



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ANTONIO MARTINEZ,
Petitioner,

G.R. No. 203022

Present:

- versus -

SERENO, C. J., Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

HON. RONALDO B. MARTIN,
Presiding Judge and ROLANDO
PALMARES, Deputy Sheriff,
both of the Regional Trial Court
of Antipolo City, Branch 73, and
NATALIA REALTY, INC.,
Respondents.

Promulgated:

DEC 03 2014

X-----X

RESOLUTION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ filed by petitioner Antonio Martinez (petitioner) are the Decision² dated April 30, 2012 and the Resolution³ dated July 25, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 105092, which denied petitioner's petition for *mandamus* for lack of merit.

The Facts

In compliance with the Court's Decision in the case entitled *Natalia Realty, Inc. v. CA*⁴ (*Natalia v. CA*), the Regional Trial Court of Antipolo

¹ *Rollo*, pp. 34-40.

² *Id.* at 43-52. Penned by Associate Justice Sisinando E. Villon with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Amy C. Lazaro-Javier, concurring.

³ Not attached to the *rollo*. Mentioned as "Order" in the petition for review on *certiorari* before the Court. (See *id.* at 35.)

⁴ 440 Phil. 1 (2002). The dispositive portion of this case reads:

City, Branch 73 (RTC) issued an *alias* writ of execution⁵ dated February 20, 2004 (February 20, 2004 *Alias* Writ) granting in favor of petitioner Antonio Martinez (petitioner), among others, possession of portions of two (2) parcels of land located in Sitio Banabas, Antipolo City, covered by Transfer Certificates of Title (TCT) Nos. 31527 and 31528 (now both covered by TCT No. N-67845) (subject lots). On March 30, 2004, respondent Deputy Sheriff Rolando Palmares (Deputy Sheriff) of the same court executed a Certificate of Delivery of Possession,⁶ attesting that the 86.26-hectare portion of the subject lots covered by TCT No. N-67845 was already delivered to petitioner and his co-parties in Civil Case No. 359-A.⁷

Subsequently, in an Order⁸ dated July 27, 2004, the RTC directed its Sheriff-in-Charge to ensure that private respondent Natalia Realty Inc.'s (private respondent) guards and developers who may still be found at the premises of the subject lots are ousted therefrom pursuant to the Court's ruling in *Natalia v. CA* and the February 20, 2004 *Alias* Writ. In response, the Deputy Sheriff submitted a report dated August 23, 2004 informing the RTC that the aforesaid *alias* writ of execution had already been returned, duly served, implemented, and fully satisfied; thus, there was no longer a need to enforce it again.⁹

More than two (2) years later, or on October 17, 2006, petitioner filed a motion for the issuance of another *alias* writ of execution before the RTC, arguing that such issuance was necessary in view of private respondent's refusal to comply with the February 20, 2004 *Alias* Writ.¹⁰

In an Omnibus Order¹¹ dated September 10, 2007, the RTC denied petitioner's motion. It found no need to issue another *alias* writ of execution since the February 20, 2004 *Alias* Writ had already been duly served, implemented, and fully satisfied.¹²

Aggrieved, petitioner moved for reconsideration. Acting on the belief that the RTC would deny the motion or might take a long time to resolve the same, petitioner then filed a petition for *mandamus* before the Court to

WHEREFORE, the petition is DISMISSED. The Regional Trial Court of Antipolo, Rizal, Branch 74, shall forthwith issue and cause to be immediately enforced an *ALIAS WRIT OF EXECUTION* of the Order of August 3, 1995 granting possession to private respondents of portions of the parcels of land covered by TCT Nos. 31527 and 31528 (now No. N-67845). This decision is immediately executory. The Clerk of Court is directed to remand the records of the case to the court of origin.

Cost against petitioner.

SO ORDERED.

⁵ See *rollo* p. 44.

⁶ Dated March 30, 2004; *id.* at 172.

⁷ *Id.* at 44.

⁸ Not attached to the *rollo*. *Id.* at 45.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 147-159. Penned by Judge Ronaldo B. Martin.

¹² See *id.* at 45, 151, and 159.

compel the RTC to issue another *alias* writ of execution against private respondent and for such *alias* writ to be immediately executed and fully implemented after its issuance. In a Resolution¹³ dated July 21, 2008, the Court remanded the petition to the CA,¹⁴ docketed as CA-G.R. SP No. 105092.

The CA Ruling

In a Decision¹⁵ dated April 30, 2012, the CA denied the petition for *mandamus* for lack of merit.¹⁶ It held that petitioner's resort to an action for *mandamus* is premature, considering that the RTC has yet to resolve the motion pending before it. It further ratiocinated that petitioner's remedy for private respondent's alleged refusal to comply with the February 20, 2004 *Alias* Writ is to initiate contempt proceedings against the latter, and not to compel the RTC to issue another *alias* writ of execution through *mandamus*.¹⁷

Dissatisfied, petitioner moved for reconsideration¹⁸ which was, however, denied in a Resolution¹⁹ dated July 25, 2012, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed the petition for *mandamus* for lack of merit.

The Court's Ruling

The petition lacks merit.

As case law defines, a writ of *mandamus* is a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to an inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. It is employed to compel the performance, when refused, of a ministerial duty which, as opposed to a discretionary one, is that which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal

¹³ Not attached to the *rollo*.

¹⁴ *Rollo*, p. 46.

¹⁵ Id. at 43-52.

¹⁶ Id. at 52.

¹⁷ See id. at 50-51.

¹⁸ See Motion for Reconsideration dated June 29, 2012; id. at 54-63.

¹⁹ Not attached to the *rollo*. See id. at 35.

authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done.²⁰ Being an extraordinary remedy, *mandamus* is available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law, such as a motion for reconsideration.²¹

A judicious review of the records of this case reveals that petitioner still had a motion for reconsideration pending resolution before the RTC when he filed a petition for *mandamus* before the Court (which the Court, in turn, remanded to the CA). Absent any showing that any of the recognized exceptions obtain to the rule requiring the filing of a motion for reconsideration prior to a petition for *mandamus*,²² petitioner may not be allowed to do so and, thus, must result in the outright dismissal of his petition for *mandamus*.

Further, as acknowledged by petitioner through his signature on the Deputy Sheriff's Certificate of Delivery of Possession dated March 30, 2004, the subject lots had already been delivered to him and his co-parties.²³ Therefore, there is no more need to issue another *alias* writ of execution as the February 20, 2004 *Alias* Writ has already been fully implemented. In this relation, the CA correctly opined that petitioner's remedy was to have private respondent cited for contempt. Jurisprudence in *Pascua v. Heirs of Segundo Simeon*²⁴ is instructive on this matter, to wit:

The proper procedure if the [losing party] refuse[s] to deliver possession of the lands is not for the court to cite them for contempt but for the sheriff to dispossess them of the premises and deliver the possession thereof to the [winning party]. However, **if subsequent to such**

²⁰ *National Home Mortgage Finance Corporation v. Abayari*, 617 Phil. 446, 458 (2009).

²¹ See *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270, 277.

²² “[T]here are several exceptions where a petition for [*mandamus*] will lie without the prior filing of a motion for reconsideration, to wit:

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the [*mandamus*] proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.”

(Id. at 277-278; citation omitted.)

²³ *Rollo*, p. 49.


²⁴ 244 Phil. 1 (1988).

dispossession, [the losing party] enter[s] into or upon the properties for the purpose of executing acts of ownership or possession or in any manner disturb the possession of [the winning party], then and only then may [the losing party] be charged with and punished for contempt.²⁵ (Emphasis and underscoring supplied)

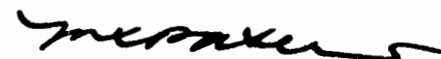
In sum, petitioner failed to sufficiently demonstrate that he had no other plain, speedy, and adequate remedy in order to be entitled to the extraordinary remedy of *mandamus*, much more substantiate his entitlement therefor. As such, his petition must fail.

WHEREFORE, the petition is **DENIED**. The Decision dated April 30, 2012 and the Resolution dated July 25, 2012 of the Court of Appeals in CA-G.R. SP No. 105092 are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

²⁵ Id. at 5.

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

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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