

FIRST DIVISION

[G.R. No. 201378, October 18, 2017]

**G.V. FLORIDA TRANSPORT, INC., PETITIONER, V. TIARA
COMMERCIAL CORPORATION, RESPONDENT.**

DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court filed by petitioner G.V. Florida Transport Inc. (GV Florida) to challenge the Decision of the Court of Appeals (CA) in CA-G.R. SP No. 110760 dated October 13, 2011 (Decision)^[2] and its Resolution dated March 26, 2012 (Resolution)^[3] which denied GV Florida's subsequent motion for reconsideration. The CA granted respondent Tiara Commercial Corporation's (TCC) petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. It found that Branch 129 of the Regional Trial Court (RTC), Caloocan City, acted with grave abuse of discretion when it refused to grant TCC's motion to dismiss GV Florida's third-party complaint in an action for damages pending before the RTC.

The bus company Victory Liner, Inc. (VLI) filed an action for damages^[4] against GV Florida and its bus driver Arnold Vizquera (Vizquera) before the RTC. This action arose out of a vehicle collision between the buses of VLI and GV Florida along Capirpiwan, Cordon, Isabela on May 1, 2007. In its complaint, VLI claimed that Vizquera's negligence was the proximate cause of the collision and GV Florida failed to exercise due diligence in supervising its employee.^[5]

In its Answer,^[6] GV Florida alleged that the Michelin tires of its bus had factory and mechanical defects which caused a tire blow-out. This, it claimed, was the proximate cause of the vehicle collision.^[7]

On April 8, 2008, GV Florida instituted a third-party complaint^[8] against TCC. According to GV Florida, on March 23, 2007, it purchased from TCC fifty (50) brand new Michelin tires, four (4) of which were installed into the bus that figured in the collision. It claimed that though Vizquera exerted all efforts humanly possible to avoid the accident, the bus nevertheless swerved to the oncoming south-bound lane and into the VLI bus. GV Florida maintains that the "proximate cause of the accident is the tire blow out which was brought about by factory and mechanical defects in the Michelin tires which third-party plaintiff GV Florida absolutely and totally had no control over."^[9]

The RTC ordered the service of summons on TCC. In the return of summons, it appears that the sheriff served the summons to a certain Cherry Gino-gino (Gino-gino) who represented herself as an accounting manager authorized by TCC to receive summons on its behalf.^[10]

TCC filed a Special Entry of Appearance with an Ex-parte Motion for Extension of Time to File Responsive Pleading and/or Motion to Dismiss.^[11] Therein, it stated that the summons was received by Gino-gino, its financial supervisor. The RTC granted TCC's prayer for extension of time to file a responsive pleading or a motion to dismiss.

TCC eventually filed a motion to dismiss^[12] GV Florida's third-party complaint. First, it argued that the RTC never acquired jurisdiction over it due to improper service of summons. Under Section 11 of Rule 14, there is an exclusive list of the persons upon whom service of summons on domestic juridical entities may be made. As the summons in this case was not served on any of the persons listed in Section 11 of Rule 14, there was no proper service of summons on TCC that would vest the RTC with jurisdiction over it. Second, TCC stated that the purported cause of action in the third-party complaint is a claim for an implied warranty which has already prescribed, having been made beyond the six-month period allowed in the Civil Code. Third, the third-party complaint failed to state a cause of action against TCC. TCC harped on the fact that GV Florida did not mention in the third-party complaint that the tires that blew out were purchased from it. Moreover, a tire blow-out does not relieve a common carrier of its liability. Fourth, TCC argues that there is a condition precedent which the law requires before a claim for implied warranty may be made. The party claiming must submit a warranty claim and demand. GV Florida failed to do so in this case. Fifth, GV Florida has the burden of first establishing that the cause of the accident was not its own negligence before it can be allowed to file a third-party complaint against TCC. Sixth, venue was improperly laid since TCC's principal place of business is in Makati. And finally, TCC states that the third-party complaint should be dismissed due to GV Florida's failure to implead Michelin as an indispensable party.^[13]

The RTC denied TCC's motion to dismiss in an Order^[14] dated March 2, 2009. It also denied TCC's subsequent motion for reconsideration in an Order^[15] dated July 16, 2009.

On October 5, 2009, TCC filed before the CA a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court challenging the RTC's denial of its motion to dismiss and motion for reconsideration.

In the meantime, TCC filed its Answer *Ad Cautelam*^[16] which repeated its arguments pertaining to jurisdiction, the prescription of the implied warranty claim, the impropriety of the third-party complaint and the venue of the action, and the failure to implead Michelin. Upon order of the RTC, the case was set for pre-trial^[17] and the parties submitted their respective pre-trial briefs. Notably, TCC filed its pre-trial brief without any reservations as to the issue of jurisdiction. Moreover, not only did it fail to include in its identification of issues the question of the RTC's jurisdiction, TCC even reserved the option to present additional evidence.^[18]

On October 13, 2011, the CA rendered its Decision granting TCC's petition and reversing the Orders of the RTC. Emphasizing that the enumeration in Section 11 of Rule 14 of the Rules of Court is exclusive, the CA found that the RTC never acquired jurisdiction over TCC because of the improper service of summons upon a person not named in the enumeration.^[19] It then proceeded to rule that GV Florida's third-party complaint against TCC is a claim for implied warranty which, under Article

1571 of the Civil Code, must be filed within six months from delivery. While the CA noted that the delivery receipt for the tires is not in the records of the case, it may be assumed that the tires were delivered a few days after the purchase date of March 23, 2007. Since GV Florida only filed the third party complaint on April 8, 2008, the action has prescribed.^[20]

GV Florida thus filed this petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the CA's Decision.

GV Florida argues that the RTC acquired jurisdiction over TCC. While it agrees that the enumeration in Section 11 of Rule 14 of the Rules of Court is exclusive, GV Florida argues that service of summons is not the only means through which a court acquires jurisdiction over a party. Under Section 20 of Rule 14, voluntary appearance of a defendant is equivalent to service of summons, which then gives a court jurisdiction over such defendant. In this case, GV Florida claims that TCC voluntarily appeared and submitted to the jurisdiction of the RTC when it filed motions and pleadings seeking affirmative relief from said court. It adds that Section 11 of Rule 14 is only a general rule which allows for substantial compliance when there is clear proof that the domestic juridical entity in fact received the summons. Moreover, GV Florida argues that improper service of summons is not a ground for dismissal of the third-party complaint since the RTC has the authority to issue *alias* summons.^[21]

GV Florida also challenges the CA's ruling that its third-party complaint against TCC should be dismissed on the ground of prescription. It claims that prescription cannot be the basis of a dismissal when the issue involves evidentiary matters that can only be threshed out during trial. In this case, GV Florida asserts that the issue of whether its action has prescribed requires a determination of when the Michelin tires were delivered. Thus, there is a need to examine the delivery receipts which, as GV Florida highlights, are not in the records of the CA as stated in the Decision itself.^[22]

In its Comment, TCC raises the procedural defense that GV Florida's petition was filed out of time. It insists that GV Florida's motion for extension of time to file its petition is no longer allowed by virtue of AM No. 7-7-12-SC which prohibits the filing of motions for extension of time in petitions filed under Rule 45 and Rule 65 of the Rules of Court.^[23] Further, TCC repeats its position that the RTC did not acquire jurisdiction over it due to improper service of summons. It also disputes GV Florida's argument that it voluntarily appeared. TCC insists that it initially filed a Special Entry of Appearance to apprise the RTC that "[TCC] is represented without necessarily waiving any right/s of the latter."^[24] TCC adds that in its motion to dismiss and Answer *Ad Cautelam*, it consistently raised the question of the propriety of the service of summons and the RTC's lack of jurisdiction over it.^[25]

Moreover, TCC insists that GV Florida's implied warranty claim has prescribed and that the latter has, in any case, failed to comply with a condition precedent—the filing of a warranty claim or demand. TCC also insists that GV Florida has never complained about the other Michelin tires it purchased. This, in TCC's view, belies GV Florida's claim that the tires are defective.^[26]

TCC also contends that GV Florida's filing of the third-party complaint is improper. It explains that the test for ascertaining whether a third-party complaint may be filed

is whether the third-party defendant may assert any defense which the third-party plaintiff may have against the original plaintiff in the original case. However, GV Florida's defense against VLI, which is lack of negligence, is personal to GV Florida and cannot be raised by TCC for its own benefit. TCC also asserts that in any case, the venue of the third-party complaint is improperly laid since TCC's principal place of business is in Makati.^[27]

Finally, TCC claims that the third-party complaint should be dismissed for failure to implead an indispensable party—Michelin, the manufacturer of the tires which GV Florida claims are defective.^[28]

We **GRANT** the petition.

I

We emphasize that GV Florida's appeal came from an original special civil action for *certiorari* and prohibition under Rule 65 filed before the CA. In cases such as this, the question of law presented before us is whether the CA was correct in its ruling that the lower court acted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[29]

In particular, the main issue we must resolve is whether the CA correctly found that the RTC's Order dismissing GV Florida's third-party complaint is tainted with grave abuse of discretion which, in turn, merits its reversal and the reinstitution of the third-party complaint.

A

However, we shall first resolve the procedural issue raised by TCC pertaining to the timeliness of this petition.

Section 2 of Rule 45 of the Rules of Court governing the procedure for filing an appeal through a petition for review on *certiorari* expressly allows the filing of a motion for extension of time. Under the Rules, the period to file a petition for review on *certiorari* is fifteen (15) days from receipt of the judgment, resolution, or final order appealed from. Nevertheless, on motion of the party filed before the reglementary period, this Court may grant extension for a period not exceeding thirty (30) days. In a Resolution^[30] dated July 16, 2012, we granted Florida's motion for extension of time. We thus find GV Florida's petition to be timely filed.

B

The central issue in this case arose from the RTC's Order dated March 2, 2009 denying TCC's motion to dismiss GV Florida's third-party complaint. In remedial law, an order denying a motion to dismiss is classified as an interlocutory order.^[31] This classification is vital because the kind of court order determines the particular remedy that a losing party may pursue. In the case of a final order—one that finally disposes of a case—the proper remedy is an appeal. On the other hand, when an order is merely interlocutory—one which refers to something between the commencement and end of the suit which decides some point or matter but is not the final decision of the whole controversy,^[32]—Section 1 of Rule 41 provides that an appeal cannot be had. In this instance, a party's recourse is to file an answer, with the option to include grounds stated in the motion to dismiss, and proceed to

trial. In the event that an adverse judgment is rendered, the party can file an appeal and raise the interlocutory order as an error.^[33]

This general rule is subject to a narrow exception. A party may question an interlocutory order without awaiting judgment after trial if its issuance is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.^[34] In this case, the party can file a special civil action for *certiorari* under Rule 65.

A special civil action for *certiorari* is an original civil action and not an appeal. An appeal aims to correct errors in judgment and rectify errors in the appreciation of facts and law which a lower court may have committed in the proper exercise of its jurisdiction.^[35] A special civil action for *certiorari*, on the other hand, is used to correct errors in *jurisdiction*. We have defined an error in jurisdiction as "one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."^[36]

This distinction finds concrete significance when a party pleads before a higher court seeking the correction of a particular order. When a party seeks an appeal of a final order, his or her petition must identify the errors in the lower court's findings of fact and law. Meanwhile, when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion.

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave "as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."^[37] In more concrete terms, not every error committed by a tribunal amounts to grave abuse of discretion. A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for *certiorari*. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.^[38]

In *Pahila-Garrido v. Tortogo*,^[39] we found grave abuse of discretion when a trial court judge issued a temporary restraining order to prevent the implementation of a writ of execution for an indefinite period. There, we declared that the blatant violation of the Rules of Court is clearly grave abuse of discretion.^[40] In *Belongilot v. Cua*,^[41] we also ruled that the Ombudsman's dismissal of a complaint for a violation of Republic Act No. 3019 was attended with grave abuse of discretion because it used irrelevant considerations and refused to properly examine pertinent facts in arriving at its decision on the issue of probable cause.^[42] We held that "an examination of the records reveal a collective pattern of action—done capriciously, whimsically and without regard to existing rules and attendant facts."^[43]

There are instances when litigants file a petition seeking the reversal of an interlocutory order yet their pleadings fail to allege any grave abuse of discretion on the part of the lower tribunal. Instead, these petitions merely identify errors of fact and law and seek their reversal. In such a case, the higher court must dismiss the petition because it fails to allege the core requirement of a Rule 65 petition—the allegation of the presence of grave abuse of discretion. Without this requirement,