

**ENGR. WILDEMAR CAPA AND DIMPNA CAPA, PETITIONERS, VS.
COURT OF APPEALS, JESSIE A. BELARMINO, UNITED VISMIN
SHIPPING LINES, INC., CAPT. AND MRS. RENE D. YHAPON, JOCELYN
RACO AND ...**

G.R. NO. 160082. September 19, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for certiorari and mandamus filed by Engr. Wildemar Capa and Dimpna Capa (petitioners) assailing the Resolution[1] dated February 13, 2003 of the Court of Appeals (CA) which noted without action petitioners' Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages and the Resolution [2]dated August 27, 2003 denying petitioners' motion for reconsideration.

Petitioners were the owners of a motor banca named M/B CLM Zoltan which they used for their fish trading business. United Vismin Shipping Lines, Inc. (private respondent United Vismin) was the owner of the motorized vessel named M/V Cebu Pearl. In the evening of April 21, 1993, M/B CLM Zoltan and M/V Cebu Pearl manned by Captain Rene Yhapon collided in the waters of Dumaguete City which resulted in the sinking of petitioners' M/B CLM Zoltan.

On August 27, 1993, petitioners filed with the Regional Trial Court (RTC) of Cebu City, Branch 8, a complaint[3] for damages, attorneys fees against private respondent United Vismin and Captain and Mrs. Rene Yhapon (private respondent Spouses Yhapon).

After trial on the merits, the RTC rendered a Decision[4] dated March 9, 2001 in favor of petitioners, the dispositive portion of which reads:

In view of the foregoing considering that a preponderance of evidence exists in favor of the plaintiffs and against the defendants, judgment is hereby rendered ordering the defendants solidarily to pay the plaintiffs:

- 1) actual damages in the amount of P483,053.08;
- 2) P100,000.00 representing loss of profits;
- 3) Moral damages in the amount of P100,000.00;
- 4) Attorney's fees in the amount of P50,000.00;
- 5) Exemplary damages in the amount of P20,000.00;
- 6) P3,792.00 as litigation expenses.

SO ORDERED.[5]

Private respondents United Vismin and Spouses Yhapon filed their notice of appeal[6] on April 18, 2001. In its Order[7] dated June 6, 2001, the RTC gave due course to the appeal and ordered the records to be elevated to the CA.

Earlier, on April 2, 2001, petitioners filed an Urgent Motion for Execution Pending Appeal[8] on the ground that private respondent United Vismin had already given notice to the Maritime Industry Authority (MARINA) of the cessation of its operation. The RTC granted petitioners' motion in an Order[9] dated August 20, 2001 after petitioners' submission of a certification from MARINA that private respondent United Vismin had suspended operation of its five vessels. A writ of execution pending appeal was issued to Sheriff Jessie A. Belarmino on September 19, 2001.[10]

On January 14, 2002, Sheriff Belarmino issued a notice of levy[11] addressed to the Regional Director of MARINA levying two vessels registered in the name of private respondent United Vismin, namely MV Island Pearl and MV Sea Pearl.

On January 18, 2002, private respondent Jocelyn Raco (Raco) through her attorney-in-fact, private respondent Jeffrey Tolosa (Tolosa), filed a Third-Party Claim with the RTC claiming ownership over MV Island Pearl and MV Sea Pearl. An Amended Third-Party Claim was subsequently filed on January 24, 2002. A notice of the claim was sent to petitioners by Sheriff Belarmino who required the former to file an indemnity bond in the amount of P2,700,000.00 on February 4, 2002.

On January 25, 2002, private respondent United Vismin and spouses Yhapon filed a Motion to Quash Levy[12] on the ground that petitioners were not required to put up a bond in favor of private respondent United Vismin as security on the latter's part in the event that the appealed decision will be reversed. The RTC in its Order dated February 1, 2002,[13] did not entertain the motion since it has lost jurisdiction over the case with the perfection of the appeal.

On February 6, 2002, the entire records of the civil case were elevated to the CA where the case was docketed as CA G.R. CV No. 74688.

Petitioners filed with the CA a motion to approve sheriff's indemnity bond, posted and received by the Office of the Sheriff on February 18, 2002 for the levy of the vessel MV Island Pearl. An opposition thereto was filed by the third party claimant.

On July 22, 2002, the CA held in abeyance any action on petitioners' motion pending submission of the certified true copy of the surety bond and the certification from the Supreme Court that the surety company is not black-listed.

On October 1, 2002, the CA issued a resolution denying the Motion to approve sheriff's indemnity bond for failure of petitioners to comply with the July 22, 2002 Resolution and noted the opposition. Petitioners' motion for reconsideration was also denied in a Resolution dated January 6, 2003.

On December 5, 2002, petitioners filed with the CA a Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages praying that the third-party claim be denied for it is invalid as it was not signed by Raco but by her alleged attorney-in-fact, Tolosa. Petitioners further prayed that their claim for damages arising from the malicious filing of the third-party claim against Raco and Tolosa be admitted by the CA in the same appealed case.

On February 13, 2002, the CA issued its assailed Resolution, to wit:

Plaintiffs-appellees' "Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages" is NOTED without action. The said motion should have been filed with the Regional Trial Court of Cebu, Branch VIII, Cebu City, and not with this Court.

Petitioners' motion for reconsideration was denied in a Resolution dated August 27, 2003.

Hence the instant petition for certiorari and mandamus on the following grounds:

GROUND FOR CERTIORARI

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN FAILING TO DENY THIRD-PARTY CLAIM FILED BY JOCELYN RACO, WHEN THE SAME IS PALPABLY NULL AND VOID.

GROUND FOR MANDAMUS

THE HONORABLE COURT OF APPEALS UNLAWFULLY NEGLECTED THE PERFORMANCE OF AN ACT SPECIFICALLY ENJOINED BY THE RULES, BY REFUSING TO TAKE COGNIZANCE OF PETITIONERS' CLAIM FOR DAMAGES AGAINST THE THIRD PARTY CLAIMANT, JOCELYN RACO AND JEFFREY TOLOSA, WHO FILED A FRIVOLOUS AND PLAINLY SPURIOUS THIRD-PARTY CLAIM.

Petitioners argue that the third-party claim is a nullity since the affidavit where third-party claimant Raco stated that she is the owner and has the right to possess the levied properties, was not signed by her but by Tolosa, her attorney in-fact, who did not even pretend to be a privy to the transactions entered into by Raco; that no special power of attorney that may have been executed by Raco in favor of Tolosa was attached to the amended third-party claim and neither did the affidavit allege that Tolosa was a duly authorized agent of Raco; that even if Tolosa was authorized by Raco to subscribe the latter's affidavit, the same authority is void ab initio for being contrary to law.

Petitioners claim that the CA has jurisdiction to resolve the Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages since the trial court had lost jurisdiction over the case when the respective appeals of private respondents and petitioners were already perfected and the entire records of the case were already transmitted to the CA on February 6; that such motion is an incident to the execution of the trial court's decision pending appeal before the CA; and that their filing of the motion with the CA is sanctioned by Section 2, Rule 39 of the Rules of Court which provides that after a trial court loses jurisdiction over a case, a motion for execution pending appeal may be filed before the appellate court.

Petitioners further contend that the CA should also take cognizance of their claim for damages arising from the spurious and frivolous third party claim filed by Raco as provided under Section 16, Rule 39 of the Rules of Court; that the transfer of ownership of vessels by private respondent United Vismin to third-party claimant Raco was for the purpose of evading satisfaction of the appealed decision as can be shown by the fact that one day after petitioners sent a letter to MARINA requesting for a certification of private respondent United Vismisn's filing of a notice to suspend operation of its vessels to support their motion for execution pending appeal, private respondent United Vismin filed a petition with MARINA for the transfer of five vessels to Raco, without petitioners' knowledge; that although private respondent United Vismin purportedly sold only three vessels in the Deed of Sale dated January 29, 2002 in favor of Raco, five vessels were included in the petition for transfer to Raco which showed the dubious error in the petition for transfer.

In their Comment, Raco avers that the third party claim was filed in accordance with Section 16, Rule 39 of the Rules of Court; that the levy was never perfected because of petitioners' failure to have the sheriff's indemnity bond approved by the CA despite extensions granted; that the issue that Tolosa as attorney-in-fact of Raco was the one who signed the affidavit of the third party claim should have been brought right at the beginning when petitioner was furnished copy of said document and was presented before the sheriff and during the time when petitioner filed an extension to put up an indemnity bond before the CA.

Private respondents United Vismin and Spouses Yhapon filed their Comment stating that the levy on the vessels

was never perfected for failure of petitioners to have their bond approved by the CA; that as of August 7, 2002, the sheriff had already lifted the levy on one of the vessels; that when petitioners opted not to file an indemnity bond, they should have filed a separate action instead of the several motions filed with CA and with this Court.

In their Reply, petitioners contend that in view of the nullity of the third-party claim filed by Tolosa in behalf of Racó, there was no need for petitioners to post an indemnity bond for the execution pending appeal to proceed; that the issue raised in this petition is the validity of the third-party claim, not the failure to post indemnity bond; no copy of the SPA executed by Racó was attached to the explanation served on petitioners; that Racó failed to controvert the claim of the nullity of the affidavit signed by Tolosa.

The issue for resolution is whether the CA committed grave abuse of discretion when it did not act on petitioners' Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages on the ground that the same should have been filed with the Regional Trial Court of Cebu, Branch VIII, Cebu City.

The petition for certiorari lacks merit.

Section 9, Rule 41 of the Rules of Court explains the instances when the trial court loses jurisdiction over a case:

Sec. 9. Perfection of appeal; effect thereof. - A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

x x x x

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

x x x x

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.

On the other hand, Section 2, Rule 39 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.

x x x x

Clearly, as long as the motion for execution pending appeal is filed within the period for perfecting the appeal and prior to the transmittal of the records to the CA, the trial court may order execution pending appeal upon good reasons to be stated in the Order granting execution pending appeal. The trial court granted petitioners' motion for execution pending appeal and issued the writ of execution commanding sheriff Belarmino to levy the properties of United Vismin.

However, a third party-claim was filed by Raco through her attorney-in-fact Tolosa pursuant to Section 16, Rule 3 of the Rules of Court which provides:

Sec. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty days (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed.

x x x x

In this case, Raco availed of the remedy known as *terceria*,^[14] by serving on the officer making the levy an affidavit of his title and a copy thereof upon petitioners. Upon receipt of such affidavit, sheriff Belarmino who is not bound to keep the properties because of such third party claim, notified petitioners of such claim and required them to post an indemnity bond in the amount of P2,700,000.00 on February 4, 2002 to answer for any liability he may incur by reason of such execution. The matter of the invalidity of the affidavit of the third-party claimant was never raised by petitioners in the trial court which could have still ruled on the same since the records were still with it at the time such third party claim was filed. Moreover, petitioners even filed an indemnity bond in the amount of P1,400,000.00 with the Office of the Sheriff on February 18, 2002.

As the appeal of private respondents United Vismin and Spouses Yhapon had already been perfected and the records were elevated to the CA on February 6, 2002, petitioners then filed with the CA a motion seeking for the approval of the sheriff's indemnity bond they posted on February 18, 2002. The CA then held in abeyance the action therein pending submission of a certified true copy of a surety bond and a certification from the Supreme Court that the surety bond is not black-listed. Subsequently, petitioners' motion to approve bond in a Resolution dated October 1, 2001 was denied for failure to comply with such directive. Despite motions for extension of time to look for a qualified and sufficient indemnity bond affordable, petitioners failed to do so which prompted the CA to deny the same.

Petitioners then filed a Motion to Deny Third-Party Claim with Motion to Admit Claim for Damages which is a complete turn around from their motion to approve indemnity bond. The CA did not commit grave abuse of discretion in not acting on the same since the invalidity of the affidavit of third-party claim should have been raised at the earliest opportunity which is in the trial court. Petitioners could have then moved for the quashal of the same, thus they could not now invoke the jurisdiction of the CA to rule on the same when they in fact had already waived the alleged defect in the affidavit when they sought from the CA the approval of the indemnity bond they posted in the trial court.

We likewise find no basis for the petition for mandamus filed by petitioners to compel the CA to act on petitioners' Motion to Admit Claim for damages as it had no jurisdiction to do so.

The second paragraph of Section 16, Rule 39 of the Rules of Court which is invoked by petitioners to support their claim provides:

x x x Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to

the property in a separate action, or prevent the judgment obligee from claiming damages in the same or separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

Clearly, a third party claimant or any third person may vindicate his claim to his property wrongfully levied by filing a proper action which is distinct and separate from that in which the judgment is being enforced. Such action would have for its object the recovery of the possession of the property seized by the sheriff, as well as damages resulting from the allegedly wrongful seizure and detention thereof despite the third-party claim; and it may be brought against the sheriff, of course, and such other parties as may be alleged to have colluded with the sheriff in the supposedly wrongful execution proceedings, such as the judgment creditor himself.[15]

The same paragraph also provides a remedy to a judgment obligee when a frivolous and plainly spurious claim was filed by a third-party claimant, i.e., to file his claim for damages in the same court where the third-party claimant filed his third-party claim or to file a separate action. Thus, petitioners' claim for damages must be filed in the trial court, whether in the same case where a third-party claim has been filed or in a separate action for damages which petitioners may institute. This is so in order to require the filing of proper pleadings and to hold trial so as to give the parties the chance to submit their respective evidence.

WHEREFORE, the petition for certiorari and mandamus is DISMISSED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Justice Bernardo P. Abesamis, concurred in by Justices Juan Q. Enriquez, Jr. and Edgardo F. Sundiam; CA rollo, p. 121.

[2] Id. at 135.

[3] Docketed as Civil Case No. CEB-14503.

[4] Penned by Judge Antonio T. Echavez, Records, pp. 213-225.

[5] Records, p.225.

[6] Id. at 238-239.

[7] Id. at 242.

[8] Id. at 231-232.

[9] Id. at 248.

[10] Id. at 256-257.

[11] Id. at 261-262.

[12] Id. at 259-260.

[13] Id. at 308.

[14] Sy v. Discaya, G.R. No. 86301, January 23, 1990, 181 SCRA 378, 383.

[15] Sy v. Discaya, supra at p. 383.

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