

**PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER, VS.
DE DIOS TRANSPORTATION CO., INC. AND DE DIOS MARIKINA
TRANSIT CORPORATION, RESPONDENTS.**

G.R. No. 147010. July 18, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the October 31, 2000 Decision[1] of the Court of Appeals in CA-G.R. SP No. 58519[2] and its January 30, 2001 Resolution denying the petitioner's motion for reconsideration of the said decision.

The petition at bar arose from the following factual milieu:

Herein respondents De Dios Transportation Co. (DDTC) and De Dios Marikina Transport Corporation (DMTC) were the franchise holders and owners of fifty-eight buses plying the Buendia-Ayala-UP and Monumento-Ayala routes. On February 23, 1995, the respondents, as vendors, executed a Deed of Conditional Sale covering the said buses and their franchise in favor of Willy Choa Coyukiat (Coyukiat) and/or Goldfinger Transport Corporation (Goldfinger) as vendees. In the said contract, the respondents bound and obliged themselves to sell to Coyukiat and Goldfinger the fifty-eight buses and their corresponding franchise, and to deliver and turn over possession of the said buses to the vendees for the price of P12,000,000, payable as follows:

- (a) A downpayment of ONE MILLION (P1,000,000.00) PESOS in personal check shall be paid upon the execution of this Contract;
- (b) The balance of ELEVEN MILLION (P11,000,000.00) to be paid by eleven (11) postdated checks at the rate of ONE MILLION (P1,000,000.00) a month all of which shall likewise be delivered to the VENDORS upon the execution of this Contract; provided, however, that the date of the first postdated check shall be thirty days from the full and actual delivery of the units as provided in paragraph 3 hereof and the subsequent dates of the other postdated checks shall be reckoned from the date of the first postdated check;[3]

The parties further agreed that in case of default by the vendors:

- CONSEQUENCES OF DEFAULT. It is agreed and understood that the representations and warranties made by the VENDORS in this Contract are the primary motivations/reasons that induced, convinced and moved the VENDEE to enter into this contract and the Deed of Sale. In the event of default by the VENDORS, the VENDEE shall at its option either consider the obligations of the VENDORS under the Contract immediately due and demandable and the VENDORS shall immediately execute the Deed of Sale of the buses and their corresponding lines/franchises without need of any further payments or reimburse all the amounts paid by the VENDEE to the VENDORS. In either case, the VENDORS shall, likewise, be liable to the VENDEE for liquidated damages in the amount of Twelve Million (P12,000,000.00) pesos.

In the event of default by the VENDEE, the VENDORS shall at their option, declare the entire obligation due and demandable, and demand for the payment of the entire balance of the purchase price or declare the

contract as without any further force and effect and that all payments previously paid are forfeited. In either case, the VENDEE shall, likewise, be liable for liquidated damages in the amount of Twelve Million (P12,000,000.00) Pesos in favor of the VENDORS.[4]

The respondents, as vendors, guaranteed that the franchise and routes to Buendia-Ayala-UP and vice versa and Monumento-Ayala via EDSA were valid, fully and completely utilizable, and merely required registration with the Land Transportation Office (LTO) for the vendees to be able to operate the same.[5] The vendees delivered the downpayment and postdated checks drawn upon the account of Goldfinger with the Philbanking Corporation for the balance of the purchase price.

On March 23, 1995, the respondents delivered the buses to the vendees. The respondents were able to encash the check for the downpayment of the purchase price. However, before the respondents could deposit the first check for the remaining balance, the vendees stopped all payments, on their claim that, contrary to the representations of the respondents, some of the buses were not in good running condition. The color of the buses had been changed without the proper permits or clearances from the Land Transportation Franchising and Regulatory Board (LTFRB), the LTO and the Philippine National Police (PNP). Consequently, the vendees failed to operate the buses. The vendees were, likewise, unable to operate the buses along the Buendia-Ayala-UP route, notwithstanding the representation of the respondents that only registration with the LTO was required.

On July 20, 1995, the vendees, through its counsel, the Padilla Reyes & De la Torre Law Office, filed a complaint against the respondents and Philbanking Corporation as defendants with the Regional Trial Court (RTC) of Quezon City for rescission of contract with a plea for a temporary restraining order or writ of preliminary injunction.[6]

Therein plaintiffs Coyukiat and Goldfinger alleged that defendants (the respondents herein) reneged on their obligation to deliver the buses in good running condition. By reason of the defendants' misrepresentation regarding the registration of the buses, they failed to secure certificates of registration under their names, preventing them from operating the buses, thus causing tremendous losses to their business which impelled them to stop the payments of the eleven remaining postdated checks. The complaint contained the following prayer:

ON THE FIRST CAUSE OF ACTION

- Declaring the Deed of Conditional Sale entered into between the plaintiffs Willy Choa Coyukiat and Goldfinger Transport Corporation and the defendants De Dios Transportation Co., Inc. and the De Dios Marikina Transit Corporation as RESCINDED.
- Ordering the defendants De Dios Transportation Co. Inc and the De Dios Marikina Transit Corporation to return the One Million Pesos (P1,000,000.00) down payment and all other amounts given by the plaintiffs to them under the Deed of Conditional Sale.
- Requiring the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to accept the return from the plaintiffs of the fifty-eight (58) passenger buses;
- Ordering the defendant De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amount of Twelve Million Pesos (P12,000,000.00) as liquidated damages.

ON THE SECOND CAUSE OF ACTION

- On the second cause of action, ordering the defendant De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amount of One Million Pesos (P1,000,000.00) as moral damages.

ON THE THIRD CAUSE OF ACTION

- On the third cause of action, ordering the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally the amount of One Million Pesos (P1,000,000.00) as exemplary damages.

ON THE FOURTH CAUSE OF ACTION

- On the fourth cause of action, ordering the defendants De Dios Transportation Co. Inc. and the De Dios Marikina Transit Corporation to pay jointly and severally to the plaintiffs the amounts of Five Hundred Thousand Pesos (P500,000.00) as attorney's fees and at least One Hundred Thousand Pesos (P100,000.00) as litigation expenses.[7]

The plaintiffs therein prayed for the issuance of a temporary restraining order, and after due notice and hearing, to issue a writ of preliminary injunction, enjoining the therein defendants DDTC and DMTC, their agents, representatives and all persons acting in their behalf from encashing, depositing, discounting or transacting the postdated checks issued by plaintiff Goldfinger as listed in Annex "B" of the complaint, and enjoining the defendant Philbanking Corporation (Del Monte branch), its agents, representatives and all persons acting in its behalf from encashing, accepting, clearing, or transacting in any other manner, the postdated checks listed in Annex "A" of the complaint.

On July 21, 1995, the RTC issued a temporary restraining order enjoining the defendants and their agents from encashing, accepting, clearing, or transacting twelve postdated checks issued by therein plaintiff Coyukiat.[8] On August 11, 1995, the RTC granted the plaintiffs' plea for a writ of preliminary injunction on a bond of P11,000,000. The plaintiffs posted Bond No. 71336 issued by herein petitioner Pioneer Insurance & Surety Corporation for the amount of P11,000,000.[9]

On August 17, 1995, the plaintiffs filed an amended complaint dropping Philbanking Corporation as party-defendant.

The defendants, in their answer with counterclaim, denied the material allegations of the complaint and prayed for the dismissal thereof. The defendants interposed counterclaims for damages and attorney's fees, thus: (a) P11,000,000 representing the plaintiffs' unpaid balance; (b) P12,000,000 representing liquidating damages; (c) P1,000,000 for moral damages; (d) P1,000,000 for exemplary damages; and (e) twenty percent of the claim representing attorneys fees and P1,000 for each court appearance.[10]

On September 21, 1998, the trial court issued an order dismissing the case on motion of the defendants for failure of the plaintiffs to prosecute the same. As directed by the trial court on motion of the defendants, the latter adduced evidence ex parte to prove their counterclaim.

On December 14, 1998, the RTC rendered a decision dismissing the complaint and granting the counterclaims of the defendants, the dispositive portion of which is herein quoted:

WHEREFORE, as prayed for, defendants' counterclaim is hereby GRANTED, and judgment is hereby rendered ordering plaintiff to pay the defendants the following:

(1)

ELEVEN MILLION (P11,000,000.00) PESOS representing the plaintiff's unpaid balance on the consideration of the Deed of Conditional Sale;

(2) TWELVE MILLION (P12,000,000.00) PESOS as liquidated damages;

(3)

FIVE HUNDRED THOUSAND PESOS (P500,000.00) as moral damages and FIVE HUNDRED THOUSAND PESOS (P500,000.00) as exemplary damages; and

(4) TWO HUNDRED THOUSAND PESOS as attorney's fees and P113,783.50 as litigation expenses;

(5) Costs of suit.[11]

Aggrieved, the plaintiffs Coyukiat and Goldfinger interposed an appeal to the Court of Appeals (CA) which was docketed as CA-G.R. CV No. 61310.

On August 20, 1999, the appellants, through Atty. Ronaldo Reyes, filed their brief with the CA. Before the appellees (the respondents herein) could file their brief, the Padilla Reyes & De la Torre Law Office filed on September 14, 1999 its withdrawal of appearance as counsel for the appellants. On the same day, the Luis Q.U. Uranza, Jr. & Associates filed its appearance as counsel for the appellants and filed a notice of withdrawal of appeal. However, the withdrawal of appearance of the Padilla Reyes & De la Torre Law Office, the appearance of the Luis Q.U. Uranza, Jr. & Associates and the notice of withdrawal of appeal filed by Luis Q.U. Uranza, Jr. & Associates did not bear the conformity of the appellants. The appellees (herein respondents) were served with copies thereof thru their counsel by registered mail.[12]

On September 15, 1999, the respondents filed with the CA a Motion to Execute Against the Injunction Bond posted by herein petitioner Pioneer Insurance and Surety Corporation, serving a copy thereof on Atty. Ronaldo Reyes.[13]

The respondents alleged inter alia in their motion that the appellants Coyukiat and Goldfinger were not entitled to a temporary restraining order or a writ of preliminary injunction. They contend that were it not for the said temporary restraining order and writ of preliminary injunction, the appellants would not have been able to hide and dispose of their assets and sell the buses, thus frustrating the collection of the amount of P11,000,000 representing the respondents' counterclaim.[14] The CA issued a resolution requiring the petitioner to file its comment on the motion.

On September 16, 1999, the CA issued a resolution granting the withdrawal of the Padilla Reyes & De la Torre Law Office as counsel for the appellants and noting the entry of the Luis Q.U. Uranza, Jr. & Associates as new counsel. However, with respect to the withdrawal of their appeal, the CA directed the appellants to submit their written conformity thereto, and held in abeyance the resolution of the said incident pending compliance by the appellants to its resolution.[15]

On September 28, 1999, the appellants submitted to the CA their conformity to the withdrawal of their appeal. On October 8, 1999, the CA issued a resolution (a) declaring that the appeal of the appellants was considered withdrawn and dismissed; and (b) directing the appellees to address their motion to execute the bond with the trial court after the remand thereto of the records. On the same day, an entry of judgment was issued by the CA.[16]

On November 4, 1999, the petitioner filed with the CA its comment on the opposition to the motion to execute filed by the respondents with the CA on the following grounds:

I

There is no basis for defendants-appellees to execute against the injunction bond.[17]

II

The Decision of the lower court has become final and, therefore, defendants-appellees' Motion can no longer

be entertained.[18]

III

Even assuming, for the sake of argument that an application for damages can still be made, defendants-appellees suffered no damage by reason of the issuance of the injunction.[19]

In accordance with the directive of the Court of Appeals, the respondents filed on December 9, 1999 with the RTC Quezon City, Br. 223, a Motion to Resolve their Motion to Execute Against the Injunction Bond. The respondents alleged inter alia that (a) the trial court had ruled that the plaintiffs Coyukiat and Goldfinger were not entitled to a writ of preliminary injunction; (b) were it not for the writ, the respondents would have been able to negotiate and collect on the remaining postdated checks of the plaintiffs which had become stale in the meantime; (c) the plaintiffs were able to hide and dispose of their assets because of a temporary restraining order and writ of preliminary injunction issued by the court; (d) by reason of the failure of the plaintiffs to pay the amount due and demandable under the decision of the court, the respondents sustained damages; (e) in accordance with the provisions of the Revised Rules of Court, before the decision of the court a quo became final and executory, the respondents filed their motion to execute against the injunction bond on September 15, 1999 before the CA; (f) the CA directed the respondents to address their motion to the trial court for consideration and resolution thereof.[20]

On February 2, 2000, the court a quo issued an order denying the motion of the respondents on the following grounds: (a) its Decision dated December 4, 1998 had already attained finality in view of the withdrawal of the appeal by the plaintiffs; and (b) the resolution of the respondents' motion to execute against the injunction bond would necessitate the reception of evidence which could no longer be done as its decision had become final and executory. The respondents' motion for reconsideration of the order was denied by the court on March 13, 2000.[21]

On April 21, 2000, the respondents, consequently, filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure before the CA seeking the annulment of the February 2, 2000 and March 13, 2000 Orders of the court a quo. The respondents in this case alleged inter alia that the court a quo acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied their motion to resolve (the motion to execute against the injunction bond) on the ground that the judgment in the main case had become final and executory, and that the case could no longer be re-opened for the parties to adduce evidence in support of the motion.[22]

On June 23, 2000, herein petitioner filed its comment. The petitioner averred that the decision of the trial court had become final and executory on September 14, 1999, upon the withdrawal of the appeal. Further, when the CA issued its October 8, 1999 Resolution directing the respondents in this case to address their motion to the trial court, it had already lost its jurisdiction over the appeal. Even assuming that the motion of the respondents was timely filed, nevertheless, they did not suffer any damages arising from the preliminary injunction issued by the trial court. The injunction bond answers only for the damages caused to the adverse party by reason of the wrongful issuance of the injunction and not for the damages awarded by the trial court on the respondents' counterclaims.

On October 31, 2000, the CA rendered a decision annulling the assailed orders of the trial court and granting the motion to execute on the injunction bond issued by the petitioner therein, thus:

WHEREFORE, the assailed Orders dated February 2, 2000 and March 13, 2000 are REVERSED and SET ASIDE and, in lieu thereof, another is rendered granting the petitioners' Motion to Execute Against the Injunction Bond. No costs.[23]

The Court of Appeals cited the ruling of this Court in *International Container Terminal Services, Inc. v. Court of Appeals*,^[24] which declared that Section 20, Rule 57 of the Rules of Court regarding the application against the surety bond in support of the writ of preliminary attachment shall apply by analogy to a preliminary injunction. The CA likewise cited the ruling of this Court in *Rivera v. Talavera*,^[25] and *Ponce Enrile v. Capulong*,^[26] that the application or claim for damages against the injunction bond must be filed before the trial court either during the trial with due notice to the surety or sureties, or even after trial when judgment is rendered, but before entry thereof.

In its petition at bar, the petitioner contends that the decision and resolution of the CA should be reversed and set aside based on the following grounds:

- With all due respect, the Honorable Court of Appeals decided the case in a way not in accord with law and the applicable decisions of the Honorable Supreme Court. The Honorable Court of Appeals erred when it ruled that it still had jurisdiction over the case even after Coyukiat and Goldfinger had filed their Notice of Withdrawal of Appeal as a matter of right.
- Respondents are not entitled to execute on the injunction bond for failing to file an application for damages against the injunction bond at the trial of the main case, Civil Case No. Q-95-24462, and for filing the same only after the decision in said case had become final and executory.
- The judgment of the Quezon City RTC-Branch 223 in the main case, Civil Case No. Q-95-24462, did not include any award for damages in favor of respondents by reason of the issuance of the writ of preliminary injunction, and the fact that the decision therein was in favor of respondents did not automatically entitle them to such award for damages.
- The damages allegedly sustained by respondents were not by reason of the issuance of the writ of preliminary injunction.^[27]

The petition is bereft of merit.

On the first ground, the petitioner argues that the withdrawal of the appeal on September 14, 1999 rendered the decision of the trial court ipso facto final and executory. Since the appellants filed their notice of withdrawal of appeal before the filing of the appellees' brief, under Section 3, Rule 50 of the Rules of Court, the appeal could be withdrawn without the need for the trial court's post factum approval. Further, under Section 1(c) of Rule 15 of the 1996 Internal Rules of the CA, when an appeal is withdrawn, entry of judgment shall be made immediately.

For their part, the respondents contend that the filing of the withdrawal of appeal through new counsel, but without the appellants' written conformity to the substitution and to such withdrawal of appeal, was not self-executory. The appeal was deemed withdrawn and dismissed only upon the submission by the appellants of their written conformity to the substitution of their new counsel and to the withdrawal of their appeal, and the CA's approval of the same. It was only then that the appeal of the appellants was deemed withdrawn and dismissed, and the decision of the trial court rendered final and executory. Thus:

The Court of Appeals
still had jurisdiction over
the case when the
Motion to Execute
Against the Injunction
Bond was filed.

Petitioner argues in its Petition that Coyukiat filed a Withdrawal of Appeal on September 14, 1999 or one day before respondents filed their Motion to Execute Against Injunction Bond on September 15, 1999. Since no

appellee's brief had been filed at that time, petitioner argues that the withdrawal of the appeal was a matter of right. Thus, Pioneer triumphantly concludes, on September 14, 1999 the appeal was already effectively withdrawn and the Decision of the trial court had already become final and executory.

What Pioneer conveniently does not disclose is that the Withdrawal of Appeal was not filed by counsel of record for Coyukiat but a different counsel purporting to be the newly substituted counsel for Coyukiat. This different counsel from the counsel of record had entered her appearance as such only for the purpose of withdrawing the appeal.

More importantly, Pioneer also conveniently fails to disclose that neither the Entry of Appearance of new counsel for Coyukiat nor the Withdrawal of the Appeal bore the conformity of Willy Choa Coyukiat and Goldfinger Transport Corporation--the appellants.

It is well-established that substitution of counsel is not effective without the conformity of client. Moreover, well-entrenched is the rule that pleadings which have the effect of withdrawing the appeal should bear the conformity of the appellant.

Clearly therefore, the Withdrawal of Appeal filed on September 14, 1999 was not effectual because it did not bear the conformity of Coyukiat. The new counsel of Coyukiat (who entered her appearance without Coyukiat's conformity in substitution of the counsel of record) cannot reasonably expect that she will be allowed by the Court of Appeals to withdraw the appeal on her own. This is especially so when even her substitution of the counsel of record does not bear the conformity of the appellants.

In a long line of cases, the court has ruled that the attorney of record is regarded as the counsel who should be held responsible for the conduct of the case (*Fojas vs. Navarro*, 32 SCRA 476, 485 [1970]).

For a substitution of attorneys to be effectual, the procedure to be followed strictly is as follows:

"In order that there may be substitution of attorneys in a given case, there must be (1) a written application for substitution; (2) the written consent of the client; (3) the written consent of the attorney substituted; and (4) in case such written consent cannot be secured, there must be filed with the application proof of service of notice of such motion upon the attorney to be substituted, in the manner prescribed by the rules. Unless the foregoing formalities are complied with, substitution will not be permitted, and the attorney who properly appeared last in the case, before such application for substitution, will be regarded as the attorney of record and will be held responsible for the proper conduct of the case." (*Adarne vs. Aldaba*, A.C. No. 801, June 27, 1978; *Cortez, et al. vs. CA, et al.*, L-32547, May 9, 1978; *Ramos vs. Potenciano*, 118 Phil. 1435; and *U.S. vs. Borromeo*, 20 Phil. 189).

In this case, therefore, the Withdrawal of Appeal filed by a new counsel who substituted the counsel of record--Atty. Ronaldo Reyes, without bearing the conformity of Coyukiat was a mere scrap of paper.

This is precisely the reason why the Court of Appeals issued a resolution requiring the appellant to submit his conformity to the withdrawal.

As mentioned above, the appellants only manifested their desire to withdraw the appeal, by way of the signature of Coyukiat in his behalf and in behalf of Goldfinger Transport Corporation, on September 29, 1999.

This conformity was taken note of by the Court of Appeals on October 8, 1999 when it dismissed the appeal.

Clearly, therefore, even if we were to follow petitioner's argument that a withdrawal of appeal is a matter of right and needs no further action from the court, in this case the intention of withdrawing the appeal was only properly made known to the court by Coyukiat and Goldfinger Transport Corp. on September 29, 1999.

By that time, respondents had already filed their Motion to Execute Against the Injunction Bond.

It is, therefore, not factually and legally accurate for petitioner Pioneer to claim that the Court of Appeals had already lost jurisdiction over the case when the Motion to Execute Against the Injunction Bond was filed.[28]

In its reply to the comment of the respondents, the petitioner avers that the compliance to the CA Resolution of September 16, 1999, to submit the appellants' conformity to the substitution of new counsel and the withdrawal of the appeal was a ratification of the withdrawal of the appeal by the new counsel which should be deemed effective as of the date of the filing of the notice of withdrawal of appeal, or on September 14, 1999.

For its part, the CA ruled that it still retained jurisdiction over the appeal when the respondents filed their motion for execution of the bond with the said court, the supervening finality of the RTC decision notwithstanding:

The record shows that the withdrawal of their appeal by appellants Willy Choa Coyukiat and Goldfinger Transport Corporation from the decision rendered in Civil Case No. Q-95-24462 was approved by the Thirteenth Division of this Court only on October 8, 1999. Having preceded the resolution to the effect issued in CA-G.R. CV No. 61310 (p. 92, Rollo) by twenty-three (23) days, there is no gainsaying the fact that the petitioners' filing of their application for damages against the injunction bond on September 15, 1999 (pp. 72-75, *ibid.*) was still well within the time frame the law prescribes therefor. That this Court still had jurisdiction over the case when the petitioners' Motion for Execution Against the Injunction Bond was filed is evident from the referral thereof to the court *a quo* in the same order which granted the appellants' withdrawal of their appeal (p. 92, *ibid.*). The supervening finality of the decision in Civil Case No. Q-95-24462 notwithstanding, the respondent court clearly committed grave abuse of discretion in denying the petitioners' motion to resolve their application for damages solely on the ground that the withdrawal of the appeal rendered its Decision dated December 4, 1998 final and executory (p. 28, *ibid.*).[29]

The contention of the petitioner does not persuade.

First. The notice of withdrawal of appeal filed by the Luis Q.U. Uranza, Jr. & Associates on September 14, 1999 with the CA was a mere scrap of paper, absent a valid substitution of counsel. The counsel of record as of September 14, 1999 was the Padilla Reyes & De la Torre Law Office. On the said date, the law office filed a motion with the CA to withdraw as counsel for the appellants, while the Luis Q.U. Uranza, Jr. & Associates filed the notice of withdrawal of appeal for the appellants. In the case of *Santana-Cruz v. Court of Appeals*,[30] this Court enumerated the essential requisites of a valid substitution of counsel:

... No substitution of counsel of record is allowed unless the following essential requisites of a valid substitution of counsel concur: (1) there must be a written request for substitution; (2) it must be filed with the written consent of the client; (3) it must be with the written consent of the attorney to be substituted; and (4) in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution was served on him in the manner prescribed by the Rules of Court. ...[31]

There was clearly no compliance to these essential requisites. It was only on September 16, 1999 when the CA granted the motion of the Padilla Reyes & De la Torre Law Office to withdraw as counsel for the appellants that the withdrawal of the said counsel and its substitution by the Luis Q.U. Uranza, Jr. & Associates became effective.

Second. Section 3, Rule 50 of the Rules of Court, as amended, reads:

Section 3. Withdrawal of appeal. - An appeal may be withdrawn as a matter of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

We agree with the respondents that the notice of withdrawal of appeal of the appellants in CA-G.R. CV No. 61310 filed on September 14, 1999 was not self-executory, and did not render the trial court's December 4, 1998 Decision final and executory. While we agree with the petitioner that under Section 3, Rule 50 of the Rules of

Court, an appeal may be withdrawn by the appellants as a matter of right at any time before the filing of the appellees' brief; however, the rule does not apply in this case because the notice of withdrawal of appeal filed in CA-G.R. CV No. 61310 by the Luis Q.U. Uranza, Jr. & Associates did not bear the appellants' conformity thereto. It bears stressing that the counsel of the appellants was a mere agent holding a special power of attorney to act for and in behalf of the principal respecting the ordinary course of the appealed case. There was a need for the appellants, as the principals, to execute a special power of attorney specifically authorizing the withdrawal of a perfected appeal.[32] Absent a special power of attorney expressly authorizing their counsel to withdraw their appeal, or in lieu thereof, the written conformity of the appellants to the withdrawal of their appeal, the notice of withdrawal of appeal by the new counsel of the appellants was a mere scrap of paper.

Third. The submission by the appellants on September 28, 1999 of the requisite conformity to the withdrawal of their appeal should not be given retroactive effect so as to foreclose the right of the respondents to file with the CA their motion to execute against the injunction bond, thus enabling the petitioner to escape liability on the same. As ratiocinated by the CA:

... Having successfully enjoined the encashment of the checks they issued through the surety bond issued by the private respondent (pp. 55-58, *ibid.*), Willy Choa Coyukiat and Goldfinger Transport Corporation were able to use and dispose of the petitioners' buses (p. 134, *ibid.*) and to evade the satisfaction of the decision rendered in Civil Case No. Q-95-24462 pending appeal (pp. 76-77, *ibid.*). Far from acknowledging the judgment debt, therefore, it appears that the withdrawal of the appeal was merely calculated to further frustrate the satisfaction of the same.[33]

The notice of withdrawal of appeal was deemed filed only on September 28, 1999 upon compliance with the September 16, 1999 Resolution of the CA. The appeal of the appellants was effectively withdrawn and dismissed before October 8, 1999 when the CA issued its resolution therein. The petitioner should not be benefited by the deleterious manipulation of the rules of procedure.

On the second ground, the petitioner avers that the respondents failed to serve a copy of their (respondents') motion to execute on the bond as mandated by Section 20, Rule 51 of the Rules of Court, as amended, which reads:

- The application for damages must be filed in the same case where the bond was issued;
- Such application for damages must be filed before the entry of judgment; and
- After hearing with notice to the surety.[34]

In *International Container Terminal Services, Inc. v. Court of Appeals*,[35] this Court ruled that due notice to the adverse party and its surety setting forth the facts supporting the applicant's right to damages and the amount thereof under the bond is indispensable. The surety should be given an opportunity to be heard as to the reality or reasonableness of the damages resulting from the wrongful issuance of the writ.[36] In the absence of due notice to the surety, therefore, no judgment for damages may be entered and executed against it.

In this case, the petitioner was not served with a copy of the motion to execute on the bond filed by the respondents with the CA in CA-G.R. CV 61310. But the records show that the CA directed the petitioner to file its comment on the said motion.[37] On November 4, 1999, the petitioner filed its comment on the respondents' motion, and on December 9, 1999, the respondents filed their motion to resolve with the trial court, serving a copy thereof to the petitioner. It cannot, thus, be gainsaid that the petitioner was deprived of its right to be heard on the respondents' motion to execute on the bond.

We also agree that the Court of Appeals had the authority to remand to the court of origin the resolution of the

motion to execute against the injunction bond after the parties adduced their respective evidence on the motion. To repeat, the respondents' motion to execute was filed earlier than the motion to withdraw the appeal, and more importantly, before the December 4, 1998 Decision of the court of origin became final and executory.[38]

On the third and fourth grounds, the same should be addressed to and resolved by the trial court after due hearing and presentation of evidence. As it was, the trial court denied the motion of the respondents on its finding that it had no jurisdiction to take cognizance of the motion, without affording the parties the right to adduce evidence thereon.

IN LIGHT OF ALL THE FOREGOING, the Petition is DENIED DUE COURSE. The decision of the Court of Appeals is AFFIRMED. The RTC Quezon City, Branch 223, is directed to resolve on the merits the Motion to Execute Against Injunction Bond filed by the respondents after the parties shall have adduced their respective evidence in Civil Case No. Q-95-24462 with dispatch.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Quisumbing, J., on official leave.

[1] Penned by Associate Justice Fermin Martin, Jr., with Associate Justices Oswaldo D. Agcaoili and Eriberto U. Rosario, Jr. concurring.

[2] Entitled *De Dios Transportation Co. Inc. and De Dios Marikina Transit Corp. v. Hon. Regional Trial Court of Quezon City, Branch 22, and Pioneer Insurance and Surety Corporation*.

[3] Rollo, p. 39.

[4] *Id.* at 40.

[5] *Id.* at 57.

[6] The complaint was entitled and docketed as follows: *Willy Choa Coyukiat and Goldfinger Transport Corporation v. De Dios Transportation Co., Inc., De Dios Marikina Transport Corp., and Philbanking Corporation*, Civil Case No. Q-95-24462.

[7] *Id.* at 64-65.

[8] *Id.* at 80.

[9] Annex "D."

[10] Rollo, p. 80.

[11] *Id.* at 84.

[12] Annex "F," Petition, *id.* at 85-87.

[13] Annex "G," Petition, *id.* at 88-91.

[14] *Id.* at 89-90.

[15] Annex "I," Comment, *id.* at 194.

[16] Annex "2," Comment, *id.* at 195.

[17] Rollo, p. 92.

[18] Id. at 97.

[19] Id. at 98.

[20] Id. at 103-107.

[21] Id. at 109.

[22] Id. at 112.

[23] Id. at 50.

[24] 214 SCRA 456 (1992).

[25] 2 SCRA 272 (1961).

[26] 185 SCRA 504 (1990).

[27] Rollo, pp. 24-25.

[28] Id. at 181-184.

[29] Id. at 47-48.

[30] 361 SCRA 520 (2001).

[31] Id. at 532.

[32] Lim Pin v. Liao Tan, 115 SCRA 290 (1982).

[33] Rollo, p. 48.

[34] Paramount Insurance Corporation v. Court of Appeals, 310 SCRA 377 (1999).

[35] Supra.

[36] Ibid.

[37] Rollo, pp. 92-101.

[38] Ponce Enrile v. Capulong, 185 SCRA 504 (1990).

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