

**COMMODITIES STORAGE &#038; ICE PLANT CORPORATION,  
SPOUSES VICTOR &#038; JOHANNAH TRINIDAD, PETITIONERS, VS.  
COURT OF APPEALS, JUSTICE PEDRO A. RAMIREZ, CHAIRMAN AND  
FAR EAST BANK &#038; TRUST ...**

*G.R. No. 125008. June 19, 1997*

Ponente: PUNO, J.

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**PUNO, J.:**

In this petition for certiorari, petitioner seeks to annul and set aside the decision and resolution of the Court of Appeals[1] in CA-G.R. SP No. 36032 dismissing the complaint in Civil Case No. 94-72076 before the Regional Trial Court, Branch 9, Manila.

The facts show that in 1990, petitioner spouses Victor and Johannah Trinidad obtained a loan of P31,000,000.00 from respondent Far East Bank & Trust Company to finance the purchase of the Sta. Maria Ice Plant & Cold Storage in Sta. Maria, Bulacan. The loan was secured by a mortgage over the ice plant and the land on which the ice plant stands. Petitioner spouses failed to pay their loan. The bank extrajudicially foreclosed the mortgage and the ice plant was sold by public bidding on March 22, 1993. Respondent bank was the highest bidder. It registered the certificate of sale on September 22, 1993 and later took possession of the property.

On November 22, 1993, petitioner spouses filed Civil Case No. 956-M-93 against respondent bank before the Regional Trial Court, Malolos, Bulacan for reformation of the loan agreement, annulment of the foreclosure sale and damages.[2] The trial court dismissed the complaint for petitioners' failure to pay the docket fees. The dismissal was without prejudice to refiling of the complaint.[3]

On October 28, 1994, petitioners filed Civil Case No. 94-72076 against respondent bank before the Regional Trial Court, Branch 9, Manila for damages, accounting and fixing of redemption period.[4] As a provisional remedy, petitioners filed on November 16, 1994 an "Urgent Petition for Receivership." They alleged that respondent bank took possession of the ice plant forcibly and without notice to them; that their occupation resulted in the destruction of petitioners' financial and accounting records making it impossible for them to pay their employees and creditors; the bank has failed to take care of the ice plant with due diligence such that the plant has started emitting ammonia and other toxic refrigerant chemicals into the atmosphere and was posing a hazard to the health of the people in the community; the spouses' attention had been called by several people in the barangay who threatened to inform the Department of Environment and Natural Resources should they fail to take action. Petitioners thus prayed for the appointment of a receiver to save the ice plant, conduct its affairs and safeguard its records during the pendency of the case.[5]

Instead of an answer, respondent bank filed on November 25, 1994 a "Motion to Dismiss and Opposition to Plaintiff's Petition for Receivership." It alleged that the complaint states no cause of action and that venue had been improperly laid. It also alleged that petitioners failed to pay the proper docket fees and violated the rule on forum-shopping.[6]

In an order dated December 13, 1994, the trial court granted the petition for receivership and appointed petitioners' nominee, Ricardo Pesquera, as receiver. The order disposed as follows:

"WHEREFORE, premises considered the Urgent Petition for Receivership is GRANTED and Mr. Ricardo Pesquera to whose appointment no opposition was raised by the defendant and who is an ice plant contractor, maintainer and installer is appointed receiver. Accordingly, upon the filing and approval of the bond of TWO MILLION (P2,000,000.00) pesos which shall answer for all damages defendant may sustain by reason of the receivership, said Ricardo Pesquera is authorized to assume the powers of a receiver as well as the obligation as provided for in Rule 59 of the Rules of Court after taking his oath as such receiver.

**SO ORDERED."**[7]

Respondent bank assailed this order before the Court of Appeals on a petition for certiorari. On January 11, 1996, the Court of Appeals annulled the order for receivership and dismissed petitioners' complaint for improper venue and lack of cause of action. The dispositive portion of the decision reads:

"WHEREFORE, the petition for certiorari is GRANTED. Accordingly, the assailed order dated December 13, 1994 (Annex A, petition) is ANNULLED and SET ASIDE and respondent's complaint in Civil Case No. 94-72076 in the respondent court (Annexes F, petition; 4, comment), is DISMISSED. Costs against respondents except the court.

**SO ORDERED."**

Reconsideration was denied on May 23, 1996.[8] Hence, this petition.

Section 1 of Rule 59 of the Revised Rules of Court provides that:

"Sec. 1. When and by whom receiver appointed.-- One or more receivers of the property, real or personal, which is the subject of the action, may be appointed by the judge of the Court of First Instance in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court, in the following cases:

- (a) When the corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;
- (b) When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund which is the subject of the action, and that such property or fund is in danger of being lost, removed or materially injured unless a receiver be appointed to guard and preserve it;
- (c) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;
- (d) After judgment, to preserve the property during the pendency of the appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment debtor refuses to apply his property in satisfaction of the judgment, or otherwise carry the judgment into effect;
- (e) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."

A receiver of real or personal property, which is the subject of the action, may be appointed by the court when it appears from the pleadings or such other proof as the judge may require, that the party applying for such

appointment has (1) an actual interest in it; and (2) that (a) such property is in danger of being lost, removed or materially injured; or (b) whenever it appears to be the most convenient and feasible means of preserving or administering the property in litigation.[9]

A receiver is a person appointed by the court in behalf of all the parties to the action for the purpose of preserving and conserving the property in litigation and prevent its possible destruction or dissipation, if it were left in the possession of any of the parties.[10] The appointment of a receiver is not a matter of absolute right. It depends upon the sound discretion of the court[11] and is based on facts and circumstances of each particular case.[12]

Petitioners claim that the appointment of a receiver is justified under Section 1 (b) of Rule 59. They argue that the ice plant which is the subject of the action was in danger of being lost, removed and materially injured because of the following "imminent perils":

"6.1 Danger to the lives, health and peace of mind of the inhabitants living near the Sta. Maria Ice Plant;

6.2 Drastic action or sanctions that could be brought against the plaintiff by affected third persons, including workers who have claims against the plaintiff but could not be paid due to the numbing manner by which the defendant took the Sta. Maria Ice Plant;

6.3 The rapid reduction of the Ice Plant into a scrap heap because of evident incompetence, neglect and vandalism."[13]

A petition for receivership under Section 1 (b) of Rule 59 requires that the property or fund which is the subject of the action must be in danger of loss, removal or material injury which necessitates protection or preservation. The guiding principle is the prevention of imminent danger to the property. If an action by its nature, does not require such protection or preservation, said remedy cannot be applied for and granted.[14]

In the instant case, we do not find the necessity for the appointment of a receiver. Petitioners have not sufficiently shown that the Sta. Maria Ice Plant is in danger of disappearing or being wasted and reduced to a "scrap heap." Neither have they proven that the property has been materially injured which necessitates its protection and preservation.[15] In fact, at the hearing on respondent bank's motion to dismiss, respondent bank, through counsel, manifested in open court that the leak in the ice plant had already been remedied and that no other leakages had been reported since.[16] This statement has not been disputed by petitioners.

At the time the trial court issued the order for receivership of the property, the problem had been remedied and there was no imminent danger of another leakage. Whatever danger there was to the community and the environment had already been contained.

The "drastic sanctions" that may be brought against petitioners due to their inability to pay their employees and creditors as a result of "the numbing manner by which [respondent bank] took the ice plant" does not concern the ice plant itself. These claims are the personal liabilities of petitioners themselves. They do not constitute "material injury" to the ice plant.

Moreover, the receiver appointed by the court appears to be a representative of petitioners. Respondent bank alleges that it was not aware that petitioners nominated one Mr. Pesquera as receiver.[17] The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested.[18] The receiver is not the representative of any of the parties but of all of them to the end that their interests may be equally protected with the least possible inconvenience and expense.[19]

The power to appoint a receiver must be exercised with extreme caution. There must be a clear showing of

necessity therefor in order to save the plaintiff from grave and irremediable loss or damage.[20] It is only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavouring to avoid that the injury thereby caused be greater than the one sought to be avoided.[21]

The Court of Appeals correctly found that the trial court gravely abused its discretion in issuing the order for receivership. The respondent court, however, went further and took cognizance of respondent bank's motion to dismiss. And finding merit in the motion, it dismissed the complaint. Petitioners now claim that the respondent court should have refrained from ruling on the motion to dismiss because the motion itself was not before it.[22]

Again, we reject petitioners' contention. The motion to dismiss is anchored on improper venue, lack of cause of action and forum-shopping. We agree with the respondent court that the question of venue relates to the principal action and is prejudicial to the ancillary issue of receivership. Although the grounds for dismissal were not specifically raised before the appellate court, the said court may consider the same since the petition for receivership depends upon a determination thereof.[23]

In their complaint, petitioners prayed for the following:

"WHEREFORE, in view of the foregoing, it is respectfully prayed that after trial on the merits judgment be rendered:

1. Ordering the Defendant to pay COMMODITIES actual and compensatory damages in the amount of PESOS: TWO MILLION FIVE HUNDRED THOUSAND and 00/100 (P2,500,000.00);
2. Ordering the Defendant to pay Plaintiffs moral damages in the amount of PESOS: TWO MILLION and 00/100 (P2,000,000.00) to compensate the Plaintiffs for the anxiety and besmirched reputation caused by the unjust actuations of the Defendant;
3. Ordering the Defendant to pay Plaintiffs nominal and exemplary damages in the amount of PESOS: FIVE HUNDRED THOUSAND and 00/100 (P500,000.00) to deter the repetition of such unjust and malicious actuations of the Defendant;
4. In order to restore the legal right of the Plaintiff COMMODITIES to redeem its foreclosed property, a right which COMMODITIES has been unjustly deprived of by the malicious and bad faith machinations of the Defendant, compelling the Defendant to produce the correct, lawful, official and honest statements of account and application of payment. Concomitantly, ordering the Defendant to accept the redemption of the foreclosed properties pursuant to Rule 39 of the Revised Rules of Court in conjunction with Act 3135, within the prescribed period for redemption, said period to commence from the date of receipt by the Plaintiff COMMODITIES of the correct, lawful, official and honest statements of account and application of payments;
5. Ordering the Defendant to pay attorney's fees in the amount of PESOS: THREE HUNDRED THOUSAND (P300,000.00); and costs of litigation.

Other reliefs and remedies just and equitable under the circumstances are likewise prayed for."[24]

Petitioners pray for two remedies: damages and redemption. The prayer for damages is based on respondent bank's forcible occupation of the ice plant and its malicious failure to furnish them their statements of account and application of payments which prevented them from making a timely redemption.[25] Petitioners also pray that respondent bank be compelled to furnish them said documents, and upon receipt thereof, allow redemption of the property. They ultimately seek redemption of the mortgaged property. This is explicit in paragraph 4 of their prayer.

An action to redeem by the mortgage debtor affects his title to the foreclosed property. If the action is seasonably made, it seeks to erase from the title of the judgment or mortgage debtor the lien created by registration of the mortgage and sale.[26] If not made seasonably, it may seek to recover ownership to the land since the purchaser's inchoate title to the property becomes consolidated after expiration of the redemption period.[27] Either way, redemption involves the title to the foreclosed property. It is a real action.

Section 2 of Rule 4 of the Revised Rules of Court provides:

"Sec. 2. Venue in Courts of First Instance.-- (a) Real actions.-- Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies." [28]

Where the action affects title to the property, it should be instituted in the Regional Trial Court where the property is situated. The Sta. Maria Ice Plant & Cold Storage is located in Sta. Maria, Bulacan. The venue in Civil Case No. 94-72076 was therefore laid improperly.

Finally, there is no merit in petitioners' claim that the respondent bank is no longer the real party in interest after selling the ice plant to a third person during the pendency of the case. Section 20 of Rule 3 of the Revised Rules of Court provides that in a transfer of interest pending litigation, the action may be continued by or against the original party, unless the court, upon motion, directs the transferee to be substituted in the action or joined with the original party. The court has not ordered the substitution of respondent bank.

IN VIEW WHEREOF, the decision dated January 11, 1996 and resolution dated May 23, 1996 of the Court of Appeals in CA-G.R. SP No. 36032 are affirmed. Costs against petitioners.  
SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

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[1] Penned by Associate Justice Pedro A. Ramirez and concurred in by Associate Justices Quirino D. Abad-Santos, Jr. and Eugenio S. Labitoria.

[2] Annex "2" to Comment, Rollo, pp. 191-209.

[3] Annex "3" to Comment, Rollo, pp. 214-217.

[4] Annex "4" to Comment, Rollo, pp. 218-228.

[5] Annex "5" to Comment, Rollo, pp. 235-240.

[6] Annex "6" to Comment, Rollo, pp. 244-257.

[7] Annex "D" to the Petition, Rollo, p. 63.

[8] Annex "L" to the Petition, Rollo, p. 142.

[9] Ralla vs. Hon. Alcasid, 116 Phil. 622, 625 [1962].

[10] Normandy v. Duque, 29 SCRA 385, 391 [1969]; Cia. General de Tabacos v. Gauzon, 20 Phil. 261, 267-268 [1911].

[11] Calo and San Jose v. Roldan, 76 Phil. 445, 453 [1946]; Mendoza v. Arellano, 36 Phil. 59, 63-64 [1917].

[12] Duque v. CFI of Manila, 13 SCRA 420, 423 [1965]; Ralla v. Alcasid, *supra*, at 625; Lama v. Apacible, 79 Phil. 68, 73-74 [1947].

- [13] *Id.*, Urgent Petition for Receivership, pp. 2-3, Rollo, pp. 237-238.
- [14] *Calo and San Jose v. Roldan*, *supra*, at 453; *Ysasi v. Fernandez*, 23 SCRA 1079 [1968]; *Cochingyan v. Cloribel*, 76 SCRA 394, 397 [1977]; *Ylarde v. Enriquez*, 78 Phil. 527, 531 [1947].
- [15] *National Investment and Development Corporation v. Judge Aquino*; *Philippine National Bank v. Judge Aquino*, 163 SCRA 153, 174 [1988].
- [16] Comment, pp. 7, 14, Rollo, pp. 171, 178.
- [17] Comment, p. 8, Rollo, p. 172.
- [18] *Alcantara vs. Abbas*, 9 SCRA 54, 58 [1963]; *Cia. General de Tabacos vs. Gauzon*, *supra*, at 267-268; *Teal Motor Co. vs Court of First Instance of Manila*, 51 Phil. 549, 563, 567 [1928].
- [19] *Normandy vs. Duque*, *supra*, at 391.
- [20] *Mendoza v. Arellano*, *supra*, at 64.
- [21] *Diaz vs. Hon. Nietes*, 110 Phil. 606, 610 [1960]; *Ylarde v. Enriquez*, *supra*, at 530.
- [22] Petition, pp. 6-9, Rollo, pp. 9-11.
- [23] The appellate court may consider an unassigned error if it is closely related to an error properly assigned, or upon which a determination of the error properly assigned is dependent. (*Garrido v. Court of Appeals*, 236 SCRA 450 [1994]; *Medida v. Court of Appeals*, 208 SCRA 886, 893 [1992]; *Roman Catholic Archbishop of Manila v. Court of Appeals*, 198 SCRA 300, 311 [1991]; *Philippine Commercial and Industrial Bank v. Court of Appeals*, 159 SCRA 24, 31 [1988]).
- [24] Annex "4" to Comment, Complaint, pp. 10-11, Rollo, pp. 227-228; Emphasis supplied.
- [25] Annex "4" to Comment, Complaint, pp. 7-10, Rollo, pp. 224-227.
- [26] The judgment or mortgage debtor remains the owner of the mortgaged property during the redemption period (*Medida v. Court of Appeals*, 208 SCRA 886, 897 [1992]).
- [27] *Id.*, *Joven v. Court of Appeals*, 212 SCRA 700, 709 [1992]; *De Castro v. Intermediate Appellate Court*, 165 SCRA 654, 662 [1988].
- [28] Rule 4 has since been amended by Administrative Circular No. 13-95 which took effect on June 20, 1995. Section 1 reads:
- "Sec. 1. Venue of real actions. -- Actions affecting title to or possession of real property, or interest therein shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated."

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