

Republic of the Philippines
Supreme Court
Baguio City

CERTIFIED TRUE COPY

WILFREDO V. SAJTAN
Division Clerk, 3rd Court
Third Division
MAY 03 2017

THIRD DIVISION

ROBERT C. MARTINEZ,

Petitioner,

G.R. No. 187342

Present:

-versus-

NOEL S. BUEN,

Respondent.

Promulgated:

April 5, 2017

X ----- MISQDCBaff ----- X

DECISION

JARDELEZA, J.:

This is a Petition for Review on *Certiorari*¹ seeking the reversal of the December 19, 2008 Decision² and March 6, 2009 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 101620. The CA affirmed the November 20, 2007 Decision⁴ of the Regional Trial Court of Manila (RTC), Branch 14, which in turn nullified the May 5, 2006 Order⁵ of the Metropolitan Trial Court of Manila (MeTC), Branch 16. The MeTC dismissed the case filed by respondent Noel S. Buen (Buen) against petitioner Robert C. Martinez (Martinez) pursuant to Section 3, Rule 17 of the Rules of Court.

On April 6, 2005, Buen filed in the MeTC an Action for Recovery of Personal Property against Martinez, docketed as Civil Case No. 180403-CV.⁶ Buen sought to recover a Toyota Tamaraw Revo with plate number WFG-276 (vehicle), claiming ownership over the same based on a certificate of registration under his name.⁷ He narrated that he organized a corporation named Fairdeal Chemical Industries, Inc. (Fairdeal) with Martinez and a

¹ *Rollo*, pp. 13-40.

² *Id.* at 42-51. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

³ *Id.* at 59-60.

⁴ *Id.* at 103-108.

⁵ *Id.* at 69. Penned by Presiding Judge Crispin B. Bravo.

⁶ *Id.* at 44.

⁷ *Id.* at 43; CA *rollo*, p. 71.

certain Benjamin Gonzales. As the majority shareholder of Fairdeal, he allowed the company the use of his personal cars, among them, the vehicle. Buen averred that Martinez now claims that the vehicle was owned by Fairdeal and refuses to return its possession despite Buen's repeated demands.⁸

In his Answer with Compulsory Counterclaim,⁹ Martinez alleged that all the vehicles utilized by Fairdeal were purchased using corporate funds; only that Buen surreptitiously registered some of them under his name.¹⁰ By way of counterclaim, he asked for moral and exemplary damages and attorney's fees.¹¹

After Buen posted the required bond, the MeTC in an Order dated April 19, 2005 awarded the possession of the vehicle to Buen.¹²

During the pendency of the civil action, Martinez filed a Complaint for Qualified Theft against Buen in the RTC of Manila, Branch 19, docketed as Criminal Case No. 05-240813.¹³ A warrant of arrest was issued against Buen who, thereafter, went into hiding.¹⁴

Trial ensued in the action for recovery of personal property. On the scheduled date of hearing on March 28, 2006, Buen's counsel manifested in open court that Buen cannot attend his cross-examination and prayed that the case be archived.¹⁵ The MeTC ordered Buen's counsel to formalize his motion and for Martinez to file his comment within 10 days from receipt thereof. Thus, Buen's counsel filed a formal Motion to Send Case to the Files of the Archives with Leave of Court¹⁶ (Motion to Archive) dated March 31, 2006 and set the same for hearing on April 11, 2006. Despite notice, Martinez failed to appear during the scheduled hearing. He also did not file a comment to the Motion to Archive as directed by the MeTC. Thus, on April 11, 2006, the MeTC, in open court, granted the Motion to Archive the case.¹⁷

Claiming that he had no knowledge of the Order granting temporary archiving of the case, Martinez, on April 21, 2006, filed a Comment/Opposition to the Motion to Remand the Case to the Archives¹⁸ (Comment/Opposition) and prayed that the motion filed by Buen's counsel be denied.

⁸ CA *rollo*, pp. 56-57.

⁹ *Id.* at 36-41.

¹⁰ *Id.* at 38.

¹¹ *Id.* at 39.

¹² *Rollo*, p. 77.

¹³ *Id.* at 44.

¹⁴ CA *rollo*, p. 52.

¹⁵ *Rollo*, p. 69.

¹⁶ *Id.* at 62-65.

¹⁷ *Id.* at 45.

¹⁸ *Id.* at 66-68.

In an Order¹⁹ dated May 5, 2006 (MeTC Order of Dismissal), the MeTC treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order and dismissed the case pursuant to the provisions of Section 3,²⁰ Rule 17 of the Rules of Court. On July 18, 2006, Buen filed a Motion to Set Aside Order (of Dismissal).²¹

In the meantime, Martinez filed a Motion to Quash the Writ of Seizure (Motion to Quash) earlier issued by the MeTC.²² In response, Buen filed an Opposition stating that the filing of the Motion to Quash is premature because the dismissal of the case is not yet final. He contended that Martinez failed to prove, by way of preponderance of evidence, his title and right of possession over the vehicle.²³

On November 13, 2006, the MeTC acted favorably on Martinez' Motion to Quash and ordered Buen to return the vehicle to Martinez. It, however, amended its Order on November 27, 2006, directing Buen to surrender possession of the vehicle to the sheriff instead.²⁴

On December 13, 2006, Buen filed a motion seeking reconsideration of the Order directing Buen to return the vehicle to Martinez. Buen also informed the court that he has since been detained in the Manila City Jail and was now ready for cross-examination.²⁵

The MeTC denied Buen's motion for reconsideration in its Order dated January 25, 2007.²⁶ It declared that the Order dated November 13, 2006 had already attained finality and could no longer be disturbed.

Buen filed a Petition for *Certiorari*²⁷ in the RTC, pleading that the MeTC acted in grave abuse of discretion when it treated Martinez' Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. He argued that the Comment/Opposition had already been rendered moot and academic by the April 11, 2006 Order granting the Motion to Archive.²⁸ He also noted that the Comment/Opposition did not conform to the intents and purposes of a motion for reconsideration; that no filing fees

¹⁹ *Supra* note 5.

²⁰ Sec. 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

²¹ *Rollo*, p. 79.

²² *Id.* at 114.

²³ *Id.* at 78.

²⁴ *Id.* at 95.

²⁵ *Id.* at 70-71.

²⁶ *Id.* at 88.

²⁷ *Id.* at 74-86.

²⁸ *Id.* at 80.

were paid for the same; and that the Comment/Opposition did not even pray that it should be treated as a motion for reconsideration.²⁹

In addition, Buen took issue with the MeTC's dismissal of the case pursuant to Section 3, Rule 17 of the Rules of Court. He contended that unless a party's conduct is so negligent or dilatory, courts should consider ordering lesser sanctions other than the dismissal of the case. He maintained that the delay brought about by his non-availability to appear during the trial is "unexpected, unavoidable and justified" and beyond his will.³⁰

In a Decision³¹ dated November 20, 2007 (RTC Decision), the RTC ruled in favor of Buen, the decretal portion of which reads:

WHEREFORE, all premises considered, the Petition for Certiorari is hereby **GRANTED**. Accordingly, the Orders of the public respondent dated May 5, 2006 and January 25, 2007 are hereby **NULLIFIED**. All derivative Orders therefrom are likewise **SET ASIDE**. Accordingly, the Branch Sheriff of the Metropolitan Trial Court (MeTC), Branch 16, Manila is hereby **DIRECTED** to take over and deliver immediately to the petitioner, the possession of the Toyota Tamaraw Revo with Plate No. WFG-276. Further, the MeTC of Manila, Branch 16, presided over by the public respondent, is hereby **DIRECTED** to set Civil Case No. 180403-CV for continuation of trial on the merits for the reception of the evidence-in-chief of the petitioner, and to hear said case until its termination.

With *costs* against the private respondent.

SO ORDERED.³² (Emphasis and italics in the original.)

The RTC agreed with Buen that Martinez' Comment/Opposition to the Motion to Archive has been rendered moot and academic by the MeTC's April 11, 2006 Order. It ruled that the remedy of Martinez then was to file a motion for reconsideration of the Order. The RTC thus concluded that the MeTC, in treating Martinez' Comment/Opposition as a motion for reconsideration, arrogated upon itself the duty of a party litigant to file a strategic pleading which was on one hand, prejudicial to Buen and, on the other hand, clearly beneficial to Martinez.³³

The RTC also agreed with Buen that the Comment/Opposition should not have been treated as a motion for reconsideration because it did not comply with the substantive and procedural requirements for a motion, such

²⁹ *Id.*

³⁰ *Rollo*, p. 81.

³¹ *Supra* note 4.

³² *Rollo*, p. 103.

³³ *Id.* at 106.

as stating the grounds relied upon, notice of hearing, manner of service, and proof of service.³⁴

Further, the RTC stated that Buen did not err in filing a petition for *certiorari* instead of an appeal because it was apparent that the MeTC committed an error in jurisdiction. It also held that while *certiorari* may not be used as a substitute for lost appeal, such rule should not be strictly enforced if the case is genuinely meritorious.³⁵

In view of the RTC's Decision in Buen's favor, the MeTC issued an Order³⁶ dated November 26, 2007 directing the sheriff to take over and deliver possession of the vehicle to Buen.

Without filing a motion for reconsideration of the RTC Decision, Martinez filed a Petition for *Certiorari*³⁷ in the CA on December 13, 2007. He claims to have dispensed with the filing of the motion for reconsideration due to the tone of finality of the RTC Decision and other special circumstances which warrant immediate action.³⁸

Martinez reiterated that a petition for *certiorari* in the RTC is not the proper remedy to challenge the MeTC's Order of April 11, 2006 and that Buen only filed the petition as a substitute for his lost appeal. He argued that Buen did not convincingly justify the reason for the considerable lapse of time before he assailed the MeTC's Order of Dismissal; the RTC, on the other hand, merely assumed the existence of circumstances not mentioned in Buen's petition.³⁹

Furthermore, Martinez averred that the MeTC, on its own, may dismiss the case on the ground of failure to prosecute as expressly allowed by Section 3, Rule 17 of the Rules of Court.⁴⁰ He argued that the dismissal was proper because Buen was a fugitive from justice as admitted by the latter's counsel in open court and in his written motion to archive. He stated that the MeTC cannot speculate on when Buen would appear to continue the trial of the case and maintained that the pending case should not be held hostage by Buen's illegal and capricious act.⁴¹

In its Decision⁴² dated December 19, 2008 (CA Decision), the CA affirmed the ruling of the RTC and dismissed Martinez' petition for *certiorari*. It found that the MeTC committed grave abuse of discretion

³⁴ *Id.* at 106-107.

³⁵ *Id.* at 107-108.

³⁶ *Id.* at 101-102.

³⁷ *Id.* at 110-136.

³⁸ *Id.* at 118.

³⁹ *Id.* at 125.

⁴⁰ *Id.* at 130-131.

⁴¹ *Id.* at 131.

⁴² *Supra* note 2.

when it treated the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order. The CA explained:

It should be recalled that the MeTC received the [O]pposition *before* it granted the motion to archive. Thus, when the MeTC granted the motion to archive, it is deemed to have denied the [O]pposition filed by herein Petitioner [Martinez]. And having denied the [O]pposition, it can no longer treat the [O]pposition as a motion for reconsideration.

x x x

By treating the [O]pposition as a motion for reconsideration, the MeTC in effect took up the cudgels for herein Petitioner. And by doing so, this resulted to the extreme prejudice which would call for the extra-ordinary remedy of certiorari.⁴³ (Italics in the original.)

Martinez sought reconsideration which the CA denied in its Resolution⁴⁴ dated March 6, 2009. The CA held that rules of procedure can be liberally construed since Buen did not deliberately and willfully violate the rules or used them to pervert the ends of justice.⁴⁵ Hence, this petition for review.

The sole issue presented is whether a petition for *certiorari* is the proper remedy to assail the MeTC Order of Dismissal.

Martinez submits that Buen availed of the wrong remedy when the latter filed a petition for *certiorari* instead of an appeal from the MeTC Order of Dismissal.⁴⁶

We deny the petition for lack of merit.

I

A dismissal based on any of the grounds in Section 3, Rule 17 of the Rules of Court has the effect of an adjudication on the merits. Unless otherwise qualified by the court, a dismissal under said rule is considered with prejudice, which bars the refiling of the case.⁴⁷ When an order completely disposes of the case and leaves nothing to be done by the court, it is a final order properly subject of an appeal.

⁴³ *Rollo*, pp. 49-50.

⁴⁴ *Supra* note 3.

⁴⁵ *Rollo*, p. 59.

⁴⁶ *Id.* at 184.

⁴⁷ *Armed Forces of the Philippines Retirement and Separation Benefits System v. Republic*, G.R. No. 188956, March 20, 2013, 694 SCRA 118, 123-124, citing *De Knecht v. Court of Appeals*, G.R. No. 108015, May 20, 1998, 290 SCRA 223, 239-240.

The May 5, 2006 Order of the MeTC is an order of dismissal pursuant to Section 3, Rule 17. Since it was silent as to whether the dismissal of the case was with prejudice, the general rule would apply, that is, the same would be considered to be one with prejudice. Under the circumstances, Buen's remedy would have been to file an ordinary appeal in the RTC pursuant to Rule 40 of the Rules of Court.

Here, Buen filed a petition for *certiorari* under Rule 65. Since a special civil action for *certiorari* can only be entertained when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law,⁴⁸ the RTC could have dismissed Buen's petition outright. The rule that *certiorari* will not lie as a substitute for appeal, however, admits of exceptions.

Certiorari may be considered a proper remedy despite the availability of appeal or other remedy in the ordinary course of law in the following instances: "(a) when it is necessary to prevent irreparable damages and injury to a party; (b) where the trial judge capriciously and whimsically exercised his judgment; (c) where there may be danger of a failure of justice; (d) where an appeal would be slow, inadequate, and insufficient; (e) where the issue raised is one purely of law; (f) where public interest is involved; and (g) in case of urgency."⁴⁹

The second exception is present in this case. We find that the MeTC judge capriciously and whimsically exercised his judgment when he: (1) treated Martinez' (belated) Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; (2) set aside the April 11, 2006 Order on the basis of the Comment/Opposition; and (3) dismissed the case without stating the specific ground on which the dismissal was based.

II

Grave abuse of discretion is defined as a "capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility."⁵⁰

⁴⁸ RULES OF COURT, Rule 65.

Sec. 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x (Emphasis supplied.)

⁴⁹ *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 594, citing *Francisco Motors Corporation v. Court of Appeals*, G.R. Nos. 117622-23, October 23, 2006, 505 SCRA 8, 20. Emphasis supplied.

⁵⁰ *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342, citing *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287, also citing *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219.

The MeTC gravely abused its discretion when it treated the Comment/Opposition as a motion for reconsideration of its order granting Buen's Motion to Archive the case.

The Comment/Opposition was filed only on April 21, 2006,⁵¹ or after the RTC had ruled on Buen's motion of the April 11, 2006 Order. Martinez claims that he had no knowledge of the April 11, 2006 Order, hence, his filing of the Comment/Opposition. However, we cannot discount the fact that he knew of Buen's intention to ask for the archiving of the case as early as the March 28, 2006 hearing when Buen's counsel moved, in the presence of Martinez' counsel, for the archiving of the case but was thereafter directed to formalize the same through a written motion. Buen's counsel filed the Motion to Archive on March 31, 2006 and set the same for hearing on April 11, 2006. Martinez and his counsel did not attend the April 11, 2006 hearing. Neither did they file a pleading opposing the Motion to Archive before it was heard. As a result, the MeTC granted Buen's Motion to Archive the case.

Martinez does not deny receiving notice of the Motion to Archive and hearing scheduled to argue said motion. Hence, by his failure to attend the hearing and file any pleading opposing Buen's motion, Martinez is deemed to have acquiesced to the archiving of the case.

When Martinez later changed his mind and filed the Comment/Opposition, the MeTC not only accepted the belated filing, it also treated the same as a motion for reconsideration of its April 11, 2006 Order.

This the MeTC cannot do.

First. The Comment/Opposition cannot be treated as a motion for reconsideration as it does not comply with the requisites for the same. In *Samma-Likha v. Samma Corporation*,⁵² we only allowed a motion for reconsideration to be treated as an appeal because it substantially complies with the formal requisites of the latter.

In this case, Martinez' Comment/Opposition does not comply with the *formal* requisites of a motion for reconsideration. We quote with approval the findings of the RTC:

233; *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, G.R. No. 135507, November 29, 2005, 476 SCRA 361, 366; *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 481; *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 384; *Microsoft Corporation v. Best Deal Computer Center Corporation*, G.R. No. 148029, September 24, 2002, 389 SCRA 615, 619-620; *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17; *Cuisin v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

⁵¹ Contrary to the CA Decision, we found that the Comment/Opposition reached the MeTC after the Motion to Archive was granted, not before. Regardless, we still find that there is grave abuse of discretion on the part of the MeTC in treating the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order.

⁵² G.R. No. 167141, March 13, 2009, 581 SCRA 211.

Indeed, the petitioner was correct in its observation that the subject Comment/Opposition should not have been treated as a Motion for Reconsideration. Firstly, under Section 3, Rule 15 of the Revised Rules on Civil Procedure, a motion shall state the relief sought to be obtained and the grounds upon which it is based. Certainly, the relief of prayer that was contained in the Comment/Opposition [was] different from the allegations in a Motion for Reconsideration. Secondly, Sections 4, 5 and 6 of the same Rule provide for a strict compliance thereof. Again, the Comment/Opposition failed to comply therewith, especially so, on the requirements of the notice of hearing, manner of service to the adverse party and proof of service thereof, which are all calculated to prevent surprise on the part of the adverse party.⁵³

In treating the Comment/Opposition as a motion for reconsideration, the MeTC disregarded the long line of cases⁵⁴ where we ruled that a motion for reconsideration, just like any other motion, requires a notice of hearing, without which, the motion is considered as a mere scrap of paper. Being a *pro forma* motion, the MeTC should not have acted on the Comment/Opposition.

Notably, neither does the Comment/Opposition comply with the *substantive* requirements of a motion for reconsideration. The Comment/Opposition did not make any express reference to the findings or conclusions of the MeTC Order of Dismissal that are not supported by evidence or the law, as required under Section 2,⁵⁵ Rule 37 of the Rules of Court referring to the contents of a motion for reconsideration.

In giving due course to the Comment/Opposition as a motion for reconsideration despite the substantive and procedural barriers, the MeTC evidently showed partiality to the cause of Martinez. Both the RTC and the CA are correct in finding that the MeTC took the cudgels for Martinez to

⁵³ *Rollo*, pp. 106-107.

⁵⁴ *Resurreccion v. People*, G.R. No. 192866, July 9, 2014, 729 SCRA 508, 527, citing *Sembrano v. Ramirez*, G.R. No. L-45447, September 28, 1988, 166 SCRA 30, 35-36; *Philippine Commercial and Industrial Bank v. Court of Appeals*, G.R. No. 120739, July 20, 2000, 336 SCRA 258, 263; *Tan v. Court of Appeals*, G.R. No. 130314, September 22, 1998, 295 SCRA 755, 763, *De la Peña v. De la Peña*, G.R. No. 116693, July 5, 1996, 258 SCRA 298, 302; *Manila Electric Company v. La Campana Food Products, Inc.*, G.R. No. 97535, August 4, 1995, 247 SCRA 77, 82; *Republic Planters Bank v. Intermediate Appellate Court*, G.R. No. L-63805, August 31, 1984, 131 SCRA 631, 637; *Firme v. Reyes*, G.R. No. L-35858, August 21, 1979, 92 SCRA 713, 716.

⁵⁵ Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof.* – The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. x x x (Emphasis supplied.)

Buen's prejudice. We find that the arbitrary and despotic manner by which the MeTC disregarded mandatory rules to favor Martinez truly calls for the extraordinary remedy of *certiorari*.

Second. Section 3, Rule 17 of the Rules of Court provides four grounds for dismissal of a case due to the fault of the plaintiff. These are:

- a. Failure to appear on the date of the presentation of his evidence in chief;
- b. Failure to prosecute for an unreasonable length of time;
- c. Failure to comply with the Rules of Court; and
- d. Failure to comply with the order of the court.

Here, while the Order indicated that the dismissal was made pursuant to Section 3, Rule 17, it did not provide for the *specific* ground upon which the dismissal was made, leaving Buen (and the appellate courts) to speculate as to the same.

True, none of the parties took issue with the MeTC Order of Dismissal being unclear. This, however, does not prevent us from looking into an unassigned error if its consideration is indispensable or necessary in arriving at a just decision.⁵⁶

Third. The MeTC granted a relief of not prayed for or in excess of what was sought by the party in his pleading. The prayer in Martinez' Comment/Opposition reads:

WHEREFORE, PREMISES[] CONSIDERED, it is most respectfully prayed of this Honorable Court, that the motion to send this instant case to the archives be denied. Defendant further prays that the testimony of the plaintiff be stricken off the record and the defendant be allowed to present his evidence on his counterclaim at the next scheduled hearing.⁵⁷

In *Diona v. Balangue*,⁵⁸ we held that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party.⁵⁹ It is improper for a court to enter an order which exceeds the scope of relief sought in the pleadings in the absence of a notice which affords the opposing party an opportunity to be heard with respect to the proposed

⁵⁶ *Shimizu Philippines Contractors, Inc. v. Magsalin*, G.R. No. 170026, June 20, 2012, 674 SCRA 65, 76-77, citing *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, March 13, 2009, 581 SCRA 70; *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244; and *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 691.

⁵⁷ *Rollo*, p. 67.

⁵⁸ G.R. No. 173559, January 7, 2013, 688 SCRA 22.

⁵⁹ *Id.* at 35.

relief. Due process considerations justify this requirement to prevent surprise to the defendant.⁶⁰

In this case, the MeTC did not inform Buen that the Comment/Opposition would be treated as a motion for reconsideration of the April 11, 2006 Order. It thus came as a surprise to Buen that the action would be dismissed with prejudice on account of the belatedly filed Comment/Opposition.

Fourth. In *Shimizu Philippines Contractors, Inc. v. Magsalin*,⁶¹ we ruled that an order of dismissal that has the effect of an adjudication on the merits should conform with Section 1, Rule 36 of the Rules of Court, (referring to judgments or final orders of the court); otherwise, the dismissal shall be considered as a denial of due process and is thus a nullity.⁶² The stated provision mandates that a judgment or final order must state clearly and distinctly the facts and the law on which the judgment or final order is based.

Here, the MeTC Order of Dismissal has the effect of an adjudication on the merits. Thus, Section 1, Rule 36 of the Rules of Court applies. However, far from being clear, the MeTC Order of Dismissal left all the parties and the courts guessing as to its basis. It is therefore a patent nullity.

In *Lu Ym v. Nabua*,⁶³ we held that an order of the court which is a patent nullity for failure to comply with the mandatory provisions of the Rules of Court may be directly assailed through a petition for *certiorari*.⁶⁴ We thus rule that Buen correctly availed of the remedy of *certiorari* to challenge the MeTC Order of Dismissal. Indeed, the MeTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it treated the Comment/Opposition as a motion for reconsideration of the April 11, 2006 Order; and on the strength of the same reconsidered its earlier ruling, then dismissed the case without stating the clear provision of law upon which it was based.

WHEREFORE, the petition is **DENIED** for lack of merit. The December 19, 2008 Decision and March 6, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 101620 are hereby **AFFIRMED**.

SO ORDERED.

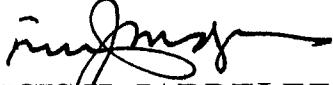
⁶⁰ *Id.* at 36, citing *Development Bank of the Philippines v. Teston*, G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

⁶¹ *Supra* note 56.

⁶² *Id.* at 76.

⁶³ G.R. No. 161309, February 23, 2005, 452 SCRA 298.

⁶⁴ *Id.* at 311. See also *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, *supra* note 49.



FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



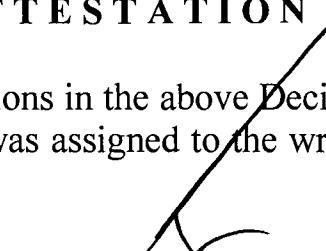
BIENVENIDO L. REYES
Associate Justice



NOEL G. TIJAM
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



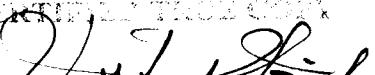
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAY 03 2017