

INSULAR LIFE ASSURANCE COMPANY, LTD., INSULAR SAVINGS BANK AND JACINTO D. JIMENEZ, PETITIONERS, VS. ROBERT YOUNG, GABRIEL LA'O II, ARTHUR TAN, LOPE JUBAN, JR., MARIA LOURDES ONG...

G.R. No. 140964. January 16, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before this Court are two (2) consolidated petitions, the first, docketed as G.R. No. 140964, is a petition for review on certiorari^[1] of the Decision of the Court of Appeals dated September 22, 1999 in CA-G.R. CV No. 54264 reversing the Decision of the Regional Trial Court, Branch 142, Makati City in Civil Case No. 92-049. The other, G. R. No. 142267, is a petition for certiorari,^[2] assailing the Resolution dated March 10, 2000 of the Court of Appeals (in the same civil case) which granted private respondents' motion for execution pending appeal.

The undisputed facts are:

In December, 1987, respondent Robert Young, together with his associates and co-respondents, namely: Gabriel La'O II, Arthur Tan, Lope Juban, Jr., Maria Lourdes Ongpin, Antonio Ongpin, Elsie Dizon, Yolanda Bayer, Cecilia Viray, Manuel Viray and Jose Vito Borromeo, acquired by purchase Home Bankers Savings and Trust Co., now petitioner Insular Savings Bank ("the Bank," for brevity), from the Licaros family for P65,000,000.00. Young and his group obtained 55% equity in the Bank, while Jorge Go and his group owned the remaining 45%.

Subsequently, the Bank granted respondents and others individual loans in the total amount of P153,000,000.00, secured by promissory notes.^[3]

On December, 1990, Benito Araneta, a stockholder of the Bank, signified his intention to purchase 99.82% of its outstanding capital stock for P340,000,000.00, subject to the condition that the ownership of all the shares will be consolidated in Young's name. On February 5, 1991, Araneta paid Young P14,000,000.00 as part of the downpayment.^[4]

In order to carry out the intended sale to Araneta, Young bought from Jorge Go and his group their 45% equity in the Bank for P153,000,000.00. In order to pay this amount, Young obtained a short-term loan of P170,000,000.00 from International Corporate Bank ("Interbank") to finance the purchase.

However, Araneta backed out from the intended sale and demanded the return of his downpayment.

Meanwhile, Young's loan from Interbank became due, causing his serious financial problem. Consequently, he engaged the services of Asian Oceanic Investment House, Inc. ("Asian Oceanic"), a domestic company owned and controlled by another petitioner, Insular Life Assurance Co., Ltd. ("Insular Life"), to look for possible sources of capital.

On August 27, 1991, through the intervention of Asian Oceanic, Young and Insular Life entered into a Credit

Agreement.[5] Under its provisions, Insular Life extended a loan to Young in the amount of P200,000,000.00. To secure the loan, Young, acting in his behalf and as attorney-in-fact of the other stockholders, executed on the same day a Deed of Pledge[6] over 1,324,864 shares which represented 99.82% of the outstanding capital stock of the Bank. The next day, he also executed a promissory note[7] in favor of Insular Life in the same amount with an interest rate of 26% per annum to mature 120 days from execution. The Credit Agreement further provides that Insular Life shall have the prior right to purchase the Schedule I Shares (owned by Young) and the Schedule II Shares (owned by the other stockholders of the Bank), as well as the 250,000 shares which will be issued after the additional capital of P25,000,000.00 (payable from the proceeds of the loan) shall have been infused.

On October 1, 1991, Insular Life and Insular Life Pension Fund formally informed Young of their intention to acquire 30% and 12%, respectively, of the Bank's outstanding shares, subject to due diligence audit and proper documentation.[8] On October 9, 1991, Insular Life and Young, authorized to represent the other stockholders, entered into a Memorandum of Agreement (MOA),[9] wherein Insular Life and its Pension Fund agreed to purchase 830,860 common shares and 311,572 common shares, respectively, for a total consideration of P198,000,000.00. Under its terms, the MOA is subject to Young's representations and warranties[10] that, as of September 30, 1991, the Bank has (a) a total outstanding paid-in capital of P157,714,900.00, (b) a total net worth of P114,801,539.00, and (c) total loans with doubtful recovery of P60,000,000.00. The MOA is also subject to these "condition precedents":[11] (1) Young shall infuse additional capital of P50,000,000.00 into the Bank, and (2) Insular Life and its Pension Fund shall undertake a due diligence audit on the Bank to determine whether the provision for P60,000,000.00 doubtful account made by Young is sufficient.

On October 11, 1991, Insular Life, through a team of auditors led by Mr. Wilfrido Patawaran, conducted a due diligence audit on the Bank pursuant to the MOA. The audit revealed several check-kiting operations which amounted to P340,000,000.00. As a result, the Bank's Board of Directors was convened to discuss this matter.

On October 17, 1991, a special meeting of the Bank's directors was held. Chief Executive Officer Antonino L. Alindogan, Jr. reported to the Board the initial findings of the audit team about the irregularities in the Bank's "kiting operations." When asked to explain these anomalies, Young, who was then the Bank's President, assumed responsibility since it happened during his incumbency. Thereupon, he offered, among others, to the Bank the 45% of his holdings as security. He admitted that he has compromised the interest of the Bank and thus tendered his resignation. The Board deferred its acceptance.[12]

On October 21, 1991, Young signed a letter[13] prepared by Atty. Jacinto Jimenez, counsel of Insular Life, addressed to Mr. Vicente R. Ayllon, Chairman of the Bank's Board of Directors, stating that due to business reverses, he shall not be able to pay his obligations under the Credit Agreement between him and Insular Life. Consequently, Young "unconditionally and irrevocably waive(s) the benefit of the period" of the loan (up to December 26, 1991) and Insular "may consider (his) obligations thereunder as defaulted." He likewise interposes no objection to Insular Life's exercise of its rights under the said agreement.

Forthwith, Insular Life instructed its counsel to foreclose the pledge constituted upon the shares. The latter then sent Young a notice informing him of the sale of the shares in a public auction scheduled on October 28, 1991, and in the event that the shares are not sold, a second auction sale shall be held the next day, October 29.

On October 28, 1991, only Insular Life submitted a bid, hence, the shares were not sold on that day. The next day, a second auction was held. Again, Insular Life was the sole bidder. Since the shares were not sold at the two public auctions, Insular Life appropriated to itself, not only the original 1,324,864 shares, but also the 250,000 shares subsequently issued by the Bank and delivered to Insular Life by way of pledge. Thus, Insular Life gave Young an acquittance of his entire claim.[14]

Thereafter, title to the said shares was consolidated in the name of Insular Life. On November 12, 1991, the Bangko Sentral ng Pilipinas' Supervision and Examination Sector approved Insular Life's request to maintain its present ownership of 99.82% of the Bank.[15]

From October 31, 1991 to December 27, 1991, Insular Life invested a total of P325,000,000.00 in the Bank. Meanwhile, on November 27, 1991, its Board of Directors, during its meeting, accepted the resignation of Young as President.[16]

On January 7, 1992, Young and his associates filed with the Regional Trial Court (RTC), Branch 142, Makati City, a complaint[17] against the Bank, Insular Life and its counsel, Atty. Jacinto Jimenez, petitioners, for annulment of notarial sale, specific performance and damages, docketed as Civil Case No. 92-049. The complaint alleges, inter alia, that the notarial sale conducted by petitioner Atty. Jacinto Jimenez is void as it does not comply with the requirement of notice of the second auction sale; that Young was forced by the officers of Insular Life to sign letters to enable them to have control of the Bank; that under the MOA, Insular Life should apply the purchase price of P198,000,000.00 (corresponding to the 55% of the outstanding capital stock of the Bank) to Young's loan of P200,000,000.00 and pay the latter P162,000,000.00, representing the remaining 45% of its outstanding capital stock, which must be set-off against the loans of the other respondents.

Petitioners filed their answer[18] with counterclaim against Young, Gabriel La'O II, Arthur Tan, Lope Juban, Jr., Antonio Ongpin, Elsie Dizon, Yolanda Bayer and Manuel Viray, respondents herein. Except for Young, none of the respondents answered the counterclaim, hence, the RTC declared them in default.

On May 10, 1995, the RTC rendered a Decision,[19] dismissing the complaint, ordering the respondents to pay the Bank their respective loans with interest at the rate of 30% per annum and monthly penalty interest of 3% from the date they are due until fully paid and dismissing petitioners' counterclaim against Young, thus:

"Judgment is therefore rendered as follows:

- Dismissing the complaint; and
- Ordering the plaintiffs jointly and severally to reimburse to the defendants the sum of P300,000.00 as attorney's fees and cost of litigation;

ON THE COUNTERCLAIMS:

Judgment is hereby rendered in favor of counterplaintiff HOME as follows:

- Ordering GABRIEL LA'O II to pay HOME the following amounts:
 - the sum of P4 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from June 17, 1991 until fully paid;
 - the sum of P6 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from September 10, 1991 until fully paid;
 - the sum of P500,000.00 with interest at the rate of 30% per annum and monthly penalty interest at 3% from September 12, 1991 until fully paid;
- Ordering ARTHUR TAN to pay to HOME the sum of P4.2 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from July 4, 1991 until fully paid;
- Ordering LOPE JUBAN, JR., to pay to HOME the sum of P3 Million with interest at the rate of 29% per annum from May 27, 1991 to August 25, 1991, and 30% per annum from August 26, 1991 and monthly penalty interest at 3% from May 27, 1991 until fully paid;

- Ordering ANTONIO ONGPIN to pay to HOME the following amounts:
 - the sum of P445,000.00 with interest at the rate of 32% per annum from May 25, 1991 to August 29, 1991, and 29% per annum from August 30, 1991, and monthly penalty interest at 3% from May 25, 1991 until fully paid;
 - the sum of P1 Million with interest at the rate of 32% a month from May 4, 1991 to August 29, 1991, and 29% per annum from August 30, 1991, and monthly penalty interest at 3% from May 4, 1991 until fully paid;
 - the sum of P550,000.00 with interest at the rate of 32% per annum from May 21, 1991 to August 29, 1991, and 29% per annum from August 30, 1991 and monthly penalty interest at 3% from May 21, 1991 until fully paid;
 - the sum of P5 Million with interest at the rate of 32% per annum from May 16, 1991 to August 29, 1991, and 29% per annum from August 30, 1991 and monthly penalty interest at 3% from May 16, 1991 until fully paid;
 - the sum of P705,000.00 with interest at the rate of 32% per annum from May 4, 1991 to August 29, 1991, and 29% per annum from May 4, 1991 and monthly penalty interest at 3% from May 4, 1991 until fully paid;
- Ordering ELSIE DIZON to pay to HOME the following amounts:
 - the sum of P2 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from June 17, 1991 until fully paid; and
 - the sum of P7.4 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from September 10, 1991 until fully paid;
- Ordering YOLANDA BAYER to pay to HOME the following amounts:
 - the sum of P1 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from June 17, 1991 until fully paid; and
 - the sum of P6.9 Million with interest at the rate of 30% per annum and monthly penalty interest at 3% from September 10, 1991 until fully paid;
- Ordering MANUEL VIRAY to pay to HOME the sum of P8.7 Million with interest at the rate of 29% per annum from May 29, 1991 to August 26, 1991, and 30% per annum from August 27, 1991, and monthly penalty interest at 3% from May 29, 1991 until fully paid;
- Ordering the above counterdefendants jointly and severally to pay to the counterplaintiff the some of P500,000.00 as attorney's fees and cost of litigation.

The counterclaim against YOUNG is dismissed for lack of merit."[20]

Aggrieved by the RTC Decision, respondents appealed to the Court of Appeals.

On September 22, 1999, the Court of Appeals rendered judgment[21] reversing the RTC Decision, the dispositive portion of which reads:

“PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and SET ASIDE, and a new one entered thereby:

- Declaring the Credit Agreement dated August 27, 1991 and the Memorandum of Agreement dated October 9, 1991 valid and binding between the parties;
- Declaring the ‘delinquent’ accounts of borrowers Lope Juben, Elsie Dizon, Arthur Tan, Gabriel La’ O, Yolanda Bayer, Antonio Ongpin and Jose Vito Borromeo as fully paid;

- Ordering the defendant Insular Life to pay the appellant Robert T. Young the amount of One Hundred Sixty Two Million Pesos (P162,000,000.00) representing the money value of 45% of the shareholdings of Home Bankers Savings and Trust Co., Inc.;
- Ordering the appellee Insular Life Assurance Co., Ltd. to pay appellant Robert T. Young moral damages in the amount of Five Million Pesos (P5,000,000.00); and
- Ordering the appellees to pay attorney's fees of One Million Five Hundred Thousand Pesos (P1,500,000.00) and the costs of the suit.

SO ORDERED.”[22]

On October 14, 1999, petitioners filed a motion for reconsideration, while respondents filed a motion for execution pending appeal.

On December 1, 1999, the Court of Appeals issued a Resolution[23] denying petitioners' motion for reconsideration for lack of merit, prompting them to file the instant petition for review on certiorari (G. R. No. 140964).

On March 10, 2000, the Court of Appeals issued a Resolution[24] granting respondents' motion for execution pending appeal. Forthwith, petitioners filed the instant petition for certiorari (G. R. No. 142267).

On March 27, 2000, we issued a Resolution[25] ordering the consolidation of the two petitions and directing the parties "to maintain the STATUS QUO before the assailed (CA) Resolution of March 10, 2000 was issued, until further orders from this Court.”

In G.R. No. 140964, petitioners ascribe to the Court of Appeals the following errors:

- In declaring the MOA dated October 9, 1991 valid and enforceable between the parties despite respondent Young's failure to comply with the terms and conditions thereof;
- In holding that the foreclosure of the pledge held on October 29, 1992 is void; and
- In awarding moral damages and attorney's fees in favor of respondent Robert Young.

In G.R. No. 142267, petitioners allege that the Court of Appeals acted with grave abuse of discretion in granting respondent Young's motion for execution pending appeal.[26]

Petitioners contend that the MOA executed on October 9, 1991 is not enforceable considering that Robert Young committed fraud, misrepresented the warranties and failed to comply with his obligations. Hence, the Court of Appeals erred when it held that the MOA is valid and ordered petitioners to pay for the shares covered by the same.

In their comment, respondents simply contend that since the MOA was prepared by counsel of petitioner Insular Life and duly signed by them, they cannot now impugn the same and avoid compliance with their obligations specified therein.

The Court of Appeals, in reversing the Decision of the RTC, ruled that the MOA is binding between the parties as it was not validly rescinded. In exercising its option to rescind the MOA, Insular Life failed to notify Young pursuant to Article 1599 of the Civil Code.[27] Hence, the MOA is enforceable against the parties thereto. The Appellate Court then concluded that Young's loan with Insular Life is deemed fully paid based on the representation and warranty in the MOA that "the entire proceeds of the sale shall be used to pay off the outstanding debt of Robert T. Young to Insular Life."

In other words, the Court of Appeals construed the MOA as a contract of sale since it applied Article 1599 of the Civil Code which pertains to cases where there is a breach of warranty.

We disagree.

The Memorandum of Agreement pertinently provides:

"1. Insular Life and the Pension Fund hereby agree to purchase from the Vendor and the Vendor agrees to convey, transfer, assign EIGHT HUNDRED THIRTY THOUSAND EIGHT HUNDRED SIXTY (830,860) Common Shares and THREE HUNDRED ELEVEN THOUSAND FIVE HUNDRED SEVENTY TWO (311,572) Common Shares of Home Bankers Savings and Trust Co., respectively, Insular Life and the Pension Fund, or to such person designated by Insular Life or the Pension Fund, for a total consideration of ONE HUNDRED NINETY-EIGHT MILLION PESOS (P198,000,000.00), subject to the following terms and conditions and representations and warranties made by the Vendor:

- REPRESENTATION AND WARRANTIES:

- As of September 30, 1991, the total outstanding paid in capital of the bank is ONE HUNDRED FIFTY SEVEN MILLION SEVEN HUNDRED FOURTEEN THOUSAND NINE HUNDRED PESOS (P157,714,900.00),

- As of September 30, 1991, the total net worth of the bank is ONE HUNDRED FOURTEEN MILLION EIGHT HUNDRED ONE THOUSAND FIVE HUNDRED THIRTY NINE PESOS (P114,801,593.00),

- As of September 30, 1991, the total loans with doubtful recovery amounted to SIXTY MILLION PESOS (P60,000,000.00), which includes the loans with doubtful recovery contained in the May 1991 findings of the Central Bank and an additional provision for certain loan accounts identified and listed by Robert T. Young,

- The entire proceeds of the sale shall be used to pay off the outstanding debt of Robert T. Young to Insular Life.

- CONDITION PRECEDENTS:

Upon the signing of this Agreement and prior to the execution of a Deed of Sale by the parties, the following events shall occur:

- The Vendor shall infuse an additional capital of FIFTY MILLION PESOS (P50,000,000.00) into the Bank,

- The Vendee shall undertake a due diligence audit on the bank for a period not exceeding 60 days from the date of the signing of this Agreement, and the audit shall be undertaken to determine that the provision for SIXTY MILLION PESOS (P60,000,000.00) for doubtful account is sufficient,

- After signing of this Agreement and during the 60 days due diligence audit of the Vendee, as mentioned in No. 2, the Vendor shall endorse and deliver the stock certificates representing TWENTY FIVE (25%) percent of the total outstanding capital stock of the bank to the Vendee, the stock certificates shall be returned to the Vendor at the end of the 60 days due diligence audit and after the Vendee is satisfied that the provision of SIXTY MILLION PESOS (P60,000,000.00) for doubtful accounts is sufficient."[28] (Emphasis ours)

Contrary to the findings of the Court of Appeals, the foregoing provisions of the MOA negate the existence of a perfected contract of sale. The MOA is merely a contract to sell since the parties therein specifically undertook to enter into a contract of sale if the stipulated conditions are met and the representation and warranties given by Young prove to be true. The obligation of petitioner Insular Life to purchase, as well as the concomitant obligation of Young to convey to it the shares, are subject to the fulfillment of the conditions contained in the MOA. Once the conditions, representation and warranties are satisfied, then it is incumbent upon the parties to

perform their respective obligations under the contract. Conversely, in the event that these conditions are not met or complied with, no obligation on the part of either party arises. This is in accord with Article 1181 of the Civil Code which provides that "(i)n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition." And when the obligation assumed by a party to a contract is expressly subjected to a condition, the obligation cannot be enforced against him unless the condition is complied with.[29]

Here, the MOA provides that Young shall infuse additional capital of P50,000,000.00 into the Bank. It likewise specifies the warranty given by Young that the doubtful accounts of petitioner Bank amounted to P60,000,000.00 only. However, records show that Young failed to infuse the required additional capital. Moreover, the due diligence audit shows that Young was involved in fraudulent schemes like check-kiting[30] which amounted to a staggering P344,000,000.00. This belies his representation that the doubtful accounts of petitioner Bank amounted only to P60,000,000.00. As a result of these anomalous transactions, the reserves of the Bank were depleted and it had to undergo a ten-year rehabilitation plan under the supervision of the Central Bank.

Significantly, respondents do not dispute petitioners' assertion that Young committed fraud, misrepresented the warranties and failed to comply with his obligations under the MOA. Accordingly, no right in favor of Young's arose and no obligation on the part of Insular Life was created.[31] In *Mortel vs. Kassco, Inc.*,[32] this Court held:

"In contracts subject to a suspensive condition, the birth or effectivity of such contracts only takes place if and when the event constituting the condition happens or is fulfilled, and if the suspensive condition does not take place or is not fulfilled, the parties would stand as if the conditional obligation had never existed."

Since no sale transpired between the parties, the Court of Appeals erred in concluding that Insular Life purchased 55% of the total shares of the Bank under the MOA. Consequently, its findings that the debt of Young has been fully paid and that Insular Life is liable to pay for the remaining 45% equity have no basis. It must be emphasized that the MOA did not convey title of the shares to Insular Life. If ever there was delivery of the said shares to Insular Life, it was because they were pledged by Young to Insular Life under the Credit Agreement.

It would be unfair on the part of Young to demand compliance by Insular Life of its obligations when he himself was remiss in his own. Neither can he feign ignorance of the stipulation in the MOA since it is presumed that he read the same and was satisfied with its provisions before he affixed his signature therein. The fact that no deed of sale was subsequently executed by the parties confirms the conclusion that no sale transpired between them.

Notably, the Deed of Pledge which secured the Credit Agreement between the parties, covered not only 1,324,864 shares which then constituted 99.82% of the total outstanding shares of petitioner Bank, but also the 250,000 shares subsequently issued. Consequently, when Young waived in his letter the period granted him under the said agreement and manifested his inability to pay his obligation (which waiver has been declared by the RTC and the CA to be valid), the loan extended by petitioner Insular Life became due and demandable.[33] Definitely, petitioners merely exercised the right granted to them under the law, which is to foreclose the pledge constituted on the shares, in satisfaction of respondent Young's loan.

The Court of Appeals also erred in declaring that the auction sale is void since petitioners failed to send a separate notice for the second auction.

Article 2112 of the Civil Code provides:

"The creditor to whom the credit has not been satisfied in due time, may proceed before a Notary Public for the sale of the thing pledged. The sale shall be made at a public auction, and with notification to the debtor and the owner of the thing pledged in a proper case, stating the amount for which the public sale is to be held. If at the first auction the thing is not sold, a second one with the same formalities shall be held; and if at the second

auction there is no sale either, the creditor may appropriate the thing pledged. In this case he shall be obliged to give an acquittance for his entire claim.”

Clearly, there is no prohibition contained in the law against the sending of one notice for the first and second public auction as was done here by petitioner Insular Life. The purpose of the law in requiring notice is to sufficiently apprise the debtor and the pledgor that the thing pledged to secure payment of the loan will be sold in a public auction and the proceeds thereof shall be applied to satisfy the debt. When petitioner Insular Life sent a notice to Young informing him of the public auction scheduled on October 28, 1991, and a second auction on the next day, October 29, in the event that the shares are not sold on the first auction, the purpose of the law was achieved. We thus reject respondents' argument that the term "second one" refers to a separate notice which requires the same formalities as the first notice.

Petitioners contend that the Court of Appeals likewise erred when it declared in the fallo of its decision that the unpaid accounts of the other respondents have been fully paid. There is no showing how the Appellate Court reached such conclusion. In doing so, the Court of Appeals violated the constitutional mandate that "(n)o decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based."^[34] Indeed, due process demands that the parties to a litigation be informed of how it was decided with an explanation of the factual and legal reasons that led to the conclusions of the court.^[35] It must be observed that those respondents did not contest petitioners' counterclaim against them.

On the issue of damages, we find the Court of Appeals' award of moral damages of P5,000,000.00 and attorney's fees of P1,500,000.00 to respondents without any basis. Under Article 2220 of the Civil Code, moral damages may be awarded in breach of contracts where the defendant acted fraudulently or in bad faith. Contrary to the finding of the Court of Appeals, we find no such breach committed by petitioners, much less any badge of fraud or bad faith on their part. It must be stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant.^[36] Attorney's fees are not automatically awarded to every winning litigant.^[37] It must be shown that any of the instances enumerated under Art. 2208 of the Civil Code exists to justify the award thereof.^[38] Not one of such instances exists here. Surprisingly, the Court of Appeals awarded the excessive amounts of P5,000,000.00 as moral damages and P1,500,000.00 as attorney's fees to respondents.

We now come to the issue of whether or not the Court of Appeals committed grave abuse of discretion when it ordered the execution of its own judgment, thus:

“It can not be denied that the plaintiffs-appellants, who are stockholders of Home, have long been deprived of their rights as such stockholders. It has been almost a decade since their cause of action accrued. And to this day, no immediate relief is still in sight. On the contrary, with Insular Life practically controlling the fate of Home, redress may become all but nugatory. This is the very line of reasoning this Court has adopted in rendering its main decision. There has been an unjust enrichment on the part of the defendants-appellees, all to the injury and humiliation of the plaintiffs-appellants are denied what is properly theirs, the injury will be a continued one.

"This, we believe, is good reason enough to grant the plaintiffs'-appellants' motion. Good reasons consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory, or the prevailing party may after the lapse of time become unable to enjoy it, considering the tactics of the adverse party who may apparently have no case except to delay.

"The allegation by the defendants-appellees that the plaintiff-appellant Young is a fugitive from justice deserves scant consideration from this Court. It is a personal attack on an adverse party that is completely uncalled for and has no bearing whatsoever in the present case. And even if the same is true, it is not difficult to see that the present predicament Young now finds himself in stemmed from the unfair, nay, unlawful

treatment he has received from the defendants-appellees. That Young now has very little assets should not come as a surprise to the defendants-appellees; through their own machinations they deprived him of the same. To now hold the plight of Young against himself would be to and insult to injury, especially if one is to consider that the latter's situation was brought about by the same party who now opposes the claim for immediate relief.

"With the grant of the instant motion, plaintiff-appellant Young may once again reclaim his rightful place in society, before he sinks deeper into the mire in which he, according to the defendants-appellees, may now be in. Contrary to the defendants'-appellees' contentions, it is, in fact, another reason to extend our favorable consideration to the motion. It is the least we can do.

x x x

"In fine, it is this Court's considered opinion that the combination of all the foregoing facts, and the plaintiffs'-appellants' readiness and willingness to post the requisite bond, constitute sufficient grounds to grant immediate relief." [39]

We reject the Court of Appeal's ratiocination. The ruling of this Court in *Heirs of the Late Justice Jose B. L. Reyes vs. Court of Appeals* [40] is instructive on this point:

"One final word. It was bad enough that the Court of Appeals erred in ruling that the lease contract must be judicially rescinded before respondent MMB, Inc. may be evicted from the premises. It was worse that the Court of Appeals immediately enforced its decision pending appeal restoring respondent in possession of the leased premises and worst, appointed a special sheriff to carry out the writ of execution. In the first place, we emphatically rule that the Court of Appeals has no authority to issue immediate execution pending appeal of its own decision. Discretionary execution under Rule 29, Section 2 (a), 1997 Rules of Civil Procedure, as amended, is allowed pending appeal of a judgment or final order of the trial court, upon good reasons to be stated in a special order after due hearing. A judgment of the Court of Appeals cannot be executed pending appeal. Once final and executory, the judgment must be remanded to the lower court, where a motion for its execution may be filed only after its entry. In other words, before its finality, the judgment cannot be executed. There can be no discretionary execution of a decision of the Court of Appeals. x x x."

We therefore rule that the Court of Appeals committed grave abuse of discretion when it granted respondents' motion for execution pending appeal.

WHEREFORE, the petitions are GRANTED. In G.R. No. 140964, the assailed Decision dated September 22, 1999 and the Resolution dated December 1, 1999 issued by the Court of Appeals in CA G.R. CV No. 54264 are REVERSED and SET ASIDE.

In G.R. No. 142267, the Resolution dated March 10, 2000 issued by the Court of Appeals granting respondents' motion for execution is declared VOID.

The Decision dated March 10, 1995 of the Regional Trial Court, Branch 42, Makati City, in Civil Case No. 92-049, is REINSTATED. Costs against respondents.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Carpio, JJ., concur.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Under Rule 65, *ibid.*.

- [3] Annexes 1-17, Answer; Rollo, pp. 167-197.
- [4] Rollo, p. 90.
- [5] Annex D, Complaint; Rollo, p. 100.
- [6] Annex D-1, *ibid.*, p. 1118.
- [7] Annex D-2, *ibid.*, p. 123.
- [8] Annex E, *ibid.*, p. 124.
- [9] Annex N, Petition, G. R. 140964; Rollo, p. 478.
- [10] *Ibid.*, pp. 479-480.
- [11] *Ibid.*, pp. 480-481.
- [12] Minutes of the Special Board Meeting on October 17, 1991, Rollo, p. 309.
- [13] Annex “A” of the Affidavit of Avelino Sebastian dated January 24, 1992; Rollo, p. 288.
- [14] Certification issued by Atty. Jacinto Jimenez, the Notary Public who conducted the notarial sale of the pledged shares; Rollo, p. 127.
- [15] Rollo, p. 304.
- [16] Minutes of petitioner Bank’s Board of Directors’ Regular Meeting on November 27, 1991; Rollo, p. 315.
- [17] Annex “A,” Petition, Rollo, p. 67.
- [18] Annex B, *ibid.*, p. 130.
- [19] Annex F, *ibid.*, p. 403.
- [20] RTC Decision, pp. 10-12, Roces, G.R. 140964, pp. 412-414.
- [21] Penned by then Justice Demetrio Demetria, concurred in by Justices Ramon Barcelona and Mercedes Gozo-Dadole of the Fourteenth Division..
- [22] CA Decision, pp. 17-18; Rollo, pp. 438-439.
- [23] Rollo, p. 476.
- [24] Annex “E,” Petition, G. R. 142267, Rollo, pp. 119-124.
- [25] *Ibid.*, p. 159.
- [26] Petition in G.R. 140964, pp. 13-14, Rollo, pp. 32-33; Petition in G. R. 142267, p. 12, Rollo, p. 14.
- [27] “Art. 1599. Where there is a breach of warranty by the seller, the buyer may, at his election:

x x x.

Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods without protest, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the ownership was transferred to the buyer. x x x.

x x x.

[28] Rollo, pp. 479-481.

[29] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, p. 149, citing, *Wise & Co. vs. Kelly*, 37 Phil. 696, *Philippine National bank vs. Philippine Trust Co.*, 68 Phil. 48, *Roque vs. Lapuz*, 96 SCRA 741, *Rose Packing Co. vs. Court of Appeals*, 167 SCRA 309.

[30] This refers to the practice of approving payment of checks drawn against the bank although the checks deposited to fund the same had not yet been cleared.

[31] *Agcaoili vs. GSIS*, 165 SCRA 1, 7; *Boysaw vs. Interphil Promotion, Inc.* 148 SCRA 635, 643; *Rodriguez vs. Belgica*, 1 SCRA 611, 615.

[32] G. R. No. 137823, December 15, 2000.

[33] Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

x x x

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

x x x.

[34] Section 14, Article VII of the Constitution.

[35] *ABD Overseas Manpower Corporation vs. NLRC*, 286 SCRA 454 (1998); *People vs. Viernes*, 262 SCRA 641, 659; *Nicos Industrial Corporation vs. Court of Appeals*, 206 SCRA 127, 132.

[36] *American Home Assurance Company vs. Chua* 309 SCRA 250, 263 (1999).

[37] *Orosa vs. Court of Appeals*, 329 SCRA 652, 664 (2000).

[38] *Ibid.*

[39] CA Resolution dated March 10, 2000, pp. 3-5, Rollo, pp. 122-124.

[40] 338 SCRA 282 (2000).

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