



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 6, 2022 which reads as follows:

“G.R. No. 250012 (*A&E Industrial Corporation vs. Anthony Edmund Hwang, and Spouses Wilson Ong Sy and Vivian Chiong Sy*). – This Petition for Review on *Certiorari*¹ seeks the reversal of the Resolutions dated 08 January 2019² and 22 October 2019³ of the Fourth Division of the Court of Appeals (CA) in CA-G.R. SP. No. 158642. The CA dismissed the special civil action for *certiorari* filed to assail the Orders dated 19 February 2018⁴ and 22 August 2018⁵ of Branch 220, Regional Trial Court (RTC), Quezon City, in Civil Case No. R-QZN-16-05546-CV. The RTC dismissed the complaint for failure to state a cause of action. According to the CA, since the RTC’s dismissal of the complaint was with prejudice, the proper recourse was to file an ordinary notice of appeal under Rule 41 of the Rules of Court and not a petition for *certiorari* under Rule 65.

Antecedents

A&E Industrial Corporation (A&E Corp.) is a domestic corporation established in 1975 primarily for the purpose of engaging in the business of real estate. On 09 December 2011, A&E Corp.’s Chief Finance Officer (CFO) and Corporate Secretary Jane Y. Mallare (Jane) died. At the time of her death, Jane was also the owner of 120,000 shares, or 19.2%, of A&E Corp.’s total

¹ *Rollo*, pp. 18-61.

² *Id.* at 10-13. Penned by Associate Justice Maria Filomena D. Singh (now a Member of this Court) and concurred in by Associate Justices Japar B. Dimaampao (now a Member of this Court) and Manuel M. Barrios.

³ *Id.* at 8-9. Penned by Associate Justice Maria Filomena D. Singh (now a Member of this Court) and concurred in by Associate Justices Japar B. Dimaampao (now a Member of this Court) and Manuel M. Barrios.

⁴ *Id.* at 125-133. Penned by Judge Jose G. Paneda.

⁵ *Id.* at 134-140. Penned by Judge Jose G. Paneda.

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outstanding capital stock.

A dispute thereafter arose between the two groups of surviving stockholders: the **Mallares**, composed of Jane's husband Florencio Mallare (Florencio), their son Aristotle Mallare (Aristotle), and Aristotle's wife Melody Tracy Mallare (Melody), and the **Hwangs**, led by Anthony Edmund Hwang (Anthony) and his wife Evelyn Hwang (Evelyn). Anthony is Jane's son from a previous relationship.

The two factions argued over who will take over Jane's corporate functions, as well as represent her interests pending the formal settlement of her intestate estate. This resulted in a slew of cases filed between the two groups, including an action for injunction, *quo warranto*, and damages (docketed as **Civil Case No. 14-131241**) filed by Anthony, et al. (A&E Corp.-Hwang Group) against Florencio, et al. (A&E Corp.-Mallare Group), before Branch 46, RTC, Manila.

The Complaint⁶ subject of the present case, however, is a complaint for annulment/declaration of nullity, reconveyance, and damages filed by the A&E Corp.-Mallare Group before the RTC, Quezon City, relative to the sale by Anthony and Evelyn of a 518-square meter parcel of land in New Manila, Quezon City, covered by Transfer Certificate of Title (TCT) No. 90873 (subject property). The subject property, which was owned by A&E Corp. *pro indiviso* with Anthony and Evelyn, was sold by the latter to Spouses Wilson Ong Sy and Vivian Chiong Sy (Spouses Sy).

In the complaint⁷ docketed as **Civil Case No. R-QZN-16-05546-CV**, A&E Corp., represented by the A&E Corp.-Mallare Group, alleged that:

2.5 On or about 07 March 2012, or barely three (3) months after the death of [Jane], [Anthony] prepared or cause to be prepared a completely fictitious and false Corporate Secretary's Certificate, signed by [Anthony] and his spouse [Evelyn] which they presented to the stockholders of plaintiff A&E, namely: [Florencio], [Aristotle], and [Melody], for them to sign. The fictitious and false Corporate Secretary's Certificate alleged that [Anthony] was [purportedly] authorized by plaintiff A&E to sell, among others, the Subject Property, to wit (the "Draft Secretary's Certificate"):

"That he is the Secretary-Treasurer of A&E INDUSTRIAL CORPORATION, a corporation duly organized and existing under the laws of the Philippines with business address at No. 23 Madison Street, New Manila, Quezon City;

"That at the special meeting of the Board of Directors of said corporation held on March 5, 2012 at which a quorum was present, the following resolution was adopted and

⁶ Id. at 141-148.

⁷ Id.

ratified.

“RESOLVED, as it is hereby resolved, that the authority to deal/negotiate in connection with the same of parcels of land with the total land area of TWO THOUSAND FIFTY-FOUR (2,054) SQUARE METERS, more particularly described in TCT Nos. 90869, 90871, 90873, & 90874 of the Registry of Deeds of Quezon City, be conferred with [Anthony], Corporate Secretary of the company;

“It is further resolved that he be likewise authorized to sign the Contracts to Sell as well as the Deeds of Absolute Sale and all other pertinent documents related thereto which he may deem fit and proper and beneficial to the company.”

2.6 The Corporation’s stockholders refused to sign the aforesaid draft Secretary’s Certificate, among others, executed by [Anthony] for the following reasons, to wit: (i) no Board meeting was held on 05 March 2012, (ii) The Corporation did not authorize the sale of the real properties of A&E, (iii) no resolution of the Board of Directors was discussed or approved, (iv) the said stockholders and members of the Board of Directors of A&E did not want and had no intention to sell the properties of A&E, (v) [Anthony] is not the Corporate Secretary or Treasurer of A&E and thus, had no basis to declare that he was elected or appointed in the said positions, and (vi) [Anthony] was not authorized to deal and/or transact any disposition of the properties of A&E with third parties.

2.7 Indeed, in the false and fictitious Draft Secretary’s Certificate, the shareholders and directors crossed out their names to signify their non-conformity thereto.

2.8 [A&E] would later on discover that sometime on or about 16 March 2012, [Anthony], without the knowledge and consent of the other directors and stockholders of A&E, surreptitiously filed an unauthorized and false Amended General Information Sheet (the “False Amended GIS”) with the SEC purporting to amend [A&E]’s 2011 General Information Sheet (GIS) (the “Original GIS”) that was already on file with the SEC. The False Amended GIS contained the following fraudulent and untruthful statements/entries:

(a) On Page 3 thereof, under the entries for “Directors and Officers,” [Anthony] made himself out to be “CFO/COS” or Chief Financial Officer and Corporate Secretary, when in truth and in fact such positions were held by [Jane], and upon her death, were left vacant;

(b) On Page 4, containing the list of stockholders, information regarding [Jane] was removed and deleted including the number of shares she held in the Corporation, despite the fact that her estate still owned nineteen-point-two percent (19.2%) of the outstanding capital stock of the Corporation; and

(c) On Page 8, or the last page, [Anthony] signed under oath that he was the Corporate Secretary of the Corporation,

when in truth and in fact he was never elected or appointed as corporate secretary nor was he authorized to act as such by A&E.

2.9 On 25 April 2012, because of (i) the untimely passing of [Jane], (ii) urgent necessity to attend to daily corporate matters, and (iii) the actions exhibited by [Anthony], the President of A&E, formally appointed [Aristotle] as the Interim Corporate Secretary of A&E until such time as a regular Corporate Secretary could be elected at an organizational meeting of the Board of Directors following a Stockholder's meeting.

2.10 Sometime on or about the first quarter of 2012, [Anthony] surreptitiously took the owner's duplicate copy of Transfer Certificate of Title No. 90873, among others, xxx from A&E's vault without the consent and against the will of [A&E].

2.11 On 07 May 2012, a demand upon [Anthony] was made by [A&E] for the return of the owner's duplicate copy of [TCT No. 90873] xxx including the other titles that he took, but despite said demand, [Anthony] failed to return the same. Thus, to protect its interest, [A&E] caused the annotation of the aforementioned incidents on Transfer Certificate of Title No. 90873 xxx through a Notice of Adverse Claim.

2.12 On 23 May 2012, the Notice of Adverse Claim dated 22 May 2012 was successfully registered and annotated on TCT No. 90873 as Entry No. 2012014259.⁸

x x x x

2.13 It was only upon diligent inquiry that [A&E] came to know that TCT No. 90873 was cancelled and in lieu thereof, TCT No. 004-2012006036 was issued to the respondents Spouses Sy on 29 May 2012.

2.13.1 [A&E] was surprised to find out that in spite of the foregoing annotation, [Anthony] and Evelyn sold the [property covered by TCT No. 90873] to respondents Spouses Sy through the execution of a purported Deed of Absolute Sale wherein [Anthony] fraudulently signed for [A&E] as alleged President and authorized representative of [A&E], without [A&E]'s consent and against its will.

2.14 Upon further inquiry with the Registry of Deeds for Quezon City, [A&E] came to know that the cancellation of TCT No. 90873 in favor of respondents Spouses Sy was based on a document denominated as Deed of Absolute Sale purportedly dated 03 May 2012 in favor of respondents Spouses Sy stipulating a purchase price of Six Million Five Hundred Thousand Pesos (Php6,500,000.00).

2.14.1 Despite the annotation on [TCT No. 90873], respondents Spouses Sy and [Anthony] and Evelyn proceeded with the sale of [the property covered by TCT No. 90873]

⁸ Id. at 141-143.

which includes the pro-indiviso share of A&E over the same without the knowledge or consent of [A&E]’s Board of Directors.

2.15 [A&E] would later discover that [Anthony] surreptitiously executed a falsified Secretary’s Certificate making it appear that [Anthony] was authorized by [A&E] to sell the subject property, among others, to respondents Spouses Sy, x x x⁹

Thus, and in view of the foregoing, the A&E Corp.-Mallare Group asked the trial court for the following reliefs:

1. **ON THE FIRST CAUSE OF ACTION** – Ordering that the Deed of Absolute Sale of the Subject Property entered into between [Anthony] and Evelyn, and defendants Spouses Sy involving the sale of plaintiff A&E’s one-half (1/2) interest in the Subject Property covered by Transfer Certificate of Title No. 90873 as (sic) NULL and VOID;
2. **ON THE SECOND CAUSE OF ACTION** – Ordering the cancellation of Transfer Certificate of Title No. 004-2012006036 and ordering a new one issued in its place reconveying in favor of plaintiff A&E its *pro indiviso* interest over the Subject Property;
3. **ON THE THIRD CAUSE OF ACTION** – Ordering all the defendants to jointly and severally pay plaintiff A&E exemplary damages in the amount of at least Five Hundred Thousand Pesos (Php500,000.00);
4. **ON THE FOURTH CAUSE OF ACTION** – Ordering all defendants to jointly and severally pay plaintiff A&E the amount of at least Two Hundred Fifty Thousand Pesos (Php250,000.00) as attorney’s fees, plus litigation expenses and costs of suit.¹⁰

Respondents were thereafter ordered to file their respective answers.

On 04 August 2016, respondents Spouses Sy filed an Urgent Motion¹¹ praying that their attached Answer, which was belatedly filed due to their counsel’s inadvertence, be admitted “in the interest of substantial justice.”¹² In their Answer,¹³ Spouses Sy argued, among others, that the Complaint should, at the very least, be suspended given the pendency of Civil Case No. 14-131241 before Branch 46, RTC, Manila.¹⁴ Spouses Sy also maintained that they were purchasers in good faith, having relied on Anthony’s representations. They maintained that they had no notice of the adverse claim over the property, pointing out that the sale was executed on 02 May

⁹ Id. at 141-144. Emphasis supplied.

¹⁰ Id. at 148.

¹¹ Id. at 226-227.

¹² Id. at 226.

¹³ Id. at 228-233.

¹⁴ Id. at 306-321.



2012, while the adverse claim was registered only on 23 May 2012.¹⁵

The Summons issued by the trial court addressed to Anthony and Evelyn was returned unserved.¹⁶

Subsequently, the A&E-Mallare Group filed a Comment/Opposition,¹⁷ asserting that Spouses Sy's Urgent Motion with Answer should be denied for being filed out of time. They posited that there was no satisfactory justification for the failure to file Answer within the reglementary period; Spouses Sy should thus be declared in default.¹⁸ The A&E-Mallare Group also insisted that they are the proper parties to file the complaint, per A&E Corp.'s 2016 General Information Sheet (GIS). Moreover, they disagreed that the pendency of the injunction case before the Manila RTC can be used as a ground to suspend the proceedings before the Quezon City RTC given that Spouses Sy are not even parties to the case pending in Manila. Finally, the A&E-Mallare Group disputed Spouses Sy's claim of good faith, stating that its Adverse Claim was registered on 23 May 2012, or six days before the purported Deed of Absolute Sale was registered. It is their contention that the purported date of the Deed of Absolute Sale is immaterial. Instead, "what [the court should regard] as an operative act to convey or affect the land insofar as third parties are concerned is the registration."¹⁹

It also appears that a Notice of Dismissal dated 03 August 2016 was filed by Anthony's sister-in-law and Evelyn's sister, Elizabeth Lim Tong (Elizabeth), purportedly as A&E Corp.'s Corporate Secretary.²⁰ In response thereto,²¹ the A&E-Mallare Group averred that Elizabeth was not authorized to cause the filing of the Notice of Dismissal. They further pointed out that Elizabeth had no personality to file said pleading, as she was neither a corporate officer nor stockholder of A&E Corp. It thereafter prayed that the RTC issue an Order "confirming the withdrawal of the Notice of Dismissal x x x filed without the authority of the plaintiff A&E Industrial Corporation."²²

On 03 October 2017, and while awaiting resolution of the foregoing pending incidents, Villaraza and Angangco Law Office, purportedly also representing A&E Corp., filed a Manifestation²³ informing the trial court of the Judgment dated 22 August 2017²⁴ rendered by the CA in CA-G.R. SP No. 143728. Said case was an offshoot of Civil Case No. 14-131241, where the Manila RTC had already previously denied the A&E-Hwang Group's prayer for the issuance of a Writ of Preliminary Injunction against the A&E-Mallare

¹⁵ Id. at 229-230.

¹⁶ Id. at 255.

¹⁷ Id. at 236-250.

¹⁸ Id. at 239, 274.

¹⁹ Id. at 244.

²⁰ Id. at 29.

²¹ Id. at 293-300.

²² Id. at 298.

²³ Id. at 306-312.

²⁴ Id. at 305-320. Penned by Associate Justice Rosmari D. Carandang (now a retired Member of the Court) concurred in by Associate Justices Stephen C. Cruz and Carmelita Salandanan Manahan.

Group. The CA reversed the Manila RTC and gave presumptive validity to the elections wherein the Hwang Group were allegedly elected into the Board of A&E Corp. It thus issued a Writ of Preliminary Injunction enjoining the A&E-Mallare Group from “usurping the powers and functions of the Board and officers of A&E Industrial Corporation.”²⁵

Ruling of the RTC

In an Order dated 19 February 2018,²⁶ the Quezon City RTC resolved to dismiss Civil Case No. R-QZN-16-05546-CV.

The RTC first framed the issue for its resolution, thus: “whether [Civil Case No. R-QZN-16-05546-CV] may be dismissed on the basis of the Decision and Writ of Preliminary Injunction issued by the [CA] relative to an Intra-Corporate case pending before another Court.”²⁷ It then held that given the issuance of the Writ of Preliminary Injunction against the A&E-Mallare Group in CA-G.R. SP No. 143728, Civil Case No. R-QZN-16-05546-CV, which was filed by the Mallare Group on behalf of A&E, cannot be considered to have been filed with proper authority. The Quezon City RTC thus resolved to dismiss the complaint for failure to state a cause of action.²⁸

WHEREFORE, premises considered, the Notice of Dismissal filed by A&E Corporation-Hwang Group is hereby **GRANTED**.

Accordingly, this instant case is hereby **DISMISSED** for failure to state cause of action.

Furnish all the parties and their respective counsels a copy of this Order.

SO ORDERED.²⁹

The A&E-Mallare Group sought reconsideration,³⁰ but this was denied in a subsequent Order³¹ dated 22 August 2018. Decrying grave abuse of discretion on the part of the trial court, the A&E-Mallare Group filed a special civil action for *certiorari*³² dated 26 November 2018 before the CA.

Ruling of the CA

The CA dismissed the Petition for *Certiorari*. The dispositive portion reads:

²⁵ Id. at 320. It is noted that the CA’s decision in this case was brought to the Supreme Court on a Petition for Review on *Certiorari* (docketed as G.R. No. 233646).

²⁶ Id. at 125-133.

²⁷ Id. at 128.

²⁸ Id. at 133.

²⁹ Id.

³⁰ Id. at 352-392.

³¹ Id. at 134-140.

³² Id. at 79-112.

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.³³

In its assailed Resolution dated 08 January 2019,³⁴ the CA explained:

[A&E – Mallare Group] alleges that since the ground of failure to state a cause of action was relied upon by the RTC in dismissing the Complaint, the dismissal of the case was without prejudice. Thus, according to [the A&E – Mallare Group], its remedy is to file a *certiorari* petition under Rule 65 of the Rules of Court.

[The A&E – Mallare Group] is mistaken.

The Order dated 19 February 2018 dismissing the Complaint did not specifically state whether the dismissal was with or without prejudice. In *Ching v. Ching, et al.*, the Supreme Court clarified: “it is only when the trial court’s order is either silent on the matter or states otherwise, that the dismissal will be considered an adjudication on the merits.”

The RTC Order dated 19 February 2018 is clearly a dismissal, i.e., it was unqualified and therefore considered with prejudice.

X X X X

[The A&E – Mallare Group] should have appealed the RTC Order of dismissal via an ordinary notice of appeal under Rule 41 to this Court. It filed instead a *certiorari* petition under Rule 65. Settled is the rule that certiorari will not lie as a substitute for appeal and, having failed to exhibit that it falls under any of the exceptions enumerated above, [the A&E – Mallare Group]’s petition must be dismissed.³⁵

With the denial³⁶ of its Motion for Reconsideration, the A&E-Mallare Group now seeks recourse before this Court.

On 17 February 2020, this Court issued a Resolution³⁷ requiring respondents to Comment on the petition within ten (10) days from notice. Accordingly, Spouses Sy³⁸ and the A&E – Hwang Group³⁹ filed their respective Comments. Thereafter, the Court required petitioner A&E-Mallare Group to file a Reply to the Comment filed by Spouses Sy.

³³ Id. at 12.

³⁴ Id. at 10-13.

³⁵ Id. at 11-12. Emphasis supplied.

³⁶ Id. at 8-9.

³⁷ Id. at 645.

³⁸ Id. at 646-654.

³⁹ Id. at 591-615.

Issue

The primary issue for resolution is whether the CA erred in dismissing the Petition for *Certiorari* filed by the A&E – Mallare Group for being the wrong remedy to assail the Quezon City RTC's dismissal of its complaint. The resolution of this issue, however, hinges on the *nature* of the dismissal, that is, whether the dismissal is with prejudice or not.

Ruling of the Court

We **GRANT** the petition. The CA committed reversible error in dismissing the A&E-Mallare Group's petition on the ground that *certiorari* is the wrong remedy.

First, the Order⁴⁰ dated 19 February 2018 is an order of dismissal without prejudice.

Section 1, Rule 16 of the Revised Rules of Court enumerates the grounds for which a Motion to Dismiss may be filed:

SECTION 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) **That the pleading asserting the claim states no cause of action;**
- (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.⁴¹

Section 5 of the same Rule states that dismissals under Section 1(f), (h), and (i) shall have the effect of barring the refile of the same action or

⁴⁰ Id. at 125-133.

⁴¹ Emphasis supplied.

claim.⁴² Thus, in *Strongworld Construction Corp. v. Perello*,⁴³ We distinguished between a dismissal *with* prejudice from a dismissal *without* prejudice in this wise: the former disallows and bars the refile of the complaint, whereas, the same cannot be said of a dismissal without prejudice.⁴⁴

Here, in dismissing the Complaint, the Quezon City RTC took judicial notice of the Writ of Preliminary Injunction issued by the CA in CA-G.R. SP No. 143728 enjoining the Mallare Group from “usurping the powers and functions of the Board and officers of A&E Industrial Corporation.”⁴⁵ We quote the pertinent portions of the Quezon City RTC’s Order:

It is clear from the decision of the Court of Appeals that it is enjoining the Mallare Group from acting as Board of Directors and Officers of A&E Corporation because until after the merits of the case has been decided, the Court of Appeals would want to maintain the status quo prior to the controversy. That status quo is the election annual stockholders meeting on February 23, 2013 which resulted to the election of the Hwang Group as Board of Directors and officers of A&E Corporation.

With such pronouncement, this Court could not proceed with this case filed by the Mallare Group as its authority is enjoined by a competent Court. **Since the filing of this instant case cannot be said to have been filed by A&E Corporation as such, the prayer of dismissal filed by the Hwang Group, as recognized Board of Directors of the corporation, must necessarily be granted** pursuant to the doctrine that the power of the corporation to sue and be sued in any court is lodged with the Board of Directors that exercises its corporate powers.

[x x x x]

In this present case, clearly, Aristotle Mallare had no authority when he signed the Verification and Certification appended to the Complaint. It must be remembered that the execution of a Certification against Forum Shopping is mandatory and failure to execute the same shall cause the dismissal of the complaint.

It is clear from the foregoing discussions that this case must be dismissed.

WHEREFORE, premises considered, the Notice of Dismissal filed by A&E Corporation-Hwang Group is GRANTED.

Accordingly, this instant case is DISMISSED for failure to state a cause of action.

⁴² Section 5, Rule 16 reads:

SEC. 5. *Effect of dismissal.* — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refile of the same action or claim.

⁴³ 528 Phil. 1080 (2006).

⁴⁴ Id. at 1093.

⁴⁵ *Rollo*, p. 320. It is noted that the CA’s decision in this case was brought to the Supreme Court on a petition for review on certiorari (docketed as G.R. No. 233646).

Furnish all the parties and their respective counsels copies of this Order.

SO ORDERED.⁴⁶

Contrary to the finding of the CA that the dismissal of the complaint was “unqualified and therefore considered with prejudice,”⁴⁷ the text of the Order itself clearly states that the dismissal was due to a failure to state a cause of action, that is, under Section 1(g) of Rule 16.⁴⁸ Not being among the grounds for dismissal enumerated under Section 5 of Rule 16, the dismissal of Civil Case No. R-QZN-16-05546-CV due to a failure to state a cause of action is without prejudice.

Second, since the dismissal was without prejudice (not having been premised on Sections 1 (f), (h) or (i) of Rule 16), the remedy of appeal was **not** available. This is also clearly provided under Section 1, Rule 41, which provides:

Section 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
- (f) An order of execution;
- (g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is

⁴⁶ Id. at 131-133. Emphasis supplied.

⁴⁷ Id. at 11.

⁴⁸ RULE 16 Motion to Dismiss

Section 1. *Grounds.* — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;
- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is enforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.
(Rule 16, as amended, Provisions either deleted or transposed)

pending, unless the court allows an appeal therefrom; and
(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.⁴⁹

Accordingly, the CA erred when it pronounced in its Resolution⁵⁰ dated 08 January 2019 that the A&E-Mallare Group's proper remedy was *via* an ordinary notice of appeal under Rule 41.

Third, this Court, in *Heirs of Sadhwani v. Sadhwani*,⁵¹ considered another option in cases of dismissals without prejudice: simply refile the complaint. This option, however, is not the plain, speedy, or adequate remedy for A&E-Mallare Group under the circumstances, considering that the issue of whether they are the proper parties to file the petition on behalf of A&E would still subsist, absent a final determination of the issue before a proper court. Thus, We find that the CA committed a reversible error when it dismissed the petition filed by the A&E-Mallare Group on the ground that *certiorari* is the wrong remedy.

Finally, it is noted that the issuance by the CA of a Writ of Preliminary Injunction in **CA-G.R. SP No. 143728** was elevated to this Court via a Petition for Review on *Certiorari* docketed as G.R. No. 233646, entitled "*Florencio T. Mallare, et al. v. A&E Industrial Corporation.*" In a Decision dated 16 June 2021,⁵² this Court **dissolved** the Writ of Preliminary Injunction issued by the CA and ordered the Manila RTC to resolve Civil Case No. 14-131241 (the injunction, *quo warranto*, and damages case pending before it) with dispatch. To Our mind, this development further underscores the necessity of remanding the case to the CA for purposes of determining whether there was indeed grave abuse of discretion on the part of the Quezon City RTC when it ordered the dismissal of Civil Case No. R-QZN-16-05546-CV. To recall, Civil Case No. R-QZN-16-05546-CV was dismissed by the Quezon City RTC on the basis of the Writ of Preliminary Injunction so issued.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Resolutions dated 08 January 2019 and 22 October 2019 of the Court of Appeals in CA-G.R. SP. No. 158642 are hereby **REVERSED** and **SET ASIDE**. This case is **REMANDED** to the Court of Appeals which is directed to hear and decide the Petition for *Certiorari* filed by the A&E-Mallare Group with utmost dispatch.

⁴⁹ Emphases supplied.


⁵⁰ *Rollo*, pp. 10-13.

⁵¹ G.R. No. 217365, 14 August 2019.

⁵² *Mallare, et al. v. A & E Industrial Corporation*, G.R. No. 233646, 16 June 2021.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA,
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
166-I

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