

THIRD DIVISION

[G.R. No. 164632, October 29, 2008]

URETHANE TRADING SPECIALIST, INC., PETITIONER, VS. EDWIN ONG AND LETICIA ONG, RESPONDENTS.

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the February 12, 2004^[1] and the July 26, 2004^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No 79251.

The dispute between the parties started in June 2000 when petitioner filed a Complaint^[3] for sum of money against the respondents (docketed as Civil Case No. 8142) before the Metropolitan Trial Court (MeTC) of Pasig City. In the proceedings, respondents were declared in default, and petitioner presented evidence *ex parte*.^[4] On October 30, 2001, the MeTC rendered its Decision^[5] ordering respondents, jointly and severally, to pay the petitioner P295,026.01 with legal interest as actual damages, and 25% thereof as attorney's fees.

Following the finality of the said decision, petitioner moved for execution on January 10, 2002.^[6] No opposition having been filed, the MeTC, on March 18, 2002, ordered the issuance of a writ of execution.^[7]

On July 9, 2002, respondents filed a petition for annulment of judgment with damages and prayer for injunctive relief before the Regional Trial Court (RTC) of Pasig City. This was docketed as Civil Case No. 69034.^[8] In their petition, they claimed that they did not receive the summons issued by the MeTC; that the sheriff's return of summons was manufactured; and that they were not furnished copies of the order of default. Thus, they prayed that the MeTC decision be annulled on grounds of extrinsic fraud and lack of jurisdiction over their persons.^[9]

Petitioner moved for the dismissal of the petition on the following grounds: (1) that the cause of action is barred by the statute of limitation; and (2) that the claim or demand set forth in the petition has been waived, abandoned or otherwise extinguished. It contended that the summons was in fact served on respondents; that the MeTC Sheriff initially went to the business address of respondent Leticia Ong at Nos. 777-779 Rizal Avenue, Manila, but as the hardware store therein had already ceased its operation, he could not serve the summons at that given address; that he then proceeded to respondents' residence, but that on account of the absence of respondents and of their domestic helper's refusal to receive the summons, the Sheriff effected substituted service.^[10] Petitioner further contended that respondent Edwin Ong, in the hearing on their application for an injunctive relief, admitted that he had attended one hearing in the proceedings before the

MeTC.^[11]

Petitioner argued that in light of these facts, respondents cannot validly invoke lack of jurisdiction over their persons as a ground in their petition; that only extrinsic fraud could be raised by them; and as they did not file a petition for relief, they were already barred by the statute of limitations and they could now be considered as having waived or abandoned their claims.^[12]

Unconvinced by petitioner's arguments, the RTC denied the motion to dismiss in its April 4, 2003 Omnibus Order.^[13] On August 8, 2003, it further denied petitioner's motion for reconsideration.^[14]

Discontented, petitioner timely petitioned for the issuance of a writ of *certiorari* before the CA (docketed as CA-G.R. SP No. 79251). The appellate court, however, in the assailed February 12, 2004 Resolution,^[15] dismissed the petition on the ground that an interlocutory order is not the proper subject of the special civil action of *certiorari*. In the further assailed July 26, 2004 Resolution,^[16] it denied petitioner's motion for reconsideration.

Aggrieved, petitioner raised the following issues for the Court's resolution in the instant petition for review on *certiorari*:

I.

Whether or not, under existing laws, the Petition for Annulment of Judgment filed by Respondents should be dismissed on two (2) grounds, namely: (1) That the cause of action is barred by the statutes of limitation or by laches; and (2) The claim or demand set forth in the plaintiff's petition has been waived, abandoned, or otherwise extinguished.

II.

Whether or not the Petition for Review [should be "petition for *certiorari*"] filed by the Petitioner should be dismissed on the ground that an order denying a motion to dismiss is an interlocutory order which cannot be the subject of a petition for *certiorari*.^[17]

The Court denies the petition and affirms the ruling of the CA.

Well-entrenched in our jurisdiction is the rule that the trial court's denial of a motion to dismiss cannot be questioned in a *certiorari* proceeding under Rule 65 of the Rules of Court. This is because a *certiorari* writ is a remedy designed to correct errors of jurisdiction and not errors of judgment.^[18] The appropriate course of action of the movant in such event is to file an answer^[19] and interpose as affirmative defenses the objections raised in the motion to dismiss.^[20] If, later, the decision of the trial judge is adverse, the movant may then elevate on appeal the same issues raised in the motion.^[21]

The only exception to this rule is when the trial court gravely abused its discretion in