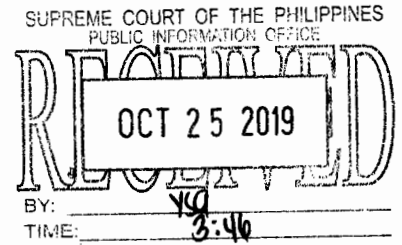




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **October 16, 2019** which reads as follows:

“G. R. No. 249006 (ECE Realty and Development, Inc. v. The Court of Appeals and Felimon G. Rodriguez, represented by Raymond Reyes)

The present Petition for *Certiorari*¹ under Rule 65² assails the October 18, 2018³ and July 8, 2019⁴ Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 157651.

The CA dismissed ECE Realty and Development, Inc.’s (*petitioner*) petition having found technical defects therein. First, the petition was filed beyond the reglementary period, as the CA ruled that the Housing and Land Use Regulatory Board (*HLURB*) is a quasi-judicial agency and the appeal governed by Rule 43 of the Rules of Court, thus, the petition should have been filed within fifteen (15) days from receipt of the denial of the motion for reconsideration. Second, petitioner failed to attach material portions of the record referred to in its petition and other supporting papers.⁵

Petitioner filed a Motion for Reconsideration⁶ and alleged that it filed a petition for *certiorari* under Rule 65, therefore, it has sixty (60) days within which to file its petition with the CA.⁷ It further averred that the petition should not have been treated as an appeal

- over – three (3) pages ...

26,

¹ *Rollo*, pp. 3-20.

² *Id.* at 5.

³ *Id.* at 23-25; penned by Associate Justice Ramon A. Cruz, with Associate Justices Ramon M. Bato, Jr. and Germano Francisco D. Legaspi, concurring.

⁴ *Id.* at 27-29.

⁵ *Id.* at 23-24.

⁶ *Id.* at 139-149.

⁷ *Id.* at 139-140.

under Rule 43⁸ as it raises the lone issue of whether the Housing and Land Use Arbiter and the HLURB Commissioners have the authority and jurisdiction to render another decision which reverses the decision on appeal rendered by the CA.⁹

The CA denied the motion for reconsideration. It ruled that even if the action is treated as a petition for *certiorari* under Rule 65, the deadline for filing would still be September 14, 2018. Petitioner belatedly filed its petition on September 17, 2018. The appellate court held that the very same defects appearing in the petition, when it was evaluated using Rule 43, are also extant when the same was evaluated under Rule 65. Such defects are grounds for dismissal under both Rule 43 and Rule 65.¹⁰

After a careful perusal of the case, the Court resolves to dismiss outright the instant petition.

In filing this petition for *certiorari*, petitioners availed of the wrong remedy. The proper remedy of a party aggrieved by a decision of the CA is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an original action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, the petition may be dismissed outright.¹¹

Even if We entertain this instant petition, We do not find any grave abuse of discretion committed by the CA in dismissing the petition. Petitioner did not offer any explanation, either in the appellate court or before this Court, as to the belated filing of its petition before the CA which is a ground for dismissal of the same. Petitioner's insistence of relaxation of the rules, as its case is of paramount importance, cannot hold justification. The bare invocation

- over -

26

⁸ Id. at 139.

⁹ Id. at 140-141.

¹⁰ Id. at 28.

¹¹ *Mercado v. Valley Mountain Mines Exploration, Inc.*, 677 Phil. 13, 51 (2011).

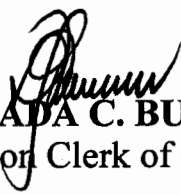
October 16, 2019

of the interest of substantial justice is not a magic wand that will automatically compel this Court to suspend procedural rules.¹²

ACCORDINGLY, the petition is hereby **DISMISSED**.

SO ORDERED. *Perlas-Bernabe, J., on official business; Gesmundo, J., designated as Acting Working Chairperson per Special Order No. 2717 dated October 10, 2019; Zalameda, J., designated as Additional Member per Special Order No. 2712 dated September 27, 2019.*

Very truly yours,


LIBRADA C. BUENA
 Division Clerk of Court
 26

LIRA & SURATOS LAW OFFICE
 Counsel for Petitioner
 Penthouse, Park Avenue Mansions
 Park Avenue, 1300 Pasay City

Court of Appeals (x)
 Manila
 (CA-G.R. SP No. 157651)

JASO, DORILLO AND ASSOCIATES
 Counsel for Respondent
 Unit 216 Cityland 8 Condominium
 98 Sen. Gil Puyat Avenue
 1200 Makati City

HOUSING AND LAND USE
 REGULATORY BOARD
 7th Floor, Sunnymede IT Center
 1614 Quezon Avenue, South Triangle
 1103 Quezon City
 (HLURB Case No. REM-A-031804
 -12618)

Public Information Office (x)
 Library Services (x)
 Supreme Court
 (For uploading pursuant to A.M.
 No. 12-7-1-SC)

UR



¹² *Artistica Ceramica, Inc. v. Ciudad del Carmen Homeowner's Association, Inc.*, 635 Phil. 21, 35 (2010).