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**SUPREME COURT  
SECOND DIVISION**

**LAW FIRM OF ABRENICA, TUNGOL &  
TIBAYAN, DANILO M. TUNGOL and  
ABELARDO M. TIBAYAN,**  
*Petitioners,*

*-versus-*

**G.R. No. 143706  
April 5, 2002**

**THE COURT OF APPEALS and  
ERLANDO A. ABRENICA,**  
*Respondents.*

X-----X

**DECISION**

**DE LEON, JR., J.:**

Before us is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> dated February 15, 2000 in CA-G.R. SP No. 55319 affirming the Order<sup>[3]</sup> dated September 17, 1999 of the Securities and Exchange Commission (SEC) en banc in EB Case No. 666 which discharged the attachment made on personal properties of respondent Erlando A. Abrenica while setting aside the SEC Order<sup>[4]</sup> dated September 28, 1999 relative to the execution of the Order dated September 17, 1999.

Petitioners Danilo N. Tungol and Abelardo M. Tibayan and respondent Erlando A. Abrenica are the registered partners in the Law Firm of Abrenica, Tungol and Tibayan, a professional law partnership duly organized under Philippine laws. On May 6, 1998, petitioners Tungol and Tibayan filed before the Securities and Exchange Commission (SEC) a complaint for accounting, return and transfer of partnership funds with damages and application for issuance of preliminary attachment against their partner, respondent Abrenica.<sup>[5]</sup> Petitioners, plaintiffs therein, claim that a real estate transaction entered into by the herein respondent Abrenica, defendant therein, was a law partnership transaction.

Following several hearings SEC Hearing Officer Roberto O. Sencio, Jr. issued an Order dated February 12, 1999 which granted the preliminary attachment of respondent Abrenica's assets.<sup>[6]</sup> After filing of a bond, a writ of preliminary attachment was issued on February 12, 1999. The writ directed that sufficient assets of respondent Abrenica be attached to cover for Four Million Five Hundred Twenty-Four Thousand Pesos (P4,524,000.00) alleged to be partnership profits unaccounted and unremitted by respondent Abrenica.

In accordance with the writ of preliminary attachment, SEC Sheriff Edgardo R. Grueso levied upon the following properties of respondent Abrenica:<sup>[7]</sup>

1. A parcel of land (Lot 3, Block 3, of the subd. plan (LRC) Psd-483, being a portion of Lot 49-C-3-E-3-B-2 (LRC) Psd-199, LRC) (GLRO) Rec. No. 7672), situated in the Bo. of Calumpang, Mun. of Marikina, Prov. of Rizal containing an area of THREE HUNDRED AND SEVENTY FIVE (375) SQUARE METERS, more or less, covered by TCT No. 216818;
2. One (1) Toyota Exsior 4-door sedan with plate no. UUB 956;
3. One (1) Toyota Corolla 4-door sedan model 1992 with plate no. TCP 318;
4. One (1) Kia Pregio with plate no. USC 553; and

5. Philippine Savings Bank deposits in the amount of Twelve Thousand Eight Hundred Seventy-Three Pesos and Forty-Two Centavos (P12,873.42).

Respondent Abrenica filed an Omnibus Motion for the inhibition of Hearing Officer Sencio and the reconsideration of the Order dated February 12, 1999 which granted the application for a writ of preliminary attachment.<sup>[8]</sup> On March 25, 1999, Hearing Officer Sencio voluntarily inhibited himself from the case.<sup>[9]</sup> Thereafter, a Hearing Panel composed of SEC Hearing Officers Alberto P. Atas, Myla Gloria A. Amboy and Nathaniel Lobigas issued an Omnibus Order dated June 14, 1999 which denied the motion for reconsideration.<sup>[10]</sup>

On June 25, 1999 respondent Abrenica filed a petition for certiorari with the SEC en banc contending that Hearing Officer Sencio and the Hearing Panel acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in granting the petitioners' application for issuance of a writ of preliminary attachment as set forth in the Order dated February 12, 1999 and thereafter denying respondent Abrenica's Motion for Reconsideration therefrom contained in the Omnibus Order dated June 14, 1999.<sup>[11]</sup>

On September 17, 1999, the SEC issued an Order<sup>[12]</sup> which discharged the attachment made on the personal properties of respondent Abrenica, ratiocinating thus:

As pointed out by [respondent Abrenica] in his reply, the current market value of the house and lot levied by [petitioners] is P6,750,000.00 which is more than sufficient to cover the P4,520,000.00 claim. Even if we take a conservative stand in the estimate of the property, the Commission is still convinced that the same is adequate to cover the claim.

The Rules of Court which applies in suppletory manner states that:

Sec. 13 Discharge of attachment on other grounds. — The party whose property has been ordered attached may file a motion with the court in which the action of (sic) pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment

on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. (Rule 57 Section 13 Rules of Court).

Thereafter, the SEC issued an Order<sup>[13]</sup> dated September 28, 1999, which reads:

Pursuant to the Order of the Commission dated September 17, 1999 discharging the attachment made on the personal property of Erlando Abrenica specifically the three vehicles to wit:

1. One (1) Toyota Exior 4-door sedan plate no. UUB 956.
2. One (1) Toyota Corolla 4-door sedan model 1992 plate no. TCP 318.
3. One (1) Kia Pregio plate no. USC 553.

The Sheriff of the Commission is hereby directed to release the same from the custody of the Commission.

Dissatisfied with the Orders of the SEC, the petitioners filed on October 12, 1999 a petition for certiorari with the Court of Appeals.<sup>[14]</sup> Petitioners alleged therein that the SEC acted with grave abuse of discretion amounting to lack of or in excess of its jurisdiction when it rendered the Order dated September 17, 1999, since (a) the issue of excessive attachment was not within its jurisdiction to hear and resolve, (b) the SEC violated the petitioners right to due process of law, (c) the SEC disregarded and violated Rule 57, Section 13 of the Revised Rules of Court, and (d) the respondent Abrenica expressly pronounced that he is not praying for such relief. The petitioners further alleged that the SEC committed grave abuse of discretion in issuing the Order dated September 28, 1999, since (a) the said order has not yet become final and executory, thereby denying petitioners right to due process, and (b) the matter of execution is within the jurisdiction of the SEC SICD Hearing Panel not the SEC en banc.

In a Decision dated February 15, 2000, the Court of Appeals brushed aside the arguments of the petitioners relative to the Order dated

September 17, 1999 and upheld the said Order. However, the appellate court found merit in the petitioners' proposition concerning the Order dated September 28, 1999. It held that there was a premature execution since the Order dated September 28, 1999 was issued just eleven (11) days after the issuance of the Order dated September 17, 1999 and, obviously, the period of appeal has not yet expired. Accordingly, the Order dated September 28, 1999 was set aside.

On June 7, 2000, the petitioners' motion for reconsideration of the decision was denied by the Court of Appeals in a resolution.<sup>[15]</sup> Hence, the petitioners brought the instant petition for review.

It is the petitioners' contention that the Court of Appeals erred in holding that the SEC en banc, exercising purely appellate jurisdiction, has jurisdiction and can take cognizance of the issue of excessive attachment which was raised for the "first time" on certiorari and not raised before or brought to the attention of, and acted or ruled upon by, the SEC Hearing Officer/Panel. Petitioners aver that such conclusion is contrary to the well-settled rule that questions or issues not adequately brought to the attention of the trial court could not be raised for the first time on appeal and could not be acted or ruled upon by the reviewing court.

Ordinarily, an appellate court may only pass upon errors assigned.<sup>[16]</sup> Nonetheless, the Supreme Court has ruled that an appellate court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, in the following instances:<sup>[17]</sup>

- (a) Grounds not assigned as errors but affecting jurisdiction of the court over the subject matter;
- (b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
- (c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;

- (d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (e) Matters not assigned as errors on appeal but closely related to an error assigned; and
- (f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

The foregoing citations specifically referred to “appellate courts” but are equally applicable to appellate administrative agencies, such as the SEC, where rules of procedure are liberally construed.<sup>[18]</sup> However, the foregoing rule and the exceptions thereto are not applicable to the circumstances of the case at bar.

A thorough review of the record clearly reveals that the SEC en banc and the Court of Appeals overlooked the nature of respondent Abrenica’s petition in EB Case No. 666. The SEC en banc was not acting on an ordinary appeal which opens the entire case for review. It was not exercising its appellate jurisdiction, which process is merely a continuation of the original suit.<sup>[19]</sup> The petition was brought under the SEC en banc’s original jurisdiction via the commencement of a new action, that is, a special civil action for certiorari.<sup>[20]</sup>

What respondent Abrenica alleged in his petition before the SEC en banc was that the Hearing Officer/Panel acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in the issuance of the Orders dated February 12, 1999 and June 14, 1999. Those orders are but resolutions on incidental matters which do not touch on the merits of the case or put an end to the proceedings.<sup>[21]</sup> Thus, they are interlocutory orders since there leaves something else to be done by the Hearing Officer/Panel with respect to the merits of the case.<sup>[22]</sup> Ordinarily, the remedy against an interlocutory order is not to resort forthwith to certiorari, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. However, where there are special circumstances clearly demonstrating the inadequacy of an

appeal, the special civil action of certiorari may exceptionally be allowed.<sup>[23]</sup>

It is elementary that a special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. When a court exercised its jurisdiction and an error was committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. An error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original special civil action of certiorari.<sup>[24]</sup>

Therefore, the SEC en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction when it addressed a non-jurisdictional issue in a special civil action for certiorari. It sought to correct an error in the enforcement of the writ of attachment, an error of judgment which is clearly a factual issue involving appraisal and evaluation of evidence. No grave abuse of discretion may be attributed to the SEC Hearing Officer/Panel simply because of the alleged misappreciation of facts and evidence.<sup>[25]</sup> Erroneous factual findings amount to no more than errors in the exercise of jurisdiction which are beyond the ambit of the sole office of a writ of certiorari, namely, the correction of errors of jurisdiction including the commission of grave abuses of discretion amounting to lack of jurisdiction.<sup>[26]</sup>

Notwithstanding our conclusions, respondent Abrenica is still not left without any remedy. He can still raise the issue of excessive attachment before the Hearing Officer/Panel, where he may properly offer his evidence to support his allegations of excessive attachment and where the petitioners may also be adequately heard on their objections thereto.

All taken, we find that the Court of Appeals erred in sustaining the Order dated September 17, 1999 of the SEC en banc in EB Case No. 666 which ordered the discharge of attachment made on personal properties of respondent Abrenica. Because of the conclusion we have thus reached, there is no need to delve on the validity of the SEC en banc Order dated September 28, 1999.

**WHEREFORE**, the instant petition is hereby **GRANTED** and the assailed Decision of the Court of Appeals dated February 15, 2000 in CA-G.R. SP No. 55319 is **REVERSED** and **SET ASIDE**. The two (2) Orders of the SEC en banc in EB Case No. 666 dated September 17, 1999 and September 28, 1999 are declared **NULL** and **VOID**. No pronouncement as to costs.

**SO ORDERED.**

**Bellosillo, Mendoza and Quisumbing, JJ., concur.**

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- [1] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justice Eubulo G. Verzola and Martin S. Villarama, Jr., Rollo, pp. 32-45.
- [2] Special Tenth Division.
- [3] Rollo, pp. 388-390.
- [4] Rollo, p. 391.
- [5] Docketed as SEC Case No. 05-98-5959, Rollo, pp. 175-198.
- [6] Rollo, pp. 98-100.
- [7] Rollo, pp. 101-103.
- [8] Rollo, pp. 104-119.
- [9] Rollo, pp. 120-122.
- [10] Rollo, pp. 123-125.
- [11] Rollo, pp. 126-168.
- [12] See Note No. 3, supra.
- [13] See Note. No. 4, supra.
- [14] Rollo, pp. 69-96.
- [15] Rollo, pp. 59-60.
- [16] Philippine National Bank vs. Rabat, 344 SCRA 706, 716 [2000]; Bella vs. Court of Appeals, 279 SCRA 497, 504 [1997]; Roman Catholic Archbishop of Manila vs. Court of Appeals, 269 SCRA 145, 153 [1997].
- [17] Logronio vs. Taleseo, 312 SCRA 52 [1999]; Catholic Bishop of Balanga vs. Court of Appeals, 264 SCRA 181, 191-192 [1996]; Larobis. vs. Court of Appeals, 220 SCRA 639, 642 [1993]; Dando vs. Fraser 227 SCRA 126, 133 [1993]; Espina vs. Court of Appeals, 215 SCRA 484, 488 [1992]; Sociedad Europea de Financiacion, S.A. vs. Court of Appeals, 193 SCRA 105, 114 [1991]; Miguel vs. Court of Appeals, 29 SCRA 760, 772-774 [1969]; Carillo vs. De Paz, 18 SCRA 467, 471 [1966]; Saura Import & Export Co., Inc. vs. Philippine International Surety Co., Inc., 8 SCRA 143, 148 [1963]; Hernandez vs. Andal, 78 Phil 196, 209-210 [1947].

- [18] Diamonon vs. Department of Labor and Employment, 327 SCRA 283, 289 [2000]; Sesbreño vs. Central Board of Assessment Appeals, 270 SCRA 360, 371 [1997].
- [19] Morales vs. Court of Appeals, 283 SCRA 211, 222 [1997].
- [20] Under Section 1, Rule XV, SICD Rules, Rollo, p. 126.
- [21] Go vs. Court of Appeals, 297 SCRA 574, 581 [1998]; De Ocampo vs. Republic, 9 SCRA 440, 443 [1963].
- [22] Diesel Construction Company, Inc. vs. Jollibee Foods Corporation, 323 SCRA 844, 854 [2000]; Bitong vs. Court of Appeals (Fifth Division), 292 SCRA 503, 521 [1998].
- [23] Quiñon vs. Sandiganbayan , 271 SCRA 575, 592 [1997].
- [24] Asian Trading Corporation vs. Court of Appeals, 303 SCRA 152, 162 [1999]; Jamer vs. National Labor Relations Commission, 278 SCRA 632, 646 [1997]; Lalican vs. Vergara, 276 SCRA 518, 529 [1997].
- [25] Teknika Skills and Trade Services, Inc. vs. Secretary of Labor and Employment, 273 SCRA 10 [1997].
- [26] Argel vs. Court of Appeals, 316 SCRA 511, 520-521 [1999].