

MEVCO HOLDINGS CO., INC., PETITIONER, V. HON. WINLOVE DUMAYAS, PRESIDING JUDGE, RTC 59 MAKATI, AND ASSET POOL A (SPV-AMC), INC., RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Before Us is a Petition for Certiorari[1] ("Petition" for brevity) filed by petitioner MEVCO Holdings Co., Inc. ("petitioner" for brevity) under Rule 65 of the Rules of Court. The Petition assails the Order[2] of the Regional Trial Court of Makati City, Branch 59 ("respondent court" for brevity), which Order[3] denied petitioner's "Motion to Dismiss"[4] in Civil Case No. 02-884.

To begin with, petitioner's Petition is dismissible because petitioner availed of the wrong remedy of filing a Petition for Certiorari under Rule 65 of the Rules of Court. This is because, as is the settled rule, a special civil action for Certiorari under Rule 65 of the Rules of Court is not a proper remedy in assailing the court's denial of a Motion to Dismiss. Petitioner should have instead proceeded to trial on the merits; and if an adverse decision would be rendered against it, petitioner could appeal such decision, where it could raise the same defenses or objections that it had raised in its Motion to Dismiss. All of these are in accordance with the following pronouncement of the Supreme Court in *Boston Equity Resources, Inc. vs. Court of Appeals and Lolita G. Toledo*, G.R. No. 173946, June 19, 2013:

"xxx Well settled is the rule that the special civil action for certiorari is not the proper remedy to assail the denial by the trial court of a motion to dismiss. The order of the trial court denying a motion to dismiss is merely interlocutory, as it neither terminates nor finally disposes of a case and still leaves something to be done by the court before a case is finally decided on the merits. Therefore, 'the proper remedy in such a case is to appeal after a decision has been rendered.'" (Emphasis supplied)

Besides, even if a Petition for Certiorari under Rule 65 of the Rules of Court could be considered as the proper remedy to assail respondent court's Order[5] denying petitioner's Motion to Dismiss,[6] the Petition[7] at bench is nevertheless dismissible because of petitioner's failure to have earlier filed the required Motion for Reconsideration of respondent court's Order[8] below. Such filing of the Motion for Reconsideration is a condition precedent before petitioner's filing of the Petition[9] at bench. The fatal consequence for a party's failure to file the required Motion for Reconsideration had already been declared by the Supreme Court in *People's Air Cargo and Warehousing Co., Inc., vs. Honorable Francisco G. Mendiola, et al.*, G.R. No. 181068, May 4, 2010, which is that:

"The petition should be dismissed outright. Firstly, no motion for reconsideration was filed before petitioner filed this petition under Rule 65.

Certiorari is not a defense against the unfavorable consequences of a failure to file the required motion for reconsideration. Petitioner may not designate to itself the determination of whether a motion for reconsideration is necessary or not. The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision. The purpose of this requirement is to enable the court or

agency to rectify its mistakes without the intervention of a higher court. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so. In this case, the petitioner failed. Thus, petitioner should have first interposed a motion for reconsideration.

xxx

The Court cannot bear petitioner's utter disregard of procedural rules and frustrate the objective of attaining just, speedy and orderly judicial proceedings." (Emphasis supplied)

Thus, no choice is given but to dispose this matter accordingly as stated below.

IN VIEW OF ALL THESE, the Petition is DISMISSED.

SO ORDERED.

Dicdican (Chairman) and Paredes, JJ., concur.

[1] Rollo, pp. 3-31.

[2] Rollo, p. 81.

[3] Rollo, p. 81.

[4] Rollo, p. 67.

[5] Rollo, p. 81.

[6] Rollo, p. 67.

[7] Rollo, pp. 3-31.

[8] Rollo, p. 81.

[9] Rollo, pp. 3-31.

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