

THIRD DIVISION

[G.R. NO. 148641, March 31, 2005]

PCI LEASING AND FINANCE, INC., PETITIONER, VS. EMILY ROSE GO KO, DOING BUSINESS UNDER THE NAME AND STYLE OF "KD SURPLUS" AND KIDDY LIM CHAO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Petitioner PCI Leasing and Finance, Inc. comes to this Court via this appeal by certiorari, challenging the resolutions of the Court of Appeals which dismissed its original action for certiorari for having been filed beyond the reglementary period.

Respondents Emily Rose Go Ko and Kiddy Lim Chao filed a complaint against petitioner for Annulment/Reformation of Chattel Mortgage, Annulment of Restructuring Agreement, Fixing of Correct Principal, Injunction with Prayer for Preliminary Injunction and Temporary Restraining Order with the Regional Trial Court of Cebu. The complaint was raffled to Branch 5 of said court, presided by Judge Ireneo Lee Gako, Jr.

The trial court, by Order of February 16, 2000, granted respondent's prayer for preliminary injunction. Petitioner, which received a copy of the Order on February 18, 2000, filed a motion for reconsideration on March 2, 2000. The motion was denied by Order of May 22, 2000 on the ground that the lifting of the injunction would have rendered one of the substantive issues of the case moot and academic. Notice of the Order dated May 22, 2000 was received by counsel for petitioner on June 2, 2000.

On July 31, 2000, or fifty-nine (59) days after receipt of the Order denying its motion for reconsideration, petitioner filed with the Court of Appeals a petition for certiorari under Rule 65 with a prayer for a writ of preliminary injunction and/or temporary restraining order.^[1] Petitioner claimed that therein public respondent Judge Gako acted with grave abuse of discretion by issuing the injunction notwithstanding respondents' non-entitlement thereto, effectively disposing of the main case without trial, and not holding that the complaint was filed merely to preempt petitioner's filing of a case for replevin.

By Resolution of **August 23, 2000**, the Court of Appeals, following Section 4, Rule 65 of the Rules of Court which had incorporated the amendment introduced by this Court's Circular No. 39-98 effective September 1, 1998, the relevant portion of which reads:

Sec. 4. Where and when petition to be filed.

x x x

If the petitioner has filed a motion for new trial or reconsideration in due time after notice of said judgment, order, or resolution, the period herein affixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition [for Certiorari, Prohibition, or Mandamus] within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except of the most compelling reason and in no case exceed fifteen (15) days. (Underscoring supplied),

dismissed the petition for having been filed beyond the reglementary period.^[2]

Thus the appellate court held:

In the case at bar, petitioner received a copy of the assailed order of February 16, 2000 on February 18, 2000. Thirteen (13) days after, or on March 2, 2000, a motion for reconsideration was filed by petitioner. Receipt of the denial of the motion for reconsideration was on June 2, 2000. Thirteen (13) days having been consumed, petitioner had a remaining period of forty seven (47) days within which to file the petition for review reckoned from June 2, 2000, or until July 19, 2000. The petition having been filed only on July 31, 2000 is therefore filed twelve (12) days beyond the reglementary period. Rule 65 is an extraordinary relief that is open so long as it is availed of within the prescribed period. (Underscoring supplied)

On **September 1, 2000**, Sec. 4 of Rule 65 was amended anew, by this Court's A.M. No. 00-2-03-SC, FURTHER AMENDING SECTION 4 RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE this time reverting to the old rule that the 60-day period of filing a petition for certiorari, prohibition and mandamus under Rule 65 was to be reckoned from the date of receipt of the denial of the motion for reconsideration of the assailed order or motion for new trial. The rule, as thus amended, now states:

Sec. 4. *When and where petition filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

x x x (Underscoring supplied)

Petitioner, which received on September 7, 2000 a copy of the appellate court's August 23, 2000 Resolution dismissing its petition, filed a motion for reconsideration thereof on September 21, 2000. No mention was made of A.M. No. 00-2-03-SC.

By Resolution of June 6, 2001,^[3] the appellate court denied petitioner's motion for reconsideration. No mention was also made by it about A.M. No. 00-2-03-SC.

Petitioner now questions the August 23, 2000 and June 6, 2001 resolutions of the Court of Appeals on the ground that the amendment of Section 4, Rule 65 effected by A.M. No. 00-2-03-SC should have been retroactively applied to its petition, it not having been finally disposed of at the time the amendment became effective.