

**THE ECONOMIC INSURANCE COMPANY, INC., PETITIONER, VS.
JUDGE GUILLERMO E. TORRES OF THE COURT OF FIRST INSTANCE
OF RIZAL; VISAYAN MARKETING CORPORATION; AND THE SHERIFF
OF THE PR...**

G.R. No. L-28488. October 21, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for certiorari to review the order dated June 1, 1967[1] of the Court of First Instance of Rizal, Branch VIII, presided by the respondent Judge Guillermo E. Torres, in Civil Case No. 8732 entitled "Visayan Marketing Corporation vs. I-Feng Enamelling Co. (Phil.) Inc." directing the petitioner, The Economic Insurance Company, Inc., to deliver to the private respondent, the Visayan Marketing Corporation, the amount of P52,987.43 as partial satisfaction of the unsatisfied judgment credit with legal interest from the date of the filing of the action and P1,000.00 as attorney's fees and the costs and the order of August 11, 1967[2] denying the petitioner's motion for reconsideration and the order dated October 13, 1967[3] denying petitioner's second motion for reconsideration.

Sometime prior to August 20, 1965, the respondent Visayan Marketing Corporation filed an action against I-Feng Enamelling Co. (Phil.) Inc. in the Court of First Instance of Rizal which was assigned to Branch VIII thereof and docketed as Civil Case No. 8732 of said court. The respondent judge, Hon. Guillermo E. Torres, rendered judgment dated August 20, 1965 ordering the defendant I-Feng Enamelling Co. (Phil.) Inc. to pay the plaintiff therein, Visayan Marketing Corporation, the sum of P360,000.00. The judgment was only partially satisfied. The therein plaintiff, Visayan Marketing Corporation, filed a motion for the examination of the petitioner, The Economic Insurance Company, Inc., for the purpose of determining whether said petitioner had property or money belonging to the defendant I-Feng Enamelling Co. (Phil.) Inc.

The President of the petitioner, Stephen J. Zohr, was examined under oath. In said examination, Stephen J. Zohr denied that any sum of money was due from the petitioner to I-Feng Enamelling Co. (Phil.) Inc., the judgment debtor in Civil Case No. 8732.

The record discloses that the petitioner, The Economic Insurance Company, Inc., (ECONOMIC for short), was the second mortgagee under a chattel mortgage executed by I-Feng Enamelling Co. (Phil.) Inc. (I-FENG for short) over certain personal properties belonging to the latter. The second chattel mortgage was security for an obligation of P300,000.00.

The Philippine Bank of Communications (PBC for short) was the first chattel mortgagee of I-Feng to secure an obligation of P202,512.57. When the PBC, as the first mortgagee, sought to foreclose the first mortgage in its favor, the Economic paid off the bank in the sum of P202,512.57. The Economic thereby became the sole chattel mortgagee. Subsequently, after a series of negotiations, the Atlas Glass & Enamelling Co., Inc. (ATLAS GLASS for short) purchased all of the petitioner's chattel mortgage rights over the properties mortgaged by

I-Feng. The petitioner executed an assignment of mortgage in favor of Atlas Glass for a total consideration of P523,000.00. In due course, Atlas Glass, as assignee of the consolidated chattel mortgage rights of the petitioner and PBC, foreclosed both chattel mortgages and eventually took possession of the mortgaged properties of I-Feng.[4]

Upon the foregoing facts, the respondent Visayan Marketing Corporation, plaintiff and judgment creditor in Civil Case No. 8732, contended that the petitioner Economic realized an amount of P52,987.43 in excess of its mortgage credit against I-Feng and is, therefore, bound under the chattel mortgage law to turn over such excess to the mortgagor, I-Feng.

After the examination under oath of the President of the petitioner Economic, the respondent judge issued an order dated June 1, 1967, the dispositive part of which reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, as Economic has in its custody and possession the sum of P52,987.43 which lawfully belongs to the herein judgment-debtor, judgment is hereby rendered ordering Economic to deliver to the Visayan Marketing Corporation the amount of P52,987.43 as partial satisfaction of the said unsatisfied judgment-credit with legal interest from the date of filing of this action, and P1,000.00 as attorney's fees and costs.

SO ORDERED.

Pasig, Rizal, June 1, 1967.

(Sgd.) GUILLERMO E. TORRES

Judge"[5]

The first and second motions for reconsideration of the petitioner Economic were both denied by the respondent judge.

The petitioner submits that the respondent judge committed a grave abuse of discretion in rendering judgment against the petitioner to pay the amount of P52,987.43 to the respondent, Visayan Marketing Corporation, because no action was filed against the petitioner by said respondent Visayan Marketing Corporation as required by Section 45, Rule 39, Revised Rules of Court which reads:

"SEC. 45. Proceedings when indebtedness denied or another person claims the property. - If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought, at any time, upon such terms as may be just."

The petitioner also contends that the respondent judge arbitrarily fixed the amount of P52,987.43 and acted without legal basis in imposing legal interest on said amount from the date of the filing of Civil Case No. 8732 and ordering said petitioner to pay attorney's fees of P1,000.00 and the costs; and that said petitioner did not foreclose the chattel mortgages.

It is clear from Section 45, Rule 39 that if a person alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court may only authorize the judgment creditor to institute an action against such person for the recovery of such interest or debt. Said section does not authorize the court to make a finding that the third person has in his possession property

belonging to the judgment debtor or is indebted to him and to order said third person to pay the amount to the judgment creditor.

It has been held that the only power of the court in proceedings supplemental to execution is to make an order authorizing the creditor to sue in the proper court to recover an indebtedness due to the judgment debtor.[6] The court has no jurisdiction to try summarily the question whether the third party served with notice of execution and levy is indebted to defendant when such indebtedness is denied.[7] To make an order in relation to property which the garnishee claimed to own in his own right, requiring its application in satisfaction of judgment of another, would be to deprive the garnishee of property upon summary proceeding and without due process of law.[8]

The contention that the profit made by the petitioner in assigning its chattel mortgage rights to Atlas Glass belongs to the judgment debtor, I-Feng, has no merit. The chattel mortgages were foreclosed by Atlas Glass, not by the petitioner.

In view of the foregoing, it is obvious that the respondent judge exceeded his jurisdiction and committed a grave abuse of discretion in ordering the petitioner to pay the sum of P52,987.43 to the private respondent Visayan Marketing Corporation in the proceeding had pursuant to Section 45, Rule 39, Revised Rules of Court.

WHEREFORE, the order dated June 1, 1967 and the orders dated August 11, 1967 and October 13, 1967 sought to be re-viewed are hereby set aside, with costs against the private respondent Visayan Marketing Corporation.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin and Guerrero, JJ., concur.

[1] Annex "B", Rollo, pp. 19-23.

[2] Annex "D", Rollo, p. 30.

[3] Annex "F", Rollo, p. 34.

[4] Petition, Rollo, pp. 1-3.

[5] Annex "B", Rollo, p. 23.

[6] McDowell v. Bell 86 Cal. 615; 25 Pac. 128; High v. Bank of Commerce, 103 Cal. 525; 37 Pac. 508.

[7] Takahashi v. Kunishima, Cal. App; (1939) 93 p. 2d 645.

[8] Lewis v. Chamberlain, 108 Cal. 525, 527, 41 Pac. Rep. 413.

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