

## SIXTEENTH DIVISION

[ CA-G.R. SP NO. 127658, November 19, 2014 ]

**AGUEDO INGCO, PETITIONER, VS. RIZALINA T. CAPCO-UMALI,  
IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 212 OF THE  
REGIONAL TRIAL COURT OF MANDALUYONG CITY, MARIE  
GERALDINE G. MACAPAGAL AND ANTONIO ANATOLIO,  
RESPONDENTS.**

### DECISION

**ZALAMEDA, R.V., J.:**

This is a Petition for Certiorari<sup>[1]</sup> (with Prayer for a Preliminary Mandatory Injunction) under Rule 65 of the Rules of Court,<sup>[2]</sup> assailing on the ground of grave abuse of discretion the Decision<sup>[3]</sup> dated 22 August 2012 penned by the Hon. Rizalina T. Capco Umali,<sup>[4]</sup> Presiding Judge of Branch 212, Regional Trial Court of Mandaluyong City<sup>[5]</sup> in the exercise of its appellate jurisdiction, in Civil Case MC12-927-A, for ejectment/forcible entry,<sup>[6]</sup> entitled "Aguedo Ingco versus Marie Geraldine G. Macapagal and Antonio Anatolio." The assailed Decision denied petitioner's appeal of the Decision<sup>[7]</sup> dated 24 February 2011, issued by Branch 60 of the Metropolitan Trial Court of Mandaluyong City,<sup>[8]</sup> which dismissed the case for lack of merit.

The antecedent facts, as culled from the records, are as follows:

On 13 September 2005, the Board of Directors<sup>[9]</sup> of Wack-Wack Twin Towers Condominium Corporation<sup>[10]</sup> passed a Resolution declaring ownership of certain condominium units at WWTTCC, whose owners/possessors have been delinquent in the payment of their monthly dues.<sup>[11]</sup> Unit 505-A<sup>[12]</sup> of WWTTCC, then registered in the name of Oscar/Haydee Badillo,<sup>[13]</sup> was one of the units offered for sale by the WWTTCC Board and purchased by petitioner Aguedo Ingco<sup>[14]</sup> through bidding. Petitioner was accordingly issued a certificate of sale and thereafter took possession thereof.

According to petitioner, on 28 October 2009, he received a writ of possession<sup>[15]</sup> over the subject property, addressed to Haydee M. Badillo "and all persons claiming rights under her," issued by Branch 57, Metropolitan Trial Court San Juan,<sup>[16]</sup> in connection with Civil Case No. 8967<sup>[17]</sup> entitled, "Marie Geraldine G. Macapagal,<sup>[18]</sup> doing business under the name and style Westport Lending Investor vs. Haydee M. Badillo." And despite petitioner's earlier written communication to the deputy sheriff of MTC-San Juan, private respondent Arturo Anatolio<sup>[19]</sup> that the owner/possessor of the condominium unit<sup>[20]</sup> was no longer Haydee M. Badillo, petitioner claimed that the writ was "issued and implemented upon force, intimidation, threat, strategy

and stealth,"<sup>[21]</sup> with him being bodily removed from the unit, together with his son and their belongings, prompting him to file with the MTC the subject ejectment case.<sup>[22]</sup>

Answering,<sup>[23]</sup> respondent Macapagal denied the allegations in the complaint for ejectment and by way of affirmative defense averred that it failed to state a cause of action for failure to make a specific averment that petitioner was removed of his possession over the subject property and further, that respondent Macapagal was continuously depriving petitioner of possession thereof. Also, according to said respondent, if there was indeed deprivation of possession, it was through a lawful order of the court, *i.e.*, a writ of possession issued and implemented by the court sheriff.

Thereafter, the MTC rendered a decision, the dispositive portion of which reads, thus:

"X x x

Premises considered, defendant has a better right of physical possession over the subject property located at 505-A Wack-Wack Twin Towers Condominium, Wack-Wack Road, Mandaluyong City.

Accordingly then, this case is hereby ordered dismissed for lack of merit. All other claims and counter-claims are likewise ordered dismissed.

SO ORDERED.

X x x"<sup>[24]</sup>

Unsatisfied, petitioner appealed the foregoing decision which was affirmed by the court *a quo* in its Decision dated 22 August 2012, the dispositive portion of which reads, thus:

"X x x

**WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed Decision dated February 24, 2011 of the Metropolitan Trial Court of Mandaluyong City, Branch 60 in Civil Case No. 8967 (sic) is hereby **AFFIRMED** in toto.

**SO ORDERED.**

X x x"<sup>[25]</sup>

Petitioner sought relief to this Court via the present Petition for Certiorari, raising the following grounds, thus:

A.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S APPEAL BASED ON THE ISSUE OF OWNERSHIP.

B.

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED PETITIONER'S APPEAL BASED SOLELY ON A DETERMINATION THAT PRIVATE RESPONDENT MACAPAGAL HAS A BETTER RIGHT OF POSSESSION OVER THE SUBJECT PROPERTY WITHOUT CONSIDERING THE OTHER PERTINENT ISSUES IN A FORCIBLE ENTRY CASE.<sup>[26]</sup>

Before delving on the merits of the case, this Court finds the present recourse, the filing of a Petition for Certiorari under Rule 65 of the Rules of Court, improper. Under Section 1, Rule 42 of the Rules of Court, appeal to the Court of Appeals in cases decided by the Regional Trial Court<sup>[27]</sup> in the exercise of its appellate jurisdiction is by way of a petition for review. As a matter of fact, Supreme Court Circular No. 2-90 is clear on this, specifying the proper modes of appeal to the Court of Appeals from the RTCs, thus:

"X x x

3. *Appeals to the Court of Appeals.* - On the other hand, appeals by certiorari will not lie with the Court of Appeals. Appeals to that Court from Regional Trial Courts may be taken:

a) by writ of error (ordinary appeal) - where the appealed judgment was rendered in a civil or criminal action by the regional trial court in the exercise of its original jurisdiction; or

**b) by petition for review - where the judgment was rendered by the regional trial court in the exercise of its appellate jurisdiction.**

The mode of appeal in either instance is entirely distinct from an appeal by certiorari to the Supreme Court.

**4. *Erroneous Appeals.* - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.** [Emphasis supplied]

X x x"

It must be noted that remedies of appeal (including petition for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is