

FIRST DIVISION

[G.R. NO. 154837, March 22, 2007]

**ANG BIAT HUAN SONS INDUSTRIES, INC., REPRESENTED BY
EDUARDO ANG GOBONSENG, SR., PETITIONER, VS. COURT OF
APPEALS, SOCIAL SECURITY SYSTEM AND MAURO TINAYTINA,
SUBSTITUTED BY HIS WIFE GLORIA TINAYTINA, RESPONDENTS.**

D E C I S I O N

CORONA, J.:

This is a special civil action for certiorari under Rule 65 of the Rules of Court assailing the resolutions of the Court of Appeals (CA) dated January 31, 2002^[1] and June 18, 2002^[2] respectively in CA-G.R. Sp. No. 67012 entitled *Ang Biat Huan Sons Industries, Inc. represented by Eduardo Ang Gobonseng, Sr. v. Mauro Tinaytina, substituted by his wife Gloria Tinaytina.*^[3]

The facts follow.

Private respondent Mauro Tinaytina was employed as a cargo truck driver by New Bian Yek Commercial and later by petitioner Ang Biat Huan Sons Industries, Inc.

In 1997, Tinaytina filed a complaint^[4] in the Social Service Commission (SSC) for adjustment of date of social security (SS) coverage and remittance of unpaid contributions.^[5] He claimed that he worked continuously for New Bian Yek Commercial from 1969 to 1975 and for petitioner from 1976 to 1978 but both companies failed to remit SS contributions on his behalf.

New Bian Yek Commercial denied Tinaytina's claim and countered that he was under its employ only from July 1973 to November 1974. On the other hand, petitioner averred that Tinaytina's employment was only from October 1, 1976 to September 30, 1977 and that it paid all his SS contributions for the period.

The SSC found that Tinaytina was New Bian Yek Commercial's employee from July 1973 to June 1975 and petitioner's from January 1976 to November 1978. The dispositive portion of the SSC resolution read:

WHEREFORE, PREMISES CONSIDERED, this Commission finds, and so holds, that [respondent] Mauro I. Tinaytina, who died on April 6, 1999, was an employee, subject to SS compulsory coverage, of ...New Bian Yek Commercial from July 1973 to June 1975, and [petitioner] Ang Biat Huan Sons Industries, Inc. from January 1976 to November 1978, receiving salary in accordance with the minimum wage law then prevailing.

Accordingly...New Bian Yek Commercial is hereby ordered to pay [the] SSS within sixty (60) days from receipt hereof, the amount of P250.05,

representing the unpaid SS contributions in behalf of the deceased [respondent] for the period July 1973 to June 1975 and the amount of P1,773.31 representing the 3% per month penalty for late payment thereof, computed as of March 30, 2001, without prejudice to the right of [the] SSS to collect additional penalty liability accruing thereafter.

[Petitioner] Ang Biat Huan Sons Industries, Inc.[,] on the other hand, is hereby ordered to pay the SSS within the aforesaid period the amount of P705.90, representing the unpaid SS contributions of the deceased [respondent] for the period January 1976 to November 1978, the amount of P4,703.21 as 3% per month penalty for late payment computed as of March 30, 2001, without prejudice to the collection of additional penalty liability accruing after said date, and the amount of P45,600 as damages for misrepresenting the deceased petitioner's true date of employment, pursuant to Section 24 (b) of the SS[S] Law, as amended.

Should [petitioner Ang Biat Huan Sons Industries Inc. and New Biak Yek Commercial] pay their respective liabilities for unpaid SS contributions within the aforesaid period, the 3% penalty is deemed condoned pursuant to SSC Res. No- 397-S.97 as amended by SSC Res. Nos. 112-S.98 and 982-S.99 implementing the condonation penalty under R.A. No. 8282 (Social Security Act of 1997).

The SSS, on the other hand, is ordered to pay immediately the deceased member's wife, Gloria Tinaytina, in her capacity as primary beneficiary, the appropriate death benefit pension effective April 1999, subject to the existing rules and regulations.

SO ORDERED.^[6]

Both petitioner and New Bian Yek Commercial filed their respective motions for reconsideration (MR)^[7] of the above resolution but the SSC denied them.^[8]

Aggrieved, petitioner filed in the CA a petition for review^[9] under Rule 43^[10] of the Rules of Court. In its resolution dated January 31, 2002, the CA dismissed petitioner's appeal on the following grounds:

1. The [v]erification and [c]ertification on [n]on-[f]orum [s]hopping was signed by Eduardo Ang Gobonseng, Sr., alleged President of petitioner company, Ang Biat Huan Sons Industries, Inc. without proof of any written authority nor board resolution supporting his claim of being duly authorized representative of [the] petitioner. Likewise, said verification and certification was not signed by Julio Sy, the representative of...New Bian Yek Commercial;
2. The [a]ffidavit of [s]ervice is not attached to the [p]etition as required under Section 13, of Rule 13 of the 1997 Rules on Civil Procedure;
3. The assailed Social Security Commission [r]esolution and [o]rder as well as the other pertinent pleadings and supporting documents are

merely photocopies and not certified true copies in violation of Section 6, Rule 43 of the same rules.^[11]

Petitioner filed an MR but the CA denied it in its resolution of June 18, 2002.^[12]

Only petitioner came to this Court via this petition for certiorari under Rule 65. It asks that the CA's resolutions be stricken down, alleging that the latter erred and misapplied the law when it denied its appeal on technical grounds. It likewise seeks a ruling on the correctness of the SSC's findings that Mauro Tinaytina was its employee from January 1976 to November 1978 and that it was liable for P45,600 as damages for misrepresenting Tinaytina's true date of employment plus P4,703.21 corresponding to the 3% penalty per month for late payment, computed as of March 30, 2001.^[13]

The petition must fail.

A petition for certiorari under Rule 65 of the Rules of Court is the proper remedy when (1) any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and (2) there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.^[14]

As a rule, a petition for certiorari will not lie where an appeal is an adequate remedy such as when an error of judgment or procedure is involved.^[15] Ordinarily, the proper recourse of an aggrieved party from a decision of the CA is a petition for review under Rule 45 of the Rules of Court.^[16] Petitioner should have thus questioned the CA's resolutions via Rule 45. Well-entrenched is the rule that a special civil action for certiorari cannot stand as substitute for a lost appeal.^[17]

Furthermore, assuming that petitioner could have properly filed a special civil action for certiorari, the fact was that petitioner failed to allege that public respondents acted without or in excess of their jurisdiction or with grave abuse of discretion.

The term "without jurisdiction" means lack of jurisdiction from the beginning whereas "excess of jurisdiction" signifies that the tribunal, board or officer overstepped such jurisdiction.^[18] On the other hand, grave abuse of discretion is the capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction.^[19] The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner due to passion or personal hostility.^[20] It must be patent and gross as to amount to an evasion of positive duty or virtual refusal to perform a duty enjoined by law.^[21]

When seeking the corrective hand of certiorari, caprice and arbitrariness must clearly be shown.^[22] Petitioner should have cited how the CA and/or the SSS (through the SSC) abused their discretion in the questioned resolutions. Petitioner failed in this aspect.

At any rate, even if petitioner made the allegations required by Rule 65, its petition will nevertheless still not stand. The CA correctly dismissed petitioner's appeal on