

**RAY U. VELASCO, JOSEYMOUR P. ECOBIZA, WILHELM BARLIS AND
BERNABE ALABASTRO, PETITIONERS, VS. COURT OF APPEALS,
FIRMWOOD DEVELOPMENT CORPORATION AND STA. CLARA
HOUSING INDUSTRIES,...**

G.R. No. 121517. March 31, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari praying for the reversal of the decision of the Court of Appeals[1] which affirmed the orders of the trial court granting private respondents' separate motion for summary judgment with prayer for damages.

A civil action was filed sometime in 1987 with the Regional Trial Court of Davao City, docketed as Civil Case No. 18567-87, by Naty Dy, Sencio Dy and Denver Builders Supply, Inc., against Nordy Diploma, Corazon Diploma, George Diploma and Sta. Clara Housing Industries, Inc. The complaint alleged that on 31 October 1987 Naty Dy of Denver Builders Supply (DENVER for brevity) and Nordy Diploma of Sta. Clara Housing Industries, Inc. (STA. CLARA for brevity) entered into a "joint partnership venture" agreement to operate the Sta. Clara plant in Davao City; that Naty Dy contributed a huge sum of money to the partnership which still owed her P13,623,265.69; that defendants unilaterally dissolved the partnership and started to dispose the goods and stocks thereof so that plaintiffs sought a judicial termination of the partnership as well as for accounting and damages. Plaintiffs also prayed for a temporary restraining order and writ of preliminary injunction against defendants including STA. CLARA, which was granted by the trial court in an order issued on 8 June 1987.

The defendants and STA. CLARA questioned the order in a petition for certiorari with the Court of Appeals. The appellate court granted the petition and set aside the writ of preliminary injunction. Not satisfied with the decision of the Court of Appeals however, the Dy spouses and DENVER elevated the matter to this Court. The petition, docketed as G.R. No. 79586, elicited on 4 September 1987 a temporary restraining order against the Diplomas and STA. CLARA enjoining the latter, their agents, representatives and/or any person or persons acting upon their orders or in their place and stead from withdrawing and/or further disposing of the plywood inventory in Sta. Clara Housing Industries, Inc. plant or warehouse as litigated in CA-G.R. SP No. 12167, Nordy P. Diploma, et al., petitioners, v. Hon. Anita Alfelor Alagaban, etc., et al., respondents.

Based on reports that several crates of plywood were being hauled out of the premises of STA. CLARA by the Diplomas in violation of the temporary restraining order issued by this Court, Joseymour Ecobiza, Deputy Sheriff of RTC-Br. 13, Davao City, accompanied by Atty. Bernabe Alabastro, caused to be seized on 26 October 1987 eleven (11) crates of plywood allegedly being transported to Tefasco Wharf at Ilang, Davao City. These crates had the markings of STA. CLARA and Firmwood Development Corporation (FIRMWOOD for brevity). 546+Deputy Sheriff Joseymour Ecobiza executed an affidavit that the seizure was effected pursuant to the temporary restraining order issued by this Court against the Diplomas and STA. CLARA.[2]

On 18 November 1987 respondent FIRMWOOD filed with the Regional Trial Court of Davao City a complaint for delivery of personal property and damages as well as attorney's fees, docketed as Civil Case No. 18841-87, against herein petitioners Ray U. Velasco, ex-officio sheriff of the Regional Trial Court of Davao City, Joseymour Ecobiza, Deputy Sheriff of Davao City, Wilhelm Barlis, former Commanding Officer of the 439th Infantry Battalion in Toril, Davao City, and Atty. Bernabe Alabastro, counsel for plaintiffs Naty Dy and Sencio Dy in Civil Case No. 18567-87. FIRMWOOD alleged in its complaint that since it owned the eleven (11) crates of plywood seized by petitioners it had the right to the possession thereof or to the payment of the value of the plywood seized in case delivery could not be made. It also prayed for reimbursement of its expenses of P5,000.00, P50,000.00 for temperate damages, another P50,000.00 for exemplary damages and still another P50,000.00 for attorney's fees.

On 11 January 1988 this Court set aside the temporary restraining order it issued on 4 September 1987 in G.R. No. 79586.

On 28 February 1988 petitioners filed their answer with counterclaim in Civil Case No. 18841-87 alleging that respondent FIRMWOOD was not the owner of the eleven (11) crates of plywood they seized but respondent STA. CLARA, hence, FIRMWOOD was not entitled to the recovery thereof. Petitioners contended that they had the authority to seize the crates of plywood and put them under custodia legis by virtue of the temporary restraining order issued by this Court on 4 September 1987 in G.R. No. 79586.

On 26 May 1988 respondent STA. CLARA filed a complaint in intervention alleging that it had a legal interest in the matter in litigation it being answerable for damages arising from a warranty to deliver the goods to respondent FIRMWOOD; that the latter was the true and lawful owner of the eleven (11) crates of plywood which were milled for it by respondent STA. CLARA; and, that since the temporary restraining order issued by this Court had been lifted, respondent STA. CLARA continued to enjoy the conduct of its regular business without interference from any person, entity or even court.[3]

Petitioners also filed their answer to the complaint in intervention denying ownership of respondent FIRMWOOD over the crates of plywood and asserting STA. CLARA's ownership thereof.

On 30 August 1988 respondent FIRMWOOD filed a Motion for Summary Judgment alleging that aside from the amount of damages due it there was no genuine issue as to any material fact of the case, STA. CLARA having confirmed FIRMWOOD's ownership over the eleven (11) crates of plywood. On 12 September 1988 respondent STA. CLARA also filed a Motion for Summary Judgment alleging the same grounds raised by FIRMWOOD and further contending that petitioners did not have the authority to hold the property in custodia legis.

On 29 November 1988 the trial court granted private respondents' motions for summary judgment and ordered petitioners and their privies and agents to release from their possession and custody the eleven (11) crates of plywood and deliver the same to respondents FIRMWOOD and/or STA. CLARA, or in case of loss, to pay their declared value of P140,000.00 or such amount as may be proved during the hearing for the purpose only of determining their actual value as well as the total amount of damages private respondents could prove against petitioners.[4]

On 7 February 1989 the trial court issued another order directing petitioners to pay the amounts incurred by respondent FIRMWOOD in filing the complaint, i.e., P390.00 for filing fee, another P390.00 for the Judiciary Development Fund, P25.00 for sheriff's fee, plus attorney's fees of P20,000.00 for respondent FIRMWOOD and P30,000.00 for respondent STA. CLARA.

Petitioners appealed the two (2) orders of the trial court to the Court of Appeals which however dismissed the

appeal and affirmed the questioned orders. The appellate court held that the pleadings, annexes and affidavits of private respondents in support of their respective motions for summary judgment were sufficient to overcome petitioners' opposition and to justify the finding that there was no legitimate defense to the action. It also held that the Court's resolution of 11 January 1988 lifting the temporary restraining order issued in G.R. No. 79586 had mooted whatever claim petitioners had over the seized property. The Court of Appeals also sustained the award of damages by the trial court to respondent FIRMWOOD whose property was wrongfully attached or seized under Rule 60, Sec. 7, of the Rules of Court, as amended.

Petitioners now allege before us that the Court of Appeals erred in the appreciation of the facts of the case and in deciding the legal questions contrary to law and jurisprudence. In support thereof petitioners assert that respondent FIRMWOOD is not the true and lawful owner of the eleven (11) crates of plywood; hence its representations in its complaint for delivery of personal property before the trial court were false and made in bad faith. Petitioners also contend that the crates of plywood seized by petitioner deputy sheriff Joseymour Ecobiza pursuant to the temporary restraining order of this Court in G.R. No. 79586 were still in custodia legis and could not be the subject of an action for replevin; and, that the temporary restraining order issued by this Court was lifted only on 13 January 1988 or long after the complaint for replevin was instituted on 11 November 1987. Petitioners further contend that their admission that the owner of the plywood at that time was respondent STA. CLARA cannot be the basis for summary judgment because there are triable issues that need to be resolved, namely: (a) whether the seizure of the plywood by petitioner Ecobiza by virtue of this Court's temporary restraining order was lawful; (b) whether the subject plywood can be replevied even if it were in custodia legis; and, (c) whether respondent FIRMWOOD has any cause of action against petitioners.

The crux of the controversy is whether the summary judgment rendered by the trial court in favor of private respondents was proper and, consequently, whether the award of damages to private respondents was correct.

We find no cogent reason to sustain the petition. Rule 34 of the Rules of Court, now Rule 35 of the 1997 Rules of Civil Procedure as amended, which gives authority to trial courts to grant relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, admissions and affidavits. This rule does not vest in the court summary jurisdiction to try the issues on pleadings and affidavits but gives the court limited authority to enter summary judgment only if it clearly appears that there is no genuine issue of material fact. On a motion for summary judgment, the court is not authorized to decide an issue of fact but to determine whether the pleadings and records before the court create an issue of fact to be tried.[5] It is impossible to state a general rule for determining whether a genuine issue of fact exists in a particular case. The determination will depend upon the particular circumstances of each case. Nevertheless, the language used by courts in making a determination in particular cases may serve to indicate the manner in which a court should approach the question to be determined. It is repeated often enough that the court is not authorized to try the issue of fact but to determine whether there is an issue to be tried. Where the motion is made by a claimant, the defending party must show that he has a plausible ground of defense, something fairly arguable and of a substantial character.[6]

Applying these legal principles, we find that the trial court committed no error in rendering a summary judgment. The material averments of the complaint of respondent FIRMWOOD state that the latter is the owner of eleven (11) crates of plywood which were taken or seized by petitioners but the seizure was not for tax assessment or by virtue of execution or attachment. While the answer of petitioners alleged that the owner of the plywood was respondent STA. CLARA, and not FIRMWOOD, petitioners admitted that the goods contained the label and markings of FIRMWOOD.[7] STA. CLARA filed its complaint in intervention[8] stating that it was joining FIRMWOOD in its suit to recover possession of the plywood seized and detained by petitioners; that

FIRMWOOD was the true and lawful owner of the subject property as the same was milled by STA. CLARA for FIRMWOOD; that STA. CLARA had the right to the possession of the plywood in order that it could discharge its obligation under a warranty to deliver the goods to FIRMWOOD; and finally, that the temporary restraining order previously issued by this Court which was the basis of petitioners in seizing the goods had already been lifted.

In their answer to the complaint in intervention, petitioners had deemed admitted the ownership and right of possession of STA. CLARA over the plywood taken by them and the fact that the temporary restraining order of this Court by virtue of which the seizure was effected had already been lifted. Petitioners admitted in par. 17.2 of their answer to the complaint in intervention that if they were "not maliciously dragged into this unfounded suit, subject plywood would have been turned over to the Intervenor (Sta. Clara) which is the owner x x x x"[9]

The remaining issue raised by petitioners in objecting to the reliefs prayed for in the complaints of private respondents is whether petitioners possessed the authority to seize and hold under their custody the crates of plywood by virtue of the temporary restraining order of this Court which undisputedly had been lifted and of no more force and effect.[10] There is therefore absent in this case any genuine issue of fact but a question purely of law. It has been held that even the existence of an important or complicated question of law where there is no issue as to the facts is not a bar to a summary judgment.[11]

The trial court as well as the Court of Appeals found as undisputably settled based on the records that the right of possession of the eleven (11) crates of plywood belonged to respondents STA. CLARA and/or FIRMWOOD and the only disagreement of the parties was that the property could not be disposed of by respondent STA. CLARA because of the temporary restraining order issued by this Court on 4 September 1987 which allegedly gave authority to petitioner Deputy Sheriff Ecobiza to seize the crates of plywood necessary to protect the outcome of Civil Case No. 18567-87. In rendering summary judgment in favor of private respondents in the replevin case, the trial court found them to be entitled to the possession of the subject property wrongfully detained by petitioners as the temporary restraining order from which they derived their authority to seize the property had already been lifted and set aside.

Petitioners allege that during the time they effected the seizure of the plywood they had the authority to do so as they were implementing the temporary restraining order which was then in full force and effect.

This contention has no merit. It is a basic procedural postulate that a preliminary injunction which necessarily includes a temporary restraining order should never be used to transfer the possession or control of a thing to a party who did not have such possession or control at the inception of the case.[12] The temporary restraining order issued by this Court on 4 September 1987 merely restrained respondent STA. CLARA and all its agents and representatives from withdrawing and disposing of the plywood inventory in STA. CLARA's plant or warehouse until further orders from this Court.[13] The order did not contain any directive whatsoever to any of the petitioners to seize property belonging to STA. CLARA or to keep the property seized in their possession. The petitioners, by what they did, took the law into their own hands without any specific order from this Court; hence, the seizure made by them on 26 October 1987 was void and illegal even if the intention of petitioners was to prevent the alleged violation of the temporary restraining order. Any violation of the injunction or temporary restraining order which is in full force or effect constitutes contempt of court and is punishable as such, and the remedy of the aggrieved party is to institute contempt proceedings where the court in appropriate cases may punish the violator for the purpose of preserving and enforcing the rights of the persons for whose protection the injunction or restraining order was granted. Clearly, with the subsequent lifting of the temporary restraining order the subject crates of plywood seized by petitioners devoid of legal authority were never placed at any time under custodia legis that would prevent private respondents from recovering their possession over the same. The amount

of damages directed by the trial court to be paid to private respondents by petitioners arising from the wrongful taking of the property is a factual matters binding and conclusive upon this Court.

WHEREFORE, the petition is DENIED. The decision of the Court of Appeals of 31 January 1995 affirming the orders of the trial court is AFFIRMED. Petitioners are directed to deliver the possession of the eleven (11) crates of plywood to private respondents, or in case of loss or inability to restore possession thereof as required, to pay private respondents the declared value thereof in the amount of P140,000.00, and to pay private respondent Firmwood Development Corporation (FIRMWOOD) attorney's fees of P20,000.00 plus P805.00 for filing fee, Judiciary Development Fund and sheriff's fee, and also to respondent Sta. Clara Housing Industries, Inc. (STA. CLARA) attorney's fees of P30,000.00 as fixed by the trial court. Costs against petitioners.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Decision penned by Presiding Justice Nathanael P. De Pano, Jr., concurred in by Associate Justices Artemon D. Luna and Ramon U. Mabutas, Jr.

[2] Records, pp. 78-79.

[3] Rollo, p. 111.

[4] Id., p. 341.

[5] Francisco, Vicente J., *The Revised Rules of Court in the Philippines*, 1966 Ed., Vol. II, p. 419.

[6] Id., p. 421, citing 3 *Moore's Federal Practice*, pp. 3184-3185.

[7] Rollo, p. 94.

[8] Id., p. 111.

[9] Id., p. 141.

[10] Id., *Answer to Complaint-in-Intervention*, p. 136.

[11] See Note 6.

[12] *Central Bank v. Dela Cruz*, G.R. No. 59957, 12 November 1990, 191 SCRA 346.

[13] Records, p. 73.

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