

**ROSENSONS, INC., ENRIQUE KATIGBAK AND ANTONIO D. KATIGBAK,
PETITIONERS, VS. HONORABLE JOSE JIMENEZ, IN HIS OFFICIAL
CAPACITY AS PRESIDING JUDGE OF BRANCH VI OF THE COURT OF
FIRS...**

G.R. No. L-41225. November 11, 1975

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for certiorari and prohibition with preliminary injunction to annul the orders, dated December 20, 1974, March 6, 1975, and July 23, 1975, issued by the respondent court in Civil Case No. 77959 of the Court of First Instance of Manila, and to restrain the said respondent court from enforcing said orders. As prayed for, a temporary restraining order was issued by this Court on August 27, 1975.[1]

The petitioner, Rosensons, Inc., a domestic corporation of which the petitioners, Enrique Katigbak and Antonio D. Katigbak, are the president and vice-president, respectively, is the owner of a three-storey building and lot located at No. 2175 A. Mabini Street, Malate, Manila. The said property was leased, on a month-to-month basis, to the respondent Go Yit who converted the building into a hotel, known as the "Miami Hotel." For the failure of the lessee, Go Yit, to pay the P8,000.00 monthly rental of the premises for the month of September, 1974, the Rosensons, Inc. instituted an ejectment suit against him before the City Court of Manila. The case, entitled "Rosenons, Inc., plaintiff, versus Go Yit, defendant," was docketed therein as Civil Case No. 236389 and assigned to Branch V.

After appropriate proceedings, the City Court of Manila rendered judgment on November 12, 1974, "ordering herein defendant to vacate the premises described in the complaint and restore possession thereof to plaintiff; to pay unto the plaintiff the sum of P24,000.00 representing rentals in arrears covering the period from September to November, inclusive; the sum of P8,000.00 a month as current rental beginning December, 1974 to be paid within the first five days of the month and each month thereafter until defendant and all persons claiming under him finally vacate the premises; P500.00 as and for attorney's fees, plus costs." [2]

On November 15, 1974, the Rosensons, Inc., filed an urgent motion for execution which was granted by the court on November 18, 1974. On November 25, 1974, the writ of execution was served on the defendant Go Yit who upon receipt thereof, vacated the premises in question voluntarily. On that same occasion, Ng Che, an employee of the Miami Hotel and one of the private respondents herein, informed the sheriff enforcing the writ of execution that he has been appointed receiver of the partnership operating the Miami Hotel, by the Court of First Instance of Manila in Civil Case No. 77959.[3] Ng Che was, nevertheless, ordered to vacate the premises and was given 24 hours within which to do so.[4] The Miami Hotel was thereafter closed for business and demolition of the building was started for the construction of a 250-room multi-storey office condominium.

As a result, on December 10, 1974, Ng Che filed a complaint, before the Court of First Instance of Manila, for damages against Rosensons, Inc., Go Yit, Juan C. Guevarra and Lorenzo Lim,[5] with a prayer for the issuance of

a writ of preliminary injunction, to restrain the defendants "from closing the premises of said hotel or otherwise interfering with the management thereof." [6] The case was docketed therein as Civil Case No. 96128 and assigned to Branch XXV.

On December 19, 1974, the court issued an order in said Civil Case No. 96128 denying the prayer for the issuance of a writ of preliminary and mandatory injunction and dissolved the restraining order it had previously issued. [7]

Ng Che also reported the incident to the court having cognizance of Civil Case No. 77959, [8] and on December 20, 1974, the respondent court issued the order complained of, directing the receiver Ng Che to continue discharging his duties as such in the operation and management of the Miami Hotel; restraining Sheriffs Guevarra and Lim of Manila from molesting (Ng Che) in the discharge of his duties; and ordering the owners of the building (Rosensons, Inc.) to refrain from undertaking any further work of demolition in the said building and to provide an entrance to the Miami Hotel for the benefit and convenience of prospective customers. [9]

On March 6, 1975, the respondent court issued an order in said Civil Case No. 77959, denying the herein petitioner's motion to lift the aforementioned order of December 20, 1974. [10]

On July 23, 1975, the respondent court issued another order in said Civil Case No. 77959, ordering the herein petitioner, Rosensons, Inc., "to open the door of Room 104 of the Miami Hotel in the presence of the Receiver and defendant Go Yit or his representative not later than July 31, 1975." [11]

Claiming that the respondent court had no jurisdiction to issue the orders complained of; that the petitioners are susceptible to suffer great and irreparable damage and/or injury if said orders were to be enforced in view of its contract to construct a 250-room multi-storey office condominium at the site of the subject premises which is to be finished on or before June, 1976; and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, the petitioners filed the instant petition.

The judgment in Civil Case No. 236389 of the City Court of Manila, ordered the defendant Go Yit to vacate the premises in question and restore possession thereof to plaintiff; to pay unto the plaintiff the sum of P24,000.00 representing rentals in arrears covering the period from September to November, inclusive; the sum of P8,000.00 a month as current rental beginning December, 1974 to be paid within the first five days of the month and each month thereafter until defendant and all persons claiming under him finally vacate the premises; P500 as and for attorney's fees, plus costs. Thereafter, a writ of execution was issued. When the sheriff tried to carry out the execution by ejecting Go Yit from the premises, Ng Che gave notice to the sheriff that he had been appointed the receiver operating the Miami Hotel by the Court of First Instance of Manila in Civil Case No. 77959. Ng Che was, nevertheless, ordered to vacate the premises. Ng Che, accordingly, reported the incident to the respondent court who had appointed him receiver of the Miami Hotel, and on December 20, 1974, the respondent court issued an order, directing Ng Che to continue discharging his duties as such in the operation and management of the Miami Hotel; restraining the sheriffs of Manila from molesting him (Ng Che) in the discharge of his duties; and ordering Rosensons, Inc., the owner of the building, from demolishing the building housing the Miami Hotel and to provide an entrance to the said hotel for the benefit and convenience of prospective customers. In effect, the order issued by the respondent court on December 20, 1974 set at naught the final judgment rendered by the City Court of Manila in Civil Case No. 236389.

Under our rules of procedure, the validity of a judgment or order of the court which has become final and executory may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if the court had no jurisdiction to enter the order or pronounce the judgment. To sustain a collateral attack on a judgment, the record must show that the court lacked jurisdiction to render the judgment. [12]

In the case at bar, there is no showing, much less an allegation, that the City Court of Manila lacked jurisdiction to render judgment in Civil Case No. 23689, ejecting Go Yit and all other persons claiming under him from the premises in question. Accordingly, the orders of the respondent court issued on December 20, 1974 and March 6, 1975 were improperly issued. A stay of execution or a setting aside of a judgment may be authorized when necessary to accomplish the ends of justice, but not when its object is to set at naught a final judgment and make a mockery of the administration of justice.

WHEREFORE, the writ prayed for is granted and the orders issued by the Court of First Instance of Manila on December 20, 1974 and March 6, 1975, in Civil Case No. 77959, insofar as they are in conflict with the decision rendered by the City Court of Manila in Civil Case No. 236389, are hereby annulled and set aside. The temporary restraining order heretofore issued is hereby made permanent. With costs against the respondents Lee Sai and Ng Che.

Barredo, J., Acting Chairman, concurs in a separate opinion.

Antonio and Aquino, JJ., concur in the result.

Martin, J., concurs.

[1] p. 32, rollo.

[2] p. 25, rollo.

[3] p. 42, rollo.

[4] p. 36, rollo.

[5] The latter two defendants are deputy sheriffs of Manila enforcing the writ of execution issued in Civil Case No. 236389 of the City Court of Manila.

[6] p. 6, rollo.

[7] p. 27, rollo. The order reads, in part, as follows:

“Considering that as of October 1, 1974, plaintiff Ng Che had assumed his duties as receiver to operate the Miami Hotel in Civil Case No. 77959, entitled: 'Lee Sai vs. Go Yit' in the Court of First Instance of Manila, and altho it was incumbent upon him to have notified Rosensons Inc., the owner of aforesaid hotel under lease by Go Yit, however, said receiver failed to do so; that altho an ejectment suit by Rosensons Inc. was filed against Go Yit in the City Court of Manila on October 3, 1974 and the answer was filed by Go Yit, thru counsel, on October 9, 1974 and on November 8, 1974 Ng Che, as receiver, made an offer to pay Rosensons Inc. the rental for November, 1974 and which offer was rejected, inasmuch as Go Yit had been in arrears since September, 1974, and despite knowledge on the part of Ng Che, as he must have been told by the representative of Rosensons Inc. of the filing of the ejectment suit against Go Yit, on October 3, 1974, he (Ng Che) did not intervene in the ejectment suit then pending in the City Court, which rendered judgment on November 12, 1974; that upon his appointment as receiver in Civil Case No. 77959, plaintiff Ng Che occupied the dual role of representing not only the debtor but the creditors, and that, therefore, he would fall under the category of persons claiming thru and under Go Yit, in the ejectment suit, and hence, would be bound by the writ of execution; that in view of his own neglect and inaction in performing his duties, as receiver, plaintiff Ng Che would have no right in law or in equity, which could be the subject of legal protection by a writ of preliminary injunction, and much less, by a writ of mandatory injunction, which can be granted only in rare cases where there is a clear right, and after hearing on

the merits and in support of a final judgment, as held in a series of decisions (Meralco vs. del Rosario, 72 Phil. 433; Villadores vs. Encarnacion, 95 Phil. 913), therefore, the prayer for the issuance of a writ of preliminary and mandatory injunctions is hereby denied, and the restraining order dissolved."

[8] p. 43, rollo.

[9] p. 22, rollo.

[10] p. 23, rollo.

[11] p. 24, rollo.

[12] Reyes vs. Barreto-Datu, 94 Phil. 446.

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CONCURRING OPINION

BARREDO, J.:

I concur in the judgment annulling and setting aside the trial court's questioned orders of December 20, 1974 and March 6 and July 23, 1975. I just want to add here that as I visualize the legal situation in this case, what is most important to consider is that the contract of lease on which the judgment of the City Court of Manila in Civil Case No. 236389 was based was exclusively between petitioner Rosensons, Inc. and respondent Go Yit. If as apparently claimed by respondent Lee Sai, some kind of relationship exists between him and Go Yit which entitled him to a part in the business of Miami Hotel which the latter conducted in the premises owned by petitioner corporation, the action he had filed in Civil Case No. 77959 could only be in personam and if, at all, the receiver he succeeded to be appointed had any right to step into the shoes of Go Yit, the receivership did not and could not have the effect of restoring to Go Yit the possession of the premises in question on the strength of the lease contract which by final judgment the City Court of Manila found had already been terminated due to default by Go Yit in the payment of the rental for September, 1974 in violation of said contract. In other words, inasmuch as Lee Sai was not a party to that contract of lease, he had no personality to ask for any relief from the judgment of ejectment against Go Yit. His remedy is against Go Yit and not against any of the petitioners. The receivership granted in Civil Case No. 77959 was in connection with the business relationship between Lee Sai and Go Yit, with which petitioners had nothing to do. Worse, instead of intervening in the ejectment suit to protect whatever right he might have in the lease, Lee Sai proposed, after the judgment of November 12, 1974 had already been rendered and a writ of execution had already been issued that he be allowed to lease the premises in question in his own name. Under these circumstances, I cannot see how any court can now compel petitioners to virtually reinstate the lease and recognize the receiver Ng Che as entitled to continue the same on behalf of Go Yit and Lee Sai.

Assuming for the sake of argument that the judgment in Civil Case No. 77959 against Go Yit and in favor of Lee Sai which is still pending appeal in the Court of Appeals is correct and would be affirmed, it is my considered opinion that the same could not bind herein petitioners who were not originally parties thereto and were joined only for purposes of the receivership. Receivership being a mere auxiliary remedy, the fact that petitioners were made respondents therein does not and cannot affect petitioners' right to the repossession of the premises in question granted to Rosensons, Inc. under the judgment in Civil Case No. 236389 of the City Court of Manila and against the lessee Go Yit.

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