

SECOND DIVISION

[G.R. No. 132703, June 23, 2000]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER,
VS. COURT OF APPEALS, HON. EDGAR D. GUSTILO, PRESIDING
JUDGE, BRANCH 28, REGIONAL TRIAL COURT, ILOILO CITY,
TALA REALTY SERVICES CORPORATION, NANCY L. TY, PEDRO B.
AGUIRRE, REMEDIOS A. DUPASQUIER, PILAR D. ONGKING,
ELIZABETH H. PALMA, DOLLY W. LIM, RUBENCITO M. DEL
MUNDO, ADD INTERNATIONAL SERVICES, INC., RESPONDENTS.**

D E C I S I O N

DE LEON, JR., J.:

Before us is a special civil action for *certiorari* to set aside and annul the Decision ^[1] of the Court of Appeals dated December 18, 1996, which sustained the dismissal ^[2] of the complaint of petitioner Banco Filipino Savings and Mortgage Bank (hereafter, Banco Filipino) for recovery of real properties filed against Tala Realty Services Corporation (hereafter, Tala Realty) on the grounds of *litis pendentia* and forum-shopping.

The antecedent facts are the following:

The General Banking Act ^[3] regulates the number of branches that a bank may operate. Under the said law, a bank is allowed to own the land and the improvements thereon used as branch sites but only up to a maximum of fifty percent (50%) of the bank's net worth.

In 1979, Banco Filipino had reached the allowable limit in branch site holdings but contemplated further expansion of its operations. Consequently, it unloaded some of its holdings to Tala Realty. Banco Filipino thereafter leased the same branch sites from Tala Realty which was conceived and organized precisely as a transferee corporation by the major stockholders ^[4] of Banco Filipino. On March 26, 1979, the Securities and Exchange Commission (SEC) issued Tala Realty's certificate of registration. ^[5]

Shortly thereafter, the board of directors of Banco Filipino authorized negotiations for the sale of some of its branch sites, through a Board Resolution ^[6]

dated April 17, 1979 (hereafter, Board Resolution).

On August 25, 1981, respondent Banco Filipino sold the above branch sites to Tala Realty under separate deeds of sale for each branch site. On the same date, Tala Realty leased the same branch sites to Banco Filipino under separate instruments for each branch site. ^[7]

The instant case originated from the sale by Banco Filipino to Tala Realty of four (4) lots in Iloilo City, covered and described in the aforementioned TCT Nos. 62273 and 62274, for two million one hundred ten thousand pesos (P2,110,000.00).^[8] Tala Realty then leased them back to Banco Filipino for a monthly rental of twenty one thousand pesos (P21,000.00) /for a period of twenty (20) years and renewable for another twenty (20) years.^[9] The lease contracts of the other branch sites sold to Tala Realty have substantially similar terms and conditions, except for the amount of the rent.

Banco Filipino alleges that a trust was created by virtue of the above transactions. Tala Realty was allegedly established to serve as a corporate medium to warehouse the legal title of the said properties for the beneficial interest of Banco Filipino and to purchase properties to be held in trust for the latter.^[10]

However, sometime in August 1992, Tala Realty demanded payment of increased rentals, deposits and goodwill from Banco Filipino, with a threat of ejectment in case of failure to comply thereto. On April 20, 1994, some stockholders of Banco Filipino filed a derivative suit against Tala Realty before the SEC for the reconveyance of the properties sold by the former to the latter. However, on March 6, 1995, the SEC dismissed the case on the ground of lack of jurisdiction.^[11]

Due to Banco Filipino's failure to comply with Tala Realty's terms, the latter carried out its threat by filing numerous ejectment suits against Banco Filipino.^[12] This prompted Banco Filipino to file, on August 16, 1995, an action for recovery of real properties^[13] before the Regional Trial Court of Iloilo, Branch 28, on the ground of breach of trust. Incidentally, during the period from August to September 1995, Banco Filipino also filed sixteen (16) other complaints for recovery of real properties which it had previously sold to Tala Realty.^[14]

These complaints, including the one filed in the Regional Trial Court of Iloilo City, Branch 28, were uniformly worded in their material allegations.^[15]

As regards Banco Filipino's complaint in the Regional Trial Court of Iloilo City, Tala Realty filed on October 9, 1995 a motion to dismiss on the following grounds: (1) forum-shopping; (2) *litis pendentia*; (3) *pari delicto*; (4) failure to implead indispensable parties; and (5) failure to state a cause of action.^[16] On the same date, private respondents Pilar D. Ongking, Elizabeth H. Palma, Dolly W. Lim and Rubencito del Mundo filed a separate motion to dismiss in the same case on the following grounds: (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; and (3) failure to state a cause of action.^[17] Likewise, on November 10, 1995, private respondent Nancy L. Ty filed a separate motion to dismiss, alleging the same grounds as those invoked by private respondents Ongking, *et. al.*^[18]

These motions to dismiss alleged, among others, that aside from the said suit before the Regional Trial Court of Iloilo City, Branch 28, other suits involving certain Quezon City, Lucena City, Malolos and Manila branches of Banco Filipino are also pending in other Regional Trial Courts.

Banco Filipino filed separate oppositions, dated October 14, 1995, October 31, 1995

and November 21, 1995 respectively, to the motions to dismiss.^[19] After a protracted exchange of pleadings, the trial court dismissed the complaint on April 22, 1996 in this wise:^[20]

A thorough and careful perusal was made by the undersigned Presiding Judge of the arguments of opposing counsels, ventilated in their respective memoranda. Opposing counsels cited the pertinent Supreme Court Circulars, provisions of the Rules of Court and related Decisions of the Supreme Court in support of their arguments.

After weighing the foregoing, this Court is of the opinion and so holds that the contention of the defendants in their motions to dismiss, etc., is meritorious.

Wherefore, in view of the foregoing, the defendants separate motions to dismiss are hereby granted.

Therefore, let this case be, as it is hereby Dismissed.

SO ORDERED.

On June 27, 1996, the trial court denied Banco Filipino's motion for reconsideration.^[21] Banco Filipino received a copy of said order of denial on July 5, 1996 but instead of filing an appeal, it filed, on July 24, 1996, a petition for *certiorari* under Rule 65 before the Court of Appeals.^[22] Banco Filipino alleged in its petition that the trial court's decision was issued with grave abuse of discretion because it did not comply with the constitutional mandate on the form of decisions.

However, the Court of Appeals dismissed Banco Filipino's petition on the ground, among others, that the "[p]etitioner's recourse to Rule 65 of the Revised Rules of Court is patently malapropos."^[23] It reiterated the rule that a special civil action for *certiorari* may be resorted to only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Banco Filipino's failure to appeal by writ of error within the reglementary period and its belated recourse to a petition for *certiorari* under Rule 65 was interpreted by the Court of Appeals as a desperate attempt by Banco Filipino to resurrect what was otherwise already a lost appeal.^[24] Furthermore, the Court of Appeals debunked Banco Filipino's theory that the assailed order of the RTC did not comply with the substantive requirements of the Constitution, and was thus, rendered with grave abuse of discretion.

On December 28, 1996, Banco Filipino received a copy of the Court of Appeals' decision dismissing its petition thereby prompting the latter to file a motion for reconsideration on January 10, 1997. The Court of Appeals denied the said motion for reconsideration on December 19, 1997 in a resolution, a copy of which was received by Banco Filipino on January 7, 1998.^[25] Banco Filipino then filed with this Court its subject petition for *certiorari* under Rule 65 of the Revised Rules of Court on March 9, 1998.^[26]

Petitioner advances the following arguments:

I. RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION

- IN FAILING TO CORRECT BY CERTIORARI THE DISMISSAL ORDER BY THE RTC WHICH PATENTLY DISREGARDED THE CONSTITUTIONAL PRESCRIPTION AS TO FORM AND JUDGMENT, AND EFFECTIVELY DENIED PETITIONER DUE PROCESS OF LAW;^[27]
- II. BANCO FILIPINO WAS DENIED THE OPPORTUNITY TO PROVE ITS CAUSE OF ACTION OF AN IMPLIED TRUST;^[28]
 - III. RESPONDENT COURT GRAVELY ERRED IN RULING THAT A WRIT OF ERROR SHOULD BE THE PROPER REMEDY INSTEAD OF A PETITION FOR CERTIORARI UNDER RULE 65;^[29]
 - IV. RESPONDENT CA GRAVELY ABUSED ITS DISCRETION IN FINDING THAT BANCO FILIPINO IS GUILTY OF SPLITTING CAUSES OF ACTION MERELY ON THE BASIS OF THE PLEADINGS THUS FILED.^[30]

Without need of delving into the merits of the case, this Court hereby dismisses the instant petition. For in filing a special civil action for *certiorari* instead of an ordinary appeal before this Court, Banco Filipino violated basic tenets of remedial law that merited the dismissal of its petition.

First. Banco Filipino's proper remedy from the adverse resolutions of the Court of Appeals is an ordinary appeal to this Court *via* a petition for review under Rule 45 and not a petition for *certiorari* under Rule 65.

A petition for *certiorari* under Rule 65 is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.^[31]

We have said time and again that for the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion, must be so patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.^[32]

Nothing in the record of this case supports Banco Filipino's bare assertion that the Court of Appeals rendered its assailed resolutions with grave abuse of discretion. On the contrary, Banco Filipino even admitted that the Court of Appeals painstakingly "labored to defend in thirty-three (33) [single spaced] pages"^[33] the rationale behind its decision, clearly setting forth therein the applicable provisions of law and jurisprudence. In other words, there being no grave abuse of discretion on its part, the Court of Appeals rendered the assailed resolutions in the proper exercise of its jurisdiction. Hence, even if erroneous, the Court of Appeals' resolutions can only be assailed by means of a petition for review. The distinction is clear: a petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review seeks to correct errors of judgment committed by the court. Errors of judgment include errors of procedure or mistakes in the court's findings.^[34] Where a court has jurisdiction over the person and the subject matter, the decision on all other

questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of such jurisdiction are merely errors of judgment.

[35]

Second. The availability to Banco Filipino of the remedy of a petition for review from the decision of the Court of Appeals effectively foreclosed its right to resort to a petition for *certiorari*. This Court has often enough reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. *Certiorari* is not allowed when a party to a case fails to appeal a judgment despite the availability of that remedy. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[36]

The antithetic character of the remedies of appeal and *certiorari* has been generally observed by this Court save only in those rare instances where appeal is satisfactorily shown to be an inadequate remedy. In the case at bar, Banco Filipino has failed to show any valid reason why the issues raised in its petition for *certiorari* could not have been raised on appeal. To justify its resort to a special civil action for *certiorari* under Rule 65, it erroneously claims that an appeal is not a speedy and adequate remedy because further delay in the disposition of this case would effectively deprive Banco Filipino of the full use and enjoyment of its properties.[37] However, the further delay that would inadvertently result from the dismissal of the instant petition is one purely of Banco Filipino's own doing. We cannot countenance an intentional departure from established rules of procedure simply to accommodate a case that has long been pending in the courts of law because of the party's own fault or negligence.

Third. *Certiorari* cannot be used as a substitute for the lapsed or lost remedy of appeal. Banco Filipino's recourse to a special civil action for *certiorari* was borne not out of the conviction that grave abuse of discretion attended the resolution of its petition before the Court of Appeals but simply because of its failure to file a timely appeal to this Court. This observation is shared by the Court of Appeals which was quick to point out that when Banco Filipino filed its petition for *certiorari* assailing the RTC order, the reglementary period for filing a petition for review before the Court of Appeals had already lapsed.

It is true that this Court may treat a petition for *certiorari* as having been filed under Rule 45 to serve the higher interest of justice, but not when the petition is filed well beyond the reglementary period for filing a petition for review and without offering any reason therefor.

Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least explain its failure to comply with the rules. In the case at bar, Banco Filipino's petition is bereft of any valid reason or explanation as to why it failed to properly observe the rules of procedure. The record shows that Banco Filipino failed, not once but twice, and for an unreasonable length of time, to file an appeal within the period required by law. From the order of the RTC, it filed its petition for *certiorari* some fourteen (14) days after the lapse of the reglementary period to appeal to the Court of Appeals. Likewise, when Banco Filipino filed its petition for *certiorari* before this Court, forty five (45) days have already passed since the end of the fifteen (15) day reglementary period for filing an