PPC availed of the correct remedy.

Rule 41 provides the rules regarding appeal from the Regional Trial Courts. Section 1 of Rule 41 provides what judgments or orders are subject of appeal and those where no appeal may be taken from, *viz.*:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (b) An interlocutory order;
- (c) An order disallowing or dismissing an appeal;
- (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (e) An order of execution;
- (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
- (g) **An order dismissing an action without prejudice.**

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (As amended by A.M. No. 07-7-12-SC, December 1, 2007)^[38] (Emphasis supplied)

An order dismissing an action without prejudice is, thus, not subject to appeal but is reviewable by a Rule 65 *certiorari* petition.

In *Development Bank of the Philippines v. Carpio*,^[39] the Court made these pronouncements on the nature of an order of dismissal based on improper venue and the mode of its review:

In this case, there was no trial on the merits as the case was dismissed due to improper venue and respondents could not have appealed the order of dismissal as the same was a dismissal, **without prejudice**. Section 1(h), Rule 41 of the Rules of Civil Procedure states that no appeal may be taken from an order dismissing an action without prejudice. Indeed, there is no residual jurisdiction to speak of where no appeal has even been filed.^[40]

In *Strongworld Construction Corporation, et al. v. Hon. Perello, et al.*,^[41] the Court elucidated on the difference between a dismissal with prejudice and one without prejudice:

We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.

x x x x

Section 1, Rule 16 of the [Rules] enumerates the grounds for which a motion to dismiss may be filed, *viz.*:

Section 1. Grounds. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending

between the same parties for the same cause;

- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth; in the plaintiff[']s pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.

Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

SEC. 5. *Effect of dismissal.* Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of Section 1 hereof shall bar the refiling of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiff[']s pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refiling of the same action.

x x x x

As has been earlier quoted, Section 1(h), Rule 41 of the 1997 Revised Rules of Civil Procedure mandates that no appeal may be taken from an order dismissing an action without prejudice. The same section provides that in such an instan[ce] where the final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.