

ARABESQUE INDUSTRIAL PHILIPPINES, INC., PETITIONER, VS. COURT OF APPEALS AND PNOC DOCKYARD AND ENGINEERING CORPORATION, RESPONDENTS.

G.R. No. 101431. December 14, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Although filed as a special civil action for certiorari under Rule 65, this petition is actually in the nature of a petition for review under Rule 45 praying for the reversal of a decision of the Court of Appeals; hence, We treat it under the latter Rule.

The records show that on 19 April 1989, Arabesque Industrial Philippines, Inc. (AIPI), bought at public auction the tugboat MT Rover of respondent PNOC Dockyard and Engineering Corp. (PDEC). Despite notice by PDEC that it was imposing lay day charges if the boat was not removed from its premises by 9 May 1989, AIPI did not remove the boat; instead, it engaged PDEC to repair it. The bill for the repair rose to P1,681,896.30. Petitioner AIPI paid only P329,115.00 leaving a balance of P1,352,781.30. After evaluating the repair work, AIPI expressed willingness to pay only an additional of P494,593.60.

On 7 September 1990, AIPI received from Atty. Rosendo Chaves, a notary public, a notice for the sale of the boat at public auction slated for 14 September 1990, pursuant to Arts. 2241 (5), 2243 and 2212 of the Civil Code. Under Art. 2241, credits for the marking, repairs, safekeeping or preservation of personal property, on the movable-made, repaired, kept or possessed constitutes fifth in the order of preference (par. 5), such credit being considered under Art. 2245 as a mortgage or lien within the purview of the legal provisions governing insolvency. From the time of judicial demand, the interest due on such credit shall earn legal interest according to Art. 2212 although the obligation may be silent on this point.

Subsequently, AIPI sued PDEC and Notary Public Rosendo Chaves for the nullification of the public auction sale plus accounting, with prayer for preliminary injunction before RTC, Branch 147, Makati, contending that Arts. 2241 and 2243 of the Civil Code cited by PDEC were not applicable as AIPI was not yet judicially declared insolvent, AIPI praying for immediate injunction of the auction sale and for PDEC to accept P494,593.60 as reasonable and complete payment of its services.

On 12 September 1990, Judge Teofilo Guadiz, Jr., of the Regional Trial Court, Makati, enjoined PDEC and Notary Public Chaves from holding the slated public auction sale until after its hearing set 1 October 1990.

On 20 September 1990, PDEC filed an omnibus motion in opposition of the injunction and praying for the lifting of the TRO, for summary judgment upon admission of AIPI of the liability of P494,593.60, and for the dismissal of the complaint. AIPI opposed the motion.

On 3 October 1990, upon filing by AIPI of a bond of P100,000.00, the trial court issued a preliminary injunction against the sale of the boat.

On 19 October 1990, PDEC filed an answer, amended on 28 October 1990. AIPI moved to amend the complaint, which was granted, and on 23 November 1990, the amended complaint was admitted upon a finding that there was no alteration of the cause of action.

On 26 November 1990, upon AIPI posting a bond of P1 Million, and considering the answer of PDEC admitting the ownership of the boat by AIPI, the court granted the replevin and ordered the return of the boat to AIPI.

On 29 November 1990, PDEC filed an “Urgent Motion to Annul, Revoke, Recall and Lift the Order Admitting the Amended Complaint dated November 23, 1990 and Order of Seizure dated November 26, 1990”.

Meanwhile, on 14 December 1990, the sheriffs enforcing the writ of replevin took possession of the boat and delivered the same to AIPI. After denial of the motion of PDEC on 20 March 1991, it filed a petition for certiorari and prohibition with the Court of Appeals under Rule 65 seeking to set aside the orders of the trial court of 23 November 1990, 26 November 1990, and 20 March 1991 admitting the amended complaint, granting the writ of replevin, and denying the urgent motion of PDEC, respectively.

On 19 July 1991, the Court of Appeals set aside the order of 26 November 1990 and directed the return of the boat to PDEC on the ground that the chattel was not wrongfully detained but possessed in the exercise of PDEC of a mechanic’s lien for its unpaid repair bills. The procedural lapse of the court a quo in granting without hearing AIPI’s leave to file amended complaint was cured by PDEC’s “Urgent Motion to Annul, Revoke and Lift the Order Admitting the Amended Complaint, etc.” Invoking the doctrine in *Portugal v. Reantaso*,^[1] the Court of Appeals ruled that lack of due process is not absence of previous notice but absolute absence of opportunity to be heard. As regards admission of the amended complaint, the appellate court held that what are barred by Sec. 3, Rule 10, of the Rules of Court are amendments which substantially change the cause of action or the theory of the case, hence, the addition of the prayer for a writ of replevin, being implied from the main cause of action, may be allowed.

AIPI now questions the decision of the Court of Appeals. It argues that respondent appellate court should not have set aside the writ of replevin because AIPI is the owner of the boat and that the right of an owner is superior to that of a mere lien holder. AIPI contends that lay day fees are incurred by it for continuous possession of the boat by PDEC, and that AIPI should not be made to suffer for PDEC’s refusal to release the boat. Moreover, the return of the boat to PDEC should have been refused as it has not posted a counterbond. AIPI argues that the petition should have been dismissed by the appellate court and remanded the case to the court a quo as it involved factual issues, like the determination of reasonable expenses for the repair. Finally, AIPI disputes the resolution of respondent appellate court on the challenge to the interlocutory orders of the court a quo because such orders are unappealable.

Private respondent PDEC, in its comment, points to the admission by AIPI of delivering the boat to PDEC for repair as fatal to the instant petition. PDEC asserts its right to retain possession of the chattel until the repair fees are fully settled, pursuant to Arts. 1731, 2098, 2105, 2112 and 2122 of the Civil Code. In its reply, AIPI reiterates the arguments in its petition, and adds that Art. 1731 of the Civil Code, which states that he who has executed works on a movable has the right to retain it by way of pledge until paid, does not apply because it actually remitted payments to PDEC.

Simply stated, the principal issues before Us are whether the writ of replevin was properly issued by the court a quo, and whether the interlocutory orders issued herein are appealable.

On the first issue, respondent Court of Appeals correctly set aside the writ of replevin. Such writ cannot be properly directed against a lawful possessor of a chattel, and the matter of ownership as well as incurring of

additional lay day fees by the continued detention of the boat by PDEC is therefore inconsequential. The requirement of posting a counterbond to reacquire possession of the chattel subject of the writ, does not apply in the case at bar because that presupposes a previous valid writ. In the case before Us, however, the chattel was ordered returned to PDEC because the writ was improperly issued. Definitely, it was not issued on the basis of the non-posting of a counterbond.

As regards the second issue, interlocutory orders, because they do not dispose of the case on the merits, are not appealable; consequently, they were correctly made subject of a petition for certiorari/prohibition before the Court of Appeals under Rule 65 of the Rules of Court.

WHEREFORE, finding no reversible error committed by respondent Court of Appeals, We RESOLVE to DENY DUE COURSE to the Petition.

SO ORDERED.

Cruz, (Chairman), Padilla, and Griño-Aquino, JJ., concur.

[1] G.R. No. L-46078, 24 November 1988; 167 SCRA 712.

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