

THIRD DIVISION

[G.R. No. 187342, April 05, 2017]

**ROBERT C. MARTINEZ, PETITIONER, VS. NOELS. BUEN,
RESPONDENT.**

D E C I S I O N

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*^[1] seeking the reversal of the December 19, 2008 Decision^[2] and March 6, 2009 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 101620. The CA affirmed the November 20, 2007 Decision^[4] of the Regional Trial Court of Manila (RTC), Branch 14, which in turn nullified the May 5, 2006 Order^[5] of the Metropolitan Trial Court of Manila (MeTC), Branch 16. The MeTC dismissed the case filed by respondent Noel S. Buen (Buen) against petitioner Robert C. Martinez (Martinez) pursuant to Section 3, Rule 17 of the Rules of Court.

On April 6, 2005, Buen filed in the MeTC an Action for Recovery of Personal Property against Martinez, docketed as Civil Case No. 180403-CV.^[6] Buen sought to recover a Toyota Tamaraw Revo with plate number WFG-276 (vehicle), claiming ownership over the same based on a certificate of registration under his name.^[7] He narrated that he organized a corporation named Fairdeal Chemical Industries, Inc. (Fairdeal) with Martinez and a certain Benjamin Gonzales. As the majority shareholder of Fairdeal, he allowed the company the use of his personal cars, among them, the vehicle. Buen averred that Martinez now claims that the vehicle was owned by Fairdeal and refuses to return its possession despite Buen's repeated demands.^[8]

In his Answer with Compulsory Counterclaim,^[9] Martinez alleged that all the vehicles utilized by Fairdeal were purchased using corporate funds; only that Buen surreptitiously registered some of them under his name.^[10] By way of counterclaim, he asked for moral and exemplary damages and attorney's fees.^[11]

After Buen posted the required bond, the MeTC in an Order dated April 19, 2005 awarded the possession of the vehicle to Buen.^[12]

During the pendency of the civil action, Martinez filed a Complaint for Qualified Theft against Buen in the RTC of Manila, Branch 19, docketed as Criminal Case No. 05-240813.^[13] A warrant of arrest was issued against Buen who, thereafter, went into hiding.^[14]

Trial ensued in the action for recovery of personal property. On the scheduled date of hearing on March 28, 2006, Buen's counsel manifested in open court that Buen cannot attend his cross-examination and prayed that the case be archived.^[15] The MeTC ordered Buen's counsel to formalize his motion and for Martinez to file his

comment within 10 days from receipt thereof. Thus, Buen's counsel filed a formal Motion to Send Case to the Files of the Archives with Leave of Court^[16] (Motion to Archive) dated March 31, 2006 and set the same for hearing on April 11, 2006. Despite notice, Martinez failed to appear during the scheduled hearing. He also did not file a comment to the Motion to Archive as directed by the MeTC. Thus, on April 11, 2006, the MeTC, in open court, granted the Motion to Archive the case.^[17]

Claiming that he had no knowledge of the Order granting temporary archiving of the case, Martinez, on April 21, 2006, filed a Comment/Opposition to the Motion to Remand the Case to the Archives^[18] (Comment/Opposition) and prayed that the motion filed by Buen's counsel be denied.

In an Order^[19] dated May 5, 2006 (MeTC Order of Dismissal), the MeTC treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order and dismissed the case pursuant to the provisions of Section 3,^[20] Rule 17 of the Rules of Court. On July 18, 2006, Buen filed a Motion to Set Aside Order (of Dismissal).^[21]

In the meantime, Martinez filed a Motion to Quash the Writ of Seizure (Motion to Quash) earlier issued by the MeTC.^[22] In response, Buen filed an Opposition stating that the filing of the Motion to Quash is premature because the dismissal of the case is not yet final. He contended that Martinez failed to prove, by way of preponderance of evidence, his title and right of possession over the vehicle.^[23]

On November 13, 2006, the MeTC acted favorably on Martinez' Motion to Quash and ordered Buen to return the vehicle to Martinez. It, however, amended its Order on November 27, 2006, directing Buen to surrender possession of the vehicle to the sheriff instead.^[24]

On December 13, 2006, Buen filed a motion seeking reconsideration of the Order directing Buen to return the vehicle to Martinez. Buen also informed the court that he has since been detained in the Manila City Jail and was now ready for cross-examination.^[25]

The MeTC denied Buen's motion for reconsideration in its Order dated January 25, 2007.^[26] It declared that the Order dated November 13, 2006 had already attained finality and could no longer be disturbed.

Buen filed a Petition for *Certiorari*^[27] in the RTC, pleading that the MeTC acted in grave abuse of discretion when it treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. He argued that the Comment/Opposition had already been rendered moot and academic by the April 11, 2006 Order granting the Motion to Archive.^[28] He also noted that the Comment/Opposition did not conform to the intents and purposes of a motion for reconsideration; that no filing fees were paid for the same; and that the Comment/Opposition did not even pray that it should be treated as a motion for reconsideration.^[29]

In addition, Buen took issue with the MeTC's dismissal of the case pursuant to

Section 3, Rule 17 of the Rules of Court. He contended that unless a party's conduct is so negligent or dilatory, courts should consider ordering lesser sanctions other than the dismissal of the case. He maintained that the delay brought about by his non-availability to appear during the trial is "unexpected, unavoidable and justified" and beyond his will.^[30]

In a Decision^[31] dated November 20, 2007 (RTC Decision), the RTC ruled in favor of Buen, the decretal portion of which reads:

WHEREFORE, all premises considered, the Petition for Certiorari is hereby **GRANTED**. Accordingly, the Orders of the public respondent dated May 5, 2006 and January 25, 2007 are hereby **NULLIFIED**. All derivative Orders therefrom are likewise **SET ASIDE**. Accordingly, the Branch Sheriff of the Metropolitan Trial Court (MeTC), Branch 16, Manila is hereby **DIRECTED** to take over and deliver immediately to the petitioner, the possession of the Toyota Tamaraw Revo with Plate No. WFG-276. Further, the MeTC of Manila, Branch 16, presided over by the public respondent, is hereby **DIRECTED** to set Civil Case No. 180403-CV for continuation of trial on the merits for the reception of the evidence-in-chief of the petitioner, and to hear said case until its termination.

With costs against the private respondent.

SO ORDERED.^[32] (Emphasis and italics in the original.)

The RTC agreed with Buen that Martinez' Comment/Opposition to the Motion to Archive has been rendered moot and academic by the MeTC's April 11, 2006 Order. It ruled that the remedy of Martinez then was to file a motion for reconsideration of the Order. The RTC thus concluded that the MeTC, in treating Martinez' Comment/Opposition as a motion for reconsideration, arrogated upon itself the duty of a party litigant to file a strategic pleading which was on one hand, prejudicial to Buen and, on the other hand, clearly beneficial to Martinez.^[33]

The RTC also agreed with Buen that the Comment/Opposition should not have been treated as a motion for reconsideration because it did not comply with the substantive and procedural requirements for a motion, such as stating the grounds relied upon, notice of hearing, manner of service, and proof of service.^[34]

Further, the RTC stated that Buen did not err in filing a petition for *certiorari* instead of an appeal because it was apparent that the MeTC committed an error in jurisdiction. It also held that while *certiorari* may not be used as a substitute for lost appeal, such rule should not be strictly enforced if the case is genuinely meritorious.^[35]

In view of the RTC's Decision in Buen's favor, the MeTC issued an Order^[36] dated November 26, 2007 directing the sheriff to take over and deliver possession of the vehicle to Buen.

Without filing a motion for reconsideration of the RTC Decision, Martinez filed a

Petition for *Certiorari*^[37] in the CA on December 13, 2007. He claims to have dispensed with the filing of the motion for reconsideration due to the tone of finality of the RTC Decision and other special circumstances which warrant immediate action.^[38]

Martinez reiterated that a petition for *certiorari* in the RTC is not the proper remedy to challenge the MeTC's Order of April 11, 2006 and that Buen only filed the petition as a substitute for his lost appeal. He argued that Buen did not convincingly justify the reason for the considerable lapse of time before he assailed the MeTC's Order of Dismissal; the RTC, on the other hand, merely assumed the existence of circumstances not mentioned in Buen's petition.^[39]

Furthermore, Martinez averred that the MeTC, on its own, may dismiss the case on the ground of failure to prosecute as expressly allowed by Section 3, Rule 17 of the Rules of Court.^[40] He argued that the dismissal was proper because Buen was a fugitive from justice as admitted by the latter's counsel in open court and in his written motion to archive. He stated that the MeTC cannot speculate on when Buen would appear to continue the trial of the case and maintained that the pending case should not be held hostage by Buen's illegal and capricious act.^[41]

In its Decision^[42] dated December 19, 2008 (CA Decision), the CA affirmed the ruling of the RTC and dismissed Martinez' petition for *certiorari*. It found that the MeTC committed grave abuse of discretion when it treated the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. The CA explained:

It should be recalled that the MeTC received the [O]pposition *before* it granted the motion to archive. Thus, when the MeTC granted the motion to archive, it is deemed to have denied the [O]pposition filed by herein Petitioner [Martinez]. And having denied the [O]pposition, it can no longer treat the [O]pposition as a motion for reconsideration.

x x x

By treating the [O]pposition as a motion for reconsideration, the MeTC in effect took up the cudgels for herein Petitioner. And by doing so, this resulted to the extreme prejudice which would call for the extra-ordinary remedy of *certiorari*.^[43] (*Italics in the original.*)

Martinez sought reconsideration which the CA denied in its Resolution^[44] dated March 6, 2009. The CA held that rules of procedure can be liberally construed since Buen did not deliberately and willfully violate the rules or used them to pervert the ends of justice.^[45] Hence, this petition for review.

The sole issue presented is whether a petition for *certiorari* is the proper remedy to assail the MeTC Order of Dismissal.

Martinez submits that Buen availed of the wrong remedy when the latter filed a petition for *certiorari* instead of an appeal from the MeTC Order of Dismissal.^[46]

We deny the petition for lack of merit.

I

A dismissal based on any of the grounds in Section 3, Rule 17 of the Rules of Court has the effect of an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refile of the case.^[47] When an order completely disposes of the case and leaves nothing to be done by the court, it is a final order properly subject of an appeal.

The May 5, 2006 Order of the MeTC is an order of dismissal pursuant to Section 3, Rule 17. Since it was silent as to whether the dismissal of the case was with prejudice, the general rule would apply, that is, the same would be considered to be one with prejudice. Under the circumstances, Buen's remedy would have been to file an ordinary appeal in the RTC pursuant to Rule 40 of the Rules of Court.

Here, Buen filed a petition for *certiorari* under Rule 65. Since a special civil action for *certiorari* can only be entertained when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law,^[48] the RTC could have dismissed Buen's petition outright. The rule that *certiorari* will not lie as a substitute for appeal, however, admits of exceptions.

Certiorari may be considered a proper remedy despite the availability of appeal or other remedy in the ordinary course of law in the following instances: "(a) when it is necessary to prevent irreparable damages and injury to a party; **(b) where the trial judge capriciously and whimsically exercised his judgment;** (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case urgency."^[49]

The second exception is present in this case. We find that the MeTC judge capriciously and whimsically exercised his judgment when he: (1) treated Martinez' (belated) Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; (2) set aside the April 11, 2006 Order on the basis of the Comment/Opposition; and (3) dismissed the case without stating the specific ground on which the dismissal was based.

II

Grave abuse of discretion is defined as a "capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility."^[50]

The MeTC gravely abused its discretion when it treated the Comment/Opposition as a motion for reconsideration of its order granting Buen's Motion to Archive the case.

The Comment/Opposition was filed only on April 21, 2006,^[51] or after the RTC had