

THIRD DIVISION

[G.R. No. 121534, January 28, 1998]

JUAN M. CASIL, PETITIONER, VS. COURT OF APPEALS; HON. URBANO VICTORIO, SR., BRANCH 50, REGIONAL TRIAL COURT, MANILA; AND ANITA U. LORENZANA, RESPONDENTS.

DECISION

PANGANIBAN, J.:

When may a complaint be dismissed on the ground of *litis pendentia*? When is an interlocutory order assailable by certiorari under Rule 65?

The Case

These are the main questions raised in this petition for review on certiorari seeking to set aside the Decision^[1] of Respondent Court of Appeals^[2] in CA-G.R. SP No. 37626 promulgated on August 21, 1995. The dispositive portion of the assailed Decision reads:^[3]

“WHEREFORE, in view of the foregoing, the instant Petition for Certiorari, Prohibition, Mandamus, with a prayer for a Temporary Restraining Order/Writ of Preliminary Injunction is hereby DENIED for lack of merit.”

The Court of Appeals affirmed, in effect, the order^[4] of the Regional Trial Court of Manila, Branch 50, which denied petitioner’s motion to dismiss grounded on *litis pendentia*.

The Facts

The facts are undisputed. Private Respondent Anita U. Lorenzana is the lessee of a government property located on Bilibid Viejo Street, near Quezon Boulevard, Manila. After the building on said land was destroyed by fire, Petitioner Juan M. Casil and private respondent entered into a written agreement authorizing the former to develop and administer the property. They also agreed that rentals from the tenants would be divided equally between them. Thus, buildings, stalls and cubicles were constructed on the subject property and leased to tenants. According to private respondent,^[5] petitioner remitted the amount of P64,000 for the months of March and April 1994. Thereafter, the remittances decreased. Private respondent allegedly found that the tenants, except for one or two, had been paying their rentals on time, but that petitioner was not properly remitting her share thereon. Thus, she wrote the tenants informing them that she had already terminated her contract with petitioner and urging them to pay directly to her. Petitioner countered by asking them to ignore private respondent’s letter.

On December 2, 1994, petitioner^[6] filed a complaint against private respondent for

"Breach of Contract and Damages" docketed as Civil Case No. 94-72362 before Branch 45 of the Regional Trial Court of Manila, hereafter referred to as "First Case." Petitioner prayed as follows:^[7]

"WHEREFORE, premises considered, it is most respectfully prayed that, after hearing, judgment be rendered in favor of the plaintiff and against the defendant ordering her:

(1) to respect, abide by and comply with the terms and conditions of the agreement after the Honorable Court shall have upheld its existence and validity;

(2) in the alternative and at the option of the plaintiff, to order the defendant to reimburse and refund the plaintiff of his investments in the property in question in the amount of more than P1,000,000.00, with legal interests from January 1994 and until the said amount is fully paid;

(3) to pay the plaintiff moral damages suffered by him in the amount of P1,000,000.00, more or less;

(4) to pay the plaintiff exemplary damages in the amount of P500,000.00, more or less;

^[5] to pay the plaintiff by way of attorney's fees in the amount of P200,000.00, plus the costs of suit."

Private respondent filed her answer in the First Case on March 14, 1995, praying:^[8]

"WHEREFORE, in view of the foregoing it is respectfully prayed:

- a. That the complaint be dismissed for lack of cause of action;
- b. That plaintiff be ordered to render accounting on the rents he received from the stall holders from the time he collected the deposits/advance rentals to the present and to deposit such amounts as were given/deposited with him in court;
- c. That the Honorable Court orders the collection of the rentals in the stalls and that the same be deposited in court subject to the disposition of the Honorable Court;
- d. That the plaintiff be ordered to pay the defendant the following:
 1. The amount of P500,000.00 as the unremitted amount of owner's share of the defendant but which the plaintiff had withheld; the additional amounts which continue to grow because of the continues forbearance by the plaintiff in remittance;
 2. The amount of P50,000.00 as actual and compensatory damages, expenses of litigation and attorney's fees;
 3. To pay moral damages in the amount of P500,000.00.

4. To pay corrective and exemplary damages in the amount of P100,000.00;

Defendant prays for such other reliefs as are just and equitable in the premises.”

However, before submitting her answer in the First Case, private respondent^[9] filed on January 11, 1995 before Branch 50 of the Regional Trial Court of Manila, her own separate complaint against petitioner for “Rescission of Contract, Accounting and Damages,” docketed as Civil Case No. 95-72598, hereafter referred to as “Second Case.” Private respondent prayed for the following reliefs:^[10]

“WHEREFORE, in view of the foregoing, it is respectfully prayed of the Honorable Court that after hear[ing] judgment be rendered:

- a. Ordering the deposit of the rental into the Court’s custody for proper disposition of the collected amount in accordance with the judgment of the Court;
- b. Ordering the defendant the payment of plaintiff’s share in accordance with Annex ‘A’ of this complaint;
- c. Ordering the defendant to pay his arrears, unremitted to plaintiff in the amount of P245,000 or more;
- d. Ordering the defendant to pay the plaintiff the sum of P50,000 as actual and compensatory damages and expenses of litigation and attorney’s fees;
- e. Ultimately ordering the agreement known as Annex ‘A’ as canceled due to violations thereon perpetuated by the defendant making implementation impractical;
- f. Plaintiff prays for such other reliefs as are just and equitable in the premises.”

On March 13, 1995, petitioner countered with a motion to dismiss the Second Case on the ground of *litis pendentia*.^[11] Subsequently, private respondent filed her opposition to said motion.^[12]

Thereafter, on June 1, 1995, Judge Urbano C. Victorio, Sr. denied the motion.^[13] The Court of Appeals subsequently dismissed the petition for certiorari, thereby affirming the trial court’s denial of the said motion.

Hence, this recourse.^[14]

The Issue

Petitioner raises a single issue:^[15]

“The central issue that is before this Honorable Court is whether or not the two cases, Civil Case No. 94-72363 x x x and Civil Case No. 95-

72598, x x x, both of which involve the same contract and same transaction, should be allowed to be litigated independently and separately of each other.”

Respondent Court’s Ruling

In holding that there was no *litis pendentia*, the Court of Appeals ratiocinated as follows:

“Jurisprudence dictates that:

‘x x x	x x x	x
	x x	

For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *sres* [sic] *adjudicata* to the other. (Ramos v. Ebarle, 182 SCRA 245 citing Marapao v. Mendoza, 119 SCRA 97 and Lopez v. Villaruel, 164 SCRA 616.)

Applying the foregoing criteria to the case at bar. We note that except for the identity of parties, there appears to be a great disparity between the cause of action and reliefs prayed for in Civil Case No. 94-72362 and that in Civil Case No. 95-72598.

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In fine, while plaintiff [petitioner herein] in Civil Case No. 94-72362 seeks to enforce the agreement allegedly entered into between the parties on 04 May 1994 or in the alternative, for the reimbursement and refund of his investment in the property subject of the suit plus damages, the plaintiff [private respondent herein] in Civil Case No. 95-72598 prays for judgment ordering the deposit of rentals, damages and the cancellation of the agreement known as Annex “A” for violation of its terms and conditions by the defendant therein.

In recapitulation, Civil Case, No. 94-72362 seeks to enforce the Agreement, Annex “A”, while Civil Case No. 95-72598 is for the repudiation or cancellation of the said agreement on the ground of violation of its terms and conditions. It is therefore clear that the ground relied upon in petitioner’s Motion to Dismiss is without basis in fact or in law. Consequently, this Court does not find that respondent Court acted in any manner in contravention of law to justify the relief prayed for.”

The Court of Appeals also held that an interlocutory order denying a motion to dismiss could not be the basis of a petition for certiorari.

The Court’s Ruling

The petition is meritorious.

**Preliminary Issue: When May an Interlocutory Order
Be Reviewed on Certiorari?**

Reiterating the position of the Court of Appeals, private respondent contends that the June 1, 1995 order of the Regional Trial Court denying the motion to dismiss is an interlocutory order which cannot be questioned in a petition for certiorari.^[16] Indeed, basic is the doctrine that "the denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by certiorari; it cannot be [the] subject of appeal, until final judgment or order is rendered."^[17] But this rule is not absolute.

In *National Union Fire Insurance Company of Pittsburg vs. Stolt-Nielsen Philippines, Inc.*,^[18] an insurer filed an action against a carrier for the recovery of a sum of money it had allegedly paid to the insured shipper. The carrier filed a motion to dismiss questioning the jurisdiction of the trial court, claiming that the case was arbitrable in accordance with the bill of lading and charter party. The trial court initially denied the motion but subsequently ordered the suspension of its resolution, "since the ground alleged in said motion does not appear to be indubitable." Through a petition for certiorari, the carrier questioned the order of the trial court. Invoking the argument now raised by private respondent, the insurer in that case challenged the resort to certiorari. In sustaining the propriety of a petition for certiorari, this Court ruled:^[19]

"Generally, this would be true. However, the case before us falls under the exception. While a Court Order deferring action on a motion to dismiss until the trial is interlocutory and cannot be challenged until final judgment, still, where it clearly appears that the trial Judge or Court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings (*University of Sto. Tomas vs. Villanueva*, 106 Phil. 439, ^[1959] citing *Philippine International Fair, Inc. et al., vs. Ibañez, et al.*, 94 Phil. 424 ^[1954]; *Enrique vs. Macadaeg, et al.*, 84 Phil. 674 ^[1949]; *San Beda College vs. CIR*, 97 Phil. 787 ^[1955]). Even a cursory reading of the subject Bill of Lading, in relation to the Charter Party, reveals the Court's patent lack of jurisdiction to hear and decide the claim."

Additionally, certiorari is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion^[20] and (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief. Here, the Court may allow certiorari as a mode of redress.^[21]

Justice Florenz D. Regalado, in his *Remedial Law Compendium*, cited these exceptions:^[22]

"However, even when appeal is available and is the proper remedy, the Supreme Court has allowed a writ of certiorari (1) where the appeal does not constitute a speedy and adequate remedy (*Salvadares vs. Pajarillo*,