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against an interlocutory order issued by a division of the COMELEC when the following circumstances are present: ***first,* the order was issued without jurisdiction or in excess of jurisdiction or with grave abuse of discretion tantamount to lack or excess of jurisdiction**; and *second*, under the COMELEC Rules of Procedure, the subject of the controversy is a matter which (1) the COMELEC *en banc* may not sit and consider; (2) a division is not authorized to act; or (3) the members of the division unanimously vote to refer to the COMELEC *en banc*.

In short, the absence of an available remedy with the Comelec *en banc* must indispensably be coupled with a strong case for grave abuse of discretion in order to warrant the issuance of the writ of *certiorari.*

While I ultimately agree with the *ponencia's* conclusion, I submit that the *ponencia's* reasoning on the propriety of a *certiorari* petition may result in confusion on what is otherwise a clear subject in jurisprudence. If the Court intends to require a party to secure a certification and, eventually, a decision from the Comelec *en banc* on a challenge to an interlocutory order of a Comelec division (as a requisite for filing a *certiorari* petition with the Court), then the Court's action must have some clear basis under the Comelec rules.

SECOND DIVISION

[G.R. No. 171626. August 6, 2014]

OLONGAPO CITY, *petitioner, vs.* **SUBIC WATER AND SEWERAGE CO., INC.**, *respondent.*

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SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEALS FROM THE COURT OF APPEALS' JUDGMENTS OR FINAL ORDERS THAT RESOLVED THE SUBJECT MATTER IN ITS ENTIRETY SHOULD BE MADE THROUGH A VERIFIED PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT.— [W]e emphasize that the present petition, brought under Rule 65, merits outright dismissal for having availed an improper remedy. The instant petition should have been brought under Rule 45 in a petition for review on *certiorari*. x x x. Supplementing Rule 45 are Sections 3 and 4 of Rule 56 which govern the applicable procedure in the Supreme Court. Appeals from judgments or final orders or resolutions of the CA should be made through a verified petition for review on *certiorari* under Rule 45. In this case, petitioner questioned the July 6, 2005 decision and the January 3, 2006 resolution of the CA which declared as null and void the writ of execution issued by the trial court. Since the CA's pronouncement **completely disposed of the case and the issues raised by the parties**, it was the proper subject of a Rule 45 petition. It was already a final order that resolved the subject matter in its entirety, leaving nothing else to be done.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* WILL NOT BE ENTERTAINED WHERE APPEAL IS AVAILABLE TO THE AGGRIEVED PARTY FOR THE REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE, NOT ALTERNATIVE OR SUCCESSIVE; NEITHER IS *CERTIORARI* A SUBSTITUTE FOR A LOST APPEAL, ESPECIALLY IF ONE'S OWN NEGLIGENCE OR ERROR IN ONE'S CHOICE OF REMEDY OCCASIONED SUCH LOSS OR LAPSE.— A petition for *certiorari* under Rule 65 is appropriate only if there is **no appeal**, or any plain, speedy, and adequate remedy in the ordinary course of law available to the aggrieved party. As we have distinctly explained in the case of *Pasiona v. Court of Appeals*: x x x. **Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for a lost**

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appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.The petitioner received the CA's assailed resolution denying its motion for reconsideration on January 9, 2006. Following Rule 45, Section 2 of the Rules of Court, the petitioner had until January 24, 2006 to file its petition for review. It could have even filed a motion for a 30-day extension of time, a motion that this Court grants for justifiable reasons. But all of these, it failed to do. Thus, the assailed CA rulings became final and executory and could no longer be the subject of an appeal. [T]o revive its lost appeal, petitioner filed the present petition for *certiorari* that – under Rule 65 – may be filed within sixty days from the promulgation of the assailed CA resolution (on January 3, 2006). A Rule 65 petition for *certiorari*, however, cannot be a substitute for a lost appeal. With the lapse of the prescribed period for appeal without an action from the petitioner, the present petition for *certiorari* – a mere replacement –must be dismissed.

3. ID.; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENT; MODES OF EXECUTION.— Under Rule 39, Section 6, a judgment creditor has two modes in enforcing the court's judgment. Execution may be either through motion or an independent action. These two modes of execution are available depending on the timing when the judgment creditor invoked its right to enforce the court's judgment. **Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry**. On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed. However, for execution by independent action to prosper – the Rules impose another limitation – the action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.

4. ID.; ID.; ID.; JURISDICTION OF A COURT TO ISSUE A WRIT OF EXECUTION BY MOTION IS ONLY EFFECTIVE WITHIN THE FIVE-YEAR PERIOD FROM THE ENTRY OF JUDGMENT; OUTSIDE THIS FIVE-YEAR PERIOD, ANY WRIT OF EXECUTION ISSUED PURSUANT TO A MOTION FILED BY THE JUDGMENT CREDITOR IS NULL AND VOID.—

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On May 7, 1999, within the five-year period from the trial court's judgment, petitioner filed its motion for the issuance of a writ of execution. However, despite the grant of the motion, the court did not issue an actual writ. It was only on May 30, 2003 that petitioner filed a second motion to ask again for the writ's issuance. By this time, the allowed five-year period for execution by motion had already lapsed. [S]ince the second motion was filed beyond the five-year prescriptive period set by the Rules, then the writ of execution issued by the trial court on July 31, 2003 was null and void for having been issued by a court already ousted of its jurisdiction. In *Arambulo v. Court of First Instance of Laguna*, we explained the rule that the jurisdiction of a court to issue a writ of execution by motion is only effective within the five-year period from the entry of judgment. Outside this five-year period, any writ of execution issued pursuant to a motion filed by the judgment creditor, is null and void. If no writ of execution was issued by the court within the five-year period, even a motion filed within such prescriptive period would not suffice. A writ issued by the court after the lapse of the five-year period is already null and void. The judgment creditor's only recourse then is to file an independent action, which must also be within the prescriptive period set by law for the enforcement of judgments.

5. ID.; ID.; ID.; ID.; FOR EXECUTION BY MOTION TO BE VALID, THE JUDGMENT CREDITOR MUST ENSURE THAT THE FILING OF THE MOTION FOR THE ISSUANCE OF THE WRIT OF EXECUTION AND THE COURT'S ACTUAL ISSUANCE OF THE WRIT BE ACCOMPLISHED WITHIN THE FIVE-YEAR PRESCRIPTIVE PERIOD; EXECUTION BY MOTION EVEN AFTER THE LAPSE OF FIVE YEARS ALLOWED WHEN THE DELAY IS CAUSED OR OCCASIONED BY ACTIONS OF THE JUDGMENT DEBTOR AND/OR IS INCURRED FOR HIS BENEFIT OR ADVANTAGE.— [F]or execution by motion to be valid, the judgment creditor must ensure the accomplishment of two acts within the five-year prescriptive period. These are: **a) the filing of the motion for the issuance of the writ of execution; and b) the court's actual issuance of the writ.** In the instances when the Court allowed execution by motion even after the lapse of five years, we only recognized one exception, *i.e.*, when *the delay is caused or*

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occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage. However, petitioner failed to show or cite circumstances showing how OCWD or Subic Water caused it to belatedly file its second motion for execution. Strictly speaking, the issuance of the writ should have been a ministerial duty on the part of the trial court after it gave its July 23, 1999 order, approving the first motion and directing the issuance of such writ. The petitioner could have easily compelled the court to actually issue the writ by filing a manifestation on the existence of the July 23, 1999 order. However, petitioner idly sat and waited for the five-year period to lapse before it filed its second motion. Having slept on its rights, petitioner had no one to blame but itself.

6. ID.; ID.; ID.; A WRIT OF EXECUTION CAN ONLY BE ISSUED AGAINST A PARTY AND NOT AGAINST ONE WHO DID NOT HAVE HIS DAY IN COURT.— Strangers to a case are not bound by the judgment rendered in it. Thus, a writ of execution can only be issued against a party and not against one who did not have his day in court. Subic Water never participated in the proceedings in Civil Case No. 580-0-90, where OCWD and petitioner were the contending parties. x x x. Subic Water did not voluntarily submit to the court's jurisdiction. In fact, the motion it filed was only made as a special appearance, precisely to avoid the court's acquisition of jurisdiction over its person. Without any participation in the proceedings below, it cannot be made liable on the writ of execution issued by the court *a quo*.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SOLIDARY OBLIGATIONS; SOLIDARY LIABILITY IS NOT PRESUMED AND MUST BE EXPRESSLY PROVIDED FOR.— As the rule stands, solidary liability is not presumed. This stems from Art. 1207 of the Civil Code x x x. In *Palmares v. Court of Appeals*, the Court did not hesitate to rule that although a party to a promissory note was only labeled as a co-maker, his liability was that of a surety, since the instrument **expressly provided for his joint and several liability** with the principal. In the present case, the joint and several liability of Subic Water and OCWD was nowhere clear in the agreement. The agreement simply and plainly stated that petitioner and OCWD were **only**

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requesting Subic Water to be a co-maker, in view of its assumption of OCWD's water operations. No evidence was presented to show that such request was ever approved by Subic Water's board of directors. Under these circumstances, petitioner cannot proceed after Subic Water for OCWD's unpaid obligations. The law explicitly states that **solidary liability is not presumed and must be expressly provided for**. Not being a surety, Subic Water is not an insurer of OCWD's obligations under the compromise agreement. At best, Subic Water was merely a guarantor against whom petitioner can claim, provided it was first shown that: a) petitioner had already proceeded after the properties of OCWD, the principal debtor; b) and despite this, the obligation under the compromise agreement, remains to be not fully satisfied.

8. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; A CORPORATION ACTS THROUGH ITS BOARD OF DIRECTORS WHICH EXERCISES ITS CORPORATE POWERS; HENCE, ABSENT AUTHORITY FROM THE BOARD OF DIRECTORS, NO PERSON, NOT EVEN ITS OFFICERS, CAN VALIDLY BIND A CORPORATION.— Subic Water is a corporation. A corporation, as a juridical entity, primarily acts through its board of directors, which exercises its corporate powers. In this capacity, the general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. x x x. In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, we held that under Section 23 of the Corporation Code**, the power and responsibility to decide whether a corporation can enter into a binding contract is lodged with the board of directors**, subject to the articles of incorporation, by-laws, or relevant provisions of law. x x x. Mr. Noli Aldip signed the compromise agreement purely in his own capacity. xxx. No document such as the minutes of Subic Water's board of directors' meeting or a secretary's certificate, purporting to be an authorization to Mr. Aldip to conform to the compromise agreement, was ever presented. In effect, Mr. Aldip's act of signing the compromise agreement was outside of his authority to undertake. Since Mr. Aldip was never authorized and there was no showing that Subic Water's articles of incorporation or by-laws granted him such authority, then the compromise

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agreement he signed cannot bind Subic Water. Subic Water cannot likewise be made a surety or even a guarantor for OCWD's obligations. OCWD's debts under the compromise agreement are its own corporate obligations to petitioner.

9. ID.; ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; THE CORPORATE VEIL SHOULD NOT AND CANNOT BE PIERCED UNLESS IT IS CLEARLY ESTABLISHED THAT THE SEPARATE AND DISTINCT PERSONALITY OF THE CORPORATION WAS USED TO JUSTIFY A WRONG, PROTECT FRAUD, OR PERPETRATE A DECEPTION; PROBATIVE FACTORS OF IDENTITY WHICH COULD JUSTIFY THE APPLICATION OF THE DOCTRINE OF PIERCING THE CORPORATE VEIL; NOT PROVED.— OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere shareholder, OCWD's juridical personality cannot be equated nor confused with that of Subic Water. It is basic in corporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Under this corporate reality, Subic Water cannot be held liable for OCWD's corporate obligations in the same manner that OCWD cannot be held liable for the obligations incurred by Subic Water as a separate entity. The corporate veil should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify a wrong, protect fraud, or perpetrate a deception. In *Concept Builders, Inc. v. NLRC*, the Court enumerated the possible probative factors of identity which could justify the application of the doctrine of piercing the corporate veil. These are: (1) Stock ownership by one or common ownership of both corporations; (2) Identity of directors and officers; (3) The manner of keeping corporate books and records; and (4) Methods of conducting the business. The burden of proving the presence of any of these probative factors lies with the one alleging it. Unfortunately, petitioner simply claimed that Subic Water took over OCWD's water operations in Olongapo City. Apart from this allegation, petitioner failed to demonstrate any link to justify the construction that Subic Water and OCWD are one and the same. Under this evidentiary situation, our duty is to respect the separate and distinct personalities of these two juridical entities.

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APPEARANCES OF COUNSEL

Angelito R. Orozco for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for *certiorari*[1] under Rule 65 the challenge to the July 6, 2005 decision[2] and the January 3, 2006 resolution[3] (*assailed CA rulings*) of the Court of Appeals (*CA*) in CA-G.R. SP No. 80947.

These assailed CA rulings annulled and set aside: a) the July 29, 2003 order[4] of the Regional Trial Court of Olongapo, Br. 75 (*RTC Olongapo*), which directed the issuance of a writ of execution in Civil Case No. 582-0-90, against respondent Subic Water and Sewerage Co., Inc. (*Subic Water*); b) the July 31, 2003 writ of execution[5] subsequently issued by the same court; and c) the October 7, 2003 order[6] of RTC Olongapo, denying Subic Water's special appearance with motion to reconsider order dated July 29, 2003 and to quash writ of execution dated July 31, 2003.[7]

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[1] *Rollo,* pp. 3-19.

[2] Penned by Associate Justice Marina L. Buzon, and concurred in by Associate Justices Mario L. Guariña and Santiago Javier Ranada; *Id*. at 20-30.

[3] *Id*. at 48-51.

[4] *Id*. at 121.

[5] *Id*. at 240-241.

[6] *Id*. at 122.

[7] *Id*. at 242-252.

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Factual Antecedents

On May 25, 1973, Presidential Decree No. 198[8] (*PD 198*) took effect. This law authorized the creation of local water districts which may acquire, install, maintain and operate water supply and distribution systems for domestic, industrial, municipal and agricultural uses.[9]

Pursuant to PD 198, petitioner Olongapo City (*petitioner*) passed Resolution No. 161, which transferred all its *existing water facilities and assets under the Olongapo City Public Utilities Department Waterworks Division*, to the jurisdiction and ownership of the Olongapo City Water District (*OCWD*).[10]

PD 198, as amended,[11] allows local water districts (*LWDs)* which have acquired an existing water system of a local government unit (*LGU*) to enter into a contract to pay the concerned LGU. In lieu of the LGU's share in the acquired water utility plant, it shall be paid by the LWD an amount not exceeding three percent (3%) of the LWD's gross receipts from water sales in any year.[12]

On October 24, 1990, petitioner filed a complaint for sum of money and damages against OCWD. Among others, petitioner alleged that OCWD failed to pay its electricity bills to petitioner and remit its payment under the contract to pay, pursuant to OCWD's acquisition of petitioner's water system. In its complaint, petitioner prayed for the following reliefs:

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[8] Declaring a National Policy Favoring Local Operation and Control of Water Systems; Authorizing the Formation of Local Water Districts and Providing for the Government and Administration of such Districts; Chartering a National Administration to Facilitate Improvement of Local Water Utilities; Granting said Administration such Powers as are Necessary to Optimize Public Service from Water Utility Operations, and for Other Purposes.

[9] PD 198, Section 5.

[10] *Rollo,* p. 4.

[11] PD 198 was subsequently amended by Presidential Decree No. 768 and Presidential Decree No. 1479.

[12] PD 198, Section 30 (b), as amended.

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"WHEREOF, it is respectfully prayed of this Honorable Court that after due hearing and notice, judgment be rendered in favor of plaintiff ordering the defendant to:

(a) pay the amount of ₱26,798,223.70 plus legal interests from the filing of the Complaint to actual full payment;

(b) pay the amount of its in lieu share representing three percent of the defendant's gross receipts from water sales starting 1981 up to present;

(c) pay the amount of ₱1,000,000 as moral damages; and

(d) pay the cost of suit and other litigation expenses."[13]

In its answer,[14] OCWD posed a counterclaim against petitioner for unpaid water bills amounting to ₱3,080,357.00.[15]

In the interim, OCWD entered into a Joint Venture Agreement[16] (*JVA*) with Subic Bay Metropolitan Authority (*SBMA*), Biwater International Limited (*Biwater*), and D.M. Consunji, Inc. (*DMCI*) on November 24, 1996. Pursuant to this agreement, **Subic Water** – a new corporate entity – was incorporated, with the following equity participation from its shareholders:

SBMA	19.99% or 20%
OCWD	9.99% or 10%
Biwater	29.99% or 30%
DMCI	39.99% or 40%[17]

On November 24, 1996, Subic Water was granted the franchise to operate and to carry on the business of providing water and sewerage services in the Subic Bay Free Port Zone, as well

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[13] *Rollo,* p. 56.

[14] *Id.* at 58-61.

[15] *Id.* at 60.

[16] *Id.* at 74-106.

[17] *Id.* at 129; 214-215.

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as in Olongapo City.[18] Hence, Subic Water took over OCWD's water operations in Olongapo City.[19]

To finally settle their money claims against each other, petitioner and OCWD entered into a compromise agreement[20] on June 4, 1997. In this agreement, petitioner and OCWD offset their respective claims and counterclaims. OCWD also undertook to pay to petitioner its net obligation amounting to ₱135,909,467.09, to be amortized for a period of not exceeding twenty-five (25) years at twenty-four percent (24%) per annum.[21]

The compromise agreement also contained a provision regarding the parties' **request** that *Subic Water, Philippines, which took over the operations of the defendant Olongapo City Water District be made the* ***co-maker*** for OCWD's obligations. Mr. Noli Aldip, then chairman of Subic Water, acted as its representative and signed the agreement on behalf of Subic Water.

Subsequently, the parties submitted the compromise agreement to RTC Olongapo for approval. In its decision dated June 13, 1997,[22] the trial court approved the compromise agreement and adopted it as its judgment in Civil Case No. 580-0-90.

Pursuant to the compromise agreement and in payment of OCWD's obligations to petitioner, petitioner and OCWD executed a Deed of Assignment on November 24, 1997.[23] OCWD assigned all of its rights in the JVA in favor of the petitioner, *including but not limited to the assignment of its shares, lease payments, regulatory assistance fees and other receivables arising out of or related to the Joint Venture*

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[18] *Id.* at 128-129.

[19] *Id.*

[20] *Id.* at 108-109.

[21] *Id.*

[22] *Id.* at 110-111.

[23] *Id.* at 158-159.

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Agreement and the Lease Agreement.[24] On December 15, 1998, OCWD was judicially dissolved.[25]

On May 7, 1999, to enforce the compromise agreement, the petitioner filed a motion for the issuance of a writ of execution[26] with the trial court. In its July 23, 1999 order,[27] the trial court granted the motion, but did not issue the corresponding writ of execution.

Almost four years later, on May 30, 2003, the petitioner, through its new counsel, filed a notice of appearance with urgent motion/manifestation[28] and prayed again for the issuance of a writ of execution against OCWD. A certain Atty. Segundo Mangohig, claiming to be OCWD's former counsel, filed a manifestation alleging that OCWD had already been dissolved and that Subic Water is now the former OCWD.[29]

Because of this assertion, Subic Water also filed a manifestation informing the trial court that *as borne out by the articles of incorporation and general information sheet of Subic Water x x x defendant OCWD is not Subic Water*.[30] The manifestation also indicated that OCWD was only a ten percent (10%) shareholder of Subic Water; and that its 10% share was already in the process of being transferred to petitioner pursuant to the Deed of Assignment dated November 24, 1997.[31]

The trial court granted the motion for execution and directed its issuance against OCWD and/or Subic Water. Because of this unfavorable order, Subic Water filed a special appearance

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[24] *Id*. at 158.

[25] *Id*. at 112-117.

[26] *Id*. at 8.

[27] *Id*. at 118.

[28] *Id*. at 119.

[29] *Id*.

[30] *Id*. at 238.

[31] *Id*.

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with motion to: (1) reconsider order dated July 29, 2003; and (2) quash writ of execution dated July 31, 2003.[32]

The trial court denied Subic Water's special appearance, motion for reconsideration, and its motion to quash. Subic Water then filed a petition for *certiorari*[33] with the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to RTC Olongapo for issuing its July 29, 2003 and October 7, 2003 orders as well as the writ of execution dated July 31, 2003.

The CA's Ruling

In its decision dated July 6, 2005,[34] the CA granted Subic Water's petition for *certiorari* and reversed the trial court's rulings.

The CA found that the writ of execution dated July 31, 2003[35] did not comply with Section 6, Rule 39 of the Rules of Court, to wit:

> Section 6. Execution by motion or by independent action. — A final and executory judgment or order may be executed **on motion within five (5) years from the date of its entry**. **After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action**. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a) [emphasis ours]

A judgment on a compromise agreement is immediately executory and is considered to have been entered on the date it was approved by the trial court.[36] Since the compromise agreement was approved and adopted by the trial court on June 13, 1997, this should be the reckoning date for the counting of the

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[32] *Supra*, note 7.

[33] *Id.* at 125-157.

[34] *Supra*, note 2.

[35] *Supra*, note 5.

[36] *Manipor v. Ricafort*, 454 Phil. 825, 833 (2003).

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period for the filing of a valid motion for issuance of a writ of execution. Petitioner thus had until June 13, 2002, to file its motion.

The CA further remarked that while it was true that a motion for execution was filed by petitioner on May 7, 1999, and the same was granted by the trial court in its July 23, 1999 order,[37] no writ of execution was actually issued.

As the CA looked at the case, petitioner, instead of following up with the trial court the issuance of the writ of execution, did not do anything to secure its prompt issuance. It waited another four years to file a second motion for execution on May 30, 2003.[38] By this time, the allowed period for the filing of a motion for the issuance of the writ had already lapsed. Hence, the trial court's July 29, 2003 order granting the issuance of the writ was null and void for having been issued by a court without jurisdiction.

The CA denied petitioner's subsequent motion for reconsideration. Petitioner is now before us on a petition for *certiorari* under Rule 65.

The Petition

The petitioner acknowledged the rule that the execution of a judgment could no longer be made by mere motion after the prescribed five-year period had already lapsed. However, it argued that the delay for the issuance of the writ of execution was caused by OCWD and Subic Water. The petitioner submitted that this Court had allowed execution by mere motion even after the lapse of the five-year period, when the delay was caused or occasioned by the actions of the judgment debtor.[39]

Also, the petitioner asserted that although Subic Water was not a party in the case, it could still be subjected to a writ of execution, since it was identified as OCWD's co-maker and successor-in-interest in the compromise agreement.[40]

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[37] *Supra*, note 27.

[38] *Id*. at note 30.

[39] *Rollo*, p. 12.

[40] *Id*. at 14.

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Lastly, the petitioner contended that the compromise agreement was signed by Mr. Noli R. Aldip, then Subic Water's chairman, signifying Subic Water's consent to the agreement.

The Court's Ruling

We **DISMISS** the petition for being the wrong remedy and, in any case, for lack of merit; what we have before us is a final judgment that we can no longer touch unless there is grave abuse of discretion.

A. Procedural Law Aspect

Certiorari is not a substitute for a lost appeal.

At the outset, we emphasize that the present petition, brought under Rule 65, merits outright dismissal for having availed an improper remedy.

The instant petition should have been brought under Rule 45 in a petition for review on *certiorari*. Section 1 of this Rule mandates:

> **Section 1.** Filing of petition with Supreme Court. — A party desiring to **appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals**, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a) [emphasis supplied]

Supplementing Rule 45 are Sections 3[41] and 4[42] of Rule 56 which govern the applicable procedure in the Supreme Court.

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[41] Section 3. Mode of appeal. — An appeal to the Supreme Court may be taken only by **a petition for review on *certiorari***, except in criminal cases where the penalty imposed is death, *reclusion perpetua* or life imprisonment. [emphasis ours]

[42] Section 4. Procedure. — **The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, Rules 45**, 48, Sections 1, 2, and 5 to 11 of Rule 51, 52 and this Rule. [emphasis ours]

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Appeals from judgments or final orders or resolutions of the CA should be made through a verified petition for review on *certiorari* under Rule 45.[43] In this case, petitioner questioned the July 6, 2005 decision[44] and the January 3, 2006 resolution[45] of the CA which declared as null and void the writ of execution issued by the trial court. Since the CA's pronouncement **completely disposed of the case and the issues raised by the parties**, it was the proper subject of a Rule 45 petition. It was already a final order that resolved the subject matter in its entirety, leaving nothing else to be done.

A petition for *certiorari* under Rule 65 is appropriate only if there is **no appeal**, or any plain, speedy, and adequate remedy in the ordinary course of law available to the aggrieved party. As we have distinctly explained in the case of *Pasiona v. Court of Appeals*:[46]

> The aggrieved party is proscribed from assailing a decision or final order of the CA *via* Rule 65 because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. In this case, **petitioner had an adequate remedy, namely, a petition for review on certiorari under Rule 45 of the Rules of Court**. **A petition for review on certiorari, not a special civil action for certiorari was, therefore, the correct remedy**.
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> **Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for a lost appeal,** especially if one's own negligence or

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[43] *San Pedro and Dopeño v. Asdala*, G.R. No. 164560, July 22, 2009, 593 SCRA 397, 401.

[44] *Supra*, note 2.

[45] *Supra*, note 3.

[46] G.R. No. 165471, 581 Phil. 124 (2008).

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error in one's choice of remedy occasioned such loss or lapse.[47] [emphasis ours]

The petitioner received the CA's assailed resolution denying its motion for reconsideration on January 9, 2006. Following Rule 45, Section 2 of the Rules of Court,[48] the petitioner had until January 24, 2006 to file its petition for review. It could have even filed a motion for a 30-day extension of time, a motion that this Court grants for justifiable reasons.[49] But all of these, it failed to do. Thus, the assailed CA rulings became final and executory and could no longer be the subject of an appeal.

Apparently, to revive its lost appeal, petitioner filed the present petition for *certiorari* that – under Rule 65 – may be filed within sixty days from the promulgation of the assailed CA resolution (on January 3, 2006). A Rule 65 petition for *certiorari*, however, cannot be a substitute for a lost appeal. With the lapse of the prescribed period for appeal without an action from the petitioner, the present petition for *certiorari* – a mere replacement –must be dismissed.

But even without the procedural infirmity, the present recourse to us has no basis on the merits and must be denied.

Execution by motion is only available within the five-year period from entry of judgment.

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[47] *Ibid.* at 138.

[48] Section 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

[49] *Id*.

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Under Rule 39, Section 6,[50] a judgment creditor has two modes in enforcing the court's judgment. Execution may be either through motion or an independent action.

These two modes of execution are available depending on the timing when the judgment creditor invoked its right to enforce the court's judgment. **Execution by motion is only available if the enforcement of the judgment was sought within five (5) years from the date of its entry**. On the other hand, execution by independent action is mandatory if the five-year prescriptive period for execution by motion had already elapsed.[51] However, for execution by independent action to prosper – the Rules impose another limitation – the action must be filed before it is barred by the statute of limitations which, under the Civil Code, is ten (10) years from the finality of the judgment.[52]

On May 7, 1999, within the five-year period from the trial court's judgment, petitioner filed its motion for the issuance of a writ of execution. However, despite the grant of the motion, the court did not issue an actual writ. It was only on May 30, 2003 that petitioner filed a second motion to ask again for the writ's issuance. By this time, the allowed five-year period for execution by motion had already lapsed.

As will be discussed below, since the second motion was filed beyond the five-year prescriptive period set by the Rules, then the writ of execution issued by the trial court on July 31, 2003 was null and void for having been issued by a court already ousted of its jurisdiction.

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[50] Section 6**.** *Execution by motion or by independent action.* — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)

[51] *Id*.

[52] CIVIL CODE, Article 1144 in relation to Article 1152.

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In *Arambulo v. Court of First Instance of Laguna*,[53] we explained the rule that the jurisdiction of a court to issue a writ of execution by motion is only effective within the five-year period from the entry of judgment. Outside this five-year period, any writ of execution issued pursuant to a motion filed by the judgment creditor, is null and void. If no writ of execution was issued by the court within the five-year period, even a motion filed within such prescriptive period would not suffice. A writ issued by the court after the lapse of the five-year period is already null and void.[54] The judgment creditor's only recourse then is to file an independent action, which must also be within the prescriptive period set by law for the enforcement of judgments.

This Court subsequently reiterated its *Arambulo* ruling in *Ramos v. Garciano*,[55] where we said:

> There seems to be no serious dispute that the 4th *alias* writ of execution was issued eight (8) days after the lapse of the five (5) year period from the date of the entry of judgment in Civil Case No. 367. **As a general rule, after the lapse of such period a judgment may be enforced only by ordinary action, not by mere motion** (Section 6, Rule 39, Rules of Court).
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> x x x x x x x x x
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> **The limitation that a judgment be enforced by execution within five years, otherwise it loses efficacy, goes to the very jurisdiction of the Court.** A writ issued after such period is void, and the failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.[56] [emphasis supplied]

To clearly restate these rulings, for execution by motion to be valid, the judgment creditor must ensure the accomplishment

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[53] G.R. No. L-31814, 53 Phil. 302 (1929).

[54] *Ibid.* at 305-306.

[55] G.R. No. L-22341, 137 Phil. 814 (1969).

[56] *Ibid.* at 818-819.

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of two acts within the five-year prescriptive period. These are: **a) the filing of the motion for the issuance of the writ of execution; and b) the court's actual issuance of the writ.** In the instances when the Court allowed execution by motion even after the lapse of five years, we only recognized one exception, *i.e.*, when *the delay is caused or occasioned by actions of the judgment debtor and/or is incurred for his benefit or advantage*.[57] However, petitioner failed to show or cite circumstances showing how OCWD or Subic Water caused it to belatedly file its second motion for execution.

Strictly speaking, the issuance of the writ should have been a ministerial duty on the part of the trial court after it gave its July 23, 1999 order, approving the first motion and directing the issuance of such writ. The petitioner could have easily compelled the court to actually issue the writ by filing a manifestation on the existence of the July 23, 1999 order. However, petitioner idly sat and waited for the five-year period to lapse before it filed its second motion. Having slept on its rights, petitioner had no one to blame but itself.

A writ of execution cannot affect a non- party to a case.

Strangers to a case are not bound by the judgment rendered in it. Thus, a writ of execution can only be issued against a party and not against one who did not have his day in court.[58]

Subic Water never participated in the proceedings in Civil Case No. 580-0-90, where OCWD and petitioner were the contending parties. Subic Water only came into the picture when one Atty. Segundo Mangohig, claiming to be OCWD's former counsel, manifested before the trial court that OCWD had already been judicially dissolved and that Subic Water assumed OCWD's personality.

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[57] *Republic v. Court of Appeals*, G.R. No. 91885, 329 Phil. 115, 122 (1996).

[58] *Salamat Vda. de Medina v. Judge Cruz*, G.R. No. L-39272, 244 Phil. 40, 48 (1988).

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In the present case, the compromise agreement, although signed by Mr. Noli Aldip, did not carry the express conformity of Subic Water. Mr. Aldip was never given any authorization to conform to or bind Subic Water in the compromise agreement. Also, the agreement merely labeled Subic Water as a co-maker. It did not contain any provision where Subic Water acknowledged its solidary liability with OCWD.

Lastly, Subic Water did not voluntarily submit to the court's jurisdiction. In fact, the motion it filed was only made as a special appearance, precisely to avoid the court's acquisition of jurisdiction over its person. Without any participation in the proceedings below, it cannot be made liable on the writ of execution issued by the court *a quo*.

B. Substantive Law Aspect

Solidary liability must be expressly stated.

The petitioner also argued that Subic Water could be held solidarily liable under the writ of execution since it was identified as OCWD's co-maker in the compromise agreement. The petitioner's basis for this is the following provision of the agreement:

> 4. Both parties also **request** that Subic Water, Philippines which took over the operations of the defendant Olongapo City Water District be made as **co-maker** for the obligation herein above-cited.[59] [emphasis supplied]

As the rule stands, solidary liability is not presumed. This stems from Art. 1207 of the Civil Code, which provides:

> Art. 1207. x x x **There is a solidary liability only when the obligation expressly so states**, or when the law or the nature of the obligation requires solidarity. [emphasis supplied]

In *Palmares v. Court of Appeals*,[60] the Court did not hesitate to rule that although a party to a promissory note was only

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[59] *Supra*, note 20.

[60] G.R. No. 126490, 351 Phil. 664 (1998).

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labeled as a co-maker, his liability was that of a surety, since the instrument **expressly provided for his joint and several liability** with the principal.

In the present case, the joint and several liability of Subic Water and OCWD was nowhere clear in the agreement. The agreement simply and plainly stated that petitioner and OCWD were **only requesting** Subic Water to be a co-maker, in view of its assumption of OCWD's water operations. No evidence was presented to show that such request was ever approved by Subic Water's board of directors.

Under these circumstances, petitioner cannot proceed after Subic Water for OCWD's unpaid obligations. The law explicitly states that **solidary liability is not presumed and must be expressly provided for**. Not being a surety, Subic Water is not an insurer of OCWD's obligations under the compromise agreement. At best, Subic Water was merely a guarantor against whom petitioner can claim, provided it was first shown that: a) petitioner had already proceeded after the properties of OCWD, the principal debtor; b) and despite this, the obligation under the compromise agreement, remains to be not fully satisfied.[61] But as will be discussed next, Subic Water could not also be recognized as a guarantor of OCWD's obligations.

An officer's actions can only bind the corporation if he had been authorized to do so.

An examination of the compromise agreement reveals that it was not accompanied by any document showing a grant of authority to Mr. Noli Aldip to sign on behalf of Subic Water.

Subic Water is a corporation. A corporation, as a juridical entity, primarily acts through its board of directors, which exercises its corporate powers. In this capacity, the general rule is that, in the absence of authority from the board of directors, no

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[61] *Spouses Ong v. PCIB*, G.R. No. 160466, 489 Phil. 673, 677 (2005).

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person, not even its officers, can validly bind a corporation.[62] Section 23 of the Corporation Code provides:

Section 23. The board of directors or trustees**.** – Unless otherwise provided in this Code, **the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees** to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (28a) [emphasis supplied]

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,[63] we held that under Section 23 of the Corporation Code**, the power and responsibility to decide whether a corporation can enter into a binding contract is lodged with the board of directors**, subject to the articles of incorporation, by-laws, or relevant provisions of law. As we have clearly explained in another case:

A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.[64] [emphasis ours]

Mr. Noli Aldip signed the compromise agreement purely in his own capacity. Moreover, the compromise agreement did not expressly provide that Subic Water consented to become OCWD's co-maker. As worded, the compromise agreement merely provided that *both parties [also]* ***request*** *Subic Water,*

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[62] *Cebu Mactan Members Center, Inc. v. Tsukahara*, G.R. No. 159624, July 17, 2009, 593 SCRA 172, 176.

[63] G.R. No. 117847, 357 Phil. 850 (1998).

[64] *Supra*, note 62, at 177-178.

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Philippines, which took over the operations of Olongapo City Water District be made as co-maker [for the obligations above-cited]. This request was never forwarded to Subic Water's board of directors. Even if due notification had been made (which does not appear in the records), Subic Water's board does not appear to have given any approval to such request. No document such as the minutes of Subic Water's board of directors' meeting or a secretary's certificate, purporting to be an authorization to Mr. Aldip to conform to the compromise agreement, was ever presented. In effect, Mr. Aldip's act of signing the compromise agreement was outside of his authority to undertake.

Since Mr. Aldip was never authorized and there was no showing that Subic Water's articles of incorporation or by-laws granted him such authority, then the compromise agreement he signed cannot bind Subic Water. Subic Water cannot likewise be made a surety or even a guarantor for OCWD's obligations. OCWD's debts under the compromise agreement are its own corporate obligations to petitioner.

OCWD and Subic Water are two separate and different entities.

Petitioner practically suggests that since Subic Water took over OCWD's water operations in Olongapo City, it also acquired OCWD's juridical personality, making the two entities one and the same.

This is an interpretation that we cannot make or adopt under the facts and the evidence of this case. Subic Water clearly demonstrated that it was a separate corporate entity from OCWD.

OCWD is just a ten percent (10%) shareholder of Subic Water. As a mere shareholder, OCWD's juridical personality cannot be equated nor confused with that of Subic Water. It is basic in corporation law that a corporation is a juridical entity vested with a legal personality separate and distinct from those

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acting for and in its behalf and, in general, from the people comprising it.[65]

Under this corporate reality, Subic Water cannot be held liable for OCWD's corporate obligations in the same manner that OCWD cannot be held liable for the obligations incurred by Subic Water as a separate entity. The corporate veil should not and cannot be pierced unless it is clearly established that the separate and distinct personality of the corporation was used to justify a wrong, protect fraud, or perpetrate a deception.[66]

In *Concept Builders, Inc. v. NLRC,*[67] the Court enumerated the possible probative factors of identity which could justify the application of the doctrine of piercing the corporate veil. These are:

(1) Stock ownership by one or common ownership of both corporations;

(2) Identity of directors and officers;

(3) The manner of keeping corporate books and records; and

(4) Methods of conducting the business.[68]

The burden of proving the presence of any of these probative factors lies with the one alleging it. Unfortunately, petitioner simply claimed that Subic Water took over OCWD's water operations in Olongapo City. Apart from this allegation, petitioner failed to demonstrate any link to justify the construction that Subic Water and OCWD are one and the same.

Under this evidentiary situation, our duty is to respect the separate and distinct personalities of these two juridical entities.

We thus deny the present petition. The writ of execution issued by RTC Olongapo, Br. 75, in favor of Olongapo City,

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[65] *Heirs of Tan Uy v. International Exchange Bank,* G.R. Nos. 166282 & 166283, February 13, 2013, 690 SCRA 519, 525.

[66] *Ibid.* at 528-529.

[67] G.R. No. 108734, 326 Phil. 955 (1996).

[68] *Ibid*. at 965.

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is hereby confirmed to be null and void. Accordingly, respondent Subic Water cannot be made liable under this writ.

WHEREFORE, premises considered, we hereby **DISMISS** the petition. The Court of Appeals' decision dated July 6, 2005 and resolution dated January 3, 2006, annulling and setting aside the orders of the Regional Trial Court of Olongapo, Branch 75 dated July 29, 2003 and October 7, 2003, and the writ of execution dated July 31, 2003, are hereby **AFFIRMED**. Costs against the City of Olongapo.

SO ORDERED.

Carpio, Acting C.J., (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 173082. August 6, 2014]

PALM AVENUE HOLDING CO., INC., and PALM AVENUE REALTY AND DEVELOPMENT CORPORATION, *petitioners, vs.* **SANDIGANBAYAN 5TH Division, REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),** *respondents.*

[G.R. No. 195795. August 6, 2014]

REPUBLIC OF THE PHILIPPINES, represented by the Presidential Commission on Good Government, *petitioner, vs.* **HON. SANDIGANBAYAN, PALM AVENUE REALTY and DEVELOPMENT**