

## **THIRTEENTH DIVISION**

**[ CA-G.R. SP NO. 89058, August 30, 2006 ]**

**MONTE DE ORO LEAD CORPORATION, ET AL., APPELLEES, VS.  
EQUITABLE PCI BANK, INC., APPELLANT.**

### **D E C I S I O N**

**REYES, JR., J., J.:**

This is an appeal from the May 28, 2004 Decision (Records, pp. 69-75) of the Regional Trial Court of Manila, Branch 30 in S.P. Civil Case No. 03107916 which set aside the June 30, 2003 Order of the Metropolitan Trial Court of Manila, Branch 11.

The case arose from a Complaint (Records, pp. 8-17) for "Recovery of Possession of Personal Property with Prayer for Issuance of a Writ of Replevin and/or Collection of a Sum of Money" filed by herein appellant Equitable PCI Bank, Inc. (EPCIBank) against herein appellees Monte De Oro Lead Corporation, et. al. The case was docketed as Civil Case No. 157036 and raffled to Metropolitan Trial Court of Manila (MTC of Manila), Branch 11.

Appellees in turn filed an Answer with Counterclaim (Records, pp. 30-36), refuting some of the material allegations of the complaint and praying for its dismissal and the payment of actual/consequential, moral and exemplary damages, attorney's fees including appearance fees and costs of suit.

During the trial of the said case, appellant EPCIBank, on October 3, 2001 presented as its evidence the testimony of Ms. Ruela Ramos. Unfortunately, on January 23, 2002, the MTC of Manila had stricken off the testimony of Ms. Ramos for failure of the latter and appellant's counsel to appear during the scheduled hearing for Ms. Ramos' cross-examination. Further, the court likewise ordered that appellant is deemed to have waived its right to adduce evidence (See: Order dated January 23, 2002, Records, p. 41).

On October 9, 2002, the MTC of Manila allowed appellees to present its evidence in support of their counterclaim on December 4, 2002 (Records, p. 42). However, the December 4, 2002 hearing was re-set to February 5, 2003. Both the appellees and their counsel were duly notified of the aforementioned schedule of hearings. But on February 5, 2003, both appellees and their counsel failed to appear. Thus, upon motion of appellant's counsel, the lower court dismissed appellees' counterclaim (See: Order dated February 5, 2003, Records, p. 43).

On March 7, 2003, appellees' counsel filed a Motion for Reconsideration (Records, pp. 44-45) claiming that he received the February 5, 2003 Order on February 24, 2003. Unfortunately, the record of the MTC of Manila showed that appellees' counsel received the February 5, 2003 Order on February 14, 2003 and thus, appellees' Motion for Reconsideration was filed out of time. Consequently, on June 30, 2003,

the MTC of Manila denied appellees' Motion for Reconsideration (Records, p. 7).

Thereafter, on September 16, 2003, appellees filed a petition for certiorari under Rule 65 of the 1997 Rules of Court before the Regional Trial Court (RTC) of Manila claiming that the MTC of Manila acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied appellees' Motion for Reconsideration. The said petition for certiorari was docketed as Civil Case No. 03-107916 and was raffled to Branch 30, RTC of Manila.

Unfortunately, the RTC, in its Decision dated May 28, 2004 disregarded the factual findings of the lower court and set aside the Order dated June 30, 2003 issued by the MTC of Manila denying appellees' Motion for Reconsideration. The dispositive portion of the appealed Decision reads as follows:

"WHEREFORE, the assailed order dated June 30, 2003 is hereby annulled and set aside. Public respondent is ordered to act on petitioners' motion for reconsideration based on its merit. No costs" (Records, p. 75).

On appeal to this Court, appellant EPCIBank set forth the following arguments:

1. The Metropolitan Trial Court of Manila, Branch 11 did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied appellees' Motion for Reconsideration (Rollo, p. 14).
2. The Regional Trial Court of Manila should have respected the factual findings of the Metropolitan Trial Court of Manila (Rollo, p. 17).

Thus, the main issue in the instant case involves a determination of the propriety of appellees' choice of resorting to the remedy of certiorari in questioning the June 30, 2003 Order of the MTC of Manila which denied appellees' Motion for Reconsideration for being filed out of time.

Appellant EPCIBank insisted that since the MTC of Manila already disposed of the case by dismissing both the complaint and appellees' counterclaim, the appropriate, adequate and immediate remedy that the appellees should have resorted is not certiorari under Rule 65 but ordinary appeal.

We find appellant's argument to be meritorious.

It bears repeating that certiorari will lie only where a court has acted without or in excess of jurisdiction or with grave abuse of discretion, or an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined, or act in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility (*Philippine National Construction Corporation vs. Dy*, 472 SCRA 1, 7-8 [2005]). Mere errors of fact or law committed by the lower court are not correctible via a Rule 65 petition for certiorari (*China Banking Corporation vs. Mondragon International Philippines, Inc.*, 475 SCRA 332, 337 [2005]). Certiorari is often resorted to in order to correct errors of jurisdiction (*Southern Cross Cement Corporation vs. Philippine Cement Manufacturers Corporation*, 434 SCRA 65, 90 [2004]). Thus, if the court has jurisdiction over the subject matter and of the person, its rulings upon all questions involved are within its jurisdiction, however irregular or erroneous these may be,