

**BANGKOK BANK PUBLIC COMPANY LIMITED, PETITIONER, VS.
THELMA U. LEE, MAYBELLE L. LIM, DANIEL U. LEE, SAMUEL U. LEE
AND MIDAS DIVERSIFIED EXPORT CORPORATION, RESPONDENTS.**

G.R. NO. 159806. January 20, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision[1] dated July 4, 2003 of the Court of Appeals in CA-G.R. SP No. 76078, which nullified the February 12, 2003 Order[2] of the Regional Trial Court (RTC) of Makati City, Branch 141. The said RTC Order directed the execution of the Decision[[3]] dated May 31, 2002 and the Partial Decision[4] dated March 23, 2000, as amended by Resolution[5] of June 19, 2000.

The facts, as borne by the records, are as follows:

Petitioner Bangkok Bank Public Company Limited is a foreign corporation engaged in the banking business in the Philippines.

Respondent Midas Diversified Export Corporation ("Midas" for brevity) is a corporation organized under Philippine laws. Individual respondents Thelma U. Lee, Maybelle L. Lim, Daniel U. Lee, and Samuel U. Lee are the owners, directors, and managers of Midas.

Sometime in 1996, petitioner provided Midas a credit line of about \$2,000,000. When Midas refused to pay its outstanding obligation, petitioner, on May 7, 1998, filed with the Regional Trial Court of Makati City, Branch 141, an Amended Complaint for Sum of Money with an Urgent Application for Issuance of a Writ of Preliminary Attachment[6] docketed as Civil Case No. 98-628 against respondents.

After respondents filed an Answer,[7] petitioner filed a Motion for Judgment on the Pleadings and/or Summary Judgment.[8] The motion was denied. Petitioner filed a Motion for Reconsideration praying for a partial judgment.

The trial court found that a partial judgment can be rendered. The only remaining factual issues would be: (1) petitioner's entitlement to the writ of preliminary attachment; and (2) the parties' claim for damages against each other. In a Partial Decision[9] dated March 23, 2000, the trial court ruled:

WHEREFORE, partial decision is hereby rendered ordering defendants Midas Diversified Export Corporation and individual defendants Thelma Lee, Maybelle L. Lim, Daniel U. [Lee] and Samuel U. Lee, jointly and severally, to pay plaintiff the sum of US\$1,998,554.60 plus legal rate of interest at 12% per annum effective upon the filing of the complaint on 12 March 1998 until fully paid; and ordering the same individual defendants to pay, jointly and severally, plaintiff the sum of US\$800,000.00 representing the account of MHI plus legal rate of interest at 12% per annum effective upon the filing of the amended complaint on 7 May 1998 until fully paid.

SO ORDERED.[10]

However, in its Resolution[11] dated June 19, 2000, the trial court amended the afore-quoted fallo, to wit:

WHEREFORE, in view of all the foregoing, Resolution is hereby issued:

- Denying defendants' motion for reconsideration of the partial decision.

- Amending the dispositive portion of the partial decision to read as follows:

WHEREFORE, partial decision is hereby rendered ordering defendant Midas Diversified Export Corporation and individual defendants Thelma Lee, Maybelle L. Lim, Daniel U. Lee and Samuel U. Lee, jointly and severally, to pay plaintiff the sum of US\$1,998,554.60 plus legal rate of interest at 12% per annum effective on 28 January 1998 when the account became due and payable until fully paid, and liquidated damages equivalent to 24% of the principal amount due, per annum, effective from said due date until fully [paid]; ordering the same individual defendants to pay, jointly and severally, the sum of US\$800,000.00 representing the account of MHI plus legal rate of interest of 12% per annum effective on 27 February 1999 when the account became due and demandable until fully paid, and liquidated damages equivalent to 24% of the principal amount per annum effective from said due date until fully paid.

- Granting plaintiff's motion for execution pending appeal perforce ordering the immediate execution of the partial decision.

SO ORDERED.[12]

Not content, respondents filed before the Court of Appeals a Petition for Certiorari with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.[13]

The appellate court upheld the decision of the trial court. However, it ruled that a partial decision cannot be the subject of execution until after judgment is rendered on the entire case. In a Decision promulgated on February 28, 2001, the portion ordering the immediate execution of the partial decision was annulled and set aside.[14]

Subsequently, on May 31, 2002, the trial court issued a Decision[15] upholding the validity of the writ of preliminary attachment and dismissing defendants' claim for damages for lack of evidence.[16]

On July 11, 2002, petitioner filed a motion for execution pending appeal. The next day, July 12, 2002, respondents filed with the trial court a Notice of Appeal of its May 31, 2002 decision.

Meanwhile, on February 12, 2003, the trial court issued the assailed Order[17] granting the motion for execution pending appeal. A Writ of Execution[18] of the partial decision as amended and of the decision on the remaining issues was promptly issued on February 20, 2003.

However, respondents filed anew before the Court of Appeals a Petition for Certiorari with Preliminary Injunction/Temporary Restraining Order[19] impugning the February 12, 2003 Order of the trial court. The appellate court granted the petition. It held that the assailed Order failed to state good reasons to justify immediate execution.

Hence, the instant petition for review anchored on the following grounds:

I.

Whether or not the Partial Decision is subject to judicial review, and whether or not Respondents' liability to pay the Bank is now the "law of the case".

II.

Assuming that the Partial Decision could still be appealed, whether or not Respondents had appealed the

Partial Decision.

III.

Assuming that the Partial Decision is not final and executory, whether or not there are nonetheless good reasons justifying its execution pending appeal.[20]

Petitioner contends that respondents' Notice of Appeal clearly indicated that they were only appealing the subsequent decision on the remaining factual issues. Petitioner claims the partial decision was never appealed and has therefore become final and executory.

Further, petitioner posits that since the RTC has ruled on the remaining factual issues, the partial decision is no longer an interlocutory but a final order that may already be the subject of execution.

However, respondents counter that the appeal from the trial court's decision on the remaining issues necessarily included appeal of its partial decision. They insist that the partial decision has been integrated in the decision on the remaining issues. Further, they argue that the remaining issues are intimately related to the matters contained in the partial decision.

Lastly, respondents argue that the February 12, 2003 Order of the trial court granting execution pending appeal did not state good reasons to justify the same; and that in fact, no good reason exists to warrant execution pending appeal.

We find no merit in the petition.

The Notice of Appeal filed by respondents stated that they were appealing the subsequent decision dated May 31, 2002, which disposed of the remaining factual issues. To our mind, the said appeal must be deemed to include the prior partial judgment as amended. The decision on the remaining factual issues is not the final and appealable judgment that finally disposes of the case on the merits. It must, therefore, only be appealed together with the amended partial judgment.[21]

Having settled the first and second issues, we come to the third. We note that when the RTC ordered the issuance of a writ of execution, judgment had already been rendered on the remaining factual issues such that the partial judgment had become a complete judgment. Thus, a writ of execution could already issue.

However, since appeal had been duly perfected, though not yet finally resolved, execution was not a matter of right, but of discretion provided good reasons therefor existed. The compelling grounds for the issuance of the writ must be stated in a special order after due hearing.

Section 2, Rule 39 of the Rules of Court provides:

SEC. 2. Discretionary execution. —

(a) Execution of a judgment or a 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. (Underscoring ours.)

...

Unfortunately, the assailed Order of the trial court failed to state good reasons for the issuance of the writ. The trial court deemed that execution should issue as a matter of right because it mistakenly held that the partial decision had become final and executory. As discussed above, the latter proposition is without legal basis.

Clearly, the assailed Order of the trial court, which granted the motion for execution pending appeal, fell short of the requirements of Section 2, Rule 39. Where the order of execution is not in conformity with the rules, the same is null and void.[22] Therefore, the Court of Appeals did not err in declaring the said Order nullified.

WHEREFORE, the assailed Decision dated July 4, 2003 of the Court of Appeals in CA-G.R. SP No. 76078, which nullified the February 12, 2003 Order of the Regional Trial Court of Makati City, Branch 141, is **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Carpio, Carpio-Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 45-60. Penned by Associate Justice Mariano C. Del Castillo, with Associate Justices Cancio C. Garcia (now a member of this Court), and Eliezer R. De los Santos concurring.

[2]Id. at 179-182.

[3]Id. at 174-176.

[4] Id. at 101-114.

[5] Id. at 131-135.

[6] Id. at 63-75.

[7] Id. at 76-85.

[8]Id. at 86-100.

[9] Supra, note 4.

[10] Id. at 114.

[11]Supra, note 5.

[12] Id. at 134-135.

[13] Id. at 136-152.

[14]Id. at 172.

[15] Supra, note 3.

[16]Id. at 176.

[17]Supra, note 2.

[18] CA Rollo, pp. 196-198.

[19] Id. at 2-22.

[20]Rollo, p. 505.

[21] De Leon v. Court of Appeals, G.R. No. 138884, 6 June 2002, 383 SCRA 216, 227-228.

[22] Rosales v. Court of Appeals, G.R. No. 137566, 28 February 2001, 353 SCRA 179, 188.

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