

**OSCAR M. VILLANUEVA AND MARIELLE V. FAVORITO,
PETITIONERS, VS. THE HONORABLE REYNALDO B. DAWAY, IN HIS
CAPACITY AS THE PRESIDING JUDGE OF BRANCH 90 OF THE
REGIONAL TRIAL COURT O...**

Ponente: BATO, JR., J.

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BATO, JR., J.:

Assailed before this Court via a Petition for Certiorari under Rule 65 of the Rules of Court are the Orders dated April 22 and July 28, 2014 issued by Presiding Judge Reynaldo Daway of the Regional Trial Court of Quezon City [Branch 90] in Case No. Q-12-276.

The factual antecedents:

Mylene Lim and Oscar M. Villanueva are the founding partners of a limited partnership under the name and style Mercurial Ventures, Ltd. Co. [MVLC].

On June 21, 2012, Mylene Lim and her husband, Sherwin Y. Lim [herein private respondents], filed a Complaint for Accounting, Damages, and Dissolution of Partnership with Application for the Appointment of a Receiver and a Management Committee against Oscar M. Villanueva and Marielle V. Favorito [herein petitioners] before the Regional Trial Court [Branch 90, Quezon City], docketed as Case No. Q-12-276. Private respondents alleged therein that the entire paid-up capital of MVLC came from their conjugal partnership of gains and that they had advanced all the funds necessary for the commencement of its operations. Sometime in 2006, Mylene Lim had to take up residence in Canada to pursue her application for citizenship and left the management of MVLC to Oscar Villanueva. Mylene Lim assigned her partnership share to Marielle Favorito, as her trustee, via a Deed of Assignment and Transfer of Rights^[1] dated June 1, 2006 [hereafter referred to as the 2006 Deed] to protect her interest in MVLC. To leave no doubt as to the existence of this trust arrangement, Marielle Favorito simultaneously executed another Deed of Assignment over the same partnership share in favor of Mylene Lim. Despite the assignment of her share to Marielle Favorito, Mylene Lim remained active in the operations of MVLC. Private respondents alleged that Oscar Villanueva took advantage of Mylene Lim's absence and ousted her from MVLC with the aid of Marielle Favorito. Subsequently, it came to private respondents' attention that Oscar Villanueva has been grossly mismanaging the affairs of MVLC and dissipating its assets and funds. In view thereof, they sought an accounting from petitioners, but to no avail. They alleged that since Mylene Lim is a co-owner and a stakeholder in all the partnership assets, she has a right to a formal account of MVLC's business and to request for its dissolution by a judicial decree grounded on Oscar Villanueva's mismanagement. They averred that a receiver and a management committee should be appointed to administer and preserve the properties and funds of MVLC which are in grave and imminent danger of being lost, removed, or materially injured.

Private respondents presented a Deed of Assignment and Transfer of Rights^[2] dated January 2008 [hereafter referred to as the 2008 Deed] described as "Doc. No. 399; Page No. 80; Book No. 3; Series of 2008" and

notarized on March 9, 2009 by Atty. Ramil Joselito B. Tamayo. The deed states that for and in consideration of the amount of P255,000.00, Marielle Favorito transferred all her rights, interests, and participation over MVLC in favor of Mylene Lim.

Petitioners filed their Answer (With Opposition to the Application for Appointment of Receiver and Management Committee) wherein they denied the allegations in the complaint and asserted that the private respondents failed to establish their personality as partners in MVLC. They insisted that Mylene Lim ceased to be a partner of MVLC because she had previously assigned her partnership shares and relinquished her interest to Marielle Favorito, as evidenced by the 2006 Deed. They asserted that there was no trust agreement or arrangement between Marielle Favorito and Mylene Lim. Petitioners assailed the 2008 Deed and claimed that contrary to private respondents' claim, the same was not simultaneously executed with the 2006 Deed. They alleged that the 2008 Deed was a falsified document since Marielle Favorito and Mylene Lim had never appeared before the notary public who supposedly notarized the same.

The RTC issued an Order^[3] setting the case for hearing of private respondents' Application for the Appointment of a Receiver and a Management Committee. The parties were required to submit their position papers/memoranda. Subsequently, the petitioners filed a Motion to Exclude seeking to exclude the 2008 Deed in the resolution of the application for the appointment of a receiver and management committee. The RTC denied the same but directed the private respondents to present the original thereof.^[4] The parties were likewise ordered to submit their respective briefs in support of their arguments as to the genuineness and due execution of the 2008 Deed.^[5] At that instance, private respondents submitted a Questioned Document Report No. 008-13^[6] issued by the Philippine National Police Crime Laboratory [PNP Crime Lab] stating that the submitted standard signatures of Marielle Favorito and her signatures appearing in the Deed of Assignment and Transfer of Rights described as Doc. No. 399; Page No. 80; Book No. 3; Series of 2008, and notarized by Atty. Ramil Joselito B. Tamayo were written by one and the same person.

After the submission of the parties' pleadings, the RTC issued the first assailed Order^[7] on April 22, 2014, the fallo of which reads:

“IN VIEW OF THE FOREGOING, the aforecited Deed of Assignment and Transfer of Rights which appears to be genuine will be considered by this Court in resolving the plaintiffs' application for the appointment of a receiver and a management committee and the said application is deemed submitted for resolution. The parties, however, are given ten (10) days from receipt of a copy of this Order, within which to file their respective position paper on whether or not the plaintiffs' application for the appointment of a receiver or a management committee be granted. The position paper shall be filed in two (2) printed copies with a digital copy of the same in CD format. Thereafter, this Court shall deem said application to be submitted for resolution.

SO ORDERED.”

Petitioners filed a Motion for Reconsideration. Private respondents filed a Motion to Expunge Ad Cautelam and argued that a motion for reconsideration is a prohibited pleading under Rule 1, Section 8(3) of the Interim Rules of Procedure for Intra-Corporate Controversies. On July 28, 2014, the RTC issued the second assailed Order^[8] denying the Motion for Reconsideration and the Motion to Expunge Ad Cautelam. Hence, the present recourse by the petitioners raising the lone issue:

“WHETHER OR NOT RESPONDENT JUDGE GRAVELY ERRED AND ABUSED HIS DISCRETION WHEN HE RULED THAT THE ASSAILED DEED OF ASSIGNMENT AND TRANSFER OF RIGHTS APPEARS TO BE GENUINE AND AS SUCH, THE COURT WOULD CONSIDER IT IN THE RESOLUTION OF PLAINTIFFS' APPLICATION FOR THE APPOINTMENT OF A RECEIVER AND A MANAGEMENT COMMITTEE.”^[9]

The petition must be dismissed for being filed out of time.

Procedural rules setting the period for perfecting an appeal or filing an appellate petition are generally inviolable. It is doctrinally entrenched that appeal is not a constitutional right but a mere statutory privilege. For sure, the perfection of an appeal in the manner and within the period set by law is not only mandatory, but jurisdictional as well. Failure to perfect an appeal renders the judgment appealed from final and executory.[10] Apropos, a party who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[11] The pertinent provision of Section 4 of Rule 65 of the 1997 Revised Rules of Civil Procedure states:

“Section 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.”

At this juncture, it should be pointed out that the assailed Orders were issued by the RTC in the exercise of its special jurisdiction over intra-corporate controversies under Republic Act No. 8799.[12] As admitted by the parties, the present case is an intra-corporate dispute which is governed by the Interim Rules of Procedure for Intra-Corporate Controversies which specifically prohibit the filing of motions for reconsideration under Rule 1, Section 8(3) thereof.[13] Accordingly, the remedy of an aggrieved party is to file a petition for certiorari within sixty (60) days from receipt of the assailed order and not to file a motion for reconsideration, the latter being a prohibited pleading.[14]

Particularly instructive on this matter is the ruling of the Supreme Court in the case of Westmont Investment Corporation vs. Farmix Fertilizer Corporation, et al.[15] wherein one of the parties filed a petition for certiorari and mandamus before this court supposedly seeking the nullification of the Decision (February 2, 2004 Decision) but was actually assailing an interlocutory order cancelling the scheduled pre-trial (November 12, 2003 Order). The Supreme Court ruled:

“The petition before the CA was filed out of time. A perusal of the allegations in the subject petition reveals that though it sought the nullification of the February 2, 2004 Decision of the RTC, what it questioned was the RTC's resolve to render a judgment before trial pursuant to Section 4, Rule 4 of the Interim Rules of Procedure for Intra-Corporate Controversies. x x x

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As correctly pointed out by the Farmix Group, it is very clear that the issues raised in the subject petition pertained to previous orders of the RTC — the November 12 and December 3, 2003 Orders — submitting the case for decision.

The November 12, 2003 Order was received by WINCORP on November 13, 2003. It then filed a Manifestation and Motion adopting the UOB Group's motion for reconsideration of said order and even raised additional arguments. Thereafter, the RTC issued the December 3, 2003 Order denying UOB Group's motion for reconsideration but there was no mention of WINCORP's manifestation and motion.

Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies specifically prohibits the filing of motions for reconsideration x x x

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With the above proscription, the RTC in the first place should not have issued the December 3, 2003 Order denying the UOB Group's motion for reconsideration, which WINCORP adopted. The remedy of an aggrieved party like WINCORP is to file a petition for certiorari within sixty (60) days from receipt of the assailed order and not to file a motion for reconsideration, the latter being a prohibited pleading. Here, WINCORP should

have filed the petition for certiorari before the CA on or before January 12, 2004. It was, however, filed only on February 13, 2004. With that, the CA should have dismissed the petition outright for being filed late.”
[Emphasis supplied]

In the case at bar, based on the Verified Statement of petitioners' counsel, they received the Order dated April 22, 2014 on April 29, 2014. Instead of assailing the order via a petition for certiorari, they opted to file a motion for reconsideration which was denied by the RTC in the Order dated July 28, 2014 and received by the petitioners on August 4, 2014. However, taking into account the proscription against the filing of a motion for reconsideration, petitioners' motion for reconsideration did not toll the 60-day reglementary period to file a petition for certiorari and they should have filed the same before this Court within 60 days from April 29, 2014, i.e. on or before June 28, 2014. Considering that the present petition was only filed on October 2, 2014 or 156 days after the receipt by the petitioners on April 29, 2014 of the assailed Order dated April 22, 2014, the petition should be dismissed for being filed out of time.

Besides, certiorari is not the appropriate remedy to assail the Order dated April 22, 2014. In this order, the RTC ruled that the 2008 Deed appears to be genuine and will be considered by the court in resolving the private respondents' Application for the Appointment of a Receiver and a Management Committee. This order partakes the nature of a ruling on the admissibility of the 2008 Deed as part of private respondents' evidence in support of their application.

Jurisprudence is replete with the rule that certiorari may only be maintained as an appropriate remedy to assail an interlocutory order in cases where the tribunal has issued an order without or in excess of jurisdiction or with grave abuse of discretion.[16] Where the issue or question involves or affects the wisdom or legal soundness of the decision, the same is beyond the province of a petition for certiorari. As long as the trial court acts within its jurisdiction, any alleged error committed in the exercise of its discretion will amount to nothing more than mere errors of judgments, correctible by an appeal and not by a petition for certiorari.[17] In this regard, the determination made by the trial court regarding the admissibility of evidence is but an exercise of its jurisdiction and whatever fault it may have perpetrated in making such a determination is an error in judgment, not of jurisdiction.[18] Thus, settled is the rule that rulings of the trial court on procedural questions and on admissibility of evidence during the course of a trial are interlocutory in nature and may not be the subject of a separate appeal or review on certiorari. They must be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case.[19] If the rule were otherwise, there simply would be no end to the trial of cases, for any litigant, not satisfied with the trial court's ruling admitting or excluding any proffered oral or documentary evidence, would then indefinitely tie up the trial while elevating the ruling for review by the appellate court.[20]

In the present case, the RTC has jurisdiction over the case and in the exercise thereof, the Presiding Judge issued the assailed Order dated April 22, 2014 admitting the 2008 Deed as part of private respondents' evidence in support of their Application for the Appointment of a Receiver and a Management Committee. Accordingly, this matter is beyond the province of a petition for certiorari and must be assigned as an error and reviewed in the appeal properly taken from the decision rendered by the RTC on the appointment of a receiver and/or the merits of the case.

WHEREFORE, the instant Petition for Certiorari is DENIED DUE COURSE and DISMISSED outright.

SO ORDERED.

Barrios, and Diy, JJ., concur.

[1] Rollo, pp. 74-75.

[2] Rollo, pp. 155-156.

[3] Rollo, p. 184.

[4] Rollo, pp. 248-249.

[5] Rollo, p. 250.

[6] Rollo, p. 303.

[7] Rollo, pp. 25-26.

[8] Rollo, p. 338.

[9] Rollo, p. 10.

[10] Land Bank of the Philippines vs. Ascot Holdings and Equities, Inc., et al., G.R. No. 175163, October 19, 2007.

[11] Republic vs. Pantranco North Express, Inc., et al., G.R. No. 178593, February 15, 2012 citing Sim vs. NLRC, G.R. No. 157376, October 2, 2007.

[12] The Securities Regulation Code

[13] Westmont Investment Corporation vs. Farmix Fertilizer Corporation, et al., G.R. No. 165876, October 4, 2010; Land Bank of the Philippines vs. Ascot Holdings and Equities, Inc., et al., G.R. No. 175163, October 19, 2007.

[14] Westmont Investment Corporation vs. Farmix Fertilizer Corporation, et al., G.R. No. 165876, October 4, 2010.

[15] Ibid.

[16] Triplex Enterprises, Inc. vs. PNB-Republic Bank, et al., G.R. No. 151007, July 17, 2006.

[17] Deutsche Bank Manila vs. Spouses Chua Yok See, G.R. No. 165606, February 6, 2006.

[18] Triplex Enterprises, Inc. vs. PNB-Republic Bank, et al., G.R. No. 151007, July 17, 2006.

[19] Triplex Enterprises, Inc. vs. PNB-Republic Bank, et al., G.R. No. 151007, July 17, 2006.

[20] Deutsche Bank Manila vs. Spouses Chua Yok See, G.R. No. 165606, February 6, 2006 citing Lamagan vs. De la Cruz, 148-B Phil. 86 (1971).

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