

THIRD DIVISION

[G.R. No. 140274, November 15, 2000]

**WILLIAM T. TOH, PETITIONER, VS. HON. COURT OF APPEALS
AND DECON CONSTRUCTION, RESPONDENTS.**

DECISION

GONZAGA-REYES, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals dated October 5, 1999 that dismissed the petition for certiorari and mandamus with temporary restraining order/preliminary injunction filed by petitioner William Toh (petitioner) against public respondent Judge Santiago G. Estrella (Judge Estrella) and private respondent Decon Construction (private respondent).

Private respondent is the plaintiff in a civil case for damages it filed against petitioner before the Regional Trial Court of Pasig City, Branch 68, docketed as Civil Case No. 65389 with public respondent Judge Estrella as presiding judge.

This instant petition stems from the incidents that transpired during the hearing held on October 10, 1996. Petitioner at that time was scheduled to present Engineer delos Santos (Eng. delos Santos) as his witness. The counsel of petitioner, Attorney Nardo M. de Guzman, Sr. (Atty. De Guzman), formally offered the testimony of the witness in this manner:

"(1) That the witness would be testifying on the fact that he is the contractor and supervising engineer of the building of defendant (herein petitioner);

(2) That he undertook the construction of the building from the start until it was finished; and

(3) That the witness exercised all the precautionary measures and saw to it that no one is injured or hurt and pursuant thereto have (sic) installed all safety measures."^[2]

Immediately thereafter, the counsel of private respondent, Attorney Dominador Santiago, admitted the offer. Atty. De Guzman then manifested that he was dispensing with the examination of Engr. delos Santos and moved for continuance to enable him to present his next witness at the next hearing. Judge Estrella forthwith ordered in open court that he was dispensing with the testimony of Eng. delos Santos. The foregoing incidents are embodied in an Order^[3] dated October 10, 1996 that formally dispensed with the testimony of Eng. delos Santos and scheduled

the next hearing on October 24, 1996.

According to petitioner, upon realizing that he was misguided by the declaration of the court dispensing with the testimony of his witness and that the order was a palpable mistake, he timely filed a motion for reconsideration of said order which was denied. Dissatisfied, petitioner filed a petition for certiorari under Rule 65 of the Rules of Court and mandamus with the Court of Appeals. On October 5, 1999, the Court of Appeals issued the now assailed decision the dispositive portion of which reads:

"WHEREFORE, the petition is DENIED. The assailed Order dated October 10, 1996 and Resolution dated December 16, 1996 are AFFIRMED. Respondent judge is ordered to proceed with the trial with dispatch. No costs.

SO ORDERED."^[4]

Hence, this petition. Petitioner seeks to set aside the just quoted decision on these grounds:

"1. The Court of Appeals erred when it declared that there was no merit on (sic) the claim of the petitioner that he was deprived of his constitutional right to due process; and

2. That the Court of Appeals erred when it declared that the court of origin did not commit grave abuse of discretion amounting to lack and/or excess of jurisdiction under the facts presented by petitioner."^[5]

The petition has no merit.

Petitioner insists that it was Judge Estrella who dispensed with the testimony of Eng. delos Santos contrary to the facts detailed in the assailed order. Petitioner points out that there was a need for Eng. delos Santos, whom petitioner regards as a vital and material witness, to testify and to identify documentary evidence in order to establish the factual basis of the purposes for which the witness' testimony was being offered. Petitioner now bewails the alleged violation of his constitutional right to due process of law. Petitioner then contends that the mere admission by private respondent of the purposes for which the testimony of said witness was being offered without the actual testimony of the witness would allegedly be an empty one "for want of factual or legal foundation".^[6] Petitioner is thus convinced that the Court of Appeals erred when it ruled that Judge Estrella did not commit grave abuse of discretion.

Petitioner's arguments are untenable. The assailed order of Judge Estrella dated October 10, 1996 clearly states that it was the counsel of petitioner who manifested that the testimony of Eng. delos Santos be dispensed with upon the admission of the counsel of private respondent of the purposes for which said testimony was being offered. Petitioner's insistence that Judge Estrella *motu proprio* ordered the