

FGU INSURANCE CORPORATION (NOW BPI/MS INSURANCE CORPORATION), PETITIONER, VS. REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66, AND G.P. SARMIENTO TRUCKING CORPORATION, RESPONDENTS.*G.R. No. 161282. February 23, 2011*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-161282/>**MENDOZA, J.:**

This is a petition for mandamus praying that the July 1, 2003 and November 3, 2003 orders [1] of the Regional Trial Court Branch 66, Makati City (RTC), which granted the Motion To Set Case For Hearing filed by private respondent G.P. Sarmiento Trucking Corporation (GPS), be set aside and, in lieu thereof, "a decision be rendered ordering the lower court to issue the Writ of Execution in Civil Case No. 94-3009 in consonance with the decision of this venerable court dated August 6, 2002." [2]

Records show that on June 18, 1994, GPS agreed to transport thirty (30) units of Condura S.D. white refrigerators in one of its Isuzu trucks, driven by Lambert Eroles (Eroles), from the plant site of Concepcion Industries, Inc. (CII) in Alabang, to the Central Luzon Appliances in Dagupan City. On its way to its destination, however, the Isuzu truck collided with another truck resulting in the damage of said appliances.

FGU Insurance Corporation (FGU), the insurer of the damaged refrigerators, paid CII, the insured, the value of the covered shipment in the sum of P204,450.00. FGU, in turn, as subrogee of the insured's rights and interests, sought reimbursement of the amount it paid from GPS.

The failure of the GPS to heed FGU's claim for reimbursement, led the latter to file a complaint for damages and breach of contract of carriage against the former and its driver, Eroles, with the RTC. During the hearing of the case, FGU presented evidence establishing its claim against GPS. For its part, GPS filed a motion to dismiss by way of demurrer to evidence, which was granted by the RTC.

The RTC ruled, among others, that FGU failed to adduce evidence that GPS was a common carrier and that its driver was negligent, thus, GPS could not be made liable for the damages of the subject cargoes. On appeal, the Court of Appeals (CA) affirmed the ruling of the RTC. The case was then elevated to this Court. On August 6, 2002, the Court rendered a decision [3] agreeing with the lower courts that GPS was not a common carrier but nevertheless held it liable under the doctrine of culpa contractual. Thus, the dispositive portion of the Court's decision reads as follows:

WHEREFORE, the order, dated 30 April 1996, of the Regional Trial Court, Branch 66, of Makati City, and the decision, dated 10 June 1999, of the Court of Appeals, are AFFIRMED only insofar as respondent Lambert M. Eroles is concerned, but said assailed order of the trial court and decision of the appellate court are REVERSED as regards G.P. Sarmiento Trucking Corporation which, instead, is hereby ordered to pay FGU Corporation the value of the damaged and lost cargoes in the amount of P204,450.00. No costs.

SO ORDERED.

On September 18, 2002, this Court denied GPS' motion for reconsideration with finality.[4] In due course, an entry of judgment[5] was issued certifying that the August 6, 2002 decision of this Court became final and executory on October 3, 2002.

On October 14, 2002, FGU filed a motion for execution[6] with the RTC praying that a writ of execution be issued to enforce the August 6, 2002 judgment award of this Court in the amount of P204,450.00.

On November 5, 2002, GPS filed its Opposition to Motion for Execution[7] praying that FGU's motion for execution be denied on the ground that the latter's claim was unlawful, illegal, against public policy and good morals, and constituted unjust enrichment. GPS alleged that it discovered, upon verification from the insured, that after the insured's claim was compensated in full, the insured transferred the ownership of the subject appliances to FGU. In turn, FGU sold the same to third parties thereby receiving and appropriating the consideration and proceeds of the sale. GPS believed that FGU should not be allowed to "doubly recover" the losses it suffered.

Thereafter, on January 13, 2003, GPS filed its Comment with Motion to Set Case for Hearing on the Merits.[8]

On July 1, 2003, the RTC issued an order granting GPS motion to set case for hearing. Its order, in its pertinent parts, reads:

X x x.

The defendant, however, contends that it has already turned over to the consignee the 30 refrigerator units subject[s] of the case. It also appears from the record that the Accounting/Administrative Manager of Concepcion Industries has executed a certification to the effect that the assured company has turned over the refrigerator units in question to plaintiff.

In view of the foregoing and considering that plaintiff may not be allowed to recover more than what it is entitled to, there is a need for the parties to clarify the following issues to allow a fair and judicious resolution of plaintiff's motion for issuance of a writ of execution:

- 1) Was there an actual turn-over of 30 refrigerators to the plaintiff?
- 2) In the affirmative, what is the salvage value of the 30 refrigerators?

WHEREFORE, the Court hereby orders both parties to present evidence in support of their respective positions on these issues.

SO ORDERED.[9] [Italicization in the original]

Upon denial of its motion for reconsideration, FGU filed this petition for mandamus directly with this Court on the following

GROUND

THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS DUTY WHEN IT RE-OPENED A CASE, THE DECISION OF WHICH HAD ALREADY ATTAINED FINALITY.

THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS MINISTERIAL DUTY WHEN IT DENIED THE ISSUANCE OF A WRIT OF EXECUTION.

In advocacy of its position, FGU argues that the decision is already final and executory and, accordingly, a writ of

execution should issue. The lower court should not be allowed to hear the matter of turnover of the refrigerators to FGU because it was not an issue raised in the Answer of GPS. Neither was it argued by GPS in the CA and in this Court. It was only brought out after the decision became final and executory.

Indeed, a writ of mandamus lies to compel a judge to issue a writ of execution when the judgment had already become final and executory and the prevailing party is entitled to the same as a matter of right.[10]

Fundamental is the rule that where the judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the writ of execution.[11] In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty. The lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution; much less may it review the same upon any matter decided on appeal or error apparent; nor intermeddle with it further than to settle so much as has been demanded.[12]

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[13] The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. The early case of *City of Butuan vs. Ortiz*[14] is one where the Court held as follows:

Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (Section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (*Molina vs. De la Riva*, 8 Phil. 569; *Behn, Meyer & Co. vs. McMicking*, 11 Phil. 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil. 4; *Espiritu vs. Crossfield and Guash*, 14 Phil. 588; *Flor Mata vs. Lichauco and Salinas*, 36 Phil. 809). In the instant case the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of P995, but in a lesser amount. Sto. Domingo had no right to an execution for the amount claimed by him.' (*De la Costa vs. Cleofas*, 67 Phil. 686-693).

Shortly after *City of Butuan v. Ortiz*, the case of *Candelario v. Cañizares*[15] was promulgated, where it was written that:

After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend execution thereof and grant relief as the new facts and circumstances warrant. We, therefore, find that the ruling of the court declaring that the order for the payment of P40,000.00 is final and may not be reversed, is erroneous as above explained.

These rulings were reiterated in the cases of *Abellana vs. Dosdos*,[16] *The City of Cebu vs. Mendoza*[17] and *PCI Leasing and Finance, Inc. v Antonio Milan*. [18] In these cases, there were compelling circumstances which clearly warranted the exercise of the Court's equity jurisdiction.

In the case at bench, the Court agrees with the RTC that there is indeed a need to find out the whereabouts of the subject refrigerators. For this purpose, a hearing is necessary to determine the issue of whether or not there was an actual turnover of the subject refrigerators to FGU by the assured CII. If there was an actual turnover, it is very important to find out whether FGU sold the subject refrigerators to third parties and profited from such sale. These questions were brought about by the contention of GPS in its Opposition to Motion for Execution[19] that after the assured, CII, was fully compensated for its claim on the damaged refrigerators, it delivered the possession of the subject refrigerators to FGU as shown in the certification of the Accounting/Administrative Manager of CII. Thereafter, the subject refrigerators were sold by FGU to third parties and FGU received and appropriated the consideration and proceeds of the sale. GPS claims that it verified the whereabouts of the subject refrigerators from the CII because it wanted to repair and sell them to compensate FGU.

If, indeed, there was an actual delivery of the refrigerators and FGU profited from the sale after the delivery, there would be an unjust enrichment if the realized profit would not be deducted from the judgment amount. "The Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality." [20]

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 34-35.

[2] Id. at 23.

[3] Id. at 37-47.

[4] Id. at 48.

[5] Id. at 49.

[6] Id. at 51-53.

[7] Id. at 54-56.

[8] Id. at 57-60.

[9] Id. at 35.

[10] *Gatmaytan v. Court of Appeals*, G.R. No. 132856, August 28, 2006; and *Gonzales v. Hon. Sayo*, G.R. No. L-58407 May 30, 1983

[11] *Ruben Sia v. Erlinda Villanueva*, G.R. No. 152921, October 9, 2006, 504 SCRA 43.

[12] *Tropical Homes v. Fortun*, 251 Phil 83 (1989).

[13] *Villa v. GSIS*, G.R. No. 174642, October 31, 2009.

[14] 113 Phil 636 (1961).

[15] 114 Phil 672 (1962).

[16] 121 Phil 241 (1965).

[17] 160 Phil. 869 (1975).

[18] G.R. No. 151215, April 5, 2010.

[19] Rollo, pp. 54-56.

[20] Heirs of Maura So et. al. v. Lucila Jomoc Obliosca et. al., G.R. No. 147082, January 28, 2008.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.