PH CREDIT CORPORATION, PETITIONER, VS. COURT OF APPEALS AND CARLOS M. FARRALES, RESPONDENTS.

G.R. No. 109648. November 22, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When there is a conflict between the dispositive portion or fallo of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. An order of execution is based on the disposition, not on the body, of the decision.

The Case

Before us is a Petition for Review under Rule 45[1] of the Rules of Court, assailing the October 28, 1992 Decision[2] and the April 6, 1993 Resolution[3] of the Court of Appeals (CA) in CA-GR SP Nos. 23324 and 25714. The dispositive portion of the said Decision reads as follows:

> "WHEREFORE, judgment is hereby rendered DISMISSING: a) CA-G.R. SP No. 23324, for being moot and academic, and b) CA-G.R. SP No. 25714, for lack of merit."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts of the case are summarized by the Court of Appeals in this wise:

> "These two cases have been consolidated because they involve the same parties and/or related questions of [f]act and/or law.
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> x x x x x x x x x
>
> "I. CA-G.R. SP NO. 23324
>
> "PH Credit Corp., filed a case against Pacific Lloyd Corp., Carlos Farrales, Thomas H. Van Sebille and Federico C. Lim, for [a] sum of money. The case was docketed as Civil Case No. 83-17751 before the Regional Trial Court, Branch 51, Manila. After service of summons upon the defendants, they failed to file their answer within the reglementary period, hence they were declared in default. PH Credit Corp., was then allowed to present its evidence ex-parte.
>
> "On January 31, 1984, a decision was rendered, the dispositive portion of which reads as follows:
> `WHEREFORE, judgment is hereby rendered in favor of plaintiff PH Credit Corporation and against defendants Pacific Lloyd Corporation, Thomas H. Van Sebille, Carlos M. Farrales, and Federico C. Lim, ordering the latter to pay the former, the following:
>
> `A) The sum of P118, 814.49 with interest of 18% per annum, starting December 20, 1982 until fully paid;
>
> `B) Surcharge of 16% per annum from December 20, 1982;

`C) Penalty Charge of 2% per month from December 20, 1982, computed on interest and principal compounded;

`D) Attorney's fees in an amount equivalent to 25% of the total sum due; and

`E) Costs of suit.

`SO ORDERED.'

"After the aforesaid decision has become final and executory, a Writ of Execution was issued and consequently implemented by the assigned Deputy Sheriff. Personal and real properties of defendant Carlos M. Farrales were levied and sold at public auction wherein PH Credit Corp. was the highest bidder. The personal properties were sold on August 2, 1984 at P18,900.00 while the real properties were sold on June 21, 1989 for P1,294,726.00.

"On July 27, 1990, a motion for the issuance of a writ of possession was filed and on October 12, 1990, the same was granted. The writ of possession itself was issued on October 26, 1990. Said order and writ of possession are now the subject of this petition.

"Petitioner claims that she, as a third-party claimant with the court below, filed an `Urgent Motion for Reconsideration and/or to Suspend the Order dated October 12, 1990', but without acting there[on], respondent Judge issued the writ of possession on October 26, 1990. She claims that the actuations of respondent Judge was tainted with grave abuse of discretion.

"We deem it unnecessary to pass upon the issue raised in view of the supervening event which had rendered the same moot and academic.

"It appears that on January 31, 1991, respondent Judge issued an order considering the assailed Order dated October 12, 1990 as well as the writ of possession issued on October 26, 1990 as `of no force and effect.'

"The purpose of the petition is precisely to have the aforesaid order and writ of possession declared null and void, but the same had already been declared `of no force and effect' by the respondent Judge. It is a well-settled rule that courts will not determine a moot question or abstract proposition nor express an opinion in a case in which no practical relief can be granted.

"II. CA-G.R. SP NO. 25714

"Petitioner claims that the respondent Judge's Order dated January 31, 1991 was tainted with grave abuse of discretion based on the following grounds:

"1. Respondent Judge refused to consider as waived private respondent's objection that his obligation in the January 31, 1984 decision was merely joint and not solidary with the defendants therein. According to petitioner, private respondent assailed the levy on execution twice in 1984 and once in 1985 but not once did the latter even mention therein that his obligation was joint for failure of the dispositive portion of the decision to indicate that it was solidary. Thus, private respondent must be deemed to have waived that objection, petitioner concludes.

"2. The redemption period after the auction sale of the properties had long lapsed so much [so] that the purchaser therein became the absolute owner thereof. Thus, respondent Judge allegedly abused his discretion in setting aside the auction sale after the redemption period had expired.

"3. Respondent Judge erred in applying the presumption of a joint obligation in the face of the conclusion of fact and law contained in the decision showing that the obligation is solidary."[5] (Citations omitted)

Ruling of the Court of Appeals

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The Court of Appeals affirmed the trial court's ruling declaring null and void (a) the auction sale of Respondent Ferrales' real property and (b) the Writ of Possession issued in consequence thereof. It held that, pursuant to the January 31, 1984 Decision of the trial court, the liability of Farrales was merely joint and not solidary. Consequently, there was no legal basis for levying and selling Farrales' real and personal properties in order to satisfy the whole obligation.

Hence, this Petition.[6]

The Issues

In its Memorandum,[7] petitioner submits the following issues for our consideration:

> "I
>
> Whether or not the Court of Appeals disregarded the basic policy of avoiding multiplicity of motions.
>
> "II
>
> Whether or not the Court of Appeals erred when it disregarded the body of the decision and concluded that the obligation was merely a joint obligation due to the failure of the dispositive portion of the decision dated 31 January 1984 to state that the obligation was joint and solidary.
>
> "III
>
> Whether or not the Court of Appeals disregarded the policy of upholding executions."[8]

The Court's Ruling

The Petition is devoid of merit.

First Issue:
Omnibus Motion Rule

Petitioner contends that because private respondent did not question the joint and solidary nature of his liability in his (a) Motion to Quash Levy Execution[9] dated August 23, 1984, (b) Urgent Motion to Order Sheriff to Suspend Sale on Execution[10] dated December 3, 1984, and (c) Motion to Declare Certificate of Sale Null and Void[11]dated January 9, 1985, he cannot now raise it as an objection. Petitioner argues that the "Omnibus Motion Rule" bars private respondent's belated objection. We do not agree.

The Omnibus Motion Rule is found in Section 8 of Rule 15 of the Rules of Court, which we quote:

> "Subject to the provisions of section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (8a)"

As an aid to the proper understanding of this case, we should at the outset point out that the objections of private respondent contained in his Omnibus Motion[12]dated November 5, 1990 were directed at the proceedings and the orders issued after the auction sale of his real property covered by TCT No. 82531. In his Omnibus Motion, he asked for the recall and quashal of the Writ of Possession issued on October 26, 1990; the annulment of the June 21, 1989 auction sale of the said real property and the recomputation of his liability to petitioner.

However, the three (3) Motions that petitioner referred to above were clearly directed against the execution of private respondent's personal properties. A perusal of these Motions will show that at the time, his objections were directed at the acts of execution against his personal properties.

In his Motion to Quash Levy Execution,[13] private respondent pointed to the "properties of herein moving

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defendant x x x located at his residence at No. 17, Bunker Hill St., New Manila, Quezon City, per the Notice of Levy and Sale,"[14] and asked for the quashal and setting aside of such Notice. He was thus referring to the levy on his personal properties. By the same token, in his Urgent Motion to Order Sheriff to Suspend Sale on Execution,[15] he referred to "a copy of a sheriff's notice of sale dated November 22, 1984,"[16] which in turn alluded to the sale of his levied personal properties. Similarly, in his Motion to Declare Certificate of Sale Null and Void,[17] he once again assailed the sale at public auction of his personal properties. It is thus clear that up to that point, he was questioning the levy and sale of his personal properties. He could not have known at the time that he would be made to answer for the entire liability, which he and his co-respondents were adjudged to pay petitioner by reason of the trial court's judgment of January 31, 1984.

After private respondent realized that he was being made to answer on the entire liability as a solidary debtor, he filed his Omnibus Motion questioning the Writ of Possession and all incident orders and proceedings relevant thereto. This realization dawned on him, because his real property was levied and sold despite the previous sale of his personal property. Only at this point was he in a position to assert his objections to the auction sale of his real property and to put up the defense of joint liability among all the respondents.

The Rules of Court requires that all available objections to a judgment or proceeding must be set up in an Omnibus Motion assailing it; otherwise, they are deemed waived. In the case at bar, the objection of private respondent to his solidary liability became available to him, only after his real property was sold at public auction. At the time his personal properties were levied and sold, it was not evident to him that he was being held solely liable for the monetary judgment rendered against him and his co-respondents. That was why his objections then did not include those he asserted when his solidary liability became evident.

Prior to his Omnibus Motion, he was not yet being made to pay for the entire obligation. Thus, his objection to his being made solidarily liable with the other respondents was not yet available to him at the time he filed the Motions referred to by petitioner. Not being available, these objections could not have been deemed waived when he filed his three earlier Motions, which pertained to matters different from those covered by his Omnibus Motion.

True, the Omnibus Motion Rule requires the movant to raise all available exceptions in a single opportunity to avoid multiple piecemeal objections.[18] But to apply that statutory norm, the objections must have been available to the party at the time the Motion was filed.

Second Issue:
Basis of Private Respondent's Liability

Petitioner argues that the CA erred in disregarding the text of the January 31, 1984 Decision of the trial court. In concluding that the obligation was merely joint, the CA was allegedly mistaken in relying on the failure of the dispositive portion of the Decision to state that the obligation was solidary.

We are not impressed. A solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a joint obligation is one in which each debtors is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor.[19] The well-entrenched rule is that solidary obligations cannot be inferred lightly. They must be positively and clearly expressed.[20] A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires."[21] Article 1207 of the Civil Code explains the nature of solidary obligations in this wise:

> "Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity."

In the dispositive portion of the January 31, 1984 Decision of the trial court, the word solidary neither appears nor can it be inferred therefrom. The fallo merely stated that the following respondents were liable: Pacific Lloyd Corporation, Thomas H. Van Sebille, Carlos M. Farrales and Federico C. Lim. Under the circumstances, the liability is joint, as provided by the Civil Code, which we quote:

> "Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers[,] the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors x x x."[22]

We should stress that respondent's obligation is based on the judgment rendered by the trial court. The dispositive portion or the fallo is its decisive resolution and is thus the subject of execution. The other parts of the decision may be resorted to in order to determine the ratio decidendi for the disposition. Where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.[23] Hence the execution must conform with that which is ordained or decreed in the dispositive portion of the decision.

Petitioner maintains that the Court of Appeals improperly and incorrectly disregarded the body of the trial court's Decision, which clearly stated as follows:

> "To support the Promissory Note, a Continuing Suretyship Agreement was executed by the defendants, Federico C. Lim, Carlos M. Farrales and Thomas H. Van Sebille, in favor of the plaintiff corporation, to the effect that if Pacific Lloyd Corporation cannot pay the amount loaned by plaintiff to said corporation, then Federico C. Lim, Carlos M. Farrales and Thomas H. Van Sebille will hold themselves jointly and severally together with defendant Pacific Lloyd Corporation to answer for the payment of said obligation."[24]

As early as 1934 in Oriental Commercial Co. v. Abeto and Mabanag,[25] this Court has already answered such argument in this wise:

> "It is of no consequence that, under the written contract of suretyship executed by the parties, the obligation contracted by the sureties was joint and several in character. The final judgment, which superseded the action brought for the enforcement of said contract, declared the obligation to be merely joint, and the same cannot be executed otherwise."[26]

The same reasoning was recently adopted by this Court in Industrial Management International Development Corp. v. NLRC,[27] promulgated on May 11, 2000.

Doctrinally, the basis of execution is the January 31, 1984 Decision rendered by the trial court, not the "written contract of suretyship" executed by the parties. As correctly observed by the trial judge:

> "x x x [W]hat was stated in the body of the decision of January 31, 1984 [was] only part of the narration of facts made by the Judge[,] and the dispositive portion is to prevail."[28]

The only exception when the body of a decision prevails over the fallo is when the inevitable conclusion from the former is that there was a glaring error in the latter, in which case the body of the decision will prevail.[29] In this instance, there was no clear declaration in the body of the January 31, 1984 Decision to warrant a conclusion that there was an error in the fallo. Nowhere in the former can we find a definite declaration of the trial court that,

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indeed, respondent's liability was solidary. If petitioner had doubted this point, it should have filed a motion for reconsideration before the finality of the Decision of the trial court.

Third Issue:
The Policy of Upholding Executions

Petitioner argues "that the issue of whether or not the judgment debt should be construed as joint or solidary can only affect the determination of the existence or absence of an excess in the proceeds of the sale."[30] He further maintains that private respondent's interests are protected anyway even if all his properties are sold, because "any excess in the proceeds of the sale over the judgment and accruing costs must be delivered to the judgment debtor."[31]

We cannot accept these arguments. What can be sold on execution is limited by the Rules of Court, as follows:

> "When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he (sheriff) must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees."[32]

A writ of execution is void when issued for a sum greater than that which is warranted by the judgment or for the original amount it states despite partial payment thereof. The exact amount due cannot be left to the determination of the sheriff.[33]

Petitioner finally insists that it is "futile for private respondent to contest the sale in execution conducted in the case at bar because of the general policy of the law to sustain execution sales."[34]

Simple logic dictates that a general policy to sustain execution sales does not guarantee that they will be upheld at every instance. Petitioner itself quotes grounds for setting aside such sales: a resulting injury or prejudice, fraud, mistake or irregularity.[35]

Being made to pay for an obligation in its entirety when one's liability is merely for a portion is a sufficient ground to contest an execution sale. It would be the height of inequity if we allow judgment obligors to shoulder entire monetary judgments when their legal liabilities are limited only to their proportionate shares in the entire obligation.

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez, and Carpio, JJ., concur.

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[1] This was one of the low-numbered cases redistributed to justices who had no backlog in their dockets, pursuant to the Court's "Zero Backlog" project under AM No. 00-9-03 SC, February 27, 2001.

[2] Rollo, pp. 37-44; penned by Justice Regina G. Ordoñez-Benitez, with the concurrence of Justices Gloria C. Paras (Division Chairman) and Eduardo G. Montenegro (member).

[3] Rollo, p. 45.

[4] CA Decision, p. 7; rollo, p. 43.

[5] CA Decision, pp. 1-5; rollo, pp. 37-41.

[6] In a Resolution, dated November 22, 1999, the Court required the parties to submit their respective Memoranda within thirty (30) days from notice. This was sent through registered mail to all the parties. Petitioner, through counsel, submitted its Memorandum on February 9, 2000. This was noted by the Court in a Resolution dated April 15, 2000. On July 3, 2000, the Court resolved to require respondent's counsel, Atty. Anthony Jay Consunji, to (a) show cause why he should not be disciplinarily dealt with or held in contempt for failure to comply with the Court's Order and (b) comply with the Court's Resolution for him to submit respondent's Memorandum -- both within ten (10) days from notice thereof. This Court Resolution was again sent to respondent through registered mail, but was returned unserved with the annotation "RTS ADD. MOVED OUT LEFT NO FORWARDING ADDRESS." On November 22, 2000, the Court required petitioner to submit to the Court the correct and present address of counsel for private respondent within ten days from notice. Petitioner then manifested to the Court on January 31, 2001 that it had no knowledge of the current address of counsel for private respondent and moved the latter's right to submit his memorandum be deemed waived. Under the premises and to avoid further delay, the Court deemed the Comment of private respondent as his Memorandum.

[7] Rollo, pp. 325-343.

[8] Petitioner's Memorandum, p. 8; rollo, p. 332.

[9] Rollo, p. 82.

[10] Rollo, p. 86.

[11] Rollo, p. 95.

[12] Supra, note 8.

[13] Supra, note 12.

[14] Ibid.

[15] Supra, note 13.

[16] Records, p. 116.

[17] Supra, note 14.

[18] Manacop v. CA, 215 SCRA 773, November 13, 1992.

[19] Tolentino, Civil Code of the Philippines, Vol. IV, 1991 ed., p. 217.

[20] Smith, Bell & Co., Inc. v. CA, 267 SCRA 530, February 6, 1997.

[21] Inciong, Jr. v. CA, 257 SCRA 578, June 26, 1996.

[22] Article 1208, Civil Code.

[23] Magat v. Judge Pimentel Jr., AM No. RTJ-00-1531, November 28, 2000; Olac v. CA, 213 SCRA 321, September 2, 1992.

[24] Petitioner's Memorandum, p. 12; rollo, p. 336.

[25] 60 Phil 723, October 10, 1934.

[26] Ibid., p. 728.

[27] GR No. 101723, May 11, 2000.

[28] RTC Decision dated January 31, 1991, p. 4; rollo, p. 71.

[29] Rosales v. CA, GR No. 137566, February 28, 2001.

[30] Petitioner's Memorandum, p. 15; rollo, p. 339.

[31] Ibid.

[32] Rule 39, §9(b), 1997 Rules of Court.

[33] Regalado, Remedial Law Compendium, Vol. I, 1997 ed., p. 426, citing Windor Steel Mfg. Co., Inc. v. CA, 102 SCRA 275, January 27, 1981.

[34] Petitioner's Memorandum, p. 15; rollo, p. 339.

[35] Ibid.

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