

## THIRD DIVISION

[ G.R. No. 192957, September 29, 2014 ]

**EMMANUEL B. MORAN, JR., (DECEASED), SUBSTITUTED BY HIS WIDOW, CONCORDIA V. MORAN, PETITIONER, VS. OFFICE OF THE PRESIDENT OF THE PHILIPPINES, AS REPRESENTED BY THE HONORABLE EXECUTIVE SECRETARY EDUARDO R. ERMITA AND PGA CARS, INC., RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari assailing the Resolutions dated March 13, 2009<sup>[1]</sup> and June 25, 2010,<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 107059. In the Resolution dated March 13, 2009, the CA outrightly struck down the petition for certiorari that the petitioner had filed to annul and set aside the Decision<sup>[3]</sup> dated April 3, 2007, and Order<sup>[4]</sup> dated October 22, 2008 of the Office of the President (OP) in O.P. Case No. 06-E-195. Meanwhile, in the Resolution dated June 25, 2010, the CA denied the petitioner's motion for reconsideration.

From the records, the following facts emerge:

On February 2, 2004, the late Emmanuel B. Moran, Jr. filed with the Consumer Arbitration Office (CAO) a verified complaint against private respondent PGA Cars, Inc. pursuant to the relevant provisions of Republic Act No. 7394 (RA 7394), otherwise known as the Consumer Act of the Philippines. Docketed as DTI Administrative Case No. 04-17, the complaint alleged that the private respondent should be held liable for the product imperfections of a BMW car which it sold to complainant.

On September 23, 2005, the CAO rendered a Decision<sup>[5]</sup> in favor of complainant and ordered the private respondent to refund the purchase price of the BMW car in addition to the payment of costs of litigation and administrative fines:

WHEREFORE, in view of the foregoing, the respondent is hereby found guilty for violation of the aforementioned provisions and [is] hereby ordered to perform the following:

1. To refund the purchase price of the subject vehicle in the amount of three million three hundred seventy five thousand pesos (P3,375,000.00);
2. To pay complainant the amount of five thousand pesos (P5,000.00) as costs of litigation;

3. To pay an administrative fine in the amount of P10,000.00 payable at 4th flr., DTI Cashier, 361 Sen. Gil Puyat Ave., Makati City.

SO ORDERED.<sup>[6]</sup>

On October 19, 2005, the private respondent sought reconsideration of the Decision but the CAO denied the motion in an Order<sup>[7]</sup> dated January 19, 2006. Thus, the private respondent appealed to the Secretary of the Department of Trade and Industry (DTI), the quasi-judicial agency designated by Article 165<sup>[8]</sup> of RA 7394 to entertain appeals from the adverse decisions and orders of the CAO. However, in a Resolution<sup>[9]</sup> dated April 28, 2006, the DTI Secretary dismissed the appeal of the private respondent who then filed an appeal with the herein public respondent OP.

On April 3, 2007, the OP granted the appeal, reversed the DTI Secretary's Resolution, and dismissed the complaint. The OP ruled that the DTI erred in holding the private respondent liable for product defects which issue was never raised by the complainant and because the private respondent was not the manufacturer, builder, producer or importer of the subject BMW car but only its seller. As such, it could not be held liable especially since none of the circumstances under Article 98<sup>[10]</sup> of RA 7394 were present in the case. The OP further ruled that the private respondent could also not be held liable for product imperfections because the product was never proven to be unfit or inadequate under the conditions laid down by law. Neither was there any inconsistency in the information provided in the container or product advertisements/messages. More, it was only after the lapse of a considerable time (nearly 10 months) since the purchase of the car and after it had been driven for 12,518 kilometers, that the complainant first complained about it. The vehicle never once broke down before then and the complainant could not, in fact, point to any specific part that is defective.

Complainant filed a motion for reconsideration with the OP, but the OP denied said motion in an Order dated October 22, 2008. On November 25, 2008, complainant received a copy of the Order denying his motion for reconsideration.

On January 23, 2009, complainant filed a petition for certiorari with the CA and alleged lack of jurisdiction on the part of the OP for ruling on cases involving a violation of RA 7394. On March 13, 2009, the CA dismissed the petition for certiorari on the ground that it was a wrong mode of appeal and for the failure of the petitioner to state material dates. On June 25, 2010, the CA likewise denied the motion for reconsideration filed by the petitioner.

Since the original complainant Emmanuel B. Moran, Jr. passed away on May 17, 2010, his widow, Concordia V. Moran filed the present petition for review on certiorari on August 9, 2010.

Petitioner argues that the CA erred in denying the petition for certiorari which alleged error of jurisdiction on the part of the OP. She contends that in cases alleging error of jurisdiction on the part of the OP, the proper remedy is to file a petition for certiorari with the CA because appeal is not available to correct lack of jurisdiction. Moreover, even though appeal is available, it is not considered as the plain, speedy, and adequate legal remedy.

Further, the petitioner claims that the OP lacked appellate jurisdiction to review decisions of the DTI in cases involving a violation of RA 7394 based on Article 166<sup>[11]</sup> thereof, which expressly confers appellate jurisdiction to review such decisions of the DTI to the proper court through a petition for certiorari. Hence, the OP cannot be deemed as the “proper court” within the purview of Article 166.

On the other hand, private respondent argues that the CA was correct in denying the petition for certiorari since this was an improper remedy in view of the availability of an appeal from the OP. Furthermore, the private respondent confirms the appellate jurisdiction of the OP over the DTI based on the constitutional power of control of the OP over Executive Departments and the well-entrenched doctrine of exhaustion of administrative remedies.

Meanwhile, the public respondent, through the Office of the Solicitor General (OSG), claims that the availability of an appeal from the OP precluded the petitioner from availing of the extraordinary remedy of certiorari. Even though there is an allegation of error of jurisdiction, the OSG avers that appeal still takes precedence over a petition for certiorari as long as the same is at the disposal of the petitioner. However, in the present case, the OSG claims that the OP acted within its jurisdiction in deciding the case on appeal from the DTI Secretary as Article 166 of RA 7394 must yield to the constitutional power of control of the OP over Executive Departments. The OSG also cites the doctrine of exhaustion of administrative remedies to support the appellate jurisdiction of the OP over the DTI.

Is the CA correct in dismissing the petition for certiorari on the ground that petitioner resorted to a wrong mode of appeal?

We rule in the negative.

Under the Consumer Act (RA 7394), the DTI has the authority and the mandate to act upon complaints filed by consumers pursuant to the State policy of protecting the consumer against deceptive, unfair and unconscionable sales, acts or practices. <sup>[12]</sup> Said law provided for an arbitration procedure whereby consumer complaints are heard and investigated by consumer arbitration officers whose decisions are appealable to the DTI Secretary.<sup>[13]</sup> Article 166 thereof provides:

ART. 166. *Decision on Appeal.* – The Secretary shall decide the appeal within thirty (30) days from receipt thereof. The decision becomes final after fifteen (15) days from receipt thereof unless a petition for certiorari is filed with the **proper court**. (Emphasis supplied.)

In his motion for reconsideration from the OP’s Decision dated April 3, 2007 which reversed and set aside the resolution dated April 28, 2006 of the DTI Secretary, complainant Emmanuel B. Moran, Jr. raised the issue of lack of jurisdiction of the OP, not being the proper court referred to in Article 166 of R.A. 7394. The OP, however, denied his motion on the ground that the President’s power of control over the executive department grants him the power to amend, modify, alter or repeal decisions of the department secretaries. On the other hand, the CA, in dismissing outright the petition for certiorari filed by Moran, Jr., implicitly sustained such