

**PNB MANAGEMENT AND DEVELOPMENT CORP. (PNB MADECOR),
PETITIONER, VS. R&R METAL CASTING AND FABRICATING,
INC., RESPONDENT.**

G.R. No. 132245. January 02, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari seeking to annul the decision of the Court of Appeals in CA-G.R. No. 49955, dated September 22, 1997,[1] and its resolution dated December 29, 1997[2] denying reconsideration of said decision. The Court of Appeals affirmed the order of the Regional Trial Court of Manila, Branch 7, in Civil Case No. 93-66675 that allowed the garnishment of amounts owed by petitioner to Pantranco North Express, Inc., respondent's judgment debtor.

It appears that on November 19, 1993, respondent R&R Metal Casting and Fabricating, Inc. (R&R) obtained a judgment in its favor against Pantranco North Express, Inc. (PNEI). PNEI was ordered to pay respondent P213,050 plus interest as actual damages, P50,000 as exemplary damages, 25 percent of the total amount payable as attorney's fees, and the costs of suit.[3]

However, the writ of execution was returned unsatisfied since the sheriff did not find any property of PNEI recorded at the Registries of Deeds of the different cities of Metro Manila. Neither did the sheriff receive a reply to the notice of garnishment he sent to PNB-Escolta.[4]

On March 27, 1995, respondent filed with the trial court a motion for the issuance of subpoenae duces tecum and ad testificandum requiring petitioner PNB Management and Development Corp. (PNB MADECOR) to produce and testify on certain documents pertaining to transactions between petitioner and PNEI from 1981 to 1995.

From the testimony of the representative of PNB MADECOR, it was discovered that NAREDECO, petitioner's forerunner, executed a promissory note in favor of PNEI for P7.8 million, and that PNB MADECOR also had receivables from PNEI in the form of unpaid rentals amounting to more than P7.5 million.

On the basis of said testimony, respondent filed with the trial court a motion for the application of funds or properties of PNEI, its judgment debtor, in the hands of PNB MADECOR for the satisfaction of the judgment in favor of respondent. Petitioner opposed the motion on the following grounds: (1) respondent failed to present the sheriff's return that would show that the writ of execution was unsatisfied; (2) petitioner's payables to PNEI under the promissory note were not yet due and demandable; (3) assuming the payables to be due and demandable, the obligation would be deemed extinguished by operation of law since PNEI is also indebted to petitioner in the form of unpaid rentals; and (4) the trial court cannot order the application of PNEI's payables to the judgment in favor of respondent, because petitioner has an adverse claim over said funds, in accordance with Section 45, Rule 39 of the Rules of Court. [5]

On May 22, 1995, the trial court issued an order garnishing the amount owed by petitioner to PNEI under the

promissory note, to satisfy the judgment against PNEI and in favor of respondent.[6] Petitioner appealed said order to the Court of Appeals, which affirmed the same in a decision dated September 22, 1997. The appellate court also denied petitioner's motion for reconsideration in a resolution dated December 29, 1997.

Hence, this petition, in which petitioner asserts that the Court of Appeals erred:

I

...IN THE INTERPRETATION OF THE RULES OF COURT WHEN IT RULED THAT AN AFFIDAVIT IS NOT A CONDITION PRECEDENT TO AN EXAMINATION OF A DEBTOR OF A JUDGMENT DEBTOR AS MENTIONED UNDER SECTION 39, RULE 39 OF THE RULES OF COURT.

II

...IN RULING THAT A DEMAND WAS MADE BY PNEI TO PETITIONER PNB MADECOR FOR THE PAYMENT OF THE PROMISSORY NOTE DATED 31 OCTOBER 1982.

III

...WHEN IT RULED THAT THE REQUISITES FOR LEGAL COMPENSATION AS SET FORTH UNDER ARTICLES 1277 AND 1278 OF THE CIVIL CODE DO NOT CONCUR IN THE CASE AT BAR.

IV

...[WHEN IT] MISCONSTRUED THE PROVISIONS OF SECTION 45, RULE 39 OF THE RULES OF COURT BY RULING THAT PETITIONER PNB-MADECOR, UPON BEING CITED IN AND SERVED WITH A NOTICE OF GARNISHMENT BECAME A FORCED INTERVENOR. HENCE, DENYING THE RIGHT OF THE LATTER TO VENTILATE ITS POSITION IN FULL-BLOWN TRIAL. [7]

At the outset, we note that petitioner had previously come before this Court raising the same issues it is raising now, in the case of PNB MADECOR v. Gerardo C. Uy, G.R. No. 129598, promulgated on August 15, 2001. The respondent therein was different but the facts are essentially the same: respondent was PNEI's judgment debtor who sought to garnish petitioner's receivables from PNEI. Petitioner opposed, claiming legal compensation, and asserting that it could not have become a forced intervenor in the case by virtue of the order of garnishment. Petitioner likewise pointed out in that earlier case that PNEI had not made any demand for payment of the amount owed under the promissory note. The alleged demand letter sent by PNEI to PNB MADECOR in this case is the same demand letter that was presented in evidence in the previous case. [8]

The only issue that was not raised in the earlier case but is raised here is the alleged necessity of an affidavit stating that the judgment had not been satisfied, before a third party may be examined as regards its debt to the judgment debtor, pursuant to Section 39, Rule 39 of the Rules of Court (prior to its amendment in 1997).

The rule cited by petitioner provides:

SEC. 39. Examination of debtor of judgment debtor. -- After an execution against the property of a judgment debtor has been returned unsatisfied in whole or in part, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge, that a person, corporation, or other legal entity has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, corporation, or other legal entity, or any officer or member thereof, to appear before the judge, or a commissioner appointed by him, at a time and place within the province in which the order is served, to answer concerning the same. The service of the order shall bind all credits due the judgment debtor and all money and property of the judgment debtor in the possession or in the control of such person, corporation, or legal entity from the time of service; and the judge may also require notice of such proceedings to be given to any party to the action in such manner as he may deem proper. (Underscoring supplied.)

Petitioner apparently confuses a sheriff's return with the affidavit, or other proof, stating that another person is indebted to the judgment debtor. The cited rule does not refer to a sheriff's return that states whether or not the judgment has been satisfied. Rather, it speaks of an affidavit, or some other proof, that a third person is indebted to, or has property of, a judgment debtor.

Petitioner insists that an "affidavit of sheriff's return" must be presented before petitioner, the debtor of the judgment debtor, may be examined concerning its debt. It asserts that the phrase "by affidavit of a party or otherwise" means either an affidavit executed by a party to the litigation, or an affidavit executed by a third person. Petitioner is evidently only stretching the meaning of the rule to serve its purpose. The rule is clear: proof of a person's indebtedness to the judgment debtor may be in an affidavit or some other form, so long as the judge is satisfied. We cannot read into the rule what simply is not there. Moreover, that proof other than an affidavit is sufficient is clear from the 1997 Revised Rules of Civil Procedure. As pointed out by respondent, the present Section 37 of Rule 39 provides that "proof to the satisfaction of the court" is sufficient to cause an examination of a judgment debtor's debtor.

As regards the second, third, and fourth issues raised by petitioner, we have squarely ruled on the same in the earlier case of *PNB MADECOR v. Gerardo C. Uy*, G.R. No. 129598, August 15, 2001.

We find, however, that legal compensation could not have occurred because of the absence of one requisite in this case: that both debts must be due and demandable.

The CA observed:

Under the terms of the promissory note, failure on the part of NAREDECO (PNB MADECOR) to pay the value of the instrument 'after due notice has been made by PNEI would entitle PNEI to collect an 18% [interest] per annum from date of notice of demand.

Petitioner makes a similar assertion in its petition, that

xxx It has been stipulated that the promissory note shall earn an interest of 18% per annum in case NAREDECO, after notice, fails to pay the amount stated therein.

Petitioner's obligation to PNEI appears to be payable on demand, following the above observation made by the CA and the assertion made by petitioner. Petitioner is obligated to pay the amount stated in the promissory note upon receipt of a notice to pay from PNEI. If petitioner fails to pay after such notice, the obligation will earn an interest of 18 percent per annum.

Respondent alleges that PNEI had already demanded payment. The alleged demand letter reads in part:

We wish to inform you that as of August 31, 1984 your outstanding accounts amounted to P10,376,078.67, inclusive of interest.

In accordance with our previous arrangement, we have conveyed in favor of the Philippine National Bank P7,884,921.10 of said receivables from you. With this conveyance, the unpaid balance of your account will be P2,491,157.57.

To forestall further accrual of interest, we request that you take up with PNB the implementation of said arrangement. xxx

We agree with petitioner that this letter was not one demanding payment, but one that merely informed petitioner of (1) the conveyance of a certain portion of its obligation to PNEI per a dacion en pago arrangement between PNEI and PNB, and (2) the unpaid balance of its obligation after deducting the amount conveyed to PNB. The import of this letter is not that PNEI was demanding payment, but that PNEI was advising petitioner to settle the

matter of implementing the earlier arrangement with PNB.

xxx

Since petitioner's obligation to PNEI is payable on demand, and there being no demand made, it follows that the obligation is not yet due. Therefore, this obligation may not be subject to compensation for lack of a requisite under the law. Without compensation having taken place, petitioner remains obligated to PNEI to the extent stated in the promissory note. This obligation may undoubtedly be garnished in favor of respondent to satisfy PNEI's judgment debt.[9] (Citations appearing in the original omitted.)

There is another alleged demand letter on record, dated January 24, 1990.[10] It was addressed to Atty. Domingo A. Santiago, Jr., Senior Vice President and Chief Legal Counsel of PNB, and signed by Manuel Vijungco, chairman of the Board of Directors of PNEI. In said letter, PNEI requested offsetting of accounts between petitioner and PNEI. However, PNEI's own Assistant General Manager for Finance at that time, Atty. Loreto N. Tang, testified that the letter was not a demand letter. [11]

On the issue of whether or not petitioner became a forced intervenor in this case, we said in the earlier PNB MADECOR case:

...petitioner contends that it did not become a forced intervenor in the present case even after being served with a notice of garnishment. Petitioner argues that the correct procedure would have been for respondent to file a separate action against PNB MADECOR, per Section 43 of Rule 39 of the Rules of Court.[12] Petitioner insists it was denied its right to ventilate its claims in a separate, full-blown trial when the courts a quo ruled that the abovementioned rule was inapplicable to the present case.

On this score, we had occasion to rule as early as 1921 in *Tayabas Land Co. v. Sharruf*,[13] as follows:

...garnishment... consists in the citation of some stranger to the litigation, who is debtor to one of the parties to the action. By this means such debtor stranger becomes a forced intervenor; and the court, having acquired jurisdiction over his person by means of citation, requires him to pay his debt, not to his former creditor, but to the new creditor, who is creditor in the main litigation. It is merely a case of involuntary novation by the substitution of one creditor for another. Upon principle the remedy is a species of attachment or execution for reaching any property pertaining to a judgment debtor which may be found owing to such debtor by a third person.

Again, in *Perla Compania de Seguros, Inc. v. Ramolete*,[14] we declared:

Through service of the writ of garnishment, the garnishee becomes a "virtual party" to, or a "forced intervenor" in, the case and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court with a view to the complete satisfaction of the judgment of the court.

xxx

There is no need for the institution of a separate action under Rule 39, Section 43, contrary to petitioner's claim. This provision contemplates a situation where the person allegedly holding property of (or indebted to) the judgment debtor claims an adverse interest in the property (or denies the debt). In this case, petitioner expressly admits its obligation to PNEI.[15] (Citations appearing in the original adjusted to conform to present decision.)

Petitioner, in fact, actively participated in the proceedings before the trial court by appearing during hearings, examining witnesses, and filing pleadings.[16] It cannot now claim that it was denied the opportunity to present its side in a full-blown trial.

WHEREFORE, the petition is DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

Buena, J., on official leave.

[1] Rollo, pp. 39-48.

[2] Id. at 50-51.

[3] Id. at 40.

[4] Records, p. 101.

[5] Rollo, p.16.

[6] Records, pp. 208-209.

[7] Rollo, pp. 19-20.

[8] Records, p. 130.

[9] PNB MADECOR v. Gerardo C. Uy, G.R. No. 129598, August 15, 2001, pp. 12-14.

[10] Records, pp. 148-149.

[11] TSN, April 19, 1995, p. 26.

[12] SEC. 43. Proceedings when indebtedness denied or another person claims the property. -- If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court may authorize, by an order made to that effect, the judgment obligee to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court, which issued it, or by the court, in which the action is brought, upon such terms as may be just.

[13] 41 Phil. 382, 387 (1921). This was reiterated in *Bautista v. Barredo*, 13 SCRA 744, 746 (1965).

[14] 203 SCRA 487, 492 (1991).

[15] PNB MADECOR v. Gerardo C. Uy, *supra*, note 9, pp. 16-17.

[16] See, e.g., records, pp. 97, 100, 108, 150-151, 155-168, 171-178. See also TSN, April 6, 1995, and TSN, April 16, 1995.

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