

FIRST DIVISION

[G.R. No. 152092, August 04, 2010]

**PILIPINO TELEPHONE CORPORATION, PETITIONER, VS.
RADIOMARINE NETWORK, INC., RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul, reverse and set aside the Resolution^[1] issued on May 2, 2001 by the former Sixth Division of the Court of Appeals in CA-G.R. SP No. 64155, entitled "*PILIPINO TELEPHONE CORPORATION v. HON. JUDGE REINATO G. QUILALA, in his capacity as Presiding Judge of the Regional Trial Court of Makati, Branch 57, and RADIOMARINE NETWORK (SMARTNET), Inc.*" The assailed Court of Appeals Resolution dismissed Pilipino Telephone Corporation's (PILTEL) petition for *certiorari* under Rule 65 with application for temporary restraining order (TRO) and/or writ of preliminary injunction which sought to set aside the Resolution^[2] made by the Regional Trial Court (RTC) of Makati City, Branch 57, dated November 13, 2000, rendering partial summary judgment in Civil Case No. 99-2041, as well as the Order^[3] of the same trial court dated January 30, 2001 denying the motion for reconsideration thereof. The instant petition also seeks to annul, reverse and set aside the Court of Appeals Resolution^[4] issued on February 7, 2002 denying petitioner's motion for reconsideration of the May 2, 2001 Court of Appeals Resolution.

The genesis of this prolonged controversy can be traced back to the execution of a Contract to Sell^[5] on December 12, 1996 between petitioner PILTEL and respondent Radiomarine Network, Inc. (RADIOMARINE), wherein the latter agreed to purchase a 3,500-square meter lot located in Makati City covered by Transfer Certificate of Title (TCT) No. T-195516 issued by the Registry of Deeds for Makati City. The terms of payment that were agreed upon by the parties were embodied in Article II of the said contract, to wit:

The total consideration of FIVE HUNDRED SIXTY MILLION PESOS [P560,000,000.00] shall be paid by the VENDEE, without the need of any demand, to the VENDOR in the following manner:

[a] a downpayment in the amount of ONE HUNDRED EIGHTY MILLION [P180,000,000.00] PESOS, to be paid on or before December 28, 1996;

[b] Any and all outstanding payables which the VENDOR owes to the VENDEE in consideration of the cellular phone units and accessories ordered by the VENDOR and delivered by the VENDEE between the initial downpayment date i.e. December 28, 1996 and April 30, 1997, shall be

credited to the VENDEE as additional payment of the purchase price.

[c] The remaining balance, after deducting [a] and [b] above, shall be paid on or about April 30, 1997. It is expressly understood however, that the VENDOR shall submit to the VENDEE, on or about April 20, 1997, a Statement of Account updating the deliveries of cellular phones and its outstanding amount in order that the VENDEE can prepare the final payment. In this way, the amount of final payment shall be made to the VENDOR on or before April 30, 1997. Should the VENDOR be delayed in the submission of the said Statement on the stipulated date, the date of payment of the remaining balance shall be automatically adjusted for a period equivalent to the number of days by which the VENDOR is delayed in the submission thereof.^[6]

Thus, under the terms agreed upon, respondent was to give the amount of P180,000,000.00 as down payment. Any outstanding unpaid obligation, which petitioner owed respondent, would be deducted from the obligations of the latter. The balance, if any, should be paid on or before April 30, 1997.

Contemporaneous with the execution of the Contract to Sell, petitioner wrote a Letter^[7] to respondent dated December 11, 1996 in which it expressed its willingness, on a purely best effort basis, to purchase from respondent 300,000 units of various models of Motorola, Mitsubishi and Ericsson brand cellular phones and accessories for the entire year of 1997.

Respondent failed to pay the balance of P380,000,000.00 on the stipulated period of April 30, 1997 alleging, among other things, that petitioner reneged on its commitment to purchase 300,000 units of cellular phones and accessories from respondent and instead purchased the units from other persons/entities.

On December 19, 1997, petitioner returned to respondent the amount of P50,000,000.00, which is part of the P180,000,000.00 down payment made by the latter pursuant to the Contract to Sell as evidenced by a Statement of Account^[8] issued by the former.

Respondent then filed a Complaint^[9] on December 1, 1999 against petitioner PILTEL seeking either the rescission of the Contract to Sell or the partial specific performance of the same with the RTC of Makati City. It prayed that judgment be rendered (a) ordering PILTEL to convey to it at least thirty-two percent (32%) interest in the Valgoson property, representing the value of its down payment of P180,000,000.00, or in the alternative, ordering PILTEL to return to it the down payment plus interest; (b) ordering PILTEL to pay to it the amount of P81,800,764.96 representing the value of the 300,000 units of various cellular phones which it bought pursuant to the commitment of PILTEL to purchase but which commitment PILTEL disregarded, plus interest, as actual and compensatory damages; and (c) ordering PILTEL to pay to it the attorney's fees in the amount of P500,000.00.

Respondent then filed a Motion for Partial Summary Judgment^[10] on October 6, 2000 which was opposed by petitioner in its Comment/Opposition^[11] filed on

October 26, 2000. The motion was eventually granted by the trial court in its assailed Resolution dated November 13, 2000, the dispositive portion of which reads:

WHEREFORE, the motion for summary judgment is granted and defendant Piltel is hereby ordered to return or to pay to plaintiff Smartnet the down payment of P180 Million less the forfeited amount of P18 Million and the cash advance of P50 Million, or a net of P112 Million with interest at 6% per annum from the extrajudicial demand of October 20, 1998 until finality of the judgment and after this judgment becomes final and executory, additional legal interest at 12% per annum on the total obligation until the judgment is satisfied.^[12]

On December 5, 2000, petitioner filed a Motion for Reconsideration^[13] which was denied for lack of merit by the RTC in the assailed Order dated January 30, 2001. Prior to the issuance of the said Order, respondent filed its Opposition^[14] on December 14, 2000 to which petitioner countered with a Reply^[15] filed on January 10, 2001.

Respondent then filed a Manifestation and Motion for Execution^[16] on March 15, 2001 manifesting its withdrawal of the two remaining causes of action and moving for the issuance of a Writ of Execution. This was followed by an Alternative Motion for Execution Pending Appeal^[17] that was filed by respondent on March 20, 2001, praying for execution pending appeal in the event that then defendant PILTEL would be held to have the right to appeal.

On April 4, 2001, petitioner filed a Petition for *Certiorari* under Rule 65^[18] of the Rules of Court before the Court of Appeals, with an application for a temporary restraining order and a writ of preliminary injunction, alleging grave abuse of discretion on the part of Judge Reinato Quilala in issuing the November 13, 2000 Resolution and the January 30, 2001 Order. This petition was docketed as CA-G.R. SP No. 64155. A week later, respondent filed before the Court of Appeals its Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction^[19] on April 11, 2001 wherein it called the appellate court's attention to what it perceived as then defendant PILTEL's pursuance of simultaneous reliefs before the trial court and the Court of Appeals that all seek to nullify the November 13, 2000 Resolution of the trial court granting the summary judgment.

Meanwhile, in compliance with the trial court's Order^[20] dated April 6, 2001, petitioner filed before it on April 16, 2001, by registered mail, a Consolidated Opposition^[21] against respondent's Manifestation and Motion for Execution dated March 15, 2001 and the Alternative Motion for Execution Pending Appeal dated March 20, 2001. On April 17, 2001, respondent filed with the trial court its *Ex Parte* Manifestation and Motion^[22] stating therein that, upon verification with the records of the court that day, then defendant PILTEL had failed to file its Comment/Opposition to respondent's aforementioned pending motions and, thus, respondent moved to submit both motions for the resolution of the trial court

without opposition from then defendant PILTEL. Hence, the trial court issued an Order^[23] on April 23, 2001 granting the withdrawal of respondent's remaining causes of action and the execution pending appeal, the dispositive portion of which reads:

WHEREFORE, the motion for execution pending appeal of the Partial Summary Judgment rendered on November 13, 2000 is GRANTED.

Let the corresponding Writ of Execution be issued and implemented accordingly.

As a result, the corresponding Writ of Execution Pending Appeal^[24] was issued on April 24, 2001.

Back at the Court of Appeals, petitioner filed an Urgent Manifestation and Urgent Reiteratory Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction^[25] on April 25, 2001.

On that same date and while its Petition for *Certiorari* under Rule 65 was still pending before the Court of Appeals, petitioner filed with the trial court its Notice of Appeal^[26] informing the said court that it will raise before the Court of Appeals the trial court's November 13, 2000 Resolution and April 23, 2001 Order. This appeal was subsequently docketed as CA-G.R. CV No. 71805.

The following day, on April 26, 2001, petitioner filed with the trial court an Urgent Manifestation to Post Supersedeas Bond and Urgent Motion to Defer Execution Pending Appeal.^[27]

On April 30, 2001, respondent filed with the Court of Appeals its Supplement (To: Opposition to the Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)^[28] while, on the other hand, petitioner filed with the trial court another Urgent Motion to Admit Supersedeas Bond^[29] on May 2, 2001. On the same day, by virtue of the Writ of Execution Pending Appeal issued by the trial court and there being no TRO issued against it by the Court of Appeals in CA-G.R. SP No. 64155, Sheriff George C. Ragutana issued a Notice of Sale on Execution Pending Appeal of Real Property^[30] giving notice to the public that the sale by public auction of the real property described in TCT No. 195516 or the Valgoson property shall be on May 31, 2001. Likewise on the same date, the Court of Appeals denied petitioner's petition for *certiorari* along with the request for the issuance of a TRO in CA-G.R. SP No. 64155, stating:

We resolve to dismiss the petition.

As pointed out by private respondent, an appeal from a partial summary judgment may be allowed by the trial court under Section 1(g), Rule 41 of the 1997 Rules of Civil Procedure, which reads:

"SECTION 1. Subject of appeal. x x x

No appeal may be taken from:

x x x x

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom;

x x x x"

Thus, petitioner should have filed, with leave of court, a notice of appeal from the partial summary judgment dated November 13, 2000 before resorting to this special civil action of certiorari. Moreover with the withdrawal and dismissal of private respondent's remaining two causes of action, the summary judgment dated November 13, 2000 ceased to be partial as it may be considered to have completely disposed of the entire case and, therefore, appealable.

Anent the alleged impropriety of a summary judgment, suffice it to say that certiorari will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by certiorari.

Petitioner likewise assails the Order of execution dated April 23, 2001. However, the copy of said Order attached to the urgent manifestation and urgent reiteratory motion for the issuance of a temporary restraining order and/or writ of preliminary injunction is a mere unsigned xerox copy thereof, contrary to the requirement in Section 1, Rule 65 of the 1997 Rules of Civil Procedure that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof. Thus, Section 3, Rule 46 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to comply with the requirement, *inter alia*, that the petition be accompanied by a clearly legible duplicate original or certified true copy of the order subject thereof, shall be sufficient ground for the dismissal thereof. As held in *Manila Midtown Hotels and Land Corporation vs. NLRC, certiorari*, being an extraordinary remedy, the party who seeks to avail of the same must observe the rules laid down by law.^[31]

Thus, the dispositive portion of which reads as follows:

WHEREFORE, the instant petition is DISMISSED for insufficiency in form and substance.^[32]