

THIRD DIVISION

[G.R. No. 172299, April 22, 2008]

**ALFREDO TAGLE, PETITIONER, VS. EQUITABLE PCI BANK
(FORMERLY PHILIPPINE COMMERCIAL INTERNATIONAL BANK)
AND THE HONORABLE HERMINIA V. PASAMBA, ACTING
PRESIDING JUDGE, REGIONAL TRIAL COURT-BRANCH 82, CITY
OF MALOLOS, BULACAN, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This Petition for *Certiorari* under Rule 65 of the Revised Rules of Court filed by petitioner Alfredo Tagle (petitioner Alfredo) stemmed from the following Resolutions promulgated by the Court of Appeals: (1) the *6 September 2005 Resolution*^[1] dismissing the Petition for *Certiorari* filed by petitioner Alfredo, docketed as CA-G.R. SP No. 90461, assailing the *4 April 2005 Order* of the Regional Trial Court (RTC), Branch 82, City of Malolos, Bulacan, in LRC Case No. P-71-2004^[2]; (2) the *16 February 2006 Resolution*^[3] denying petitioner Alfredo's Motion for Reconsideration; and (3) the *11 April 2006 Resolution*^[4] denying petitioner Alfredo's Second Motion for Reconsideration.^[5]

Petitioner Alfredo urges this Court to set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the *4 April 2005 Order*^[6] of the RTC in LRC Case No. P-71-2004, which denied petitioner Alfredo's *Motion to Stop Writ of Possession*. He prays that this Court certify "for review with prayer for preliminary injunction to stop the writ of possession [of] the property located at Concepcion Subdivision, Baliuag, Bulacan and embraced in Transfer Certificate of Title No. T-143715 of the Registry of Deeds for the Province of Bulacan [subject property] and after due hearing, let judgment be rendered annulling or modifying the proceedings of the Honorable Regional Trial Court Branch 82, [City of Malolos, Bulacan,] and the Court of Appeals as the law requires with costs."^[7]

According to petitioner Alfredo, the subject property is registered in his name and was constituted as a Family Home in accordance with the provisions of the Family Code. He and his wife Arsenia Bautista Tagle (Arsenia) never mortgaged the subject property to respondent Equitable PCI Bank (respondent E-PCI) whether before or after the subject property was constituted as their Family Home. It was Josefino Tagle (Josefino), who was not the owner of the subject property, who mortgaged the same with respondent E-PCI. Josefino was religiously paying the installments on his mortgage obligation and had paid more than half thereof. Josefino, however, passed away. Petitioner Alfredo was then forced to assume Josefino's outstanding mortgage obligation. Even as petitioner Alfredo was already paying Josefino's mortgage

obligation in installments, respondent E-PCI still foreclosed the mortgage on the subject property. [8]

On the other hand, respondent E-PCI recounts that the subject property was formerly registered in the name of petitioner Alfredo. It was mortgaged, pursuant to a Special Power of Attorney executed by petitioner Alfredo, to secure the obligation of the spouses Josefino and Emma Tagle with respondent E-PCI. Respondent E-PCI foreclosed the mortgage on the subject property upon default in payment by spouses Josefino and Emma, and upon the expiration of the period of redemption, caused the consolidation and transfer of the title to the subject property in its name. Consequently, respondent E-PCI filed with the RTC a *Petition for Issuance of Writ of Possession* of the subject property, which was docketed as LRC Case No. P-71-2004. Petitioner Alfredo, however, filed a Motion to Stop Writ of Possession on the ground that the subject property is a Family Home which is exempt from execution, forced sale or attachment. [9]

On 4 April 2005, the RTC issued the assailed *Order* denying petitioner Alfredo's Motion, the dispositive part of which reads:

WHEREFORE, premises considered, the Motion to Stop Writ of Possession is hereby DENIED.

In denying the motion, the RTC held that:

In the case at bar, the mortgage transaction happened on May 9, 1997 (Exhibit D), after the effectivity of the Family Code.

With Article 155 in application, it is crystal clear that this instant case does not fall under the exemptions from execution provided in the Family Code, as the case stemmed from the mortgage transaction entered into between the [herein respondent E-PCI] and [herein petitioner Alfredo and his spouse Arsenia] dating back in (sic) 1997. This fact will militate against the so-called exemption by sheer force of exclusion embodied in said article. Hence, the law's protective mantle cannot be availed of by [petitioner Tagle and his spouse Arsenia]. [10]

Petitioner Alfredo and his spouse Arsenia filed with the RTC a Motion for Reconsideration of its foregoing order. However, it was likewise denied by the RTC in another *Order* [11] dated 21 June 2005.

Thereafter, petitioner Alfredo [12] elevated the case to the Court of Appeals on a Petition for *Certiorari* [and Prohibition] under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 90461, assailing and seeking the nullification and the setting aside of the denial of his *Motion to Stop Writ of Possession*.

In a *Resolution* dated 6 September 2005, the appellate court resolved to dismiss the petition, stating thus:

The instant petition is not accompanied by (i) the order denying petitioner's motion to exempt from foreclosure of mortgage; and (ii) a relevant and pertinent document, *i.e.*, motion to exempt from foreclosure of mortgage (Sec. 1, Rule 65, in relation to Sec. 3, Rule 46, 1997 Rules

of Civil Procedure).

WHEREFORE, the petition is DISMISSED outright.^[13]

In due time, petitioner Alfredo moved for the reconsideration of the afore-quoted *Resolution*.

On 16 February 2006, the Court of Appeals promulgated a *Resolution* denying petitioner Alfredo's motion for reconsideration, decreeing that:

Petitioner [Alfredo] seeks reconsideration of Our resolution dated September 6, 2005 dismissing the petition for not being accompanied by the order dated April 4, 2005 (denying his motion to exempt from foreclosure mortgage) and motion to exempt from foreclosure of mortgage. Instead of the aforesaid order and motion, however, petitioner submitted certified true copies of the order dated June 21, 2005 (which was already attached to the petition) and motion to stop writ of possession.

WHEREFORE, for lack of merit, the motion for reconsideration is DENIED.

^[14]

Undaunted still, petitioner Alfredo once more filed a *Motion for Reconsideration* of the appellate court's *16 February 2006 Resolution*.

On 11 April 2006, the Court of Appeals promulgated the last of its *Resolutions*, denying, as expected, petitioner Alfredo's Second Motion for Reconsideration, stated in full below:

For consideration is petitioner's [Alfredo's] motion for reconsideration of Our February 16, 2006 resolution denying its (sic) motion for reconsideration of Our resolution dated September 6, 2005 dismissing the petition.

Appellant has not cured the formal defects of the petition noted in Our resolution dated September 6, 2005. And, more importantly, a second motion for reconsideration of a final order is not allowed (Sec. 5, Rule 37, 1997 Rules of Civil Procedure; Obando vs. Court of Appeals, 366 SCRA 673).

WHEREFORE, the subject motion for reconsideration is DENIED.^[15]

Hence, this Petition for *Certiorari* with Prohibition filed under Rule 65 of the Revised Rules of Court.

Petitioner Alfredo filed the instant petition designating it in both the caption and the body as one for "*certiorari*" under Rule 65 of the Revised Rules of Court. He anchors the present petition on the sole issue of "whether or not the subject property subject of the mortgage being a family home is exempt from foreclosure of mortgage."^[16] He argues:

That from the records of the mortgage, the same was not constituted before or after the constitution of the family home by the petitioner and

as such the Honorable Court of Appeals has acted without or in excess of its or his jurisdiction or with grave abuse of discretion in the proceedings complained of.^[17]

He thus prays for this Court to issue a preliminary injunction to stop the implementation of the writ of possession of the subject property, and after due hearing, render a judgment annulling or modifying the proceedings before the RTC and the Court of Appeals, with costs.^[18]

On the other hand, respondent E-PCI counters that the petition at bar must be dismissed on the following grounds:

First, petitioner Alfredo's "Petition for *Certiorari*" with this Court failed to comply with the technical requirements of the Rules of Court^[19] for petitions for *certiorari* in that (a) the present petition was filed out of time considering that the 60-day period within which to file the same was reckoned from receipt of the *11 April 2006 Resolution* denying petitioner Alfredo's second Motion for Reconsideration, instead of the *16 February 2006 Resolution* denying his first Motion for Reconsideration;^[20] (b) petitioner Alfredo did not allege in the present petition that the Court of Appeals "acted without or in excess of its or his jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction"^[21] when it dismissed his petition in CA-G.R. SP No. 90461 for failure to attach thereto certified true copies of the *4 April 2005 RTC Order* denying his *Motion to Stop Writ of Possession*, as well as the very motion subject of the assailed order; (c) the present petition lacks the proper verification and is considered an unsigned pleading which produces no effect whatsoever;^[22] and (d) the present petition requested for the issuance of an injunction without stating the grounds therefor.^[23]

Second, petitioner Alfredo's second Motion for Reconsideration filed with the Court of Appeals is prohibited by law,^[24] as a second motion for reconsideration of a judgment or final resolution is clearly disallowed by Sec. 2, Rule 52 of the Rules of Court, as amended.

And third, granting *arguendo* that the petition at bar was properly filed by petitioner Alfredo with this Court, the Court of Appeals did not err in dismissing the Petition for *Certiorari* in CA-G.R. SP No. 90461 for failure of petitioner Alfredo to submit the required documents.^[25]

Respondent E-PCI then concludes that "the present Petition for *Certiorari* was filed not to question the jurisdiction of the Court of Appeals but as a vain hope of appealing the Order dated April 4, 2005 issued by the Regional Trial Court x x x."^[26]

In reply to the foregoing counter-arguments, petitioner Alfredo contends:

1. That Rule 52 Sec. 2 of the 1997 Rules of Procedure is not applicable to the present case because what is applicable is a Second Motion for Reconsideration in the Supreme Court;
2. That the 60 day period within which petitioner [Alfredo] may file subject Petition for *Certiorari* has been reckoned from April 11, 2006

denying the petitioner's [Alfredo's] Second Motion for Reconsideration and the Rules of Court does not distinguished (sic) whether the denial is first or second;

x x x x

4. That the issue of whether or not the mortgage was executed before or after the constitution of the Family Home is a necessary question in a Petition for *Certiorari* under Rule 65; and

5. That the verification based on personal knowledge is proper because the Rules of Court did not distinguish whether the facts is based on personal knowledge or an (sic) authentic records;^[27]

For its substantive as well as procedural infirmities, the instant petition must be dismissed.

Given the above-stated arguments raised by both parties, the threshold question that must be initially resolved is whether or not the present Petition for *Certiorari* filed under Rule 65 of the Revised Rules of Court is the proper remedy for petitioner Alfredo to avail of in seeking the reversal of the three *Resolutions* of the Court of Appeals dated 6 September 2005, 16 February 2006 and 11 April 2006.

A petition for *certiorari* is governed by Rule 65 of the Revised Rules of Court, which reads:

Section 1. Petition for *certiorari*. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of [its or his] jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A special civil action for *Certiorari*, or simply a Petition for *Certiorari*, under Rule 65 of the Revised Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.^[28]

A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Such cannot