

FIRST DIVISION

[G.R. NO. 146818, February 06, 2006]

**JAN-DEC CONSTRUCTION CORPORATION, PETITIONER, VS.
COURT OF APPEALS AND FOOD TERMINAL, INC., RESPONDENTS.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for *certiorari* of the Resolution^[1] dated August 11, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 60045, which dismissed petitioner's petition for *certiorari* and the CA Resolution dated December 20, 2000, which denied petitioner's motion for reconsideration.

The factual background of the case is as follows:

On December 17, 1999, Jan-Dec Construction Corporation (petitioner) filed a complaint before the Regional Trial Court, Branch 276, Muntinlupa City (RTC) against Metro-South Intermodal Transport Terminal Corporation (Intermodal) and Food Terminal, Inc. (respondent) for "Sum of Money and Enforcement of Contractor (sic) Lien," docketed as Civil Case No. 99-325.^[2] The petitioner alleges in the complaint that: respondent leased to Intermodal a portion of its property located at DPB Avenue, FTI Compound, Taguig City for the purpose of operating a bus terminal; Intermodal contracted with the petitioner for the construction of a bus terminal on the leased property at an agreed contract price of P27,097,990.00 with 10% downpayment and the balance payable in eleven equal monthly payments; the petitioner performed its obligation under the construction agreement with the corresponding change orders but, in gross violation of its obligation, Intermodal paid only a fraction of the agreed consideration; despite demands, Intermodal failed to pay the balance of P23,720,000.00; petitioner learned that respondent will takeover the bus terminal; respondent should assume the unpaid obligations of Intermodal in the event of such takeover in view of the petitioner's preferential lien over the bus terminal under Article 2242, paragraphs 3 and 4 of the Civil Code.^[3]

In its Answer with Counterclaim and Cross-Claim dated January 26, 2000, Intermodal contends that the petitioner has no cause of action against it since the latter did not properly comply with its obligation to the former. Intermodal points to the respondent as the party solely liable to the petitioner since respondent failed to comply with its obligations under the lease contract by failing to deliver the 5-hectare permanent terminal site and to provide road access to the terminal.^[4]

On February 14, 2000, respondent filed a Motion to Dismiss. Respondent alleges that the complaint failed to state any cause of action against it because it is not a party to the construction agreement between petitioner and Intermodal and therefore cannot be held liable therefor.^[5]

On March 24, 2000, the RTC issued the Order dismissing the complaint against respondent.^[6] The RTC held that: there is no privity of contract between petitioner and respondent; there is no showing that respondent is liable for the contractual obligation of Intermodal; it would be unfair to put respondent in defense for an obligation it never incurred.^[7]

On April 19, 2000, petitioner filed a Motion for Reconsideration, arguing that, even if there is no contractual relationship between petitioner and respondent, a quasi-contract exists under Article 1312 of the Civil Code and respondent is duty bound to respect the creditor's lien under Article 2242, paragraph 3 of the Civil Code.^[8] On June 7, 2000, the RTC issued the Order denying petitioner's motion for reconsideration.^[9]

On August 3, 2000, petitioner filed a petition for *certiorari* with the CA, claiming that the RTC gravely abused its discretion in dismissing the complaint against respondent.^[10] On August 11, 2000, the CA issued the Resolution dismissing petitioner's petition for *certiorari* for being an improper remedy against the Orders of the RTC.^[11] It held that under Rule 41 of the 1997 Rules of Civil Procedure, appeal is the proper remedy from a judgment or final order of the RTC.

On August 30, 2000, petitioner filed a Motion for Reconsideration.^[12] On December 20, 2000, the CA issued the Resolution denying petitioner's motion for reconsideration.^[13]

On February 12, 2001, petitioner filed the present petition for *certiorari* based on the following grounds:

I

THE COURT OF APPEALS GRAVELY ABUSED IT DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT APPEAL UNDER RULE 41 OF THE 1997 RULES OF CIVIL PROCEDURE, NOT CERTIORARI UNDER RULE 65 IS THE APPROPRIATE REMEDY IN ASSAILING AN ORDER OF DISMISSAL AGAINST ONE DEFENDANT WHILE THE CASE STILL PENDS AS TO THE REMAINING DEFENDANT.

II

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT VOIDING THE ERRONEOUS ORDER OF DISMISSAL OF THE COMPLAINT BY THE TRIAL COURT.^[14]

Anent the first ground, petitioner contends that the CA overlooked that there are two defendants in Civil Case No. 99-325 and the case was not dismissed in its entirety since the complaint was dismissed only as against respondent. Petitioner points out that Section 1, Rule 41 of the 1997 Rules of Civil Procedure specifically states that no appeal may be taken from a judgment or final order for or against one or more of several parties in separate claims, counterclaims and third party complaints, while the main case is pending, unless the court allows an appeal

therefrom; in such instance, the aggrieved party may file an appropriate special civil action under Rule 65. Petitioner submits that the remedy it availed of is correct, and it was grave abuse of discretion for the CA to dismiss the petition for *certiorari*.

As to the second ground, petitioner maintains that respondent is liable for the obligations of Intermodal should it takeover the bus terminal, under Articles 1312 and 2242, paragraphs 3 and 4, of the Civil Code.

On the other hand, respondent avers that the present petition for *certiorari* should be dismissed for being an improper remedy from the final order of the CA. Respondent submits that appeal via a petition for review under Rule 45 of the 1997 Rules of Civil Procedure is the correct recourse. In the event that the petition is given due course, respondent contends that CA did not abuse its discretion, much less err, in dismissing petitioner's petition for *certiorari* because appeal is the proper remedy from the RTC's Order dismissing the complaint against petitioner since the order of dismissal is final and not interlocutory. Furthermore, respondent insists that the complaint failed to state any cause of action against it because respondent is not a party to the construction agreement between petitioner and Intermodal and, as such, cannot be held liable for the debts incurred by the latter.

Prefatorily, the Court notes that petitioner filed a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. As a rule, the remedy from a judgment or final order of the CA is appeal via petition for review under Rule 45 of the Rules.

Under Rule 45, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.^[15] It seeks to correct errors of judgment committed by the court, tribunal, or officer. In contrast, a special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.^[16] It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal.^[17]

In the present case, petitioner received the CA Resolution dated December 20, 2000 denying its motion for reconsideration on January 2, 2001. Instead of filing a petition for review with this Court within 15 days from receipt or until January 17, 2001, petitioner filed this special civil action on February 12, 2001 or 41 days from receipt of the CA Resolution dated December 20, 2000. By then, petitioner had already lost the remedy of appeal. By availing of a wrong remedy, the instant petition should have merited outright dismissal.

While there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, the long line of decisions denying the special civil action for *certiorari*, either before appeal was availed of or in instances where the appeal period had lapsed, far outnumbers the instances where *certiorari* was given due course. The few significant exceptions are: (a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; (d) when the

questioned order amounts to an oppressive exercise of judicial authority.^[18]

In the present case, petitioner has not provided any cogent explanation that would absolve it of the consequences of its failure to abide by the Rules. *Apropos* on this point are the Court's observations in *Duremdes v. Duremdes*:^[19]

Although it has been said time and again that litigation is not a game of technicalities, that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved, this does not mean that procedural rules may altogether be disregarded. **Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.**^[20] (Emphasis supplied)

Evidently, the CA erred in dismissing petitioner's petition for *certiorari* from the Order of the RTC dismissing the complaint against respondent. While Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case, it also provides several exceptions to the rule, to wit: (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) 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; (f) an order of execution; **(g) 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 (h) an order dismissing an action without prejudice. In the foregoing instances, the aggrieved party may file an appropriate special civil action for *certiorari* under Rule 65.

In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and herein respondent and the complaint against Intermodal is still pending. Thus, the remedy of a special civil action for *certiorari* availed of by petitioner before the CA was proper and the CA erred in dismissing the petition.

However, the assailed Resolution of the CA dismissing petitioner's petition for *certiorari* amounts to nothing more than an error of judgment, correctible by appeal. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*.^[21] For if every error committed by the trial court or quasi-judicial agency were to be the proper subject of review by *certiorari*, then trial would