

**VICENTE S. UMALI, PETITIONER, VS. HON. JORGE COQUIA,
PRESIDING JUDGE OF CFI, MANILA, BRANCH XI, RESTITUTO AGUS
AND DOLORES LUDOVICO, RESPONDENTS.**

G.R. No. L-46303. May 09, 1988

Ponente: CORTES, J.

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CORTES, J.:

As correctly argued by petitioner, resolution of the instant petition calls for the application of the rule on prescription of enforcement of judgments.

Petitioner and private respondents Agus and Ludovico, together with several other parties, were co-defendants in Aboitiz Marketing Corporation v. PQOG Veterans Enterprises, Inc., Civil Case No. 53970, CFI Manila, Branch XI.

The trial court found the following facts:

It appears from the evidence, consisting mainly of plaintiffs testimony and its exhibits, that between the period of March to April 1959 the defendants. PQOG Veterans Enterprises, Inc.. and the Legionaires Enterprises. Inc.. represented to the plaintiff that they were awardees of reparation goods from Japan, under Resolution Nos. 88 and 91 of the Reparations Commission; that after a series of conferences between plaintiff and defendants. PQOG Veterans Enterprises. Inc.. and Legionaires Enterprises. Inc., (henceforth PQOG and Legionaires. the plaintiff agreed to pay to said defendants the value of the reparation goods under the award, in the amount of P1,000,000.00.

On May 27, 1959 said two defendants, PQOG and Legionaires, entered into a contract (Exhs. A. A-1 to A-10) with plaintiff, confirming their verbal agreement.

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Defendants PQOG and Legionaires started to draw from plaintiff on 29 May 1959. the sum of P30,000.00 Philippine currency (Exh. B). On 23 June 1959, defendants Vicente Umali Agustin Marking, Restituto Agus and Dolores Ludovico drew the sum of P27,250.00 pursuant to the above-quoted provision of Exhibit A, which was evidenced by a promissory note (Exh. C). On the same date, defendants. Restituto Agus and Dolores Ludovico, executed a real estate mortgage to secure and guaranty the payment of the promissory note, in the sum of P27,250.00 (Exhs. C-1 & C-2).

On 5 August 1959. defendants Vicente S. Umali, Agustin Marking and Robert Leong drew the sum of P25,000.00 from plaintiff, to secure which Robert Leong executed a real estate mortgage in favor of the plaintiff (Exhs. B. B-1 & B-2).

On 13 August 1959. defendants PQOG and Severino Edesa drew the sum of P10,000.00 from plaintiff, secured by a performance bond B-59-29. issued by the Utility Assurance and Surety Company (Exhs. F. F-1 & F-2); and. on

11 September 1959. PQOG and Severino B. Edesa finally drew from plaintiff the sum of P5,000.00. to secure which defendant Utility Assurance and Surety Company issued a bond for the same amount (Exh. G).

After the defendants had drawn the foregoing amounts in the total sum of P97.250.00, it turned out, according to said defendants, that they have not been awarded the goods and commodities by the Reparations Commission per Resolutions 88 and 91. Plaintiffs made demands, both verbal and written, against the defendants in the months of July and August 1960. . . After the above-named defendants — except defendant Vicente Umali — received the demand letters, defendants, thru counsel, requested that they be given time within which to comply with their obligations under the contract, Exhibit A. Defendants promised that should they be unable to get the goods and commodities from Japan, they would return the amounts they have drawn from plaintiff, with damages, and attorney's fees as per the contract. Plaintiff gave defendants periods of grace, notwithstanding which defendants failed .and refused to reimburse plaintiff the amount received by them, plus interest, damages and attorney's fees. ... [CFI Decision, pp. 5-6, Rollo, pp. 14-15; Italics supplied.]

The CFI rendered a decision on July 15, 1967, the dispositive part of which reads:

WHEREFORE, judgment is hereby rendered —

A. On the principal complaint, ordering defendants.

1. PQOG Veterans Enterprises. Inc.;
2. Legionnaires Enterprises, Inc.;
3. Utility Assurance & Surety Co., Inc.;
4. Francisco B. Offemaria;
5. Vicente S. Umali;
6. Agustin Marking;
7. Severino B. Edesa;
8. Robert Leong;
9. Restituto A. Agus; and
10. Dolores Q. Ludovico

to pay the plaintiff, jointly and severally the sum of P97.250.00, with interest at the legal rate from demand until fully paid; but the extent of the liabilities of the following shall be limited as follows: defendant Utility Assurance & Surety Co.. Inc. (3) to the extent of P15.000.00 only: Robert Leong (8)' to the extent of P25.000.00 only; and Restituto A. Agus and Dolores Q. Ludovico (9) and (10) to the extent of P27.250.00 only.

On the cross-claim — 1) ordering defendants Vicente S. Umali and Agustin Marking to pay, jointly and severally, the defendant cross-claimant Robert Leong the sum of P25,000.00, plus interests thereon; plus the sum of P2,000.00 as and for attorney's fees; and (2) ordering cross-defendants Vicente S. Umali and Agustin Marking to pay cross-claimants Restituto A. Agus and Dolores Q. Ludovico the sum of P27,250.00, plus interest thereon, and the sum of P2,750.00 as and for attorney's fees. [CFI Decision, pp. 6-7; Rollo, pp. 15-16; Italics supplied.]

Petitioner did not appeal from the decision of the trial court. However, co-defendant Utility Assurance & Surety Co., Inc. appealed. The appeal was dismissed by the Court of Appeals on July 10, 1969.

In the meantime, writs of execution and alias writs of execution were issued by the CFI against petitioner on August 15, 1973, October 31, 1974 and July 24, 1975. The writs having been returned unsatisfied, private respondents Agus and Ludovico filed on October 14, 1976 a motion for examination of petitioner under Sec. 38, Rule 39 of the Revised Rules of Court. Overruling petitioner's opposition, respondent judge issued a resolution dated March 18, 1977 granting the motion. A motion for reconsideration of said resolution was denied on May 12, 1977.

Hence, the instant special civil action for certiorari with preliminary injunction alleging grave abuse of discretion on the part of respondent judge when he issued the order allowing the examination of petitioner as judgment debtor.

The Court issued a temporary restraining order on June 22, 1977, restraining respondent judge from proceeding with the examination of petitioner as judgment debtor on July 25, 1977 or on any date thereafter.

Ostensibly the issue for resolution is whether or not respondent judge gravely abused his discretion when he allowed the examination of petitioner as judgment debtor pursuant to Sec. 38, Rule 39 of the Revised Rules of Court, which provides:

Sec. 38. Examination of judgment debtor when execution returned unsatisfied. — When an execution issued in accordance with law against property of a judgment debtor, or any one of several debtors in the same judgment, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from the judge of the Court of First Instance of the province in which judgment was rendered or of the province from which the execution was returned, requiring such judgment debtor to appear and answer concerning his property and income before such judge of the Court of First Instance, or before a commissioner appointed by him, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment debtor toward the satisfaction of the judgment. But no judgment debtor shall be so required to appear before a judge of first instance or commissioner outside the province in which such debtor resides or is found.

Petitioner contends that the examination is premature since Sec. 38 requires that the writ of execution be returned unsatisfied before a judgment debtor can be examined as to his property and it has not been shown that the writs of execution issued were returned unsatisfied.

The Court of First Instance, however, has found that the writs and alias writs were returned unsatisfied and has even indicated in its resolution dated May 12, 1977 the pages in the record containing the sheriffs returns attesting to such fact. There is no reason to disturb this finding as it finds support in the record.

However, the more important issue is whether or not the judgment of the Court of First Instance with regard to private respondents' cross-claim may still be executed as against petitioner. Petitioner contends that execution on motion is already barred by Sec. 6, Rule 39 of the Revised Rules of Court, which reads:

"Sec. 6. Execution by motion or by independent action.— A judgment may be executed on motion within five (5) years from the date of its entry or from the date it becomes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

Thus, petitioner's theory is that if the judgment may no longer be executed by motion as against him, then he may no longer be required to appear before the trial court to answer concerning his property.

There is merit in petitioner's contention.

Since petitioner did not appeal, the decision of the trial court as to the cross-claim against him became final and executory thirty (30) days after July 15, 1967. The first writ of execution was issued on August 15, 1973, or six (6) years later. This being the case, the judgment on the cross-claim may no longer be executed on motion as against petitioner. The judgment would have to be enforced by independent action.

In support of petitioner's position is a long-standing rule summarized by this Court, through Justice Recto, in the leading case of *Demetriou v. Lesaca* [63 Phil. 112 (1936)]:

The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ

of execution issued for its enforcement. The judgment may be enforced after the lapse of this period and before the same shall have been barred by the statute, of limitations, instituting an ordinary action. (Sections 443 and 447, Code of Civil Procedure; *Campania General de Tabacos vs. Martinez*, 17 Phil. 160; *Paterno vs. Aguila*, 22 Phil. 427; *Compania General de Tabacos vs. Martinez and Nolan*, 29 Phil. 515; *Arambulo vs. Court of First Instance of Laguna and Municipality of Santa Rosa*, 53 Phil. 302.)

The rule set forth in *Demetriou* is now enshrined in Sec. 6, Rule 39 of the present-day Rules of Court and has been reiterated and construed in several decisions, among those of recent vintage being *Sta. Ana v. Menla* [G.R. No. L-15564, April 29, 1961, 1 SCRA 1294]; *Ramos v. Garciano* [G.R. No. L-22341, April 29, 1969, 27 SCRA 1190]; *Casela v. Court of Appeals* [G.R. No. L-26754, October 16, 1970, 35 SCRA 279]; *Development Bank of the Philippines v. Tanada* [G.R. No. L-32532, March 29, 1974, 56 SCRA 470]; *Torralha v. De los Angeles* [G.R. No. L-27592, February 14, 1980, 96 SCRA 69]; *Jalandoni v. Philippine National Bank* [G.R. No. L-47579, October 9, 1981, 108 SCRA 102]; and *Republic v. Court of Appeals* [G.R. No. L-43179, June 27, 1985, 137 SCRA 220].

Far from bolstering their position, private respondents' contention that the five (5) year period should be counted from the finality of the decision of the Court of Appeals dismissing the appeal of *Utility Assurance & Surety Co., Inc.* weakens it. What private respondents are obviously seeking to execute is the favorable judgment on the cross-claim against petitioner, not the judgment on the principal action where petitioner and private respondents were all co-defendants. If private respondents' theory is followed, then they would not be judgment creditors who may seek execution of a favorable judgment and move to compel a judgment debtor to appear before the court and answer with regard to his property, for they would also be judgment debtors like petitioner.

Unfortunately, the five (5) year period within which private respondents may enforce execution by motion has already lapsed, and this they must have realized, as betrayed by their insistence on the date of finality of the decision of the Court of Appeals as the starting point for counting the five (5) year prescriptive period.

Correlatively, the appellant in the Court of Appeals is *Utility Assurance & Surety Co., Inc.* whose liability springs from the performance bonds it issued, an obligation totally distinct from the obligation of petitioner to private respondents. The appeal of the bonding company was confined to its liability for the obligation it secured in the amount of P15,000.00 arising from bonds it issued in favor of defendants other than petitioner and private respondents herein. Thus, even if said company's appeal was sustained, petitioner's and private respondents' liability to the plaintiff would still stand and, consequently, so would petitioner's liability to private respondents on the cross-claim.

WHEREFORE, the petition is hereby GRANTED and the resolution of respondent judge ordering the examination of petitioner dated March 18, 1977 and the resolution dated May 12, 1977 denying the motion for reconsideration are SET ASIDE. The restraining order issued by this Court on June 22, 1977 is made PERMANENT.

SO ORDERED.

Fernan (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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