

SONIC STEEL INDUSTRIES, INC., PETITIONER, VS. COURT OF APPEALS, HON. EDUARDO B. PERALTA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 17 OF THE REGIONAL TRIAL COURT OF MANILA, S...

G.R. No. 165976. July 29, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In the present petition for certiorari, petitioner assails the September 17, 2004 Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 85023, which denied reconsideration of its August 2, 2004 Resolution[2] that dismissed the petition before it for failure to comply with the requirements of Section 1, Rule 65 in relation with Section 3, Rule 46 and Section 11, Rule 13 of the Rules of Court.

Factual Antecedents

Petitioner Sonic Steel Industries Inc. (Sonic) is engaged in the manufacture and sale of galvanized steel sheets or G.I. sheets. In 2001, petitioner procured from respondent Seaboard-Eastern Insurance Company, Inc. (Seaboard) a marine open policy designated: "Seaboard-Eastern Insurance Co., Marine Open Policy No. 10227". In March 2003 petitioner loaded 371 crates of G.I. sheets valued at P19,979,460.00 on board respondent Premier Shipping Lines, Inc.'s (Premier's) vessel, the M/V Premship XIV, for shipment to its clients in Davao City. Prior to departure of the vessel, respondent Premier procured an insurance policy from respondent Oriental Assurance Corporation (Oriental) to cover the goods of petitioner shipped on board the vessel.

On or about March 28, 2003, while the vessel was navigating in the vicinity of Calangaman Island, the Master of the vessel ordered an inspection on the ship. In the course of the inspection, it was discovered that the cargo was flooded with seawater.

Despite petitioner Sonic's demand for indemnification for the total loss of its insured cargo, respondents Seaboard and Oriental refused to settle its claim. Hence, Sonic filed a complaint with the Regional Trial Court (RTC) of Manila, Branch 17.

Petitioner's original complaint against respondents was filed within 60 days of the loss of its goods, in compliance with a stipulation in the bill of lading issued by respondent Premier that "(s)uits based on claims arising from shortage, damage, or non delivery of shipment shall be instituted within [60] days of the date of accrual of the right of action."

As respondents did not pay petitioner's claim even long after 90 days from the date of accrual of the right of action, petitioner moved before the RTC to have its Amended Complaint admitted, to incorporate Sections 243 and 244 of the Insurance Code, which provide for the proper interest to be awarded in cases where there is unreasonable refusal to pay valid claims.

After respondent Seaboard's Comment and/or Opposition to Petitioner's Motion for Leave of Court to File Amended Complaint and Motion to Admit Amended Complaint, and petitioner's Reply thereto were filed, the RTC denied the admission of petitioner's Amended Complaint. Petitioner moved for a reconsideration but the same was denied. Petitioner thus filed a petition for certiorari with the CA.

Proceedings Before the Court of Appeals

The CA dismissed the petition for certiorari filed before it in its August 2, 2004 Resolution, which disposed as follows:

WHEREFORE, we hereby DISMISS the petition for failure to comply with the requirements of Section 1, Rule 65 in relation with Section 3, Rule 46 and Section 11, Rule 13 of the Revised Rules of Court.

SO ORDERED.[3]

The motion for reconsideration was denied in the assailed September 17, 2004 Resolution, the dispositive portion of which states:

CONSIDERING THE FOREGOING, we hereby DENY petitioner's motion for reconsideration for having been filed out of time.

SO ORDERED.[4]

Hence, this petition.

Issues

Petitioner raises the following issues:

A

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT GRANT PETITIONER'S MOTION FOR RECONSIDERATION DATED AUGUST 23, 2004

B

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF DISCRETION WHEN IT DID NOT GRANT PETITIONER'S PETITION FOR CERTIORARI

C

WHETHER X X X THE HONORABLE PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT ADMIT PETITIONER'S AMENDED COMPLAINT[5]

Petitioner's Arguments

Petitioner contends that its motion for reconsideration was validly filed with the CA two days after the date it was due for the reason that it was the next working day for government offices. It further contends that the Rules of Court should not be interpreted to sacrifice substantial rights of a litigant at the altar of technicalities and that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying its petition for certiorari based on minor technical lapses.

Petitioner also submits that Sections 243 and 244 of the Insurance Code are applicable in its case and therefore the

incorporation of the said sections is a valid cause for amending the Complaint. Petitioner, thus, contends that the CA committed grave abuse of discretion when it gave countenance to the alleged irregular acts of RTC Judge Eduardo B. Peralta by refusing to admit petitioner's Motion for Leave of Court to File Amended Complaint and Motion to Admit Amended Complaint.

Respondents' Arguments

Respondents on the other hand contend that the dismissal by the CA of the petition for certiorari before it was anchored on and sanctioned by law and was not despotic, whimsical or arbitrary. They submit that disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.

They further contend that certiorari lies only to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction and not errors of judgment. They claim that the present petition does not meet or satisfy the yardstick of grave abuse of discretion.

Our Ruling

At the outset, it is relevant to mention that on December 11, 2007, petitioner moved to withdraw^[6] the petition as the petitioner and respondent Seaboard have amicably settled the instant controversy. In our January 16, 2008 Resolution^[7] we granted petitioner's petition to withdraw petition and considered the case CLOSED and TERMINATED as to respondent Seaboard.

As against respondents Premier and Oriental, we also dismiss the petition.

Certiorari under Rule 65 is proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. For a writ of certiorari to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction but must also show that he has no plain, speedy and adequate remedy in the ordinary course of law.^[8] On September 29, 2004, petitioner received the assailed September 17, 2004 Resolution denying reconsideration of the dismissal of its petition with the CA. It could have filed an appeal by certiorari under Rule 45 of the Rules of Court, but it did not. Instead it allowed almost two months to pass and then filed a petition for certiorari under Rule 65. Certiorari is not a substitute for a lost appeal. The Rules preclude recourse to the special civil action of certiorari if appeal, by way of a petition for review, is available as the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.^[9]

At any rate, we find no grave abuse of discretion amounting to lack of or excess of jurisdiction on the part of the CA. Petitioner admittedly committed lapses. The CA's ruling on such lapses was within the contemplation of the law. "For certiorari to prosper, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility".^[10] In the present case, petitioner failed to sufficiently show that the CA ruled in a capricious and whimsical manner amounting to an arbitrary exercise of power.

WHEREFORE, the petition is DISMISSED. The September 17, 2004 Resolution of the Court of Appeals is AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] CA rollo, pp. 248-250; penned by Associate Justice Arturo D. Brion (now a Member of this Court) and concurred in by Associate Justices Delilah Vidallon-Magtolis and Eliezer R. Delos Santos.

[2] Id. at 196-197.

[3] Id. at 197.

[4] Id. at 249.

[5] Rollo, pp. 523-524.

[6] Id. at 549-552.

[7] Id. at 553.

[8] Tacloban Far East Marketing Corporation v. Court of Appeals, G.R.No. 182320, September 11, 2009, 599 SCRA 662, 668-669.

[9] Id. at 668 citing Rigor v. Tenth Division of the Court of Appeals, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 381-382.

[10] Id. at 760.

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