

**RAMON BALITE, JOSE C. LEABRES AND FREDERICK M. DE BORJA,
PETITIONERS, VS. HON. COURT OF APPEALS (FORMER SPECIAL
FOURTH DIVISION), FELICIDAD SANDOVAL VDA. DE CARLOS AND
TEOFILO C...**

G.R. No. 140931. November 26, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the November 4, 1999 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 53229, citing petitioner Ramon Balite, the president of the then SIDDCOR Insurance Corporation (SIDDCOR), now the Mega Pacific Insurance Corporation, and its counsel, petitioners Frederick M. de Borja and Jose C. Leabres, in contempt of court for forum shopping and ordering each of them to pay a fine of P1,000.

The Antecedents

On September 1, 1995, Juan De Dios Carlos filed a Complaint in the Regional Trial Court (RTC) of Muntinlupa, Branch 256, against respondent Felicidad Sandoval and her son, respondent Teofilo Carlos II, for declaration of nullity of marriage, status of child, recovery of property, reconveyance, sum of money, and damages, with prayer for the issuance of a writ of preliminary attachment. The case was docketed as Civil Case No. 95-135. On September 7, 1995, the trial court issued an Order granting Carlos's plea for a writ of preliminary attachment upon the posting of a bond in the amount of P20,000,000.[1] The latter filed with the trial court a bond issued by the SIDDCOR, in the amount of P20,000,000 which was approved by the trial court. A writ of preliminary attachment was, thereafter, issued by the trial court on September 15, 1995. Sheriff Antonio D. Blancaflor served a copy of the notice of garnishment to the Philippine National Bank (PNB) covering the deposits of the respondents. The latter filed a motion to discharge the writ of preliminary attachment issued by the court, which motion was denied by the trial court per its Order dated December 4, 1995. By then, the respondents had filed their answer with compulsory counterclaim.

On December 6, 1995, the respondents filed a petition for certiorari with the CA for the nullification of the September 7, 1995 Order and writ of preliminary attachment issued by the court, and the notice of garnishment issued by the sheriff. The case was docketed as CA-G.R. SP No. 39267.

While the petition was pending, the respondents filed a motion for summary judgment. Carlos filed a counter-motion for summary judgment in his favor.

On February 27, 1996, the CA rendered judgment in CA-G.R. SP No. 39267 in favor of the respondents granting their petition and nullifying the assailed order and writ of preliminary attachment issued by the trial court. The appellate court ruled that there was no factual and legal bases for the issuance of the assailed order and writ.

Carlos filed a petition for review on certiorari of the appellate court's decision before the Supreme Court. The

case was docketed as G.R. No. 125717.

On April 8, 1996, the trial court rendered a summary judgment in favor of Carlos and against the respondents. The fallo of the decision reads:

WHEREFORE, premises considered, defendants' Motion for Summary Judgment is hereby denied. Plaintiff's Counter-Motion for Summary Judgment is hereby granted and summary judgment is hereby rendered in favor of plaintiff as follows:

- Declaring the marriage between defendant Felicidad Sandoval and Teofilo Carlos solemnized at Silang, Cavite, on May 14, 1962, evidenced by the Marriage Contract submitted in this case, null and void ab initio for lack of the requisite marriage license;
- Declaring that the defendant minor, Teofilo S. Carlos II, is not the natural, illegitimate (sic), or legally adopted child of the late Teofilo E. Carlos;
- Ordering defendant Sandoval to pay and restitute to plaintiff the sum of P18,924,800.00, together with interest thereon at the legal rate from the date of filing of the instant complaint until fully paid;
- Declaring plaintiff as the sole and exclusive owner of the parcel of land, less the portion adjudicated to the plaintiffs in Civil Case No. 11975, covered by TCT No. 139061 of the Register of Deeds of Makati City, and ordering said Register of Deeds to cancel said title and to issue another title in the sole name of plaintiff herein;
- Declaring the Contract, Annex K of the Complaint, between plaintiff and defendant Sandoval null and void, and ordering the Register of Deeds of Makati City to cancel TCT No. 139058 in the name of Teofilo Carlos, and to issue another title in the sole name of the plaintiff herein;
- Declaring the Contract, Annex M of the Complaint, between plaintiff and defendant Sandoval null and void;
- Ordering the cancellation of TCT No. 210877 in the names of defendant Sandoval and defendant minor Teofilo S. Carlos II and ordering the Register of Deeds of Manila to issue another title in the exclusive name of plaintiff herein;
- Ordering the cancellation of TCT No. 210878 in the names of defendant Sandoval and defendant minor Teofilo S. Carlos II and ordering the Register of Deeds of Manila to issue another title in the sole name of plaintiff herein.

Let this case be set for hearing for the reception of plaintiff's evidence on his claims for moral damages, exemplary damages, attorney's fees, appearance fees and litigation expenses on June 7, 1996 at 1:30 o'clock (sic) in the afternoon.

SO ORDERED.[2]

Carlos filed a motion to waive presentation of evidence to prove damages and attorney's fees referred to by the trial court in its summary judgment. On April 26, 1996, the trial court granted the motion. The respondents received on April 19, 1996 a copy of the decision and filed a motion for the reconsideration of the summary judgment on May 23, 1996.

On April 29, 1996, Carlos filed a Motion for Execution pending appeal. On May 21, 1996, the trial court issued an Order granting the motion and ordered the issuance of a writ of execution pending appeal upon the posting of a bond in the amount of P20,000,000.

On June 4, 1996, the respondents filed their Notice of Appeal.

Carlos posted the requisite bond issued by the SIDDCOR in the amount of P20,000,000, which was duly

approved by the trial court. The court issued a writ of execution on May 27, 1996. Sheriff Blancaflor served a notice of delivery/payment to the bank managers of the PNB in Muntinlupa City and Malolos, Bulacan.

On June 5, 1996, the PNB filed a Manifestation and Motion to admit its petition for intervention in interpleader with prayer for consignment. The court issued an Order^[3] denying the motion on June 5, 1996. The dispositive portion of the order reads:

WHEREFORE, the instant PNB's Manifestation and Motion are hereby denied and, unless a Temporary Restraining Order or a Writ of Injunction has been issued by the appellate courts, PNB is hereby directed to comply with the Notice of Delivery/Payment dated May 27, 1996 issued by Sheriff Luis Bucayon II pursuant to the Order dated May 21, 1996 and Writ of Execution dated May 27, 1996 issued by this Court, by delivering the garnished amount to him upon receipt of this Order. Let a copy of this Order be served personally upon PNB by Sheriff Bucayon II. Furnish copy also of this Order upon all parties concerned.

SO ORDERED.^[4]

The respondents filed a petition for certiorari with the CA for the nullification of the trial court's May 21, 1996 Order. The case was docketed as CA-G.R. SP No. 40819. On June 6, 1996, the CA issued a Resolution directing the issuance of a status quo order and required Carlos to file his comment on the petition.

On June 13, 1996, Carlos filed a Motion to Dismiss Appeal.^[5] On June 19, 1996, the trial court issued an Order in Civil Case No. 95-135 giving due course to the appeal of the respondents. The appeal was docketed as CA-G.R. SP No. 53229.

On October 21, 1996, this Court dismissed the petition in G.R. No. 125717 and affirmed the assailed decision of the CA in CA-G.R. SP No. 39267. Carlos filed a motion for the reconsideration of the decision, but the Court denied the said motion.

On December 10, 1996, the respondents filed a Motion in CA-G.R. CV No. 53229 for judgment on the attachment bond posted by Carlos. The latter and the SIDDCOR opposed the motion. The CA issued a Resolution dated June 26, 1998 rendering judgment on the attachment bond as prayed for by the respondents. The fallo reads:

WHEREFORE, premises considered, judgment is hereby rendered against the attachment bond, ordering SIDDCOR INSURANCE CORPORATION and plaintiff-appellee to pay defendants-appellants, jointly and severally, the sum of P15,384,509.98, and 12% interest per annum from June 27, 1996 when the unlawful garnishment was effected until fully paid and P1,000,000.00 as attorney's fees with 6% interest thereon from the trial court's decision on April 8, 1996 until fully paid.^[6]

On July 27, 1998, SIDDCOR filed a Motion for Reconsideration of the June 26, 1998 Resolution of the CA. On August 7, 1998, the respondents filed in CA-G.R. CV No. 53229 a motion for immediate execution of the June 26, 1998 Resolution, which the appellate court granted over the opposition of Carlos and SIDDCOR per its Resolution dated October 16, 1998. The CA denied the motion for reconsideration of the SIDDCOR and held that its resolution in CA-G.R. SP No. 39267 had already become final and executory. The SIDDCOR, now the Mega Pacific Insurance Corporation (MPIC), filed a motion for reconsideration of its October 16, 1998 Resolution which the appellate court denied on December 22, 1998.

On March 8, 1999, SIDDCOR filed a petition for certiorari with this Court for the nullification of the October 16, 1998 and December 22, 1998 Resolutions of the CA. The case was docketed as G.R. No. 136035. SIDDCOR prayed therein that:

- 1) The instant Petition for Review be given due course;

2) After due consideration, that the instant Petition for Review be granted, reversing and setting aside the Resolutions of the Honorable Court of Appeals promulgated by the Former Special Fourth Division of the Honorable Court of Appeals dated June 26 and October 16, 1998 in CA-G.R. CV No. 53229 entitled Juan de Dios Carlos vs. Felicidad Sandoval Vda. De Carlos, et al. insofar as it renders judgment against the attachment bond issued by herein Petitioner SIDDCOR (now MEGA PACIFIC) INSURANCE CORPORATION and ordering it to pay the amount of P15,384,509.98, and 12% interest per annum from June 27, 1996 when the alleged unlawful garnishment was effected until fully paid and P1,000,000.00 as attorney's fees with 6% interest thereon from the trial court's decision on April 8, 1986 until fully paid.

3) Other reliefs just and equitable under the premises are similarly prayed for.[7]

For their part, the respondents filed a motion, on March 17, 1999, in CA-G.R. CV No. 53229 for the implementation of the appellate court's June 26, 1998 Resolution on the attachment bond. The respondents' motion contained the following prayer:

WHEREFORE, it is most respectfully prayed that the motion for contempt dated October 30, 1998 be considered withdrawn, that the resolution dated October 16, 1998 ordering the lower court to issue the writ of execution be set aside, and directing the Clerk of this Division to issue a writ of execution of the June 26, 1998 resolution above quoted.[8]

On May 5, 1999, the CA issued a Resolution granting the motion of the respondents, thus:

PREMISES CONSIDERED, the motion to implement the June 26, 1998 resolution is hereby GRANTED. The motion for contempt dated October 30, 1998 is considered withdrawn, the resolution dated October 16, 1998 as far as ordering the lower court to issue a writ of execution is set aside, and let a writ of execution be issued on the June 26, 1998 resolution, whose decretal portion reads:

"WHEREFORE, premises considered, judgment is hereby rendered against the attachment bond, ordering SIDDCOR INSURANCE CORPORATION and plaintiff-appellee to pay defendants-appellants, jointly and severally, the sum of P15,384,509.98 and 12% interest per annum from June 27, 1996 when the unlawful garnishment was effected until fully paid and P1,000,000.00 as attorney's fees with 6% interest thereon from the trial court's decision on April 8, 1986 until fully paid."

SO ORDERED.[9]

The CA also resolved to designate Ramon Abalos as Special Sheriff. On May 24, 1999, the respondents filed a motion for the appointment of the City Sheriff of Manila or his deputy to enforce the judgment of the appellate court on the attachment bond. The appellate court granted the motion and issued, on May 26, 1999, an amended writ of execution.

Meantime, on June 9, 1999, the Court issued a Resolution in G.R. No. 136035 granting the plea of the SIDDCOR for the issuance of a temporary restraining order enjoining the CA and the City Sheriff of Manila from enforcing its judgment on the attachment bond; and to comment on the petition. On the same day, the Court issued a temporary restraining order as prayed for by the SIDDCOR.

Nevertheless, on June 11, 1999, the SIDDCOR filed in CA-G.R. CV No. 53229 a motion for reconsideration of the appellate court's Resolution dated May 26, 1999 and the writ of execution and the amended writ of execution issued by it on May 26, 1999. On June 15, 1999, the SIDDCOR also filed a Motion to Recall or Set Aside the notice of garnishment issued by the sheriff based on the amended writ of execution issued by the CA, as well as a motion to quash/recall writ of execution. On June 23, 1999, the CA issued a Resolution enjoining the City Sheriff of Manila from enforcing the writ of execution/garnishment so as not to render the decision of this Court in G.R. No. 136035 moot and academic. The respondents filed a counter-motion for contempt and disciplinary action

against the counsel of the SIDDCOR for forum shopping. On July 26, 1999, the CA issued a Resolution denying the motions filed by the SIDDCOR and granting the motion of the respondents. The appellate court ordered the president of the SIDDCOR, petitioner Ramon Balite, and its counsels, petitioners Atty. Frederick de Borja and Atty. Jose Leabres, to show cause why they should not be cited in contempt of court for forum shopping.[10] The CA ruled that the Supreme Court had already acquired jurisdiction over G.R. No. 136035; hence, it no longer had jurisdiction to entertain and resolve the motions of the SIDDCOR for the setting aside of the May 26, 1999 Resolution and writ of execution issued by it. The appellate court held that by filing its motion in CA-G.R. CV No. 53229, the SIDDCOR and its counsel indulged in forum shopping. Thus, the CA set aside its Resolution dated June 23, 1999. The decretal portion of the resolution reads:

WHEREFORE, the motion for reconsideration dated June 11, 1999 and the motion to recall the urgent motion to lift/recall notice of garnishment dated June 15, 1999 of SIDDCOR (now Mega Pacific) Insurance Corp. are hereby DENIED and the counter-motion of defendants-appellants to set aside resolution dated June 23, 1999 is GRANTED and said resolution is hereby SET ASIDE. The President of SIDDCOR (now Mega Pacific) Insurance Corp. and Attys. Frederick M. de Borja and Jose C. Leabres are hereby ordered to show cause why they should not be held in contempt of court and for said attorneys to show cause why no disciplinary action should be taken against them for forum shopping, within ten (10) days from notice.

The reply to garnishment dated May 13, 1999 filed by Banco Filipino and the Manifestation dated May 14, 1999 filed by Prime Bank to the effect that plaintiff-appellee Juan De Dios Carlos has no account with said banks are hereby NOTED.

SO ORDERED.[11]

Petitioner Balite, the current president of the SIDDCOR (now the MPIC) and Rhodora Morales, its past president, filed a motion for the reconsideration of the July 26, 1999 Resolution of the CA, contending that they filed their urgent motions to lift/recall notice of garnishment issued by the appellate court on June 15, 1999 in order to give the latter a chance to correct itself before pursuing other remedies. They also asserted that their petition for review in G.R. No. 136035 involved the summary judgment of the CA on the attachment bond; on the other hand, their two motions sought to prevent the CA from rendering any decision in G.R. No. 136035 moot and academic, since the Court had already assumed jurisdiction over their petition for review. They aver that they merely informed the CA that the Court had already issued a temporary restraining order, and merely reacted to the ruling of the appellate court in favor of the respondents. Since they merely wanted to prevent the CA from rendering nugatory any decision of the Supreme Court in G.R. No. 136035 in favor of the SIDDCOR, they should not be cited for contempt. According to the petitioners, it was their duty to protect the rights and interest of the SIDDCOR from the appellate court's usurpation of the Supreme Court's jurisdiction in G.R. No. 136035. The petitioners contended that the appellate court was partial to the counsel of the respondents because it refused to cite him in contempt of court when the said counsel filed a motion for immediate execution of the judgment of the appellate court on the attachment bond despite the pendency of the petition before this Court in G.R. No. 136035.

On November 4, 1999, the appellate court issued a Resolution denying the motion:

... RAMON BALITE, the President of said Corporation and its lawyers, FREDERICK M. DE BORJA and JOSE C. LEABRES, to pay a fine of P1,000.00 each for contempt of court within five (5) days from notice, and to impose upon the same lawyers De Borja and Leabres the penalty of reprimand for forum shopping, on pain of harsher sanction in case of repetition.[12]

The petitioners now come to this Court on a petition for review on certiorari assailing the June 23, 1999 and November 4, 1999 Resolutions of the appellate court, and raised the cogent issue of whether they are guilty of forum shopping and contempt of court for filing their June 11, 1999 motion to recall or set aside writ of execution

dated May 26, 1999, and the urgent motion to lift/recall notice of garnishment issued by the City Sheriff of Manila pursuant to the amended writ of execution issued by the appellate court. The petitioners reiterate their arguments in their pleadings in the CA.

In their comment on the petition, respondents Felicidad Carlos and Teofilo Carlos II, the defendants-appellants in CA-G.R. CV No. 53229, contend that the remedy of the petitioners from the writ of execution and amended writ of execution issued by the CA and the notice of garnishment of the sheriff was to secure from the Supreme Court in G.R. No. 136035 a writ of preliminary mandatory injunction, not a motion to lift/recall the said writ and notice of garnishment in the appellate court. They aver that by seeking relief from the CA, the petitioners indulged in forum shopping; hence, they are guilty of contempt of court.

We give due course and grant the petition.

There is forum shopping when a party seeks to obtain remedies in an action in one court, which had already been solicited, and in other courts and other proceedings in other tribunals.[13] In another case,[14] the Court ruled that forum shopping is the act of one party against another when an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum other than by appeal or the special civil action of certiorari; or the institution of two or more acts or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. A party should not be allowed to present simultaneous remedies in two different forums for it degrades and wreaks havoc to the rule on orderly procedure.[15] A party may avail of the remedies prescribed by the Rules of Court for the myriad reliefs from the court. However, such party is not free to resort to them simultaneously or at his pleasure or caprice. Such party must follow the sequence and hierarchical order in availing such remedies and not resort to shortcuts in procedure or playing fast and loose with the said rules.[16] Forum shopping, an act of malpractice, is considered as trifling with the courts and abusing their processes. It is improper conduct and degrades the administration of justice. If the act of the party or its counsel clearly constitutes willful and deliberate forum shopping, the same shall constitute direct contempt, and a cause for administrative sanctions; as well as a ground for the summary dismissal of the case with prejudice.[17]

In this case, the CA issued a resolution in CA-G.R. CV No. 53229 granting the motion of the respondents (the defendants-appellants therein) for a judgment on the attachment bond filed by Carlos and issued by the SIDDCOR in the amount of P20,000,000. The CA, likewise, granted, on October 16, 1998, the motion of the respondents for the execution pending appeal of the said judgment of the CA on the attachment bond on the holding of the CA that its June 26, 1998 Resolution had become final and executory. This impelled the petitioner to seek relief from the Court by filing, on March 4, 1999, a petition for certiorari, docketed as G.R. No. 136035, for the nullification of the June 26, 1998 and October 16, 1998 Resolutions of the CA and for a temporary restraining order and/or a writ of preliminary injunction to enjoin the enforcement of such resolutions pendente lite by the CA and the respondents. Upon the timely filing by the petitioner of its petition and the payment of the requisite docket and other legal fees therefor, the Court acquired jurisdiction over the petition.

Despite the knowledge of the filing of the said petition with this Court, the respondents filed a motion for the immediate implementation of the June 26, 1998 judgment of the CA on the attachment bond on March 17, 1999 which the CA granted on May 5, 1999. The CA issued a writ of execution and an amended writ of execution directing the Sheriff of the City of Manila or his deputy to enforce the writs issued by the CA, and, thus, eschewed the plea of the petitioner for this Court to issue a temporary restraining order or writ of preliminary injunction against the respondents. Even after the Court issued a Resolution in G.R. No. 136035 on June 9, 1999 granting the plea of the petitioner therein for a temporary restraining order and issued the said writ on the said date, the Sheriff issued a notice of garnishment over the funds of the petitioner with the PNB on June 15, 1999.

The petitioner therein had the following remedies: (a) to file a supplemental petition impleading the City Sheriff of Manila as party respondent and assail the amended writ of attachment issued by the CA and the notice of garnishment issued by the Sheriff, and pray for an amended temporary restraining order enjoining the respondents and those acting for and in their behalf from implementing the assailed resolutions of the CA as well as the amended writ of execution and notice of garnishment; or (b) to file a manifestation and omnibus motion in CA-G.R. CV No. 53229 reminding the appellate court that the Court had acquired jurisdiction over its petition in G.R. No. 136035 and had issued a temporary restraining order enjoining the enforcement of the assailed judgment of the CA. The petitioner should have included a prayer therein for the CA to respect and comply with the temporary restraining order of the Court, and to quash/recall the amended writ of execution it issued, as well as the notice of garnishment issued by the Sheriff pursuant to the amended writ of execution. In case the CA denied the said motion, the petitioner could still file the appropriate motion in this Court to cite the CA in contempt. By filing the said motion in the CA, the petitioner therein would thereby be giving the appellate court an opportunity to cleanse itself and to rectify its errors. In fact, SIDDCOR was able to secure a temporary restraining order from the Court in G.R. No. 136035. As this Court ruled in *International Container Terminal Services, Inc. v. Court of Appeals*:^[18]

Moreover, “[t]here is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another.” Therefore, a party to a case resorts to forum shopping because “[b]y filing another petition involving the same essential facts and circumstances, xxx, respondents approached two different fora in order to increase their chances of obtaining a favorable decision or action.” It cannot be said that private respondent “Manila Pilots” sought to increase its chances of obtaining a favorable decision or action as a result of an adverse opinion in one forum, inasmuch as no unfavorable decision had ever been rendered against private respondent “Manila Pilots” in any of the cases brought before the courts below. On the contrary, private respondent “Manila Pilots” was one of the prevailing parties in Civil Case No. 88-44726 which established with finality its exclusive right together with “United Harbor” to provide pilotage services in the Philippines even prior to the institution of the other actions (G.R. 107720, Civil Case No. 93-66024 and Civil Case No. 93-66143).^[19]

Thus, in filing such manifestation and omnibus motion in the CA, SIDDCOR, the petitioner therein, would not have thereby engaged in forum shopping. In this case, SIDDCOR, thru counsel, precisely prayed in its urgent motion to lift/recall notice of garnishment for the CA to rectify its errors in light of the temporary restraining order issued by this Court, as follows:

URGENT MOTION TO LIFT/RECALL
NOTICE OF GARNISHMENT

Surety SIDDCOR (now MEGA PACIFIC) INSURANCE CORPORATION (“Surety” for brevity), thru the undersigned counsel, unto this Honorable Court of Appeals, most respectfully states, that:

- 1) On 26 May 1999, this Honorable Court issued an amended Writ of Execution commanding the City Sheriff of Manila or his Deputy to enforce the same in accordance with its Resolution dated June 26, 1998 and May 05, 1999;
- 2) Pursuant thereto, Mr. Mario Villanueva, Sheriff of Manila, issued Notices of Garnishment against the accounts of herein Surety with different banks;
- 3) On 09 June 1999, the Honorable Supreme Court issued a Resolution granting Surety’s prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, in G.R. No. 136035, entitled SIDDCOR (now MEGA PACIFIC) Insurance Corporation vs. Felicidad Sandoval Vda. de Carlos, et al., the dispositive portion of which reads:
“Acting on the urgent motion of petitioner for the issuance of a temporary restraining order and/or writ of

preliminary injunction, the Court Resolved to: (a) GRANT the same; and (b) ISSUE the TEMPORARY RESTRAINING ORDER prayed for effective as of this date and to continue to be so effective during the entire period that the case is pending or until further orders.” (underscoring ours.)

...

P R A Y E R

ACCORDINGLY, it is most respectfully prayed of this Honorable Court that the Notices of Garnishment issued by the Sheriff of Manila, Mr. Mario Villanueva, against the accounts of herein Surety with different banks, BE LIFTED and/or RECALLED immediately.

Other reliefs just and equitable are similarly prayed for.

RESPECTFULLY SUBMITTED this 15[th] day of June 1999 at the City of Makati for Manila.[20]

SIDDCOR, likewise, appended to its motion a copy of a temporary restraining order of the Court and thus prayed that the CA resolve to recall/lift the notice of garnishment, which it alleged was issued by the sheriff in defiance of the temporary restraining order of the Court. However, the CA cited the petitioners herein for contempt of court. What is so nettlesome is that in its June 23, 1999 Resolution, the CA ordered the sheriff to stop the enforcement of the writ of execution and/or garnishment so as not to preempt the action of the Court on the petition in G.R. No. 136035:

Considering the “Motion to Quash/Recall Writ of Execution” filed by SIDDCOR Insurance Corporation (now Mega Pacific Insurance Corporation), defendants-appellants are hereby ordered to file their comment thereto within FIFTEEN (15) DAYS from receipt of notice, after which, the said motion is submitted for resolution with or without said comment.

In the meantime, in order not to pre-empt the action of the Court on the motion and considering further the petition filed by the Surety, Mega Pacific Insurance Corporation, before the Supreme Court and the reliefs prayed for therein, the City Sheriff of Manila or his deputies are hereby directed to temporarily stay the enforcement of the Writ of Execution and/or Garnishment until further order from this Court.[21]

The CA even correctly ruled in its July 26, 1999 Resolution that:

Defendants-appellants also submit that since the Supreme Court has acquired jurisdiction over [the] June 26, 1998 and October 16, 1998 resolutions by virtue of the petition for review on certiorari in G.R. No. 136035 filed by SIDDCOR to set aside said resolutions, this Court has lost jurisdiction over the same; hence, it has no more jurisdiction to entertain the present motion seeking the same objective and issue the resolution dated June 23, 1999.

This is well taken.

“When an appeal is perfected, the action is within the control of the appellate court and the lower court can not undo or modify the proceeding by which such jurisdiction is obtained (Port Banga Lumber Co. vs. Export & Import Lumber Co., 28 Phil. 5).

“As soon as the appeal is perfected, the jurisdiction of the appellate court attached, and that of the trial court ceases, as far as the subject matter of the appeal is concerned (4 C.J.S. 1089)” (III Francisco, Revised Rules of Court, Civil Procedure, p. 120).[22]

And yet, the CA took cognizance of and granted the March 17, 1999 and May 24, 1999 motions of the respondents for the immediate implementation of its June 26, 1998 Resolution on the attachment bond, and for the appointment of the City Sheriff of Manila to enforce the writ of execution as well as the amended writ of

execution issued by it on May 26, 1998, despite the filing by the petitioner of its petition in G.R. No. 136035 and the pendency thereof.

It behooved the CA not to take cognizance of the said motions of the respondents or, at the very least, hold the resolution thereof in abeyance pending the final disposition by this Court of G.R. No. 136035. The CA did not do so. Worse, despite its lack of jurisdiction, the CA granted the said motions of the respondents. And when the petitioners prayed that the CA rectify its error to pay obeisance to the temporary restraining order of this Court in G.R. No. 136035 by recalling/lifting the amended writ of execution and a notice of garnishment as it ought to, the appellate court turned a deaf ear to such plea and even cited the petitioners herein, the president and counsel of the petitioner SIDDCOR, in contempt of court and fined them P1,000 each. By so doing, the CA acted with the gravest abuse of its discretion amounting to lack or excess of jurisdiction. Hence, the Court is constrained to rule that the assailed resolutions issued by the appellate court are null and void.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Resolution of the Court of Appeals dated November 4, 1999 is hereby ANNULLED AND SET ASIDE. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Records, p. 59.

[2] Id. at 553-555.

[3] Id. at 794.

[4] Id. at 795.

[5] Id. at 1000-1001.

[6] Rollo, pp. 17-18.

[7] Id. at 76-77.

[8] Id. at 38.

[9] Id. at 43-44.

[10] Id. at 57-60.

[11] Id. at 59-60.

[12] Id. at 34.

[13] MB Finance Corporation v. Abesamis, 195 SCRA 592 (1991).

[14] Ortigas v. Velasco, 234 SCRA 455 (1997).

[15] First Philippine International Bank v. Court of Appeals, 252 SCRA 259 (1996).

[16] Gatmaytan v. Court of Appeals, 267 SCRA 488 (1997).

[17] Section 5, Rule 7 of the Rules of Court, as amended.

[18] 249 SCRA 389 (1995).

[19] Id. at 395-396.

[20] Rollo, pp. 95-96.

[21] Id. at 55.

[22] Id. at 59.

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