

PILIPINO TELEPHONE CORPORATION, PETITIONER, VS. RADIOMARINE NETWORK, INC., RESPONDENT.

G.R. No. 152092. August 04, 2010

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to annul, reverse and set aside the Resolution[1] issued on May 2, 2001 by the former Sixth Division of the Court of Appeals in CA-G.R. SP No. 64155, entitled "PILIPINO TELEPHONE CORPORATION v. HON. JUDGE REINATO G. QUILALA, in his capacity as Presiding Judge of the Regional Trial Court of Makati, Branch 57, and RADIOMARINE NETWORK (SMARTNET), Inc." The assailed Court of Appeals Resolution dismissed Pilipino Telephone Corporation's (PILTEL) petition for certiorari under Rule 65 with application for temporary restraining order (TRO) and/or writ of preliminary injunction which sought to set aside the Resolution[2] made by the Regional Trial Court (RTC) of Makati City, Branch 57, dated November 13, 2000, rendering partial summary judgment in Civil Case No. 99-2041, as well as the Order[3] of the same trial court dated January 30, 2001 denying the motion for reconsideration thereof. The instant petition also seeks to annul, reverse and set aside the Court of Appeals Resolution[4] issued on February 7, 2002 denying petitioner's motion for reconsideration of the May 2, 2001 Court of Appeals Resolution.

The genesis of this prolonged controversy can be traced back to the execution of a Contract to Sell[5] on December 12, 1996 between petitioner PILTEL and respondent Radiomarine Network, Inc. (RADIOMARINE), wherein the latter agreed to purchase a 3,500-square meter lot located in Makati City covered by Transfer Certificate of Title (TCT) No. T-195516 issued by the Registry of Deeds for Makati City. The terms of payment that were agreed upon by the parties were embodied in Article II of the said contract, to wit:

The total consideration of FIVE HUNDRED SIXTY MILLION PESOS [P560,000,000.00] shall be paid by the VENDEE, without the need of any demand, to the VENDOR in the following manner:

[a] a downpayment in the amount of ONE HUNDRED EIGHTY MILLION [P180,000,000.00] PESOS, to be paid on or before December 28, 1996;

[b] Any and all outstanding payables which the VENDOR owes to the VENDEE in consideration of the cellular phone units and accessories ordered by the VENDOR and delivered by the VENDEE between the initial downpayment date i.e. December 28, 1996 and April 30, 1997, shall be credited to the VENDEE as additional payment of the purchase price.

[c] The remaining balance, after deducting [a] and [b] above, shall be paid on or about April 30, 1997. It is expressly understood however, that the VENDOR shall submit to the VENDEE, on or about April 20, 1997, a Statement of Account updating the deliveries of cellular phones and its outstanding amount in order that the VENDEE can prepare the final payment. In this way, the amount of final payment shall be made to the VENDOR on or before April 30, 1997. Should the VENDOR be delayed in the submission of the said Statement on the stipulated date, the date of payment of the remaining balance shall be automatically adjusted

for a period equivalent to the number of days by which the VENDOR is delayed in the submission thereof.[6]

Thus, under the terms agreed upon, respondent was to give the amount of P180,000,000.00 as down payment. Any outstanding unpaid obligation, which petitioner owed respondent, would be deducted from the obligations of the latter. The balance, if any, should be paid on or before April 30, 1997.

Contemporaneous with the execution of the Contract to Sell, petitioner wrote a Letter[7] to respondent dated December 11, 1996 in which it expressed its willingness, on a purely best effort basis, to purchase from respondent 300,000 units of various models of Motorola, Mitsubishi and Ericsson brand cellular phones and accessories for the entire year of 1997.

Respondent failed to pay the balance of P380,000,000.00 on the stipulated period of April 30, 1997 alleging, among other things, that petitioner reneged on its commitment to purchase 300,000 units of cellular phones and accessories from respondent and instead purchased the units from other persons/entities.

On December 19, 1997, petitioner returned to respondent the amount of P50,000,000.00, which is part of the P180,000,000.00 down payment made by the latter pursuant to the Contract to Sell as evidenced by a Statement of Account[8] issued by the former.

Respondent then filed a Complaint[9] on December 1, 1999 against petitioner PILTEL seeking either the rescission of the Contract to Sell or the partial specific performance of the same with the RTC of Makati City. It prayed that judgment be rendered (a) ordering PILTEL to convey to it at least thirty-two percent (32%) interest in the Valgoson property, representing the value of its down payment of P180,000,000.00, or in the alternative, ordering PILTEL to return to it the down payment plus interest; (b) ordering PILTEL to pay to it the amount of P81,800,764.96 representing the value of the 300,000 units of various cellular phones which it bought pursuant to the commitment of PILTEL to purchase but which commitment PILTEL disregarded, plus interest, as actual and compensatory damages; and (c) ordering PILTEL to pay to it the attorney's fees in the amount of P500,000.00.

Respondent then filed a Motion for Partial Summary Judgment[10] on October 6, 2000 which was opposed by petitioner in its Comment/Opposition[11] filed on October 26, 2000. The motion was eventually granted by the trial court in its assailed Resolution dated November 13, 2000, the dispositive portion of which reads:

WHEREFORE, the motion for summary judgment is granted and defendant Piltel is hereby ordered to return or to pay to plaintiff Smartnet the down payment of P180 Million less the forfeited amount of P18 Million and the cash advance of P50 Million, or a net of P112 Million with interest at 6% per annum from the extrajudicial demand of October 20, 1998 until finality of the judgment and after this judgment becomes final and executory, additional legal interest at 12% per annum on the total obligation until the judgment is satisfied.[12]

On December 5, 2000, petitioner filed a Motion for Reconsideration[13] which was denied for lack of merit by the RTC in the assailed Order dated January 30, 2001. Prior to the issuance of the said Order, respondent filed its Opposition[14] on December 14, 2000 to which petitioner countered with a Reply[15] filed on January 10, 2001.

Respondent then filed a Manifestation and Motion for Execution[16] on March 15, 2001 manifesting its withdrawal of the two remaining causes of action and moving for the issuance of a Writ of Execution. This was followed by an Alternative Motion for Execution Pending Appeal[17] that was filed by respondent on March 20, 2001, praying for execution pending appeal in the event that then defendant PILTEL would be held to have the right to appeal.

On April 4, 2001, petitioner filed a Petition for Certiorari under Rule 65[18] of the Rules of Court before the Court of Appeals, with an application for a temporary restraining order and a writ of preliminary injunction, alleging grave abuse of discretion on the part of Judge Reinato Quilala in issuing the November 13, 2000

Resolution and the January 30, 2001 Order. This petition was docketed as CA-G.R. SP No. 64155. A week later, respondent filed before the Court of Appeals its Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[19] on April 11, 2001 wherein it called the appellate court's attention to what it perceived as then defendant PILTEL's pursuance of simultaneous reliefs before the trial court and the Court of Appeals that all seek to nullify the November 13, 2000 Resolution of the trial court granting the summary judgment.

Meanwhile, in compliance with the trial court's Order[20] dated April 6, 2001, petitioner filed before it on April 16, 2001, by registered mail, a Consolidated Opposition[21] against respondent's Manifestation and Motion for Execution dated March 15, 2001 and the Alternative Motion for Execution Pending Appeal dated March 20, 2001. On April 17, 2001, respondent filed with the trial court its Ex Parte Manifestation and Motion[22] stating therein that, upon verification with the records of the court that day, then defendant PILTEL had failed to file its Comment/Opposition to respondent's aforementioned pending motions and, thus, respondent moved to submit both motions for the resolution of the trial court without opposition from then defendant PILTEL. Hence, the trial court issued an Order[23] on April 23, 2001 granting the withdrawal of respondent's remaining causes of action and the execution pending appeal, the dispositive portion of which reads:

WHEREFORE, the motion for execution pending appeal of the Partial Summary Judgment rendered on November 13, 2000 is GRANTED.

Let the corresponding Writ of Execution be issued and implemented accordingly.

As a result, the corresponding Writ of Execution Pending Appeal[24] was issued on April 24, 2001.

Back at the Court of Appeals, petitioner filed an Urgent Manifestation and Urgent Reiteratory Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[25] on April 25, 2001.

On that same date and while its Petition for Certiorari under Rule 65 was still pending before the Court of Appeals, petitioner filed with the trial court its Notice of Appeal[26] informing the said court that it will raise before the Court of Appeals the trial court's November 13, 2000 Resolution and April 23, 2001 Order. This appeal was subsequently docketed as CA-G.R. CV No. 71805.

The following day, on April 26, 2001, petitioner filed with the trial court an Urgent Manifestation to Post Supersedeas Bond and Urgent Motion to Defer Execution Pending Appeal.[27]

On April 30, 2001, respondent filed with the Court of Appeals its Supplement (To: Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)[28] while, on the other hand, petitioner filed with the trial court another Urgent Motion to Admit Supersedeas Bond[29] on May 2, 2001. On the same day, by virtue of the Writ of Execution Pending Appeal issued by the trial court and there being no TRO issued against it by the Court of Appeals in CA-G.R. SP No. 64155, Sheriff George C. Ragutana issued a Notice of Sale on Execution Pending Appeal of Real Property[30] giving notice to the public that the sale by public auction of the real property described in TCT No. 195516 or the Valgoson property shall be on May 31, 2001. Likewise on the same date, the Court of Appeals denied petitioner's petition for certiorari along with the request for the issuance of a TRO in CA-G.R. SP No. 64155, stating:

We resolve to dismiss the petition.

As pointed out by private respondent, an appeal from a partial summary judgment may be allowed by the trial court under Section 1(g), Rule 41 of the 1997 Rules of Civil Procedure, which reads:

"SECTION 1. Subject of appeal. x x x

No appeal may be taken from:

x x x x

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;

x x x x"

Thus, petitioner should have filed, with leave of court, a notice of appeal from the partial summary judgment dated November 13, 2000 before resorting to this special civil action of certiorari. Moreover with the withdrawal and dismissal of private respondent's remaining two causes of action, the summary judgment dated November 13, 2000 ceased to be partial as it may be considered to have completely disposed of the entire case and, therefore, appealable.

Anent the alleged impropriety of a summary judgment, suffice it to say that certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by certiorari.

Petitioner likewise assails the Order of execution dated April 23, 2001. However, the copy of said Order attached to the urgent manifestation and urgent reiteratory motion for the issuance of a temporary restraining order and/or writ of preliminary injunction is a mere unsigned xerox copy thereof, contrary to the requirement in Section 1, Rule 65 of the 1997 Rules of Civil Procedure that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof. Thus, Section 3, Rule 46 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to comply with the requirement, inter alia, that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof, shall be sufficient ground for the dismissal thereof. As held in *Manila Midtown Hotels and Land Corporation vs. NLRC*, certiorari, being an extraordinary remedy, the party who seeks to avail of the same must observe the rules laid down by law.[31]

Thus, the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is DISMISSED for insufficiency in form and substance.[32]

In response to petitioner's May 2, 2001 motion filed in the trial court, respondent filed an Opposition to the Urgent Motion to Admit Supersedeas Bond[33] on May 4, 2001 alleging that the offer to post supersedeas bond does not entitle then defendant PILTEL to a deferment of execution pending appeal since at that time, compelling reasons warrant immediate execution and that PILTEL has resorted to forum shopping in order to have the execution postponed. On May 8, 2001, petitioner filed its Reply (to the Opposition to Motion to Admit Supersedeas Bond)[34] to which respondent filed its Rejoinder[35] on May 9, 2001.

Notwithstanding the dismissal of petitioner's Petition for Certiorari (CA-G.R. SP No. 64155), petitioner still filed on May 9, 2001 a Supplemental Petition for Certiorari[36] challenging the April 23, 2001 Order of the trial court as having been issued with grave abuse of discretion. Petitioner likewise filed a (Second) Urgent Manifestation and Reiteratory Motion for a Temporary Restraining Order and/or Writ of Preliminary Injunction[37] on May 17, 2001. Both pleadings were merely noted without action by the Court of Appeals in a Resolution[38] dated May 18, 2001, to wit:

In view of the resolution of this Court dated May 2, 2001 which dismissed the petition, the Supplemental Petition

dated May 9, 2001 and (Second) Urgent Manifestation and Reiteratory Motion for a Temporary Restraining Order and/or Writ of Preliminary Injunction dated May 15, 2001 filed by petitioner are hereby NOTED without action.

On May 22, 2001, petitioner filed its Motion for Reconsideration[39] to the May 2, 2001 Court of Appeals Resolution. It followed this up with the filing of a pleading entitled "(A) Third Urgent Manifestation and Reiteratory Motion for a Temporary Restraining Order and/or Writ of Preliminary Injunction; and (B) Motion to Set Case for Oral Arguments"[40] on June 1, 2001.

Respondent filed its Comment[41] and Supplemental Comment[42] on June 15, 2001 and June 25, 2001, respectively, to petitioner's May 22, 2001 Motion for Reconsideration. In return, petitioner filed by registered mail its Consolidated Reply (to Smartnet's [1] Comment and [2] Supplemental Comment) on August 23, 2001. Subsequently, respondent filed its Rejoinder[43] on September 17, 2001.

Back at the trial court, it issued an Order[44] on May 11, 2001 denying petitioner's Urgent Manifestation to Post Supersedeas Bond and Urgent Motion to Defer Execution Pending Appeal on the ground that the reasons for the allowance of execution pending appeal still prevail and the posting of a supersedeas bond does not entitle the judgment debtor to a suspension of execution as a matter of right. The dispositive portion of which states:

WHEREFORE, defendant's Urgent Manifestation to Post Supersedeas Bond, Urgent Motion to Defer Execution Pending Appeal and the Urgent Motion to Admit Supersedeas Bond are hereby denied for lack of merit.[45]

Petitioner then filed on May 30, 2001 a Motion for Reconsideration[46] of the said Order of the trial court. This was subsequently denied by the trial court in an Order[47] issued on August 14, 2001, which likewise granted the withdrawal of all the remaining incidents of the case. This Order later became the subject of petitioner's Supplemental Notice of Appeal[48] which it filed on September 4, 2001.

On January 4, 2002, respondent filed a Manifestation[49] in CA-G.R. SP No. 64155 informing the Court of Appeals of the status of the appeal taken by petitioner in CA-G.R. CV No. 71805 and reiterating the gross violations of the rule against forum shopping allegedly committed by the same. A month later, or on February 7, 2002, the Court of Appeals denied petitioner's May 22, 2001 Motion for Reconsideration in CA-G.R. SP No. 64155. In denying petitioner's motion, the appellate court declared that "even assuming that the Petition for Certiorari has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping." The Court of Appeals concluded that petitioner committed forum shopping because the subject matter of its petition for certiorari and the notice of appeal that it subsequently filed are one and the same, to wit:

It should be noted that after the filing of the instant petition, petitioner appealed to this Court the partial summary judgment dated November 13, 2000 and the Order dated April 23, 2001, declaring the partial summary judgment to have finally disposed of the entire case and granting the motion for execution pending appeal, docketed as CA-G.R. CV No. 71805, which are the same subject matter of the instant petition.[50]

Hence, this petition where petitioner raises the following grounds:

I.

A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS THE PROPER REMEDY FROM A PARTIAL SUMMARY JUDGMENT.

A. SECTION 1(G), RULE 41 OF THE RULES OF COURT DOES NOT APPLY TO PARTIAL SUMMARY JUDGMENTS.

B. A PARTIAL SUMMARY JUDGMENT IS AN INTERLOCUTORY ORDER THAT CANNOT BE THE SUBJECT OF AN APPEAL.

C. THE RULES AND EXISTING JURISPRUDENCE DICTATE THAT APPEAL FROM A PARTIAL SUMMARY JUDGMENT MUST BE TAKEN TOGETHER WITH THE JUDGMENT THAT MAY BE RENDERED IN THE ENTIRE CASE AFTER TRIAL.

D. THE REMEDY OF AN AGGRIEVED PARTY FROM A PARTIAL SUMMARY JUDGMENT IS A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT.

E. EVEN ASSUMING, -ONLY FOR THE SAKE OF ARGUMENT, THAT SECTION 1, RULE 41 IS APPLICABLE, THE GENERAL RULE EVEN AS STATED IN THE SAME SECTION ITSELF, IS THAT "NO APPEAL MAY BE TAKEN FROM A JUDGMENT OR FINAL ORDER FOR OR AGAINST ONE OR MORE OF SEVERAL PARTIES OR IN SEPARATE CLAIMS, COUNTERCLAIMS, CROSS-CLAIMS AND THIRD-PARTY COMPLAINTS, WHILE THE MAIN CASE IS PENDING." MOREOVER, THE EXCEPTION PROVIDED THEREIN IS NOT EVEN MANDATORY.

F. AT THE TIME OF THE FILING OF THE PETITION IN THIS CASE, THE PARTIAL SUMMARY JUDGMENT WAS TRULY "PARTIAL", AND NOT FINAL IN THE SENSE THAT IT DISPOSES OF THE ENTIRE CASE.

II.

EVEN ASSUMING, ONLY FOR THE SAKE OF ARGUMENT, THAT APPEAL IS THE PROPER REMEDY FROM A PARTIAL SUMMARY JUDGMENT, A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS NOT BARRED.

III.

JUDGE QUILALA COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN RENDERING THE ASSAILED PARTIAL SUMMARY JUDGMENT.

IV.

THE ISSUES RAISED IN PILTEL'S PETITION FOR CERTIORARI WITH THE COURT OF APPEALS ARE DIFFERENT FROM THE ISSUES RAISED IN PILTEL'S APPEAL.

V.

PILTEL DID NOT COMMIT FORUM SHOPPING.

VI.

THE COURT OF APPEALS FAILED TO APPRECIATE THAT THE URGENT MANIFESTATION AND URGENT REITERATORY MOTION FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER DID NOT ASSAIL THE 23 APRIL 2001 [ORDER]; THE SAID ORDER WAS ASSAILED IN THE ORIGINAL SUPPLEMENTAL PETITION."[51]

A careful perusal of the voluminous pleadings filed by the parties leads us to conclude that this case revolves around the following core issues:

I.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM SHOPPING

II.

WHETHER OR NOT GRAVE ABUSE OF DISCRETION ATTENDED THE TRIAL COURT'S ISSUANCE OF A SUMMARY JUDGMENT

III.

WHETHER OR NOT THE PETITION FOR CERTIORARI WAS PROPERLY DISMISSED

We find the instant petition to be without merit.

Anent the first issue, petitioner asserts that the filing of its Notice of Appeal in CA-G.R. CV No. 71805 subsequent to the filing of its Petition for Certiorari before the Court of Appeals in CA-G.R. SP No. 64155 does not amount to forum shopping because the issues raised in the petition for certiorari are different from the issues raised in the appeal since the former seeks to have an order declared null and void for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction while the latter deals with the correctness and legal soundness of the questioned decision. Furthermore, petitioner argues that a subsequent appeal was not adequate to address the grave abuse of discretion committed by the trial court judge and could not have provided adequate relief. Lastly, petitioner maintains that the element of res judicata is not present in this case so as to amount to forum shopping on the part of petitioner.[52]

We cannot countenance petitioner's nuanced position on this issue. The captions/subheadings of the petitioner's petition for certiorari and the argument captions/subheadings of petitioner's appellant's brief may, at first blush, appear to be dissimilar. However, the discussion that expounded on each of them plainly betray a similarity of issues presented, grounds argued, and reliefs sought.

An example is petitioner's first argument in its Petition for Certiorari before the Court of Appeals in CA-G.R. SP No. 64155 where it alleged grave abuse of discretion on the part of Judge Quilala in granting summary judgment despite the existence of materially disputed facts and the absence of supporting affidavits, to wit:

I

RESPONDENT JUDGE COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN RENDERING SUMMARY JUDGMENT NOTWITHSTANDING THE FACT THAT:

A. THE PLEADINGS READILY AND IMMEDIATELY SHOW THAT THERE ARE MATERIAL DISPUTED FACTS DETERMINATIVE OF THE PARTIES' CLAIMS AND DEFENSES WHICH CANNOT BE SETTLED WITHOUT PRESENTATION OF EVIDENCE."[53]

In support of this allegation, petitioner states the following:

51. From the foregoing statement of the positions of the parties, the following questions of material fact determinative of the parties claim and defenses are glaring:

51.1 Does the Letter constitute a valid, binding, and enforceable agreement between the parties?

51.2 Did the parties intend the Letter to form an integral part of the Contract?

51.3 Was the Letter a material consideration for SMARTNET's entering into the Contract?

51.4 Did PILTEL violate or fail to comply with any of its obligations under the Contract?

51.5 Assuming, arguendo, that the Letter constitutes a valid binding, and enforceable agreement, did PILTEL violate any of its provisions?

51.6 Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract and/or

the Letter?

52. BECAUSE OF THE INDISPUTABLE EXISTENCE OF THE FOREGOING MATERIAL QUESTIONS OF FACT WHICH GO INTO THE HEART OF THE PARTIES' RESPECTIVE CLAIMS AND DEFENSES, ESPECIALLY SMARTNET'S CLAIM FOR PARTIAL SPECIFIC PERFORMANCE OR (IN THE ALTERNATIVE) FOR RESCISSION, SUMMARY JUDGMENT IS EVIDENTLY NOT PROPER."[54]

On the other hand, petitioner assigned as its first error in its Appellant's Brief in CA-G.R. No. 71805 the following contention:

I.

JUDGE QUILALA GRIEVOUSLY ERRED IN HOLDING THAT THE CONTRACT HAD BEEN "RENDERED VOID AND INEFFECTIVE AND WITHOUT FORCE AND EFFECT."[55]

In discussing this point, petitioner argued that the trial court was required to consider the materially disputed facts before it can properly grant summary judgment instead of directly disputing the finding that the contract had been rendered void, to wit:

Clearly, then, in order for Judge Quilala to determine whether or not SMARTNET is entitled to any of the relief it prayed for, it had to resolve, among others, the following issues of fact: Does the Letter constitute a valid, binding, and enforceable agreement between the parties? Did the parties intend the Letter to form an integral part of the Contract? Did PILTEL violate or fail to comply with any of its obligations under the Contract to Sell? Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract to Sell?"[56]

In the present Petition for Review, we likewise find the same arguments, to wit:

6.31. In this case, Judge Quilala rendered partial summary judgment notwithstanding the fact that THE PLEADINGS READILY AND IMMEDIATELY SHOW THAT THERE ARE MATERIAL DISPUTED FACTS DETERMINATIVE OF THE PARTIES' CLAIMS AND DEFENSES WHICH CANNOT BE SETTLED WITHOUT PRESENTATION OF EVIDENCE.

x x x x

The rendition of the foregoing summary judgment is improper because, from the pleadings of the parties and the issues presented at the pre-trial conference, including the issues presented by PILTEL in its pre-trial brief, the following questions of material fact determinative of the parties claim and defenses are glaring:

1. Does the Letter constitute a valid, binding, and enforceable agreement between the parties?
2. Did the parties intend the Letter to form an integral part of the Contract?
3. Was the Letter a material consideration for SMARTNET's entering into the Contract?
4. Did PILTEL violate or fail to comply with any of its obligations under the Contract?
5. Assuming, arguendo, that the Letter constitutes a valid, binding, and enforceable agreement, did PILTEL violate any of its provisions?
6. Is PILTEL guilty of fraud or bad faith in the negotiation, performance or execution of the Contract and/or the Letter?"[57]

From the foregoing, it can be clearly deduced that petitioner repeated the same argument in its appeal and its petition for certiorari filed in the Court of Appeals as well as in the instant petition that the trial court's resolution of the case by summary judgment was invalid allegedly because of materially disputed facts which would render

the whole proceeding beyond the purview of the established rules on summary judgment.

Another illustration of petitioner's proclivity to repeat its arguments in different fora can be found in the second argument of its petition for certiorari in CA-G.R. SP No. 64155 which reads:

II

EVEN ASSUMING, ARGUENDO, THAT SUMMARY JUDGMENT IS PROPER, RESPONDENT JUDGE COMMITTED PATENT AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN HE DISREGARDED THE LAW AND WELL-ESTABLISHED JURISPRUDENCE IN RENDERING JUDGMENT IN FAVOR OF SMARTNET.

A. SMARTNET [RADIOMARINE] WENT TO COURT WITH UNCLEAN HANDS. HENCE, IT IS NOT ENTITLED TO RELIEF FROM THE COURTS.

B. SMARTNET CANNOT RENDER THE CONTRACT VOID AND UNENFORCEABLE THROUGH ITS OWN DEFAULT, BREACH, OR FAILURE.

C. SMARTNET IS NOT ENTITLED TO INTEREST.

D. SMARTNET'S OBLIGATION TO PAY THE BALANCE OF THE PURCHASE PRICE IS VALID, BINDING, ENFORCEABLE AND SUBSISTING.[58]

In support of which, petitioner discussed the following points:

83. SMARTNET cannot avoid the Contract by the simple expedient of not paying. Here, the bare truth of the matter is that SMARTNET is invoking its own refusal or failure to comply with its obligation under the Contract to annul or render the Contract ineffective or void.

x x x x

85. SMARTNET is in effect saying that, since it has not paid, and it failed and refused, and continues to fail and refuse, to pay the balance of the purchase price for the Valgoson Property, the Contract is automatically annulled or rescinded.

86. Article 1182 of the Civil Code provides that: "When the fulfillment of the obligation depends upon the sole will of the debtor, the conditional obligation shall be void." Thus, in *Osmena vs. Rama*, it was held that the condition to pay (the balance of the purchase price of shares of stock) as soon as the debtor sells her house is void.

87. Article 1186 of the Civil Code provides that: "The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." The reason for the rule is that ONE MUST NOT PROFIT BY HIS OWN FAULT.

88. In *Mana vs. Luzon Consolidated Mines & Co.*, a company engaged the services of a contractor to construct a road. Halfway, the company directed the contractor to stop work. The contractor sued for the entire contract price. The company refused, asserting that only half of the project was finished. The Court of Appeals sustained the contractor and directed the company to pay the entire contract price, saying that the project is deemed fulfilled because it was the company that voluntarily prevented its completion.

89. The case of *Valencia vs. Rehabilitation Finance Corporation* and Court of Appeals is even more applicable. There, the Rehabilitation Finance Corporation ("RFC") advertised to the general public an "invitation to bid" for the construction of a building in Davao City. Valencia submitted a bid for the electrical and plumbing works for the building. RFC awarded the plumbing to Valencia. Valencia was asked to put up the performance bond as required under the contract. Valencia did not put up the bond and also did not begin the work. When RFC sued him, among the defenses put up by Valencia was that, since he did not put up a bond, there was no

contract since the condition was not complied with. The Supreme Court, affirming the Court of Appeals, held Valencia liable for damages to RFC, saying that:

x x x x

90. Article 1308 of the Civil Code states that: "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them." Thus, in *Fernandez vs. Manila Electric Company*, the Supreme Court held that the validity and fulfillment of contracts can not be left to the will of one of the contracting parties, and the mere fact that one has made a poor bargain is no ground for setting aside an agreement.[59] (citations omitted.)

These same arguments were raised by petitioner in its Appellant's Brief in CA-G.R. CV No. 71805, to wit:

77. SMARTNET is in effect saying that, since it has not paid, and it failed and refused, and continues to fail and refuse, to pay the balance of the purchase price for the Valgoson Property, the Contract to Sell is automatically annulled or rescinded.

78. SMARTNET cannot avoid the Contract by the simple expedient of not paying. The validity of, compliance with, or fulfillment of a contract cannot be left to the will of one of the parties.

79. Article 1182 of the Civil Code provides that: "When the fulfillment of the obligation depends upon the sole will of the debtor, the conditional obligation shall be void." Thus, in *Osmena vs. Rama*, it was held that the condition to pay (the balance of the purchase price of shares of stock) as soon as the debtor sells her house is void.

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x x x x

83. Article 1308 of the Civil Code states that: "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them." Thus, in *Fernandez vs. Manila Electric Company*, the Supreme Court held that the validity and fulfillment of contracts can not be left to the will of one of the contracting parties, and the mere fact that one has made a poor bargain is no ground for setting aside an agreement.[60]

It is apparent from the above that petitioner puts forward in both its petition for certiorari and its appeal before the Court of Appeals as well as in the present petition the assertion that the contract at issue was rendered void and

unenforceable due to mistakes attributable solely to the respondent in this case.

And finally, the most glaring demonstration of petitioner's penchant for forum shopping can be found in the prayer of its Court of Appeals' petition for certiorari and appeal including the instant petition before this Court.

In the present petition for review, petitioner sought in its prayer the following relief:

WHEREFORE, PILTEL respectfully prays that judgment be rendered:

1. Annuling, reversing and setting aside the First and Second Assailed Resolutions;
2. Annuling, reversing and setting aside the Resolution of the trial court dated 13 November 2000 and the Order of the trial court dated 30 January 2001.

PILTEL likewise prays for such further or other relief as may be deemed just and equitable under the circumstances.[61] (Emphasis supplied.)

In its petition for certiorari in CA-G.R. SP No. 64155, petitioner prayed for the following:

2.1. Annul, reverse and set aside the Assailed Resolution dated 13 November 2000 and the assailed Order dated 30 January 2001, AND DENY SMARTNET'S MOTION FOR PARTIAL SUMMARY JUDGMENT;

2.2 (a) Order the lower court to proceed with the trial on the merits of the case; or, in the alternative,

(b) dismiss the Complaint, and order SMARTNET to pay PILTEL:

(i) Php380,000,000.00, representing the balance of the purchase price for the Valgoson Property, plus interest until the same is fully paid;

(ii) Php5,000,000.00, as moral damages;

(iii) Php1,000,000.00, as exemplary damages; and

(iv) Php1,000,000.00, as attorney's fees and costs of litigation."[62] (Emphasis supplied.)

While in its Supplemental Petition for Certiorari in the same appellate case, petitioner prayed:

2. After due proceedings, judgment be rendered annulling, reversing and setting aside the Order of 23 April 2001 in so far as it grants execution pending appeal.[63] (Emphasis supplied.)

Petitioner's Appellant's Brief in CA-G.R. CV No. 71805, on the other hand, sought the following relief:

WHEREFORE, PILTEL respectfully prays that judgment be rendered as follows:

a. Annuling, reversing and setting aside (1) the Assailed Resolution dated 13 November 2000, (2) the First Assailed Order dated 23 April 2001, and (3) the Second Assailed Order dated 14 August 2001;

b. Remanding the case to the Trial Court and allow the parties to present evidence on their respective claims and defenses; and

c. Ordering SMARTNET to return the amount of Php131,795,836.38 to PILTEL, plus interest.

PILTEL likewise prays for such further or other relief just and equitable under the circumstances."[64] (Emphasis supplied.)

It is plainly apparent from the foregoing that both the then pending suits before the Court of Appeals and the instant petition before this Court raised the same issues and sought the same reliefs, i.e., the annulment of the November 13, 2000 Resolution of the trial court granting partial summary judgment, as well as the withdrawal of

the other causes of action thereby disposing of the entire case, and the execution of the summary judgment as directed by the trial court in its April 23, 2001 Order.

Forum shopping exists when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other.[65] There is *res judicata* when (1) there is a final judgment or order; (2) the court rendering it has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits; and (4) there is between the two cases identity of parties, subject matter and causes of action. For *litis pendentia* to exist, there must be (1) identity of the parties or at least such as representing the same interests in both actions; (2) identity of the rights asserted and relief prayed for, the relief founded on the same facts; and (3) identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[66]

In the case at bar, the elements of *litis pendentia* and, consequently, of forum shopping are present in petitioner's petition for certiorari along with its supplemental petition for certiorari in CA-G.R. SP No. 64155 and in its appeal in CA-G.R. CV No. 71850. Obviously, there is identity of parties. Likewise, there is identity of causes of action as both cases assign the same errors on the part of the trial court. Finally, there is identity of reliefs as both seek the annulment and reversal of the same orders. It is not difficult to conclude that a decision in either case will necessarily have a practical legal effect in the other.

Petitioner further argues that the petition for certiorari alleged grave abuse of discretion on the part of the trial court judge in issuing the November 13, 2000 Resolution and April 23, 2001 Order, while the appeal alleged grave error on the part of the trial court judge in its November 13, 2000 Resolution, April 23, 2001 Order, and August 14, 2001 Order which are entirely different issues.[67] However, it is our view that, though petitioner attempts to make distinctions between them, the two cases at issue are undoubtedly directed against the November 13, 2000 Resolution and the April 23, 2001 Order of the trial court, as well as all rulings of the trial court arising from these two. Clearly, both actions alleged the same right supposedly violated by the same acts of the trial court which caused the same damage to petitioner, thus, in violation of the rule against forum shopping. The present petition likewise violates the said rule.

Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and raising substantially the same issues either pending in, or already resolved adversely by some other court, or to increase his chances of obtaining a favorable decision if not in one court, then in another. The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts as it constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[68]

Petitioner stresses that when it filed its petition for certiorari directed against the November 13, 2000 Resolution granting partial summary judgment, the remedy of appeal was not yet an available option to it as the case in the trial court had yet to be concluded. However, upon the issuance of the April 23, 2001 Order which rendered the previously partial summary judgment as the complete and final judgment disposing of the trial court case and was the subject of petitioner's supplemental petition for certiorari, appeal was now open to petitioner which it readily pursued. Since the issues raised and the reliefs sought in its petition for certiorari and its appeal are identical which would make a decision in either one as *res judicata* on the other and given that it is axiomatic that the availability of appeal precludes resort to certiorari, it was imperative on the part of petitioner to withdraw its petition for certiorari which it did not do. This is where the petitioner crossed the line into the forbidden recesses of forum shopping. The assailed February 7, 2002 Court of Appeals Resolution correctly pointed this out citing

the case of *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*,^[69] to wit:

Second, the Petition for Certiorari was superseded by the filing, before the Court of Appeals, of a subsequent appeal docketed as CA-G.R. CV No. 57119, questioning the Resolution and the two Orders. In this light, there was no more reason for the CA to resolve the Petition for Certiorari.

Section 1, Rule 65 of the Rules of Court, clearly provides that a petition for certiorari is available only when "there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law." A petition for certiorari cannot coexist with an appeal or any other adequate remedy. The existence and the availability of the right to appeal are antithetical to the availment of the special civil action for certiorari. As the Court has held, these two remedies are "mutually exclusive."

In this case, the subsequent appeal constitutes an adequate remedy. In fact it is the appropriate remedy, because it assails not only the Resolution but also the two Orders.

It has been held that "what is determinative of the propriety of certiorari is the danger of failure of justice without the writ, not the mere absence of all other legal remedies." The Court is satisfied that the denial of the Petition for Certiorari by the Court of Appeals will not result in a failure of justice, for petitioner's rights are adequately and, in fact, more appropriately addressed in the appeal.

Third, petitioner's submission that the Petition for Certiorari has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for Certiorari, like the appeal, seeks to set aside the Resolution and the two Orders.

Such argument unwittingly discloses a recourse to forum shopping, which has been held as "the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for Certiorari and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for Certiorari has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.

With respect to the second issue of whether or not grave abuse of discretion attended the granting of summary judgment by the trial court, we rule that a petition for an extraordinary writ of certiorari is not a proper remedy to assail the propriety of the said act. The pertinent provision of law in this particular case is Section 1, Rule 65 of the 1997 Rules of Civil Procedure, to wit:

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 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.

In other words, a writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.^[70]

In *Rizal Security & Protective Services, Inc v. Maraan*,^[71] we elaborated on the aforementioned grounds:

The respondent acts without jurisdiction if he does not have the legal power to determine the case. There is

excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law. And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction. x x x.

After a careful review of the records, we find that petitioner failed to sufficiently show that the trial court, in rendering a partial summary judgment, so gravely abused its discretion amounting to lack or excess of jurisdiction. Verily, the circumstances of this case do not show that the trial court's discretion was exercised arbitrarily, capriciously, or despotically because the November 13, 2000 Resolution laid down the factual and legal bases relied upon by the trial court in granting the Motion for Partial Summary Judgment. Even assuming arguendo, that the trial court committed errors in its appreciation of the facts and pleadings on record, as petitioner contends in its petition for certiorari, we agree with the Court of Appeals that these involve errors of judgment which are not reviewable by certiorari. As this Court held:

As a legal recourse, the special civil action of certiorari is a limited form of review. The jurisdiction of this Court is narrow in scope; it is restricted to resolving errors of jurisdiction, not errors of judgment. Indeed, as long as the courts below act within their jurisdiction, alleged errors committed in the exercise of their discretion will amount to mere errors of judgment correctable by an appeal or a petition for review.[72]

Lastly, we resolve the issue of whether or not the petition for certiorari filed by petitioner was properly dismissed by the Court of Appeals. In dismissing the said petition, the Court of Appeals ruled in its May 2, 2001 Resolution that appeal and not certiorari is the proper remedy available to petitioner - a holding that was restated by the appellate court in its February 7, 2002 Resolution citing the case of *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*.^[73]

Petitioner defends its resort to dual remedies by arguing that, under the peculiar circumstances of the case, it could properly avail of a petition for certiorari and an appeal and that the former is not barred even with the filing of the latter.^[74] However, we deem such a position untenable as established jurisprudence declares otherwise.

The well-settled rule is that certiorari is not available where the aggrieved party's remedy of appeal is plain, speedy and adequate in the ordinary course, the reason being that certiorari cannot co-exist with an appeal or any other adequate remedy. The existence and availability of the right of appeal are antithetical to the availment of the special civil action for certiorari. These two remedies are mutually exclusive.^[75]

Moreover, in *Monterey Foods Corporation v. Eserjose*,^[76] the Court distinguished when a partial summary judgment is appealable and when it is not, to wit:

Petitioners maintain that the order granting partial summary judgment was merely interlocutory in nature and did not dispose of the action in its entirety. They cite the doctrines laid down in *Province of Pangasinan v. Court of Appeals* and *Guevarra v. Court of Appeals*, where the Court categorically stated that a partial summary judgment is not a final or appealable judgment.

Petitioners' position is untenable.

The rulings in *Province of Pangasinan* and *Guevarra* is not applicable in the case at bar. The said cases specifically delved on the appeal of a partial summary judgment, which did not dispose of all the reliefs sought in the complaint. In the case at bar, other than the admitted liability of petitioners to respondents under the contract growing agreement, all other reliefs sought under the complaint had already been expressly waived by respondent before the trial court. Accordingly, the assailed November 25, 1999 Order of the trial court which granted partial summary judgment in favor of respondent was in the nature of a final order which leaves nothing more for the court to adjudicate in respect to the complaint. x x x. (Emphases supplied.)

Petitioner strongly asserts that the aforementioned Court of Appeals' Resolutions are invalid while conveniently failing to take into account the fact that the petition for certiorari it filed before the Court of Appeals had become moot and academic because of the following circumstances: First, when the May 2, 2001 Resolution was issued by the Court of Appeals, respondent had already filed its Manifestation and Motion for Execution dated March 15, 2001 withdrawing its remaining causes of action and the RTC had already granted this in an Order dated April 23, 2001. In effect, this Order terminated the case before the RTC and the proper mode to challenge it is through an appeal which petitioner did through a Notice of Appeal on April 25, 2001. Not unlike the factual circumstances found in the Ley Construction and Development Corporation case, the petition for certiorari was correctly dismissed since superseding events had already rendered it not only improper because appeal already became an available remedy but also superfluous as the appeal that was eventually filed dealt essentially with the same issues. Second, when the February 7, 2002 Resolution was issued, there was already a Sheriff's Return^[77] issued on September 21, 2001 informing the trial court that the writ of execution pending appeal was fully satisfied rendering the case bereft of any pending incidents at the trial court level and, thus, concluded already which would make an appeal as the proper mode to question it and not a petition for certiorari.

To reiterate, it is axiomatic that a writ of certiorari is available 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 jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.^[78] As we have previously discussed, we find that the trial court acted within its jurisdiction when it granted summary judgment and the purported errors attributed to the trial court appear to be errors of judgment not reviewable by certiorari but by appeal. Likewise, we find that the particular circumstances of this case made the remedy of appeal the proper vehicle to thresh out the issues raised by petitioner and rendered the petition for certiorari improper and moot, notwithstanding the fact that it was filed earlier than the appeal subsequently filed by petitioner. Premises considered, the petition for certiorari was properly dismissed by the Court of Appeals.

WHEREFORE, the petition is hereby DENIED, and the assailed Resolutions of the Court of Appeals are AFFIRMED in toto. With costs against petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin,^[*] Del Castillo, and Perez, JJ., concur.

[*] Per Special Order No. 876 dated August 2, 2010.

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring; rollo, pp. 77-82.

[2] Rollo, pp. 220-224.

[3] Id. at 271-272.

[4] Id. at 83-85.

[5] Id. at 111-114.

[6] Id. at 114.

[7] Id. at 115.

[8] Id. at 170.

- [9] Id. at 117-132.
- [10] Id. at 397-412.
- [11] Id. at 202-219.
- [12] Id. at 224.
- [13] Id. at 225-245.
- [14] Id. at 451-481.
- [15] Id. at 246-270.
- [16] Id. at 507-511.
- [17] Id. at 512-519.
- [18] Id. at 273-320.
- [19] Id. at 1350-1370.
- [20] Id. at 563.
- [21] Id. at 520-534.
- [22] Id. at 1407-1432.
- [23] Id. at 535-537.
- [24] Id. at 579-580.
- [25] Id. at 542-578.
- [26] Id. at 538-541.
- [27] Id. at 1435-1437.
- [28] Id. at 1377-1390.
- [29] Id. at 586-589.
- [30] CA rollo, pp. 414-415.
- [31] Rollo, pp. 80-81.
- [32] Id. at 81.
- [33] Id. at 1438-1449.
- [34] Id. at 1464-1471.
- [35] Id. at 1489A-1492.
- [36] Id. at 608-618.
- [37] Id. at 1500-1503.
- [38] Id. at 1507.
- [39] Id. at 86-110.

[40] Id. at 1533-1536.

[41] Id. at 1540-1588.

[42] Id. at 1589-1592.

[43] Id. at 1654-1677.

[44] Id. at 1537-1539.

[45] Id. at 1539.

[46] Id. at 1736-1740.

[47] Id. at 668-669.

[48] Id. at 670-673.

[49] Id. at 1719-1725.

[50] Id. at 83-84.

[51] Id. at 38-40.

[52] Id. at 2309-2326.

[53] Id. at 290.

[54] Id. at 298-299.

[55] Id. at 680.

[56] Id. at 719.

[57] Id. at 51-53.

[58] Id. at 291.

[59] Id. at 308-311.

[60] Id. at 729-732.

[61] Id. at 69-70.

[62] Id. at 316.

[63] Id. at 616.

[64] Id. at 736-737.

[65] Santos v. Heirs of Dominga Lustre, G.R. No. 151016, August 6, 2008, 561 SCRA 120, 128; Briones v. Henson-Cruz, G.R. No. 159130, August 22, 2008, 563 SCRA 69, 84-85; Land Bank of the Philippines v. AMS Farming Corporation, G.R. No. 174971, October 15, 2008, 569 SCRA 154, 179-180; Presidential Commission on Good Government v. Sandiganbayan, G.R. No. 157592, October 15, 2008, 569 SCRA 360, 375; Rural Bank of the Seven Lakes (S.P.C.), Inc. v. Dan, G.R. No. 174109, December 24, 2008, 575 SCRA 476, 485-486.

[66] Coca-Cola Bottlers (Phils.), Inc. v. Social Security Commission, G.R. No. 159323, July 31, 2008, 560 SCRA 719, 734-736.

[67] Rollo, pp. 2310-2316. oner. the same damage to petiti orddrs

[68] Tokio Marine Malayan Insurance Company, Incorporated v. Valdez, G.R. No. 150107, January 28, 2008, 542 SCRA 455, 465.

[69] 393 Phil. 633, 640-642 (2000).

[70] Delos Santos v. Court of Appeals, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

[71] G.R. No. 124915, February 18, 2008, 546 SCRA 23, 32, citing Condo Suite Club Travel, Inc. v. National Labor Relations Commission, 380 Phil. 660, 667 (2000).

[72] Apostol v. Court of Appeals, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92.

[73] Supra note 69.

[74] Rollo, pp. 2288-2290.

[75] Estinozo v. Court of Appeals, G.R. No. 150276, February 12, 2008, 544 SCRA 422, 431; Macawiag v. Balindong, G.R. No. 159210, September 20, 2006, 502 SCRA 454, 465; Caballes v. Court of Appeals, 492 Phil. 410, 420 (2005); People v. Court of Appeals, G.R. No. 144332, June 10, 2004, 431 SCRA 610, 617.

[76] 457 Phil. 771, 782 (2003).

[77] Rollo, pp. 1733-1734.

[78] RULES OF COURT, Rule 65, Sec. 1.

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