

**STRONGHOLD INSURANCE COMPANY, INC., PETITIONER, VS.
HONORABLE NEMESIO S. FELIX, IN HIS CAPACITY AS PRESIDING
JUDGE OF BRANCH 56, REGIONAL TRIAL COURT, MAKATI CITY,
RICHARD C. JA...**

G.R. NO. 148090. November 28, 2006

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 4 May 2001 Decision[2] of the Court of Appeals in CA-G.R. SP No. 63334.

The Antecedent Facts

Emerita Garon ("Garon") filed an action for sum of money docketed as Civil Case No. 99-1051 against Project Movers Realty and Development Corporation ("Project Movers") and Stronghold Insurance Company, Inc. ("Stronghold Insurance"). In an Order[3] dated 19 September 2000, the Regional Trial Court of Makati City, Branch 56[4] ("trial court") granted Garon's motion for summary judgment. The trial court rendered judgment in favor of Garon, as follows:

- Defendant Project Movers Realty and Development Corporation is hereby directed to pay plaintiff as follows:

On Promissory Note No. PMRDC 97-12-332:

(A) The sum of PESOS: Six Million Eighty Eight Thousand Seven Hundred Eighty Three and 68/100 (P6,088,783.68) under PMRDC-97-12-332;

(B) Interest thereon at 36% per annum computed from 19 December 1997 until fully paid;

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

On Promissory Note No. PMRDC No. 97-12-333:

(A) The peso equivalent of the sum of DOLLARS: One Hundred Eighty Nine Thousand Four Hundred Eighteen and 75/100 (US\$189,418.75) under PMRDC-97-12-333;

(B) Interest thereon at the stipulated rate of 17% per annum computed from 31 December 1997;

(C) A penalty of 3% per month computed from 03 November 1998 until full payment on all unpaid amounts consisting of the principal and interest.

- Defendant Stronghold Insurance Company, Inc. is hereby held jointly and solidarily liable to plaintiff Mrs. Garon in the amount of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY FIVE THOUSAND ONE

HUNDRED THIRTY NINE AND EIGHTY FIVE CENTAVOS (P12,755,139.85).

- Defendants Project Movers Realty and Development Corporation and Stronghold Insurance Company, Inc. are also ordered to pay plaintiff Mrs. Garon jointly and severally the sum of PESOS: TWO HUNDRED THOUSAND as attorney's fees plus costs of suit.

All other claims and counter-claims of the parties are hereby ordered dismissed.

SO ORDERED.[5]

On 6 October 2000, Garon filed a motion for execution pending appeal. On 10 October 2000, Stronghold Insurance moved for the reconsideration of the 19 September 2000 Order of the trial court.

In an Order[6] dated 23 January 2001, the trial court denied Stronghold Insurance's motion for reconsideration for lack of merit.

In an Order[7] dated 8 February 2001, the trial court granted Garon's motion for execution pending appeal. The trial court ordered Garon to post a bond of P20 million to answer for any damage that Project Movers and Stronghold Insurance may sustain by reason of the execution pending appeal. On 14 February 2001, Branch Clerk of Court Richard C. Jamora ("Jamora") issued a writ of execution pending appeal.

On 16 February 2001, Stronghold Insurance filed a notice of appeal.

Stronghold Insurance also filed a petition for certiorari before the Court of Appeals to assail the trial court's 8 February 2001 Order and the writ of execution pending appeal. In its Resolution[8] of 23 February 2001, the Court of Appeals enjoined the trial court, Jamora and Garon from enforcing the 8 February 2001 Order. However, it turned out that notices of garnishment had been served before the Court of Appeals issued the temporary restraining order (TRO). In its Order[9] dated 7 March 2001, the trial court denied Stronghold Insurance's Urgent Motion for the recall of the notices of garnishment.

The Ruling of the Court of Appeals

In its 4 May 2001 Decision, the Court of Appeals dismissed the petition of Stronghold Insurance and lifted the TRO it issued.

The Court of Appeals sustained the trial court in issuing the writ of execution pending appeal on the ground of illness of Garon's husband. Citing Articles 68[10] and 195[11] of the Family Code, the Court of Appeals held that while it was not Garon who was ill, Garon needed the money to support her husband's medical expenses and to support her family.

Stronghold Insurance alleged that its liability is limited only to P12,755,139.85 in accordance with its surety bond with Project Movers, plus attorney's fees of P200,000 as awarded by the trial court. However, the amount in the writ of execution pending appeal and notices of garnishment is P56 million. Nevertheless, the Court of Appeals ruled that Stronghold Insurance failed to show that more than P12,755,139.85 had been garnished.

Hence, the petition before this Court.

In its Resolution[12] dated 8 August 2001, this Court issued a TRO to restrain and enjoin the enforcement of the 8 February 2001 Order and the writ of execution pending appeal until further orders from this Court.

The Issue

The sole issue is whether there are good reasons to justify execution pending appeal.

The Ruling of This Court

The petition has merit.

Requisites of Execution Pending Appeal

Execution pending appeal is governed by paragraph (a), Section 2, Rule 39 of the 1997 Rules of Civil Procedure ("Rules") which provides:

SEC. 2. Discretionary execution. -

(a) Execution of a judgment or final order pending appeal. - On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

x x x x

Execution pending appeal is an exception to the general rule. The Court explained the nature of execution pending appeal as follows:

Execution pending appeal is an extraordinary remedy, being more of the exception rather than the rule. This rule is strictly construed against the movant because courts look with disfavor upon any attempt to execute a judgment which has not acquired finality. Such execution affects the rights of the parties which are yet to be ascertained on appeal.[13]

The requisites for the grant of an execution of a judgment pending appeal are the following:

- (a) there must be a motion by the prevailing party with notice to the adverse party;
- (b) there must be good reasons for execution pending appeal;
- (c) the good reasons must be stated in the special order.[14]As a discretionary execution, execution pending appeal is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal.[15] Good reasons, special, important, pressing reasons must exist to justify execution pending appeal; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequality.[16] Good reasons consist of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer should the appealed judgment be reversed later.[17]

Existence of Good Grounds to Justify Execution Pending Appeal

In this case, Garon anchors the motion for execution pending appeal on the following grounds:

- (a) any appeal which Project Movers and Stronghold Insurance may take from the summary judgment would be patently dilatory;
- (b) the ill health of Garon's spouse and the spouses' urgent need for the funds owed to them by Project Movers and Stronghold Insurance constitute good reasons for execution pending appeal; and

(c) Garon is ready and willing to post a bond to answer for any damage Project Movers and Stronghold Insurance may suffer should the trial court's decision be reversed on appeal.[18] In granting the motion for execution pending appeal, the trial court ruled:

A perusal of [t]he records of the instant case will sustain plaintiff's claim that defendants raised no valid or meritorious defenses against the claims of plaintiff. The Court notes with interest the fact that defendants admitted the genuineness and due execution of the Promissory Notes and Surety Agreement sued upon in this case.

The instant case simply turns on the issues of (i) whether or not there was a valid, due and demandable obligation and (ii) whether or not the obligation had been extinguished in the manner provided for under our laws. The Answers of defendants contained admissions that the obligation was valid and subsisting and that the same was due and unpaid. Founded as it is on Promissory Notes and Surety Agreements, the authenticity and due execution of which had been admitted, the Court is convinced that plaintiff is entitled to a judgment in her favor and that any appeal therefrom will obviously be a ploy to delay the proceedings (See *Home Insurance Company vs. Court of Appeals*, 184 SCRA 318).

The second ground relied upon by plaintiff is also impressed with merit. In *Ma-ao Sugar Central vs. Canete*, 19 SCRA 646, the Supreme Court held that the movant was entitled to execution pending appeal of an award of compensation, ruling that his ill health and urgent need for the funds so awarded were considered "good reasons" to justify execution pending appeal (See also *De Leon vs. Soriano*, 95 Phil. 806).

It is established that plaintiff's spouse, Mr. Robert Garon, suffers from coronary artery disease, benign Prostatic Hyperplasia and hyperlipidemia. He is undergoing continuous treatment for the foregoing ailments and has been constrained to make serious lifestyle changes, that he can no longer actively earn a living. As shown in plaintiff's verified motion, she has urgent need of the funds owed to her by defendants in order to answer for her husband's medical expenses and for the day-to-day support of the family considering her husband's ill health. The Court therefore finds and holds that there exists good reasons warranting an execution pending appeal.[19]

The trial court ruled that an appeal from its 19 September 2000 Order is only a ploy to delay the proceedings of the case. However, the authority to determine whether an appeal is dilatory lies with the appellate court.[20] The trial court's assumption that the appeal is dilatory prematurely judges the merits of the main case on appeal.[21] Thus:

Well-settled is the rule that it is not for the trial court to determine the merit of a decision it rendered as this is the role of the appellate Court. Hence, it is not within the competence of the trial court, in resolving the motion for execution pending appeal, to rule that the appeal is patently dilatory and to rely on the same as the basis for finding good reason to grant the motion.[22]

In a Decision[23] promulgated on 7 May 2004 in CA-G.R. CV No. 69962 entitled "*Emerita Garon v. Project Movers Realty and Development Corporation, et al.*," the Court of Appeals sustained the trial court in rendering the summary judgment in Civil Case No. 99-1051. However, the Court of Appeals ruled that Stronghold Insurance could not be held solidarily liable with Project Movers. The Court of Appeals ruled that the surety bond between Project Movers and Stronghold Insurance expired on 7 November 1998 before the maturity of Project Movers' loans on 17 December 1998 and 31 December 1998, respectively. Hence, when the loans matured, the liability of Stronghold Insurance had long ceased. The Court of Appeals affirmed the trial court's 19 September 2000 Order with modification by ruling that Stronghold Insurance is not liable to Garon.

The 7 May 2004 Decision of the Court of Appeals is not yet final. It is the subject of a petition for review filed by Garon before this Court. The case, docketed as G.R. No. 166058, is still pending with this Court. While this Court

may either affirm or reverse the 7 May 2004 Decision of the Court of Appeals, the fact that the Court of Appeals absolved Stronghold Insurance from liability to Garon shows that the appeal from the 19 September 2000 Order is not dilatory on the part of Stronghold Insurance.

We agree with Stronghold Insurance that Garon failed to present good reasons to justify execution pending appeal. The situations in the cases cited by the trial court are not similar to this case. In *Ma-Ao Sugar Central Co., Inc. v. Cañete*,^[24] Cañete filed an action for compensation for his illness. The Workmen's Compensation Commission found the illness compensable. Considering Cañete's physical condition and the Court's finding that he was in constant danger of death, the Court allowed execution pending appeal. In *De Leon, et al. v. Soriano, et al.*,^[25] De Leon, et al. defaulted on an agreement that was peculiarly personal to Asuncion. The agreement was valid only during Asuncion's lifetime. The Court considered that Soriano's health was delicate and she was 75 years old at that time. Hence, execution pending appeal was justified. In this case, it was not Garon, but her husband, who was ill.

The posting of a bond, standing alone and absent the good reasons required under Section 2, Rule 39 of the Rules, is not enough to allow execution pending appeal. The mere filing of a bond by a successful party is not a good reason to justify execution pending appeal as a combination of circumstances is the dominant consideration which impels the grant of immediate execution.^[26] The bond is only an additional factor for the protection of the defendant's creditor.^[27]

The exercise of the power to grant or deny a motion for execution pending appeal is addressed to the sound discretion of the trial court.^[28] However, the existence of good reasons is indispensable to the grant of execution pending appeal.^[29] Here, Garon failed to advance good reasons that would justify the execution pending appeal.

Execution Pending Appeal against Stronghold Insurance Exceeds its Liability under the Trial Court's Order

The dispositive portion of the trial court's 19 September 2000 Order states:

WHEREFORE, premises considered[,] this Court hereby renders judgment in favor of the plaintiff Mrs. Emerita I. Garon as follows:

x x x x

- Defendant Stronghold Insurance Company, Inc. is hereby held jointly and solidarily liable to plaintiff Mrs. Garon in the amount of PESOS: TWELVE MILLION SEVEN HUNDRED FIFTY FIVE THOUSAND ONE HUNDRED THIRTY NINE AND EIGHTY FIVE CENTAVOS (P12,755,139.85).

- Defendants Project Movers Realty and Development Corporation and Stronghold Insurance Company, Inc. are also ordered to pay plaintiff Mrs. Garon jointly and severally the sum of PESOS: TWO HUNDRED THOUSAND as attorney's fees plus costs of suit.

x x x x^[30]

The writ of execution pending appeal issued against Project Movers and Stronghold Insurance is for P56 million.^[31] However, the Court of Appeals ruled that Stronghold Insurance failed to show that more than P12,755,139.85 had been garnished. The ruling of the Court of Appeals unduly burdens Stronghold Insurance because the amount garnished could exceed its liability. It gives the sheriff the discretion to garnish more than P12,755,139.85 from the accounts of Stronghold Insurance. The amount for garnishment is no longer ministerial on the part of the sheriff. This is not allowed. Thus:

Leaving to the Sheriff, as held by the Court of Appeals, the determination of the exact amount due under the Writ would be tantamount to vesting such officer with judicial powers. He would have to receive evidence to

determine the exact amount owing. In his hands would be placed a broad discretion that can only lead to delay and open the door to possible abuse. The orderly administration of justice requires that the amount on execution be determined judicially and the duties of the Sheriff confined to purely ministerial ones.[32]

WHEREFORE, we SET ASIDE the 4 May 2001 Decision of the Court of Appeals in CA-G.R. SP No. 63334. We also SET ASIDE the 8 February 2001 Order of the Regional Trial Court of Makati City, Branch 56 and the writ of execution pending appeal issued on 14 February 2001. We make permanent the temporary restraining order we issued on 8 August 2001.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Marina L. Buzon with Associate Justices Eubulo G. Verzola and Bienvenido L. Reyes, concurring. Rollo, pp. 25-34.

[3] Id. at 78-89.

[4] Through Presiding Judge Nemesio S. Felix.

[5] Rollo, pp. 88-89.

[6] Id. at 122.

[7] Id. at 123-126.

[8] Id. at 129-130.

[9] CA rollo, p. 136.

[10] Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[11] Art. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

(1) The spouses;

(2) Legitimate ascendants and descendants;

(3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;

(4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

(5) Legitimate brothers and sisters, whether of the full or half-blood.

[12] Rollo, pp. 171-173.

[13] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, 17 June 2004, 432 SCRA 360, 389.

[14] Maceda, Jr. v. Development Bank of the Philippines, 372 Phil. 107 (1999).

[15] Villamor v. National Power Corporation, G.R. No. 146735, 25 October 2004, 441 SCRA 329.

- [16] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, 17 June 2004, 432 SCRA 360.
- [17] Diesel Construction Company, Inc. v. Jollibee Foods Corp., 380 Phil. 813 (2000).
- [18] CA rollo, pp. 75-81.
- [19] Rollo, pp. 124-125.
- [20] Villamor v. National Power Corporation, G.R. No. 146735, 25 October 2004, 441 SCRA 329.
- [21] Id.
- [22] Planters Products, Inc. v. Court of Appeals, 375 Phil. 618, 623 (1999).
- [23] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid, concurring. Rollo, pp. 275-285-A.
- [24] 125 Phil. 1047 (1967).
- [25] 95 Phil. 806 (1954).
- [26] Flexo Manufacturing Corporation v. Columbus Foods, Incorporated, G.R. No. 164857, 11 April 2005, 455 SCRA 272.
- [27] Id.
- [28] Villamor v. National Power Corporation, supra note 20.
- [29] Id.
- [30] Rollo, p. 88.
- [31] Id. at 127.
- [32] See Windor Steel Mfg. Co., Inc. v. Court of Appeals, No. L-34332, 27 January 1981, 102 SCRA 275, 282.

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