

**ROSE MARIE A. TUMULAK, CHRISTIANE STEP TUMULAK
ALEJANDRINO AND JOSE ANTONIO TUMULAK DIOSANTA,
PETITIONERS, VS. THE HONORABLE JUDGE, RTC BRANCH 53,
LAPU-LAPU CITY AND BANCO DE OR...**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is a Petition for Certiorari[2] under Rule 65 of the Rules of Court seeking to nullify or set aside the Orders dated June 16, 2011[3] and October 3, 2011[4], both rendered by the Regional Trial Court (RTC), Branch 53, Lapu-Lapu City in Civil Case No. R-LLP-10-05910-CV.

Stripped of the non-essentials, the facts are as follows:

On December 29, 2010, Rose Marie A. Tumalak, Christiane Step Tumalak, Alejandrino and Jose Antonio Tumalak Diosanta (petitioners) filed a Complaint[5] before the RTC for Annulment of Mortgage with Prayer for a Writ of Preliminary Injunction (WPI) and Temporary Restraining Order (TRO) against Banco De Oro Unibank, Inc.[6] (formerly Banco de Oro Universal Bank) docketed as Civil Case No. R-LLP-10-05910-CV.

On February 15, 2011, the petitioners received an incomplete Motion to Dismiss[7] from the respondent bank. The petitioners noticed that the annexes mentioned in the pleading were not appended thereto.[8]

A few days later, the petitioners received a Manifestation Re Motion to Dismiss[9] dated February 7, 2011 which submitted the missing annexes in the motion to dismiss. The respondent bank cited inadvertence due to pressure of work as the reason for its failure to attach the missing annexes.[10]

On March 3, 2011, the petitioners filed their Comment to Motion to Dismiss[11] seeking to set aside the motion with supporting laws and jurisprudence.

On June 16, 2011, the RTC rendered the assailed Order[12] granting the respondent bank's motion to dismiss, the dispositive portion whereof reads:

“WHEREFORE, the defendants' MOTION TO DISMISS is hereby GRANTED for being MERITORIOUS AND WELL-TAKEN. The plaintiffs' complaint is hereby DISMISSED FOR LACK OF CAUSE OF ACTION.

Notify the parties through counsel of this order.

SO ORDERED.”

Aggrieved, the petitioners filed a Motion for Reconsideration[13] on August 24, 2011[14] but it was denied by the court a quo in its assailed Order[15] dated October 3, 2011.

Thus, the petitioners are now before this Court via the instant recourse relying on the following grounds:

I.

THE RTC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT GRANTED THE RESPONDENT BANK'S MOTION TO DISMISS ON THE BASIS OF LACK OF CAUSE OF ACTION.

II.

THE RTC ERRED IN NOT GIVING CREDENCE AND NOT APPRECIATING THE RIGHTS OF THE PETITIONERS AS LEGAL BENEFICIARIES OF THE FAMILY HOME AS EXPRESSLY PROVIDED FOR UNDER ARTICLE 158 OF THE FAMILY CODE OF THE PHILIPPINES.

The Ruling of this Court

The petition is bereft of merit.

Section 1, Rule 65 of the Rules of Court 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.[16]

In this case, the instant 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).

In *Neypes v. Hon. Court of Appeals*[17] the Supreme Court defines a final judgment or order as “one that finally disposes of a case, leaving nothing more for the court to do with respect to it. It is an adjudication on the merits which, considering the evidence presented at the trial, declares categorically what the rights and obligations of the parties are; or it may be an order or judgment that dismisses an action. (Emphasis Ours)

In this case, the assailed order of the RTC which granted the motion to dismiss is a final order. It is not interlocutory because the proceedings are terminated; it leaves nothing more to be done by the lower court. It is patent that the assailed orders are within the contemplation of a final judgment or order which are appealable under the rules and not a proper subject of a petition for certiorari under Rule 65.

Basic is the rule that a writ of certiorari will not issue where the remedy of appeal is available to an aggrieved party. A remedy is considered "plain, speedy and adequate" if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency. In this case, appeal was not only

available but also a speedy and adequate remedy.[18]

The ruling of the Supreme Court in the case of *Madrigal Transport Inc. v. Lapanday Holdings Corporation*[19], is very much instructive regarding this issue, thus:

“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.” (Emphasis Ours)

Apropos thereto, since the instant case was improperly brought before this Court, the case should be dismissed.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Delos Santos, J., Chairperson and Lopez, JJ., concur.

[1] Spelled as Stephan in the complaint and other pleadings attached in the petition.

[2] Rollo, pp. 3-13.

[3] Rollo, pp. 14-15, penned by Acting Presiding Judge Wifredo Fiel Navaro.

[4] Rollo, p. 74.

[5] Rollo, pp. 16-20.

[6] Hereinafter referred to as respondent bank.

[7] Rollo, pp. 36-40.

[8] Culled from the Petition, supra note 2 (at pp. 4-5).

[9] Rollo, pp. 41-42.

[10] Culled from the Petition, supra note 2 (at p. 5).

[11] Rollo, pp. 50-55.

[12] Supra note 3.

[13] Rollo, pp. 59-64.

[14] The date alleged in the petition is August 23, 2011.

[15] Supra note 4.

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

[17] G.R. No. 141524, Sept, 14, 2005.

[18] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008.

[19] G.R. No. 156067, August 11, 2004.

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