

## FIRST DIVISION

**[ G.R. No. 151942, November 27, 2003 ]**

**SPOUSES GREGORIO GO AND JUANA TAN GO, PETITIONERS, VS. JOHNSON Y. TONG; COURT OF APPEALS; AND HONORABLE JUDGE JUAN NABONG OF THE REGIONAL TRIAL COURT, BRANCH 32, MANILA, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

As a rule, docket fees should be paid upon the filing of the initiatory pleadings. However, for cogent reasons to be determined by the trial judge, staggered payment thereof within a reasonable period may be allowed. Unless grave abuse of discretion is demonstrated, the discretion of the trial judge in granting staggered payment shall not be disturbed.

#### The Case

Petitioner assails the September 18, 2001 Decision<sup>[1]</sup> and the January 21, 2002 Resolution <sup>[2]</sup> of the Court of Appeals (CA) in CA-GR SP No. 58942. The decretal portion of the Decision reads as follows:

"WHEREFORE, the petition is hereby DENIED."<sup>[3]</sup>

The assailed Resolution denied petitioners' Motion for Reconsideration.

#### The Facts

The facts of the case are summarized by the CA in this wise:

"Petitioner Juana Tan Go (petitioner Juana) purchased a cashier's check dated September 13, 1996 from the Far East Bank and Trust Company (FEBTC) Lavezares, Binondo Branch in the amount of P500,000.00, payable to Johnson Y. Tong (private respondent).

"On petitioner Juana's instruction, the cashier's check bore the words 'Final Payment/Quitclaim' after the name of payee private respondent allegedly to insure that private respondent would honor his commitment that he would no longer ask for further payments for his interest in the 'informal business partnership' which he and she had earlier dissolved.

"After the check was delivered to private respondent, he deposited it with the words 'Final Payment/Quitclaim' already erased, hence, it was not honored.

"Private respondent's counsel subsequently wrote the manager of FEBTC

Lavezares Branch informing that the words 'Final Payment/Quitclaim' on the check had been 'inadvertently erased without being initialed by your bank or the purchaser thereof' and thus requesting that the check be replaced with another payable to 'Johnson Tong-Final Settlement/Quitclaim' with the same amount, the bank charges therefor to be paid by his client-private respondent.

"FEBTC did not grant the request of private respondent's counsel, hence, private respondent filed a complaint against FEBTC and petitioner Juana and her husband Gregorio Go at the Manila RTC, for sum of money, damages, and attorney's fees, subject of the case at bar.

"Answering the Complaint, therein defendants-herein petitioners Juana and her husband and FEBTC alleged that the erasure of the words 'Final Payment/Quitclaim' was intentional on private respondent's part, reflective of his intention to collect more from petitioner Juana, hence, the non-issuance of a replacement check was justified, unless private respondent was sincere in abiding with the 'terms agreed upon.'

"During the pendency of the case, petitioner's son, George Tan Go, filed a criminal complaint against private respondent for falsification of the check. The criminal complaint was dismissed, however, by the Manila Prosecutor's Office.

"On July 17, 1998, private respondent requested public respondent for leave to file Supplemental Complaint. Acting on the request, public respondent suggested to him 'to file a Motion to admit' within fifteen (15) days, copy furnished petitioners who were given the same number of days from receipt to file their Comment.

"On August 25, 1998, private respondent filed a 'Motion for Leave to File a Supplemental Complaint and to Admit the Attached Supplemental Complaint' which Supplemental Complaint alleged that petitioners 'used' their son to file the criminal complaint for falsification against him which caused damages, hence, the prayer for an increase in the amount of moral and exemplary damages sought to be recovered from P2.5 million to P55 million and praying for the award of actual damages of P58,075.00. The motion was set for hearing on September 4, 1998. Copy of the motion to petitioners was sent by registered mail.

"Public respondent, by Order of September 4, 1998, noting that petitioners had been furnished copy of the 'Motion for Leave' x x x but that there had been no comment thereon, granted the motion and admitted the Supplemental Complaint.

"Petitioners and FEBTC's Comment-Opposition were subsequently filed.

"Petitioners and FEBTC filed their respective Motions for Reconsideration of the September 4, 1998 Order.

"On November 18, 1998, petitioners filed a Manifestation of Deposit and deposited to the RTC Clerk of Court the amount of P500,000.00

representing the amount of the check, **`subject to the condition that it shall remain deposited until the disposition of the case.'**

"Petitioners' and FEBTC's separate Motions for Reconsideration of the September 4, 1998 Order were later denied by Order of December 4, 1998, hence, petitioners filed their Answer dated December 18, 1998 to the Supplemental Complaint with Counterclaim, alleging as Special Affirmative defenses the following:

`5. As already intimated, the defendants are not a party to the aforementioned criminal complaint, but only their son George who took it upon himself to file it in his own right, without their involvement in any way, hence, said incident cannot be pleaded as supplement to the original complaint, much less as a new cause of action without impleading George Go as party defendant.

`6. Plaintiff cannot prosecute his Supplemental Complaint, and the same should be dismissed, unless the corresponding docket fee and legal fees for the monetary claims in the amount of P55,057,075.00 are paid for. x x x.'

"On February 5, 1999, public respondent, acting on the verbal manifestation/motion of private respondent's counsel, allowed the release of petitioners' P500,000.00 deposit to private respondent.

"By order of November 17, 1999, public respondent, `in the interest of justice and because of the huge amount of outlay involved (the Court considers the business climate and the peso crunch prevailing),' allowed private respondent to first deposit P25,000.00 on or before December 15, 1999 and P20,000.00 every month thereafter until the full amount of docket fees is paid, and `only then shall the deposits be considered as payment of docket fees.'

"Petitioners filed a Motion for Reconsideration of the November 17, 1999 Order which was, by Order of April 11, 2000, denied.

"Thus arose the present petition filed on May 30, 2000 which ascribes to public respondent the commission of grave abuse of discretion in issuing the Orders of February 5, 1999 (allowing the release of the P500,000.00 deposit to private respondent), November 17, 1999 (allowing the payment, on staggered basis, of the docket fees for the Supplemental Complaint) and April 11, 2000 (denying the Motion for Reconsideration of the November 17, 1999 Order)."<sup>[4]</sup>

### **Ruling of the Court of Appeals**

In their Petition for *Certiorari* before the CA, petitioners alleged that respondent judge committed grave abuse of discretion when he issued the Orders dated February 5, 1999,<sup>[5]</sup> November 17, 1999<sup>[6]</sup> and April 11, 2000.<sup>[7]</sup>

According to the CA, petitioners failed to assail, within the prescribed period,

respondent judge's February 5, 1999 Order allowing the release of the money deposited by them. It was only in their May 30, 2000 Petition before the CA that they questioned the Order. Moreover, the appellate court held that, anyway, private respondent was entitled to the deposit, which represented the amount indicated on the check that belonged to him.

As to the November 17, 1999 Order allowing private respondent to pay the docket fee on a staggered basis and the April 11, 2000 Order denying the Motion for Reconsideration thereof, the CA held that "*Sun Insurance Office Ltd.* x x x permits the payment of the prescribed docket fee within a reasonable period but in no case beyond the applicable prescriptive or regular period."<sup>[8]</sup> In that case, the court *a quo* opined that the docket fee payment scheme imposed by the respondent judge "cannot be said to have been issued with grave abuse of discretion."<sup>[9]</sup>

Hence, this Petition.<sup>[10]</sup>

### **The Issues**

In their Memorandum,<sup>[11]</sup> petitioners submit the following issues for our consideration:

"Whether or not the Honorable Court of Appeals committed grave and serious errors which [are] tantamount to grave abuse of discretion when it upheld the validity of the Orders dated Feb[ruary] 5, 1999, November 17, [1999] and April 11, 2000 issued by public respondent Hon. Judge Juan Nabong of RTC Branch 32 of Manila, in Civil Case No. 97-81935.

"Whether or not public respondent Judge Juan Nabong committed grave abuse of discretion in not suspending the proceedings pending appeal with the Honorable Court of Appeals, and in x x x refusing to inhibit himself."<sup>[12]</sup>

### **The Court's Ruling**

The Petition has no merit.

#### **Preliminary Issue:**

##### **Mode of Appeal**

Private respondent argues that the instant Petition should have been brought under Rule 45 of the Revised Rules of Court and not under Rule 65. On the other hand, petitioners maintain that their suit questions interlocutory orders issued by the RTC and thus falls within the ambit of Rule 65, under which questions of law and facts may be raised.

We clarify. A petition for *certiorari* under Rule 65 of the Revised Rules of Court may be filed under the following condition:

"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 jurisdiction, and

there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law x x x." [13]

On the other hand, Rule 45 prevails under this circumstance:

"A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. x x x." [14]

Rule 45 of the Rules of Court specifically states that in all cases, the CA's decisions, final orders or resolutions -- regardless of the nature of the action or proceedings involved -- may be appealed to this Court through a petition for review, which is just a continuation of the appellate process involving the original case. [15] On the other hand, a special civil action under Rule 65 is an independent suit based on the specific grounds provided therein. As a general rule, *certiorari* cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. [16]

Very recently, in *Fortune Guarantee and Insurance Corporation v. CA*, [17] this Court had the occasion to discuss this matter. In that case, the petitioner alleged grave abuse of discretion on the part of the respondent trial court judge when the latter issued the assailed Order granting a Motion for Execution Pending Appeal. Said the Court in that case:

"[I]t must be pointed out that petitioner adopted the wrong mode of appeal in bringing this case before us. The proper remedy of a party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45 which is not similar to a petition for certiorari under Rule 65 of the Rules of Court. x x x." [18]

In the present case, petitioners are appealing a final decision of the CA by resorting to Rule 65, when their remedy should be based on Rule 45. [19] When an error of judgment of the CA is brought up to this Court for review, the action is properly designated as a petition for review and not a special civil action. [20] Thus, while the instant Petition is one for *certiorari* under Rule 65 of the Rules of Court, the assigned errors are more properly addressed in a petition for review under Rule 45.

Accordingly, when parties adopt an improper remedy, as in this case, their petitions may be dismissed outright. [21] However, in the interest of substantial justice, we deem it wise to overlook procedural technicalities in order to rule speedily on this case [22] and demonstrate that even without the procedural infirmity, the Petition should be rejected due to its lack of merits.

**First Issue:**  
**Release of the Money Deposited**

Petitioners argue that respondent judge committed grave abuse of discretion when he issued the February 5, 1999 Order allowing the release of their P500,000 bank deposit. According to them, he "demonstrated his capacity for abuse of judicial authority as the release of the money was made in direct contravention of [their]