

## THIRD DIVISION

[ G.R. NO. 148174, June 30, 2006 ]

**BONIFACIO CONSTRUCTION MANAGEMENT CORPORATION,  
PETITIONER, VS. THE HON. ESTELA PERLAS-BERNABE, IN HER  
OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE RTC OF  
MAKATI, BRANCH 142, AND GARY CRUZ, RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

This is a petition for review on certiorari assailing the Decision<sup>[1]</sup> of the Court of Appeals dated March 12, 2001 and its Resolution<sup>[2]</sup> dated May 8, 2001 in CA-G.R. SP No. 62512, entitled "*Bonifacio Construction Management Corporation vs. The Honorable Estela Perlas-Bernabe as Presiding Judge, RTC of Makati City, Branch 142 and Gary Cruz.*"

The facts are as follows:

The Bonifacio Construction Management Corporation, petitioner, is a domestic corporation in charge of the Fort Bonifacio-Kalayaan-Buendia Flyover Project II, while Gary Cruz, private respondent, is a doctor of medicine with a Medical Clinic and Industrial Service Office located at No. 3434 Limbo St., cor. Kalayaan Avenue, Makati City.

On January 5, 1998, the construction of the Fort Bonifacio-Kalayaan-Buendia Flyover in Makati City commenced. Since then, business establishments within the vicinity of the construction site, including respondent's clinic, have been affected by the construction works. As a result, his patients and clients stopped visiting his medical clinic for fear of welding flames from the on-going construction. Furthermore, they could no longer park their vehicles near the medical clinic.

On September 25, 1998, respondent filed a complaint with the Office of the Barangay Chairman of Pinagkaisahan, Makati City.<sup>[3]</sup> In turn, the latter, in letters dated October 2 and 8, 1998,<sup>[4]</sup> advised petitioner to take appropriate action thereon. Both letters remained unheeded.

Consequently, on November 17, 1998, respondent sent petitioner a letter<sup>[5]</sup> demanding payment of P2,000.00 a day for loss of income due to the construction. But petitioner refused to pay, prompting respondent to file with the Regional Trial Court, Branch 142, Makati City a complaint for damages<sup>[6]</sup> against petitioner, docketed as Civil Case No. 99-521.

Petitioner filed a motion to dismiss<sup>[7]</sup> on the ground of lack of cause of action and respondent's failure to implead as co-defendant the State, a real party in interest.

In an Order<sup>[8]</sup> dated February 10, 2000, the trial court denied the motion and required petitioner to file an answer.

Instead of filing an answer, petitioner, on February 28, 2000, filed an urgent omnibus motion<sup>[9]</sup> seeking reconsideration of the trial court's February 10, 2000 Order.

On June 19, 2000, the trial court issued an Order<sup>[10]</sup> denying petitioner's urgent omnibus motion, holding that the allegations in the complaint constitute a cause of action; and giving petitioner ten (10) days from notice within which to file its answer. On July 3, 2000, petitioner filed its answer.<sup>[11]</sup>

On August 16, 2000, petitioner filed another motion to dismiss<sup>[12]</sup> alleging that respondent, as plaintiff, failed to implead the contractor as an indispensable party. In an Order dated September 19, 2000,<sup>[13]</sup> the trial court denied the motion. Petitioner's subsequent motion for reconsideration was likewise denied.

Thus, petitioner filed with the Court of Appeals a petition for *certiorari* and/or prohibition under Rule 65 of the 1997 Rules of Court, as amended, alleging that respondent judge acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when she refused to dismiss the complaint in Civil Case No. 99-521.

On March 12, 2001, the Appellate Court rendered a Decision dismissing the petition for certiorari and/or prohibition. Petitioner filed a motion for reconsideration but the same was denied.

Hence, this petition.

Petitioner basically contends before the Court of Appeals that the trial court acted without or in excess of jurisdiction or with grave abuse of discretion when it denied its second motion to dismiss the complaint dated August 16, 2000 in Civil Case No. 99-521.

The petition for *certiorari* and prohibition filed by petitioner with the Court of Appeals is not the proper remedy to assail the denial by the trial court of its motion to dismiss. **The Order of the trial court denying the motion to dismiss is merely interlocutory.** An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits. It is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This proceeds from the court's inherent power to control its processes and orders so as to make them conformable to law and justice.<sup>[14]</sup>

In Indiana Aerospace University vs. Commission on Higher Education,<sup>[15]</sup> we held:

**"An order denying a motion to dismiss is interlocutory, and so the proper remedy in such a case is to appeal after a decision has been rendered. A writ of certiorari is not intended to correct every controversial interlocutory ruling:** It is resorted only to