

## SECOND DIVISION

[ G.R. No. 183869, August 03, 2015 ]

**LEONARDO L. VILLALON, PETITIONER, VS. RENATO E. LIRIO,  
RESPONDENT.**

### DECISION

**BRION, J.:**

This appeal by certiorari<sup>[1]</sup> assails the March 31, 2008 Decision<sup>[2]</sup> and the July 21, 2008 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. No. SP No. 94154.

The CA reversed and set aside the October 17, 2005<sup>[4]</sup> and February 14, 2006<sup>[5]</sup> Orders of the Regional Trial Court (RTQ,<sup>[6]</sup> which dismissed the complaint<sup>[7]</sup> filed by respondent Renato E. Lirio (Lirio) against petitioner Leonardo L. Villalon (*Villalon*).

#### The Factual Antecedents

Lirio and Semicon Integrated Electronics Corporation (Semicon) entered into a contract of lease<sup>[8]</sup> covering Lirio's properties<sup>[9]</sup> in Pasig City. Villalon, who was then Semicon's president and chairman of the board, represented the lessee corporation in the lease contract.

Prior to the expiration of the lease, Semicon terminated the contract and allegedly left unpaid rentals, damages, and interest. Lirio demanded payment but Semicon and Villalon failed to pay.<sup>[10]</sup>

As a result, Lirio filed on May 17, 2005 a complaint for sum of money with prayer for preliminary attachment against Semicon and Villalon.<sup>[11]</sup>

In his complaint, Lirio alleged that Semicon and Villalon unjustly pre-terminated the lease and failed to pay the unpaid rentals despite demand. In praying for the issuance of a preliminary attachment, Lirio claimed that Villalon fraudulently and surreptitiously removed Semicon's equipment, merchandise, and other effects from the leased premises, preventing him to exercise his right, among others, to take inventories of these effects, merchandise, and equipment.<sup>[12]</sup>

In response, Villalon filed a motion to dismiss<sup>[13]</sup> on the ground that the complaint failed to state a cause of action against him. He argued that he is not a real party-in-interest in the action as he is merely an officer of Semicon. Villalon further contended that there was no competent allegation in the complaint about any supposed wrongdoing on his part to warrant his inclusion as a party defendant.

#### The Ruling of the Regional Trial Court

The RTC granted Villalon's motion to dismiss. It held that under the theory of separate corporate entity, the action should be limited against Semicon, the lessee; it cannot be expanded against Villalon, a mere corporate officer.

The RTC concluded that the allegations clearly showed that the collection of unpaid rentals and damages arose from the alleged breach of the lease contract executed and entered into by Lirio and Semicon, and that the conflict was between Lirio and Semicon only and did not include Villalon.

The RTC denied Lirio's motion for reconsideration.

Lirio responded to the grant of the motion to dismiss and the denial of reconsideration with the CA, by filing a petition for *certiorari* under Rule 65 of the Rules of Court.

### **The Ruling of the Court of Appeals**

The CA nullified the RTC's dismissal order and ruled that the RTC gravely abused its discretion.

It held that the RTC completely ignored the fact that the case "might possibly" and properly call for the application of the doctrine of piercing the veil of corporate entity. Further, the CA found that Villalon "played an active role in removing and transferring Semicon's merchandise, chattels and equipment from the leased premises. This deprived Lirio of his preferred lien over the said merchandise, chattels, and equipment for the satisfaction of Semicon's obligation under the lease contract."

The dispositive portion of the CA decision reads:

"WHEREFORE, premises considered, the instant petition is **GRANTED**, the assailed **ORDER** of the Regional Trial Court, Branch 157, Pasig City dated 17 October 2005 is NULLIFIED."

The CA denied Villalon's motion for reconsideration; thus, he came to us for relief via the present petition.

### **The Petition<sup>[14]</sup>**

Villalon claims that the CA erred in giving due course to Lirio's petition for *certiorari* considering that appeal became available after the RTC dismissed the complaint.

Villalon asserts that an order granting a motion to dismiss is final and appealable. He argues that a petition for *certiorari* under Rule 65 of the Rules of Court prospers only when there is neither appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

Thus, Villalon insists that Lirio should have appealed the order of dismissal since a petition for *certiorari* is not a substitute for a lost appeal. Moreover, Villalon notes

that Lirio failed to show how an appeal could have been inadequate.

Villalon further posits that the RTC did not gravely abuse its discretion, even assuming that *certiorari* was proper. He avers that the trial court properly dismissed the complaint because the allegations failed to show a cause of action against him.

Villalon likewise alleges that the CA erred when, in order to apply the doctrine of piercing the veil of corporate entity, it had to add allegations not found in the complaint.

### **The Respondent's Case**<sup>[15]</sup>

Lirio argues that *certiorari* is allowed even if appeal is available where appeal does not constitute a speedy and adequate remedy.

Although Lirio agrees that he could have appealed the RTC's order dismissing the complaint against Villalon, he contends that appeal was not speedy and adequate because the RTC gravely abused its discretion when it whimsically and arbitrarily ignored existing doctrines on piercing the veil of corporate fiction.

Lirio insists that Villalon had a role in the surreptitious and fraudulent removal of Semicon's merchandise, effects, and various equipment from the leased premises and their transfer to another location, which deprived him of his preferred lien over the said merchandise, effects, and equipment.

Lirio further argues that there is a sufficient cause of action to hold Villalon personally liable for Semicon's liability because the allegations of fraud and evasion of contractual obligations were clearly spelled out in the complaint.

### **The Issues**

Based on the foregoing, we resolve: (1) whether the petition for *certiorari* to the CA was the proper remedy; and (2) whether the complaint failed to state a cause of action against Villalon.

### **The Court's Ruling**

We grant the petition.

Specifically, we rule that (1) Lirio's resort to *certiorari* with the CA was improper; and (2) the complaint failed to state a cause of action.

### **A petition for certiorari is not a substitute for a lost appeal.**

This Court has repeatedly held that a special civil action for *certiorari* under Rule 65 is proper only when there is neither appeal, nor plain, speedy, and adequate remedy in the ordinary course of law. The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.<sup>[16]</sup>

In *Madrigal Transport Inc. v. Lapanday Holdings Corporation*,<sup>[17]</sup> we ruled that because an appeal was available to the aggrieved party, the action for certiorari would not be entertained. We emphasized in that case that the remedies of appeal and certiorari are mutually exclusive, not alternative or successive. Where an appeal is available, certiorari will not prosper, even if the ground is grave abuse of discretion.

In *Cathay Pacific Steel Corporation v. Court of Appeals*,<sup>[18]</sup> we held that even if, in the greater interest of substantial justice, certiorari may be availed of, it must be shown that the [lower court] acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The court must have exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.

In the present case, **Lirio failed to satisfactorily explain why he did not appeal the dismissal order although he admitted that he could have done so.** Neither did he claim that he was prevented, legally or physically, from appealing.

Strikingly, **Lirio did nothing during the period within which he should have filed an appeal.** While he admits that he could have appealed the dismissal to the CA, he insists that appeal could not have been speedy and adequate because the RTC gravely abused its discretion. Lirio cites the case of *Luna v. Court of Appeals*<sup>[19]</sup> to justify his resort to certiorari despite the availability of appeal.

We find no merit in Lirio's argument.

The case of *Luna* involved a suit for damages filed against an airline company by passengers whose baggage was undelivered at the designated time and place. In this case, the liability of the airline company was established as the airline company impliedly admitted that it failed to duly deliver the passengers' baggage.

We held that since the passengers suffered an injury for which compensation was due, the airline company could not be allowed to escape liability by arguing that the trial court's orders had attained finality due to the passengers' failure to move for reconsideration or to file a timely appeal.<sup>[20]</sup>

In *Luna*, we allowed the *occasional departure* from the general rule that the extraordinary writ of *certiorari* cannot substitute for a lost appeal only because the rigid application of the rule would have resulted in injustice to the passengers.<sup>[21]</sup>

We find no basis to relax the rules of procedure in the present case.

While it is true that liberal application of the rules of procedure is allowed to avoid manifest failure or miscarriage of justice, it is equally true that a party invoking liberality must explain his failure to abide by the rules.<sup>[22]</sup>

To reiterate, Lirio failed to explain why he did not appeal the dismissal order while admitting that he could have done so. Rather, he clung to his argument that he had correctly filed a petition for *certiorari* because of the alleged grave abuse of