635 Phil. 21

# SECOND DIVISION

# [ G.R. Nos. 167583-84, June 16, 2010 ]

## ARTISTICA CERAMICA, INC., CERALINDA, INC., CYBER CERAMICS, INC. AND MILLENNIUM, INC., PETITIONERS, VS. CIUDAD DEL CARMEN HOMEOWNER'S ASSOCIATION, INC. AND BUKLURAN PUROK II RESIDENTS ASSOCIATION, RESPONDENTS.

## D E C I S I O N

**PERALTA, J.:**

Before this Court is a petition for *certiorari*,[1] under Rule 65 of the Rules of Court, seeking to set aside the January 4, 2005 Decision[2] and March 18, 2005 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 70473 and CA-G.R. SP No. 71470.

The facts of the case are as follows:

Petitioners Artistica Ceramica, Inc., Ceralinda, Inc., Cyber Ceramics, Inc., and Millennium, Inc., are corporations located in Pasig City and engaged in the manufacture of ceramics. Petitioners' manufacturing plants are located near the area occupied by respondents Ciudad Del Carmen Homeowner's Association, Inc., and Bukluran Purok II Residents Association.

Sometime in 1997, respondents sent letter complaints[4] to various government agencies complaining of petitioners' activities. The complaints stemmed from the alleged noise, air and water pollution emanating from the ceramic-manufacturing activities of petitioners. In addition, respondents also complained that the activities of petitioners were both safety and fire hazards to their communities. As a result of the complaints filed, Closure Orders and Cease-and-Desist Orders[5] were issued against the operations of petitioners.

In order to amicably settle the differences between them, petitioners and respondents entered into two agreements. The first agreement was the June 29, 1997 Drainage Memorandum of Agreement[6] (Drainage MOA) and the second was the November 14, 1997 Memorandum of Agreement[7] (MOA). Embodied in the Drainage MOA was the commitment of petitioners to construct an effective drainage system in Bukluran Purok II. The MOA, on the other hand, was an agreement by respondents to cause the dismissal of all the complaints filed by them against petitioners in exchange for certain undertakings during the lifetime of the MOA. Among the undertakings agreed to by petitioners are the following: 1) the cessation of their manufacturing activities on or before May 7, 2000; 2) the putting up of an Environmental Guarantee Fund in accordance with the guidelines prescribed by the Department of Energy and Natural Resources; 3) the furnishing of a performance bond; and 4) and the creation of an Arbitration and Monitoring Committee.

On July 17, 2000, respondents filed with the Arbitration Committee a Complaint[8] alleging the failure of petitioners to comply with the terms of the agreement. On April 2, 2002, the Arbitration Committee rendered a Decision,[9] the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, THE ARBITRATION COMMITTEE hereby promulgates the following findings and rulings:
>
> On the matter of the allowances for the representatives of the Residents Associations, pending the resolution of the instant case, the Mariwasa Subsidiaries have paid the aforesaid allowances.
>
> On the contribution of the Mariwasa Subsidiaries in the amount of P300,000.00 for the construction of the chapel/multi-purpose hall as referred in Annex "B" of the MOA, Mariwasa Subsidiaries is directed to give to Ciudad del Carmen Homeowners Association of the Residents Associations the amount of P300,000.00 as the participation of the Mariwasa Subsidiaries in the construction of the aforesaid chapel/multi-purpose hall.
>
> Re: the problem of the drainage system, the construction of the drainage system for Bukluran Purok II mentioned in the June 29, 1997 MOA was undertaken. But the Arbitration Committee finds that in spite of the construction of the drainage system, there continues to be flooding in Bukluran Purok Dos.
>
> On the issue of relocation, the MOA categorically states:
>
> > f. (The Mariwasa Subsidiaries shall) [p]ermanently cease the manufacturing operation in the Premises of at least one of its corporation [sic] by 7 November 1999, and permanently cease the manufacturing operations of all remaining corporations in the Premises on or before 07 May 2000; Henceforth, no manufacturing activity shall be made or undertaken in the Premises either by itself or by any other person/entity, except with the consent of the SECOND PARTY, nor shall the FIRST PARTY attempt to avoid its obligation hereunder resulting in the operation of its manufacturing plants in the Premises; FORCE MAJEURE is NOT AVAILABLE to the FIRST PARTY as an excuse for not ceasing to operate;
> >
> > g. (The Mariwasa Subsidiaries shall) [m]ake representation with the DENR, the LLDA, and the Pasig City Government, the MMDA, and such other relevant government agency or office, informing these agencies of their undertaking to cease manufacturing operations in the Premises by 07 May 2000, such that permits, licenses and clearances issued to and in favor of the FIRST PARTY shall only be effective until 07 May 2000 and other permits, licenses and clearances applied for by the FIRST PARTY shall be effective only until 07 May 2000.

The Mariwasa Subsidiaries are directed to strictly comply with the above-quoted undertakings. Further on this matter, the parties are directed to immediately discuss and agree on the date of the relocation of all of the manufacturing facilities of Mariwasa Subsidiaries out of Bo. Rosario, Pasig City, but in no case should such date be beyond six (6) months from finality of this Decision, and in the event that Mariwasa Subsidiaries shall fail to relocate their manufacturing facilities within the date agreed or fixed herein, as the case maybe, a fine of P10,000.00 for each day of delay is hereby imposed upon the Mariwasa Subsidiaries.

In connection with the Performance Bond of P25,000,000.00 referred to in the MOA in "2 PERFORMANCE BOND AND PENALTY PROVISIONS," on the basis of the evidence introduced in the hearings, the Arbitration Committee finds that the Mariwasa Subsidiaries have not fully complied with all of their undertakings as enumerated in the MOA and in its Annexes "A" and "B." Thus, the Mariwasa Subsidiaries did not submit the regular quarterly reports mentioned in undertaking Letter "a." Undertaking Letter "d" was not fully implemented, including even the matter of funding the Arbitration Committee where the allowances for representatives of the Residents Associations were only paid during the hearings of the instant case.

The Environmental Guarantee Fund mentioned in undertaking Letter "h" was never established.

In connection with the participation of the Mariwasa Subsidiaries in the community and social development projects specified in Annex "B" of the MOA, the Arbitration Committee finds that the drainage system that was constructed in Bukluran Purok Dos has not solved the problem of flooding in the area. Then, the Mariwasa Subsidiaries should remit to Ciudad del Carmen Homeowners Association of the Residents Associations the amount of P300,000.00 that was promised by the Mariwasa Subsidiaries for the construction of a chapel/multi- purpose hall.

As for damages, on the basis of the evidence presented in the hearings, the Mariwasa Subsidiaries are hereby directed, jointly and severally, to pay to the Residents Associations the amount of P1,000,000.00 as temperate or moderate damages. In addition, the Mariwasa Subsidiaries are directed to pay P100,000.00 as damages to Bukluran Dos Residents Association for the former's failure to bring about the effective drainage system that was sought to be constructed in the June 29, 1997 MOA. The Mariwasa Subsidiaries are also directed to pay the amount of P100,000.00 as part of damages in the form of attorney's fees.

SO ORDERED.[10]

Respondents filed a motion for reconsideration, specifically asserting that the Arbitration Committee erred in failing to rule on or to declare the automatic forfeiture of the performance bond in their favor. On May 27, 2002, the Arbitration Committee issued a Resolution[11] denying respondents' motion.

Petitioners and respondents separately filed a petition for review[12] before the CA. Petitioners sought to question the award of damages by the Arbitration Committee to respondents. Respondents, for their part, sought to question the non-forfeiture of the performance bond in their favor despite the finding of the Arbitration Committee that petitioners had not fully complied with all their undertakings under the MOA.

On September 16, 2002, petitioners filed a Motion to Consolidate the Two Petitions for Review, which was subsequently granted by the CA.

On January 4, 2005, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the first petition docketed as CA-G.R. SP No. 70473 is AFFIRMED with MODIFICATION. Accordingly, the order directing the petitioners to give the respondents the amount of PhP300,000.00 is DELETED.
>
> The second petition docketed as CA-G.R. SP No. 71470 is GRANTED. Accordingly, the Arbitration Committee is hereby directed to order the automatic forfeiture of the performance bond in the amount of PhP25,000,000.00 in favor of respondents.
>
> SO ORDERED.[13]

Aggrieved, petitioners filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution[14] dated March 18, 2005.

Hence, herein petition, with petitioners arguing that the CA acted with grave abuse of discretion when it:

> DECLARED THAT THE PETITIONERS FAILED IN THEIR UNDERTAKING TO PROVIDE DRAINAGE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MOA.
>
> DECLARED THAT THE PETITIONERS ARE SOLELY CULPABLE FOR THE LACK OF AN ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC).
>
> AWARDED TEMPERATE DAMAGES DESPITE LACK OF BASIS THEREFOR.
>
> ORDERED THE AUTOMATIC FORFEITURE OF THE PERFORMANCE BOND DESPITE CONTRARY PROVISIONS IN THE MOA.[15]

The petition is not meritorious.

Prefatorily, the Court notes that petitioners filed a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. As a rule, the remedy from a

judgment or final order of the CA is appeal via petition for review under Rule 45 of the Rules of Court.

In Mercado v. Court of Appeals,[16] this Court had again stressed the difference of the remedies provided for under Rule 45 and Rule 65 of the Rules of Court, to wit:

> x x x [T]he proper remedy of the party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical with a petition for review under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. **On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45**. x x x[17]

One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefore is grave abuse of discretion.[18] Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[19] Pertinent, therefore, to a resolution of the case at bar is a determination of whether or not an appeal or any plain, speedy and adequate remedy was still available to petitioners, the absence of which would warrant petitioners' decision to seek refuge under Rule 65 of the Rules of Court.

A perusal of the records will show that petitioners filed a Motion for Reconsideration to the January 4, 2005 CA Decision, which was, however, denied by the CA via a Resolution dated March 18, 2005. As manifested by petitioners, they received a copy of the March 18, 2005 CA Resolution on March 28, 2005. Thus, from March 28, 2005, petitioners had 15 days,[20] or until April 12, 2005, to appeal the CA Resolution under Rule 45. Clearly, petitioners had an available appeal under Rule 45 which, under the circumstances, was the plain, speedy and adequate remedy. However, petitioners instead chose to file a special civil action for *certiorari,* under Rule 65, on April 18, 2005, which was 6 days after the reglementary period under Rule 45 had expired.

The fact that the petitioners used the Rule 65 modality as a substitute for a lost appeal is made plainly manifest by: a) its filing the said petition 6 days after the expiration of the 15-day reglementary period for filing a Rule 45 appeal; and b) its petition which makes specious allegations of "grave abuse of discretion." But it asserts that the CA erred (1) when it declared that the petitioners failed in their undertakings to provide drainage in accordance with the requirements of the MOA; (2) when it declared that petitioners are solely culpable for the lack of an environmental compliance certificate, when it awarded temperate damages; and (3) when it ordered the automatic forfeiture of the performance bond. These are mere errors of judgment which would have been the proper subjects of a petition for review under rule 45.