Republic of the Philippines
Supreme Court
Manila

## SECOND DIVISION

**LEONARDO L. VILLALON,**
Petitioner,

- versus -

**RENATO E. LIRIO,**
Respondent.

**G.R. No. 183869**

Present:

CARPIO, *J., Chairperson,*
BRION,
BERSAMIN,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

03 AUG 2015

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## DECISION

**BRION, *J.*:**

This appeal by *certiorari*[1] assails the March 31, 2008 Decision[2] and the July 21, 2008 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. No. SP No. 94154.

The CA reversed and set aside the October 17, 2005[4] and February 14, 2006[5] Orders of the Regional Trial Court (*RTC*),[6] which dismissed the complaint[7] filed by respondent Renato E. Lirio (*Lirio*) against petitioner Leonardo L. Villalon (*Villalon*).

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* Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo, per Raffle dated October 12, 2009.

1 *Rollo*, pp. 7-21. The petition is filed under Rule 45 of the Rules of Court.

2 Id. at 23-28. The decision was penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justice (now Supreme Court Associate Justice) Mariano C. Del Castillo and Associate Justice Arcangelita Romilla-Lontok of the Thirteenth Division.

3 Id. at 30-31.

4 Id. at 55-56.

5 Id. at 55-57.

6 Id. The Orders were issued by Judge Esperanza Fabon-Victorino of Branch 157 of the Regional Trial Court, Pasig City, in Civil Case No. 70368.

7 Id. at 33-39. The complaint is captioned Amended Complaint with Prayer for Preliminary Attachment.

## The Factual Antecedents

Lirio and Semicon Integrated Electronics Corporation (*Semicon*) entered into a contract of lease[8] covering Lirio's properties[9] in Pasig City. Villalon, who was then Semicon's president and chairman of the board, represented the lessee corporation in the lease contract.

Prior to the expiration of the lease, Semicon terminated the contract and allegedly left unpaid rentals, damages, and interest. Lirio demanded payment but Semicon and Villalon failed to pay.[10]

As a result, Lirio filed on May 17, 2005 a complaint for sum of money with prayer for preliminary attachment against Semicon and Villalon.[11]

In his complaint, Lirio alleged that Semicon and Villalon unjustly pre-terminated the lease and failed to pay the unpaid rentals despite demand. In praying for the issuance of a preliminary attachment, Lirio claimed that Villalon fraudulently and surreptitiously removed Semicon's equipment, merchandise, and other effects from the leased premises, preventing him to exercise his right, among others, to take inventories of these effects, merchandise, and equipment.[12]

In response, Villalon filed a motion to dismiss[13] on the ground that the complaint failed to state a cause of action against him. He argued that he is not a real party-in-interest in the action as he is merely an officer of Semicon. Villalon further contended that there was no competent allegation in the complaint about any supposed wrongdoing on his part to warrant his inclusion as a party defendant.

## The Ruling of the Regional Trial Court

The RTC granted Villalon's motion to dismiss. It held that under the theory of separate corporate entity, the action should be limited against Semicon, the lessee; it cannot be expanded against Villalon, a mere corporate officer.

The RTC concluded that the allegations clearly showed that the collection of unpaid rentals and damages arose from the alleged breach of the lease contract executed and entered into by Lirio and Semicon, and that

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8 Id. at 40-47. The lease contract dated July 17, 1995, had a term of ten (10) years from July 15, 1995, to July 14, 2005.

9 Id. at 8. The properties consist of a three-storey building and a two-storey building in adjacent lots covered by Transfer Certificate of Title Nos. PB-78516 and 18746 located along Marcos Highway, Santolan, Pasig City.

10 Id. at 48-49.

11 Id. at 33-39.

12 Id. at 35-36.

13 Id. at 50-55.

the conflict was between Lirio and Semicon only and did not include Villalon.

The RTC denied Lirio's motion for reconsideration.

Lirio responded to the grant of the motion to dismiss and the denial of reconsideration with the CA, by filing a petition for *certiorari* under Rule 65 of the Rules of Court.

## The Ruling of the Court of Appeals

The CA nullified the RTC's dismissal order and ruled that the RTC gravely abused its discretion.

It held that the RTC completely ignored the fact that the case "might possibly" and properly call for the application of the doctrine of piercing the veil of corporate entity. Further, the CA found that Villalon "played an active role in removing and transferring Semicon's merchandise, chattels and equipment from the leased premises. This deprived Lirio of his preferred lien over the said merchandise, chattels, and equipment for the satisfaction of Semicon's obligation under the lease contract."

The dispositive portion of the CA decision reads:

> "WHEREFORE, premises considered, the instant petition is **GRANTED**, the assailed ***ORDER*** of the Regional Trial Court, Branch 157, Pasig City dated 17 October 2005 is NULLIFIED."

The CA denied Villalon's motion for reconsideration; thus, he came to us for relief via the present petition.

## The Petition[14]

Villalon claims that the CA erred in giving due course to Lirio's petition for *certiorari* considering that appeal became available after the RTC dismissed the complaint.

Villalon asserts that an order granting a motion to dismiss is final and appealable. He argues that a petition for *certiorari* under Rule 65 of the Rules of Court prospers only when there is neither appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

Thus, Villalon insists that Lirio should have appealed the order of dismissal since a petition for *certiorari* is not a substitute for a lost appeal. Moreover, Villalon notes that Lirio failed to show how an appeal could have been inadequate.

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[14] Id. at 7-21.

Villalon further posits that the RTC did not gravely abuse its discretion, even assuming that *certiorari* was proper. He avers that the trial court properly dismissed the complaint because the allegations failed to show a cause of action against him.

Villalon likewise alleges that the CA erred when, in order to apply the doctrine of piercing the veil of corporate entity, it had to add allegations not found in the complaint.

## The Respondent's Case[15]

Lirio argues that *certiorari* is allowed even if appeal is available where appeal does not constitute a speedy and adequate remedy.

Although Lirio agrees that he could have appealed the RTC's order dismissing the complaint against Villalon, he contends that appeal was not speedy and adequate because the RTC gravely abused its discretion when it whimsically and arbitrarily ignored existing doctrines on piercing the veil of corporate fiction.

Lirio insists that Villalon had a role in the surreptitious and fraudulent removal of Semicon's merchandise, effects, and various equipment from the leased premises and their transfer to another location, which deprived him of his preferred lien over the said merchandise, effects, and equipment.

Lirio further argues that there is a sufficient cause of action to hold Villalon personally liable for Semicon's liability because the allegations of fraud and evasion of contractual obligations were clearly spelled out in the complaint.

## The Issues

Based on the foregoing, we resolve: (1) whether the petition for *certiorari* to the CA was the proper remedy; and (2) whether the complaint failed to state a cause of action against Villalon.

## The Court's Ruling

We grant the petition.

Specifically, we rule that (1) Lirio's resort to *certiorari* with the CA was improper; and (2) the complaint failed to state a cause of action.

**A petition for certiorari is not a substitute for a lost appeal.**

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15 Id. at 83-94 and 129-139.

This Court has repeatedly held that a special civil action for *certiorari* under Rule 65 is proper only when there is neither appeal, nor plain, speedy, and adequate remedy in the ordinary course of law. The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.[16]

*In Madrigal Transport Inc. v. Lapanday Holdings Corporation*,[17] we ruled that because an appeal was available to the aggrieved party, the action for *certiorari* would not be entertained. We emphasized in that case that the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion.

In *Cathay Pacific Steel Corporation v. Court of Appeals*,[18] we held that even if, in the greater interest of substantial justice, *certiorari* may be availed of, it must be shown that the [lower court] acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The court must have exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law.

In the present case, **Lirio failed to satisfactorily explain why he did not appeal the dismissal order although he admitted that he could have done so**. Neither did he claim that he was prevented, legally or physically, from appealing.

Strikingly, **Lirio did nothing during the period within which he should have filed an appeal**. While he admits that he could have appealed the dismissal to the CA, he insists that appeal could not have been speedy and adequate because the RTC gravely abused its discretion. Lirio cites the case of *Luna v. Court of Appeals*[19] to justify his resort to *certiorari* despite the availability of appeal.

We find no merit in Lirio's argument.

The case of *Luna* involved a suit for damages filed against an airline company by passengers whose baggage was undelivered at the designated time and place. In this case, the liability of the airline company was established as the airline company impliedly admitted that it failed to duly deliver the passengers' baggage.

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16 *NAPOCOR v. Sps. Laohoo, et al.*, 611 Phil. 194 (2009); *Madrigal Transport Inc., v. Lapanday Holdings Corp.*, 479 Phil. 768 (2004); *Sps. Reterta v. Sps. Mores and Lopez*, 671 Phil. 346 (2011); *Ongsitco v. Court of Appeals*, 325 Phil. 1069 (1996); *Espinoza v. Provincial Adjudicator*, 545 Phil. 535 (2007).

17 479 Phil. 768, 782 (2004).

18 531 Phil. 620 (2006).

19 216 SCRA 107 (1992).

We held that since the passengers suffered an injury for which compensation was due, the airline company could not be allowed to escape liability by arguing that the trial court's orders had attained finality due to the passengers' failure to move for reconsideration or to file a timely appeal.[20]

In *Luna*, we allowed the *occasional departure* from the general rule that the extraordinary writ of *certiorari* cannot substitute for a lost appeal only because the rigid application of the rule would have resulted in injustice to the passengers.[21]

We find no basis to relax the rules of procedure in the present case.

While it is true that liberal application of the rules of procedure is allowed to avoid manifest failure or miscarriage of justice, it is equally true that a party invoking liberality must explain his failure to abide by the rules.[22]

To reiterate, Lirio failed to explain why he did not appeal the dismissal order while admitting that he could have done so. Rather, he clung to his argument that he had correctly filed a petition for *certiorari* because of the alleged grave abuse of discretion on the part of the RTC.

Lirio's reasoning is faulty.

We do not see why appeal could not have been speedy and adequate. As admitted by Lirio himself, he received the RTC's *final* dismissal order on February 24, 2006,[23] yet, he waited for two months before he took action by filing the petition for *certiorari* on April 20, 2006.[24]

Indeed, if speed had been Lirio's concern, he should have appealed within fifteen days from his receipt of the final order denying his motion for reconsideration, and not waited for two months before taking action.[25] Moreover, an appeal would have adequately resolved his claim that the RTC erred in dismissing his complaint against Villalon, an order granting a motion to dismiss being final and appealable.

Further, we are not convinced that Lirio filed the petition for *certiorari* because the RTC allegedly gravely abused its discretion. The **more tenable explanation** for his wrong choice of remedy is that **the period to appeal simply lapsed without an appeal having been filed**. Having lost his right to appeal, Lirio instituted the only remedy that he thought was still available. This is contrary to the basic rule that the

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20 Id. at 111.
21 Id.
22 538 Phil. 587 (2006).
23 *Rollo*, p. 59.
24 Id. at 58.
25 *See* RULE 41, SECTION 3, RULES OF COURT.

remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[26]

Finally, unlike in *Luna* where the airline's liability was clearly shown, Villalon's liability arising from his purported fraudulent acts was not established at all. As will be further discussed, the allegations in the complaint failed to particularly state how Villalon committed fraud. For this reason, the RTC could not have resolved whether Villalon could be made personally accountable for Semicon's liabilities.

For all these reasons, we rule that Lirio's resort to the extraordinary writ of *certiorari* was improper.

**The complaint failed to state a cause of action court.**

Even if we are to relax the rules of procedure and allow *certiorari* to substitute for the lost appeal, we still grant Villalon's appeal and reverse the CA's decision.

To recall, Lirio claims that the RTC gravely abused its discretion when it dismissed the complaint against Villalon by "whimsically and arbitrarily ignoring the basic doctrines in piercing the veil of corporate fiction."

A review of the allegations of the complaint, however, would show that the RTC did not gravely abuse its discretion when it dismissed the complaint.

Rule 8,[27] Section 5[28] of the Rules of Court requires that in all averments of fraud or mistake, **the circumstances constituting fraud or mistake must be stated with particularity**, unlike in cases of malice, knowledge, or other conditions of the mind which may be averred generally.

In *Luistro v. Court of Appeals*,[29] we ruled that the following allegation fell short of the requirement that fraud must be stated with particularity.

> "That sometime in the year of 1997, the consolidator-facilitator of the Defendants FGPC and Balfour **by means of fraud and machinations of words** were able to convince the plaintiff to enter into `CONTRACT OF EASEMENT OF RIGHT OF WAY' wherein the latter granted in favor of the defendant FGPC the right to erect [its] Tower No. 98 on the land of the plaintiff situated at Barangay Maigsing Dahilig, Lemery 4209 Batangas including the right to Install Transmission Lines over a portion of the same property for a consideration therein stated, a xerox copy of said contract is hereto attached as ANNEXES "A" up to "A-4" of the complaint;
> That the said contract, (Annexes "A" up to "A-4") was entered into by the plaintiff under the "**MISREPRESENTATION, PROMISES, FALSE AND**

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26 *Supra* note 17.

27 Manner of Making Allegations in the Pleading.

28 Section 5. *Fraud, mistake, condition of the mind.* — In all averments of fraud or mistake the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge, or other condition of the mind of a person may be averred generally.

29 603 Phil. 243 (2009).

> **AND FRAUDULENT ASSURANCES AND TRICKS"** of the defendants." [emphasis ours]

In the present case, the only allegation of fraud in the complaint reads:

> "With intent to **defraud the plaintiff** and to prevent the plaintiff from exercising his right [to be constituted or appointed as attorney-in-fact of the defendant with power and authority to cause the premises to be opened, to take inventories of all the defendants' merchandise, effects, furniture, fixtures and/or equipment therein and transfer the same to the plaintiff's bodega], **the defendants surreptitiously and fraudulently** removed their merchandise, effects, and equipment from the lease premises and transferred them to another location."[30] [emphasis ours]

Lirio's mere invocation of the words "surreptitiously and fraudulently" does not make the allegation particular without specifying the circumstances of Villalon's commission and employment of fraud, and without delineating why it was fraudulent for him to remove Semicon's properties in the first place.

The allegation of fraud would have been averred with particularity had Lirio alleged, *for example*, that Villalon removed the equipment under the false pretense that they needed repair and refurbishing but the equipment were never returned; or that Villalon removed the merchandise because Semicon needed to sell them in exchange for new supplies but no new supplies were bought. No such allegation was ever made.

Thus, the RTC could not have properly ruled on whether there was a need to pierce the veil of corporate entity precisely because the complaint failed to state with particularity how Villalon committed and employed fraud.

Finally, even if we grant that the allegations of fraud were averred with particularity, the RTC's finding that the complaint failed to state a cause of action against Villalon was only an error of judgment and did not constitute grave abuse of discretion. An error of judgment, which is properly reviewed through an appeal, is not necessarily equivalent to grave abuse of discretion.[31]

**WHEREFORE**, in view of the foregoing findings and legal premises, we **GRANT** the petition and **REVERSE** and **SET ASIDE** the March 31, 2008 Decision and July 21, 2008 Resolution of the Court of Appeals.

**SO ORDERED.**

**ARTURO D. BRION**
Associate Justice

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30 *Rollo*, pp. 35-36.
31 253 Phil. 276 (1989).

**WE CONCUR:**

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

**LUCAS P. BERSAMIN**
Associate Justice

**JOSE CATRAL MENDOZA**
Associate Justice

**MARVIC M.V.F. LEONEN**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

**ANTONIO T. CARPIO**
Acting Chief Justice