

**SPS. GODFREY TEVES AND MA. TERESA TEVES, PETITIONER, –
VERSUS – HON. SYLVIA G. AGUIRRE-PADERANGA, PRESIDING
JUDGE, RTC, BRANCH 16 AND INTEGRATED CREDIT &
CORPORATE SERVICES, CO....**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Before Us is a Petition for Certiorari[1] filed pursuant to Rule 65 of the 1997 Rules of Court seeking to nullify the Orders dated July 14, 2010[2] and September 2, 2010[3], both rendered by the Regional Trial Court (RTC), Branch 16, Cebu City in LRC No. 9468.

Factual Antecedents

Petitioner, Spouses Godfrey and Ma. Teresa Teves[4] averred that sometime in 1996 they entered into a dollar loan contract with Standard Charter Bank (Standard) which is secured by a real estate mortgage. Unexpectedly, the economic crisis in 1997 bloated the peso dollar exchange rate to almost double than the original exchange rate, that is, from P26.00 to P40.00. Because of the unexpected collapse of the economy, Sps. Teves were having difficulty catching up to their obligation with Standard and they were hoping to pay it at the prevailing rate of the dollar at the time the loan was incurred.[5]

In 2006, Sps. Teves filed a case for Declaration of Nullity of Contract against Standard before the RTC of Makati, Branch, 149 docketed as Civil Case No. 06-227 (Makati case). However, while the case is pending, Standard extra-judicially foreclosed the property also in 2006 and sold it to Integrated Credit and Corporate Services Company (ICCS). To secure possession, ICCS filed a Petition for Writ of Possession before the RTC, Branch 16 of Cebu City docketed as L.R.C. REC. No. 9468 Case No. 12 Lot No. 32 Blk. 3. ICCS was later on substituted by Ms. Carol Aqui[6] as petitioner in the Writ of Possession case. Ultimately, the possession was awarded to Aqui.[7]

While the final resolution of the Petition for Writ of Possession and the Ex-Parte Motion to Turn Over Monthly Rentals was pending, Sps. Teves and Standard amicably settled the Makati case by a Compromise Agreement.[8]

On July 14, 2010, the RTC issued two Orders. One was an Order denying the Motion for Reconsideration of Sps. Teves on the issue of writ of possession. The other was the one subject of this Petition for Certiorari, that is the delivery of monthly rentals from May 24, 2007 up to the time the property is surrendered. Sps. Teves filed a Partial Motion for Reconsideration dated August 19, 2010 but it was denied by the court a quo in its order dated September 2, 2010.[9]

Aggrieved, Sps. Teves filed the instant Special Civil Action for Certiorari under Rule 65 of the Rules of Court.

Issues

The petitioner proffered the following issues for Our resolution:

“I.

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE MOTION TO TURN OVER THE BACK RENTALS IN A PETITION FOR A WRIT OF POSSESSION TO MS. AQUÍ, WHICH WRIT'S SOLE CONCERN IS WHETHER THE PETITIONER IS ENTITLED TO POSSESSION.

II.

WHETHER OR NOT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONVENIENTLY BRUSHING ASIDE THE JUDGMENT ON COMPROMISE AGREEMENT IN MAKATI CASE BETWEEN PETITIONERS AND STANDARD CHARTER BANK, THE LATTER BEING THE SOURCE OF RIGHTS OF INTEGRATED CREDIT CORPORATE SERVICES AND MS. AQUÍ.”

The Ruling of this Court

The petition lacks merit.

Section 1, Rule 65 of the Rules of Court explicitly provides when a petition for certiorari may be availed of:

SECTION 1. Petition for certiorari. – 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 its or his jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

A writ for certiorari may issue only when the following requirements are set out in the petition and established:

- (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions;
- (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
- (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[10]

In the instant case, the Petition filed under Rule 65 of the Rules of Court is clearly an improper remedy. The Orders subject of the petition partakes the nature of a judgment or final order which is appealable under Rule 41 of the Rules of Court, which states that:

“Section 1. Subject of appeal. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

xxx. (Emphasis Ours)

To justify the filing of the petition, Sps. Teves alleged[11] that the assailed orders are interlocutory in nature, hence, reviewable by certiorari.

A judicious perusal of the challenged orders[12] however revealed that they are final orders and not interlocutory. In *Jose v. Javellana*[13], the Supreme Court citing *Garrido v. Tortogo*[14] distinguished between final and interlocutory orders, thus:

“The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done

except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.”

In this case, the assailed orders do not refer to preliminary matters but rather they dispose the subject matter in its entirety, leaving nothing more to be done except to enforce it by execution. Clearly, it is final order subject to appeal under Rule 41. Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one’s own negligence or error in one’s choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.[15]

Apropos thereto, the instant petition is dismissed because it is improperly brought before this Court.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Lagura-Yap, and *Quijano-Padilla, JJ. concur.

*Acting Junior Member per Office Order No. 472-13-ABR dated December 12, 2013

[1] Rollo, pp. 3-19

[2] Id., pp. 20-21 penned by Presiding Judge Sylva G. Aguirre Paderanga

[3] Id., pp. 22-24

[4] Hereinafter referred to as Sps. Teves

[5] See Petition supra note 1 (at. pp. 5-6)

[6] Hereinafter referred to as Aqui

[7] See Petition supra note 1 (at. p. 6)

[8] See Petition supra note 1 (at. pp. 6-7)

[9] See Petition supra note 1 (at. p. 7-8)

[10] Soriano v. Ombudsman Marcelo, G.R. No. 167743, November 22, 2006

[11] See Petition, supra note 1 (at p. 5)

[12] Supra notes 2 and 3

[13] G.R. No. 158239, January 25, 2012

[14] G.R. No. 156358, August 17, 2011 (the italics are part of the original text).

[15] Madrigal Transport v. Lapanday Holdings Corporation, G.R. No. 156067. August 11, 2004

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