

## SHUHEI YASUDA, PETITIONER, VS. COURT OF APPEALS AND BLUE CROSS INSURANCE, INC., RESPONDENTS.

*G.R. No. 112569. April 12, 2000*

Ponente: QUISUMBING, J.

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### QUISUMBING, J.:

This is a special civil action for certiorari[1] under Rule 65 of the Revised Rules of Court seeking reversal of the decision[2] of the Court of Appeals in CA-G.R. SP No. 31402 on November 11, 1993 and setting aside the writs of execution pending appeal issued by the Regional Trial Court of Makati, Branch 59. The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, the petition is GRANTED. The Order dated February 16, 1993 and the writ of execution pending appeal issued pursuant thereto are hereby SET ASIDE insofar as herein petitioner is concerned [Blue Cross], and the Order dated June 17, 1993 and the writ of execution issued pursuant thereto are ANNULLED and SET ASIDE. The ensuing writs and processes in the implementation of said Order of June 17, 1993 are equally ANNULLED and SET ASIDE. Private respondent [Shuheï Yasuda] and/or respondent Sheriff are/is hereby ordered to return to petitioner [Blue Cross] the seized properties of the petitioner.

SO ORDERED[3]

By this decision, the Court of Appeals rendered nugatory, as far as private respondent is concerned, the Order dated February 16, 1993, issued by the trial court granting execution pending appeal.[4]

Further, respondent appellate court also set aside the Order of the trial court dated June 17, 1993, granting petitioner's Application for Judgment against the counterbond filed by private respondent Blue Cross Insurance, Inc.

The pertinent facts of the case, borne by the records, are as follows:

Petitioner Shuheï Yasuda is a Japanese national.[5] Enrique Rojas, Eduardo Lopingco, and he, incorporated the YRL Shipping Co. S/A, a foreign corporation organized in Panama and engaged in the shipping business.[6]

On January 9, 1990, petitioner filed a complaint before the Regional Trial Court of Makati, to collect from defendants YRL Shipping Co. S.A., Azucar Shipping Corp., Eduardo Lopingco, Enrique Rojas, and Arnold Savella the sum of P8,966,304.00. It also asked for damages, issuance of an arrest order, preliminary attachment, restraining order and injunction.[7] The amount represents the alleged equity interest and share of petitioner in the income of YRL Shipping Co. derived from its operations here in the Philippines under a Bareboat Charter Agreement with the Azucar Shipping Corp. Such amount was allegedly withheld by the defendants from petitioner.

In an order dated January 16, 1990, the RTC granted petitioner's prayer for the issuance of a writ of preliminary attachment.[8]

On January 30, 1990, defendant Eduardo Lopingco filed a motion to quash the order, but the RTC denied it in an order dated February 6, 1990.[9]

On February 6, 1990, the trial court granted the application for the issuance of a writ of preliminary injunction. It also enjoined said private respondents and any and all persons or agents or parties acting in their behalf from managing or otherwise operating the vessel M/V Valiant beyond March 31, 1990, upon posting of a bond in the amount of ONE MILLION (P1,000,000.00).[10]

On February 14, 1990, the defendants except Savella filed a Motion for Reconsideration of the two (2) orders dated February 6, 1990, which was denied in an order dated March 8, 1990.[11]

Defendants assailed the orders of the RTC granting the attachment and injunction through a petition for certiorari, docketed as CA-G.R. SP No. 22017 with the Court of Appeals. It was dismissed on February 28, 1991.[12] Defendants' motion for reconsideration was likewise denied.[13]

Defendants appealed to this Court, but we sustained the decision of the Court of Appeals in a Resolution dated October 7, 1991.[14]

To discharge and release the properties subject of the writs of attachment and injunction, private respondents filed with the trial court counterbonds issued by private respondent Blue Cross Insurance, Inc.,[15] in the amounts of P8,966,304.00 and P1,000,000.00.[16]

After trial on the merits, the trial court rendered a decision[17] in favor of the petitioner-plaintiff. In addition, it ordered the defendants to pay actual, moral, exemplary damages, and attorney's fees.

The RTC dismissed defendants' counterclaims and cross-claims for lack of merit.[18]

Defendants, except Savella, appealed the decision of the Regional Trial Court.[19]

On February 16, 1993 upon petitioner's motion and over the vigorous opposition of defendants except Savella, the trial court issued an order allowing execution pending appeal of a portion of its decision awarding actual or compensatory damages. The trial court found that there are good reasons to justify the execution of the judgment pending appeal, namely, that the appeal taken by the defendants is dilatory; that herein petitioner is a Japanese national and is sickly; that the vessel M/V "Valiant" has been left to waste and deteriorating at the pier, and is in grave danger of losing its value; and that petitioner posted bond to answer for any damages which the defendants may suffer if the court later finds that petitioner is not entitled thereto.[20] Accordingly, the trial court issued a writ of execution.[21]

As attested to in the Sheriffs Report dated April 27, 1993, the Sheriff was able to execute only No. II, par. a, but failed to execute the money judgment under pars. b, c, d and e of the order dated February 16, 1993, by the trial court granting the motion for the issuance of a writ of execution pending appeal, because defendants with whom private respondent Blue Cross acted as surety, cannot be located and their properties could not be determined.[22]

On May 5, 1993, petitioner then filed an application for judgment against the counterbonds issued by private respondent[23] which, after hearing, was granted by the trial court in its order dated June 17, 1993.[24]

Private respondent Blue Cross filed a special civil action for certiorari with prayer for a temporary restraining order and/or preliminary injunction [25] with the Court of Appeals, questioning the propriety of the order of execution pending appeal and the subsequent writ of execution. At the same time, the trial court issued a Notice of Levy and Sale on Execution of Personal Properties. However, the Court of Appeals issued a TRO enjoining the trial court and the sheriff from enforcing the writ of execution against the counterbonds issued by private respondent, and from conducting the auction sale.[26]

The Court of Appeals granted the petition for certiorari filed by private respondent Blue Cross. It set aside the writs of execution pending appeal issued by the trial court, insofar as private respondent is concerned.[27]

Hence, this special civil action for certiorari,[28] filed by the aggrieved private party, Shuhei Yasuda.

Petitioner herein imputes to the Court of Appeals errors of law as well as grave abuse of discretion amounting to lack or excess of jurisdiction:

1. . . . IN ANNULING AND SETTING ASIDE THE ORDER OF FEBRUARY 16, 1993 ALLOWING EXECUTION PENDING APPEAL, BECAUSE THE PETITIONER BLUE CROSS, QUESTIONING THE PROPRIETY THEREOF, IS NOT A PARTY TO THE CASE, AND THE SAID ORDER HAS ALREADY BECOME FINAL AND EXECUTORY AFTER THE DEFENDANTS (PRINCIPALS OF BLUE CROSS) BOWED TO THE SAME AND DID NOT ELEVATE THE SAID. ORDER TO THE COURT OF APPEALS;

2. . . . IN ALLOWING PRIVATE RESPONDENT, WHICH IS BUT A SURETY, TO RAISE SEPARATE DEFENSES AGAINST THE EXECUTION PENDING APPEAL BECAUSE IT IMPROPERLY ALLOWED A SURETY TO BECOME A PARTY AND TO LITIGATE WITH: PETITIONER-PLAINTIFF; [and]

3. . . . IN ANNULING THE ORDER OF JUNE 17, 1993 AND THE WRIT ISSUED IN ACCORDANCE THEREWITH BECAUSE THE PRIVATE. RESPONDENT BLUE CROSS AND DEFENDANTS ARE TREATED IN. LAW AS ONE AND THE SAME AND PRIVATE RESPONDENT BLUE CROSS IS BOUND BY THE ORDER OF EXECUTION PENDING APPEAL ISSUED AGAINST ITS PRINCIPALS, THE DEFENDANTS.[29]

In brief, the pertinent issues to be resolved are:

- 1 Whether or not the surety has standing to question the propriety of the issuance of the writ of execution pending appeal?
- 2 Whether or not there were good reasons to allow execution pending appeal?

At the outset, it must be noted that the surety in this case filed a special civil action for certiorari with prayer for a temporary restraining order and/or preliminary injunction with the Court of Appeals. It questioned the propriety of the order of execution pending appeal and the subsequent writ of execution issued pursuant thereto. A special civil action for certiorari under Rule 65 is an original action, independent from the principal action, and not a part or continuation of the trial which resulted in the rendition of the judgment complained of.[30] It does not interrupt the course of the principal action nor the running of the reglementary periods involved in the proceedings, unless an application for a restraining order or a writ of preliminary injunction to the appellate court is granted,[31] as in the present case. It is not a mode of appeal where the appellate court reviews the errors of fact or law committed by the lower court. The issue in a special civil action for certiorari is whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.[32]

In an appeal by certiorari under Rule 45, the petitioner and respondent are also the original parties to the action in the lower court. But in certiorari as an original action, the parties are the aggrieved party against the lower court or quasi-judicial agency and the prevailing parties, who thereby respectively become the petitioner and respondents.[33] Paragraph 1, Section 1, Rule 65 of the Revised Rules of Court provides:

Section 1. Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its of his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[Emphasis supplied.] [34]

Private respondent herein, Blue Cross, had personality to bring a special civil action for certiorari before the Court of Appeals. As the entity that posted the bonds, and aggrieved by the trial court's order of execution pending appeal, Blue Cross had a substantial interest in the case. It could bring such action in its name to protect its interest.[35] In *Santos v. Court of Appeals*, G.R. No. 127899, December 2, 1999, citing *People v. Santiago*,[36] we held that:

In a special civil action for certiorari under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed grave abuse of discretion amounting to lack of jurisdiction, the rules state that the petition may be filed by the person aggrieved.

Petitioner also claims that the order allowing execution pending appeal had become final and executory because the defendants in the trial court who are the principals of private respondent did not appeal the order; thus, private respondent, the surety, is "deemed to have bowed to said order"[37] and could no longer question its propriety. This is erroneous. An order for execution pending appeal is not appealable pursuant to Paragraph 2(f), Section 1, Rule 41 of the Revised Rules of Court.[38] This provision enumerates the judgments or final orders that may be appealed from. It also specifies the interlocutory or other orders from which no appeal can be taken. In the latter instance, the aggrieved party may resort to a special civil action under Rule 65, i.e., a petition for certiorari.[39]

Having found that private respondent Blue Cross has standing to file this petition, we now decide whether execution pending appeal should be allowed in the instant petition.

The prevailing doctrine as provided for in Par. 3, section 2 of Rule 39 of the 1997 Rules of civil Procedure[40]

is that discretionary execution is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal. Good reasons consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may apparently have no case but to delay.[41]

In *Ong v. Court of Appeals*,[42] the Court underscored the importance of the requisite "good reasons" for allowance of execution pending appeal. It ruled that:

The reasons allowing execution [pending appeal] must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.

It is not intended obviously that execution pending appeal shall issue as a matter of course. Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity.

One "good reason" upheld by this Court to justify execution pending appeal is the deterioration of commodities subject of litigation.[43] In *Federation of United Namarco Distributors, Inc. v. National Marketing Corp.*, this Court sustained the good reasons stated by the trial court in its order, namely: that the goods subject matter of the judgment will deteriorate during the pendency of the appeal; and that the slight deterioration of said good will be sufficient to impair their market value as first-hand goods; hence, keeping them in storage pending petitioner's appeal will render the judgment in favor of respondents ineffectual, as respondents' interest in the goods is not that of consuming, but of marketing, them.

In the case of *Bell Carpets International Trading Corp. v. Court of Appeals*,[44] a writ of execution pending appeal was likewise allowed on the ground that "the finished goods [yarn] that were attached easily deteriorate and go out of fashion insofar as the shades and colors are concerned, thus making them unsaleable, and their

continued storage will only make them dirty and further depreciate their value."

In the present case, petitioner, in his Motion for Execution Pending Appeal, cites as a ground for its allowance, the deteriorating condition of the vessel, M/V "Valiant". He claims that the vessel has been left to rot at the pier and without a crew to guard it. It is in grave danger of losing its value. The vessel, practically abandoned, is exposed to the varied elements of nature, such as rains and storms, not to mention human elements such as invasion or robbery. The defendants, in their Opposition to petitioner's Motion for Execution Pending Appeal, failed to controvert these allegations. In our view the grounds raised by petitioner are good reasons to allow execution pending appeal.

ACCORDINGLY, the petition is GRANTED. The decision of the Court of Appeals is REVERSED and SET ASIDE, while the Orders of the Regional Trial Court of Makati dated February 16, 1993 and June 17, 1993 are REINSTATED. The Sheriff of the RTC of Makati, Branch 59, is hereby ordered to implement the writ of execution dated June 17, 1993, against private respondent Blue Cross Insurance Corporation. Costs against private respondent.

### SO ORDERED

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 6-22.

[2] Id. at 90-102.

[3] Id. at 102.

[4] CA Records, pp. 178-179.

"Premises considered, the motion is hereby granted. Upon posting by the plaintiff of a bond in the amount of One Million (P1,000,000.00) Pesos subject to the approval of this Court, let the corresponding writ of execution issue on the pecuniary awards representing actual and compensatory damages as decreed in the dispositive portion of the decision rendered by this Court under Par. II, Letters (b), ( c), (d) and (e), and for the turn-over and delivery of the possession and control over the vessel "M/V Valiant" to the plaintiff(Par. a, decision), which state as follows:

"II. Ordering:

a.....defendant Azucar Shipping Corporation to turn-over and deliver possession and control over the vessel, MV "Valiant" to plaintiff;

b.....defendants YRL Shipping Co., S.A.; Edaurdo Lopingco; and Enrique Rojas; jointly and severally, to pay the plaintiff the amount of six million two hundred ninety four pesos and sixty centavos (P6,000,294.60) which became due and payable at the time the complaint was filed, with interest at the legal rate from January 9, 1990, the date of the filing of the complaint;

c.....defendants YRL Shipping Co., S.A.; Edaurdo Lopingco; and Enrique Rojas; jointly and severally, to pay plaintiff actual damages in the amount of P3,880,785.10, representing plaintiff's share from the vessel's income from January 1990 to October 1992, with interest thereon at legal rate computed from the date of the finality of this decision until fully paid;

d.....defendant Arnold Savella to pay the plaintiff the amount of P500,000 with interest thereon at legal rate from January 9, 1990, the date of the filing of the complaint until paid; and such amount, if paid by or recovered from defendant Savella, shall be deducted from the totality of plaintiff's claims against YRL Shipping Co., S.A., Eduardo Lopingco and Enrique Rojas as indicated in the next preceding paragraph;

e.....defendants YRL Shipping Co., S.A.; Eduardo Lopingco; and Enrique Rojas; to pay the plaintiff the sum of P285,382.40 a month, representing his share from the monthly income of the vessel, starting November 1992 until the vessel MV "Valiant" is turned over to the plaintiff or until April 1993, expiry date of the renewed bareboat charter, whichever comes ahead.

SO ORDERED."

[5] Supra, note 1 at 6.

[6] Supra, note 4 at 42.

[7] Supra, note 1 at 7.

[8] Id. at 90-91.

[9] Id. at 91.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Id. at 92.

[15] Id. at 95-96.

[16] Supra, note 14.

[17] Supra, note 4 at 42-109.

[18] Supra, note 1 at 94.

[19] Id. at 95.

[20] Supra, note 4 at 172-179.

[21] Id. at 180-182.

[22] Id. at 183.

[23] Id. at 110-112.

[24] Id. at 33-38.

[25] Id. at 2-32.

[26] Supra, note 1 at 98.

[27] Id. at 90-102.

[28] Id. at 6-21.

[29] Id. at 14.

[30] Palomares, et. al. v. Jimenez, et. al., 90 Phil 773, 776; National Irrigation Administration v. Honorable Court of Appeals, et. al., G.R. No. 129169, November 17, 1999.

[31] Regalado, Remedial Law Compendium, vol. 1, 6th ed., 1997, p. 705.

[32] Id. at 543.

[33] Id. at 544.

[34] Before the 1997 revisions to the Rules of Court, Paragraph 1, Section 1, Rule 65 provided that:

Section 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

[35] Santos v. Court of Appeals, G.R. No. 127899, December 2, 1999.

[36] People v. Santiago, 174 SCRA 143, 153.

[37] Supra, note 1 at 17.

[38] SECTION 1. Subject of appeal. -- An appeal may betaken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

xxx

An order of execution;

xxx(Emphasis supplied.)

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[39] Supra, note 32 at 491-492.

[40] SEC. 2. Discretionary Execution. --

(a) Execution of a judgment or final order pending appeal -- On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

xxx

[41] Philippine Bank of Commerce v. Court of Appeals, 279 SCRA 371-372.

[42] 203 SCRA 38, 43, cited in Bonifacio Sanz Maceda Jr. and Teresita Maceda-Docena v. Development Bank of the Philippines, G.R. No. 135128, August 26, 1999.

[43] See Note 42 citing Federation of United Namarco Distributors, Inc. v. National Marketing Corp., 4 SCRA 867.

[44] 185 SCRA 35, 39.

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