

[**G.R. No. 133145, August 29, 2000**]

**LEY CONSTRUCTION & DEVELOPMENT CORPORATION,
PETITIONER, VS. HYATT INDUSTRIAL MANUFACTURING
CORPORATION, PRINCETON DEVELOPMENT CORPORATION AND
YU HE CHING, RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

An appeal and a petition for *certiorari* are mutually exclusive. 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. Hence, a petition for *certiorari* is rendered moot by an appeal challenging not only the trial court resolution dismissing the complaint, but also the two interlocutory orders earlier assailed in the petition.

The Case

Before us is a Petition for Review on *Certiorari* assailing the July 24, 1997 and March 4, 1998 Resolutions^[1] of the Court of Appeals (CA) in CA-GR SP No. 42512. The decretal portion of the first CA Resolution reads as follows:^[2]

“WHEREFORE, the Petition is hereby DENIED DUE COURSE for having become MOOT AND ACADEMIC.”

The second assailed Resolution, on the other hand, denied petitioner’s Motion for Reconsideration.^[3]

The Petition for *Certiorari*, which was denied by the appellate court, assailed two Orders^[4] of the Regional Trial Court (RTC) of Makati.^[5] In its September 17, 1996 Order, the RTC had ruled as follows:

“WHEREFORE, in order not to delay the early termination of this case, all depositions set for hearing are hereby cancelled[;] set this case for pre-trial on November 14, 1996 at 2:00 o’clock in the afternoon.”^[6]

In its October 14, 1996 Order, the RTC denied reconsideration in this wise:

“WHEREFORE, [petitioner’s] Motion for Partial Reconsideration of the Order of this Court dated September 17, 1996 is DENIED.

“The pre-trial conference set on November 14, 1996 at 2:00 o’clock in the afternoon shall proceed as scheduled.”^[7]

The Facts

The undisputed facts are summarized by the Court of Appeals as follows:^[8]

"On 1 April 1994, the petitioner filed a complaint for specific performance and damages against respondent Hyatt Industrial Manufacturing Corporation (Hyatt, for brevity), docketed as Civil Case No. 94-1429 of the respondent court. The Complaint was subsequently amended twice, to implead respondents Princeton Development Corporation (Princeton, for brevity) and Yu He Ching (Yu, for brevity) as defendants.

After some skirmishes over the admission of the second amended complaint, culminating in the decision of this Court in CA-G.R. SP No. 36206 dated 15 May 1995, the private respondents filed their answers to the said second amended complaint.

On 2 April 1996, the petitioner served notices to take the depositions of respondent Yu, Elena Sy and Pacita Tan Go. On 17 July 1996, the respondent court issued an Order allowing the petitioner to take the depositions of Elena Sy on 17 September 1996, respondent Yu on 26 September 1996, and Pacita Tan Go on 3 October 1996.

However, on 15 August 1996, respondent Hyatt filed a manifestation stating that Elena Sy had resigned from the company effective 1 July 1996. On 17 September 1996, Elena Sy failed to appear at her scheduled deposition-taking. The respondent court then issued its first questioned Order cancelling all depositions set for hearing, in order not to delay the early termination of the case, and setting the case for pre-trial on 14 November 1996, at 2:00 p.m.

On 24 September 1996, petitioner filed a Motion for Partial Reconsideration of the said Order insofar as it cancelled the scheduled taking of depositions.

On 14 October 1996, the respondent court issued the second questioned order.

Hence, this petition for *certiorari*, in which the petitioner accuses the respondent court of having acted with grave abuse of discretion in depriving it of 'the due process right to discovery.'

The petition was raffled to Justice Pacita Cañezares-Nye, who was then terminally ill. After her untimely death on February 28, 1997, the petition was re-raffled to the undersigned ponente on April 3, 1997.

In the meantime, the respondent court went ahead with the pre-trial of Civil Case No. 94-1429 on 14 November 1996.^[9] Petitioner moved for its suspension, and when (the) said motion was denied, refused to enter into the pre-trial conference. On motion of the private respondents, petitioner was declared non-suited and its complaint was dismissed.

On 23 December 1996, petitioner filed a Conditional Notice of Appeal (conditioned on its failure to file a motion for reconsideration within the reglementary period). Thereafter, it filed a motion for reconsideration, which the respondent court denied. Hence, its appeal is now pending before this Court."

Ruling of the Court of Appeals

The Petition for *Certiorari* was deemed moot and academic by the appellate court, which ratiocinated as follows:

"We agree with the private respondents that the petition in this case has already become moot and academic. Any decision of ours will not

produce any practical legal effect. According to the petitioner, if we annul the questioned Orders, the dismissal of its Complaint by the trial [court] will have to be set aside in its pending appeal. That assumes that the division handling the appeal will agree with Our decision. On the other hand, it may not. Also other issues may be involved therein than the validity of the herein questioned orders.

"We cannot pre-empt the decision that might be rendered in such appeal. The division to [which] it has been assigned should be left free to resolve the same. On the other hand, it is better that this Court speak with one voice."

Hence, this Petition.^[10]

The Issues

In its Memorandum, petitioner submits the following issues for our consideration:

"(a) Whether or not the Honorable Court of Appeals committed reversible error in dismissing the petition for *certiorari* in CA-GR SP No. 42512 below as being supposedly moot and academic; and

(b) Whether or not the Honorable Court of Appeals committed reversible error in not nullifying the Orders dated 17 September and 14 October 1996 of the RTC, which arbitrarily deprived petitioner of the right to discovery."^[11]

In the main, the Court will determine whether the Court of Appeals erred in denying due course to the Petition for *Certiorari* on the ground of mootness.

The Court's Ruling

The Petition before us has no merit.

Main Issue: Mootness of the Petition for *Certiorari*

Petitioner contends that the appellate court erred in holding that the Petition for *Certiorari*, which had assailed the two interlocutory RTC Orders, was moot, academic and devoid of any practical legal effect. It insists that a ruling on the merits on the said Petition "would have a practical legal effect since it would likely result in the setting aside of the dismissal of petitioner's amended complaint."^[12]

We disagree. First, it should be stressed that the said Petition sought to set aside only the two interlocutory RTC Orders, not the December 3, 1996 Resolution^[13] dismissing the Complaint. Verily, the Petition could not have assailed the Resolution, which was issued after the filing of the former.

Under the circumstances, granting the Petition for *Certiorari* and setting aside the two Orders are manifestly pointless, considering that the Complaint itself had already been dismissed. Indeed, the reversal of the assailed Orders would have practical effect only if the dismissal were also set aside and the Complaint reinstated. In other words, the dismissal of the Complaint rendered the Petition for *Certiorari* devoid of any practical value.