

**CORAZON SUYAT, PACITA UY TAN, RODRIGO DE LA ROSA, RUBEN DE LA ROSA, AND BAGUIO GARDEN HOTEL- APARTMENTS, INC., PETITIONERS, VS. HON. ANNIE GONZALES-TESORO, DIRECTOR OF THE SECUR...**

*G.R. NO. 162277. December 07, 2005*

Ponente: PANGANIBAN, J.

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**PANGANIBAN, J.:**

In this Decision, the Court reiterates the well-known rule that the execution of a final judgment is a matter of right on the part of the prevailing party, and mandatory and ministerial on that of the issuing court or tribunal.

**The Case**

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the October 16, 2003 Decision[2] and the January 29, 2004 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 75376. The challenged Decision disposed as follows:

"WHEREFORE, the petition is hereby DENIED for lack of merit."[4]

The assailed Resolution denied reconsideration.

**The Facts**

The CA narrated the relevant facts as follows:

"Herein [individual] petitioners are officers of Baguio Garden Hotel Apartments, Inc. They were charged before the Securities and Exchange Commission (SEC) for the misrepresentation and irregularities appearing in the financial statements of the corporation.

"On January 15, 1998, the Securities and Exchange Commission, Baguio Extension Office, rendered a decision containing the following dispositive portion:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Ordering [individual petitioners] to pay to the corporation jointly and solidarily the unaccounted cash of P519,488.12 shown in the financial records of 1995; to pay back the corporation the amount of P378,123.89[,] which they disbursed as a loan and reflected as cash outlay although not paid by the corporation[,] as shown in the Cash Flow Statement of 1994; and the deficit of Retainer Earnings of 1994 in the amount of P639,057.83;
- Ordering [petitioner] Corazon Suyat to pay back the corporation her cash advances and unpaid rentals in the total amount of P149,403; [petitioner] Pacita Uy Tan to pay back the corporation her cash advances and unpaid rentals in the total amount of P301,281.50; [petitioners] Rodrigo de la Rosa and Ruben de la Rosa to pay back to the corporation their cash advances of P20,000;
- Ordering [individual petitioners] to stop paying themselves share (sic) in the profits in the form of cash advances or defaulting themselves in the payment of rentals due to the corporation, and, instead, to make the

proper accounting of the finances of the corporation for the years 1994, 1995, 1996, and 1997[,] inclusive of the aforecited ordered payments, through the assistance of a duly licensed Certified Public Accountant appointed by the Commission from two nominees of both parties, submitted within fifteen (15) days from receipt of this decision, and to be compensated by the corporation;

- Ordering, after the aforementioned accounting has been made, the distribution of surplus profits accumulated from 1993 to 1997 in excess of 100% of the paid-in capital of the corporation. [Petitioners' shares] in the said profits may be compensated or offset against the amounts due from them as ordered above; provided that in the event the practice of cash advances and non-payment of rentals was likewise done by the [petitioners] for the years 1996 and 1997, then their repayments should be made in accordance with the procedure described above; and provided, finally, that the practice shall stop altogether for the year 1998 and thereafter.

- Charging the payment of [respondent's] cost of litigation including attorney's fees, properly audited by the aforementioned appointed Certified Public Accountant, against funds of the corporation.

SO ORDERED.'

"The above decision was affirmed on appeal by the Commission en banc. Petitioners appealed, but the same was dismissed for being a wrong mode of appeal. Hence, the decision became final and executory. On April 10, 2000, herein private respondent filed a Motion for Execution of the afore-quoted judgment. On April 5, 2001, private respondent filed a Motion to Reiterate Issuance of Writ of Execution. Acting on the motion filed by private respondent, the SEC issued a Writ of Execution ordering the Baguio City Sheriff to execute the January 15, 1998 decision. Meanwhile, a Notice of Garnishment was issued by Sheriff Romeo R. Florendo against a certain Paul Uy.

"On May 22, 2001, petitioners filed a Motion to Stay Execution with respect to items 1 and 2 of the above dispositive portion, and to execute items 3 and 4 thereof by appointing a certified public accountant to make the proper accounting of the finances of the corporation. So as not to render the pending Motion to Stay Execution ineffectual, petitioners also filed a Motion to Quash/Stay Notice of Garnishment.

"In its Order dated June 5, 2001, the SEC granted the twin motions as follows:

'WHEREFORE, based on the foregoing, it is hereby ORDERED that the NOTICE OF GARNISHMENT be quashed and that the WRIT OF EXECUTION be enforced by the appointment of a Certified Public Accountant, to be agreed upon by both parties, who shall be given a period of 90 days, from the date of the C.P.A.'s written acceptance of such appointment, to be submitted to this Commission, within which to perform the required audit and to submit the findings of this Commission.

"Should the parties fail to agree on a C.P.A. within 7 days from receipt of this ORDER, this Commission shall make the choice which shall be final and binding upon the parties.

'The parties hereto shall signify, in their written appointment of the C.P.A., that they shall be bound by the audit and findings of the said C.P.A.

'After receipt of the findings of the C.P.A. this Commission shall issue a WRIT OF EXECUTION based thereon.

'SO ORDERED.'

"Pursuant to the afore-quoted Order of the SEC, the parties through their counsel, executed a Joint Memorandum appointing Christopher Ismael to perform the required audit and accounting of the books and records of the corporation. The parties unconditionally bound themselves to 'abide fully by the findings of said Mr. Christopher Ismael as final and as the sole and irrefutable basis for the Commission for the execution of the DECISION dated January 15, 1998.'

"Based on the Auditor's Independent Report, the SEC, on January 14, 2003, issued a Writ of Execution *motu proprio* in the following tenor:

'x x x x x x x x

'WHEREFORE, based on the Auditor's Independent Report, considered FINAL AND BINDING upon agreement of all the parties hereto, and enforcing the final DECISION dated JANUARY 15, 1998, A MODIFIED OR COMPLETE DECISION is hereby rendered, and YOU, THE CITY SHERIFF and your lawful deputies, are hereby ordered commanded to cause:

- Petitioner corporation, Baguio Garden Hotel-Apts., Inc., to pay Petitioner Ester Lau the sum of P1,193,814.99;
- [Petitioner] Rodrigo dela Rosa to pay to the Petitioner corporation, Baguio Garden Hotel-Apts., Inc., the sum of P202,415.76;
- [Petitioner] Ruben dela Rosa to pay to the Petitioner corporation, Baguio Garden Hotel-Apts., Inc.[,] the sum of P161,831.86;
- [Petitioner] Corazon Suyat to pay to the Petitioner corporation, Baguio Garden Hotel-Apts., Inc., the sum of P52,931.11;
- [Petitioner] Pacita Uy Tan to pay to the Petitioner corporation, Baguio Garden Hotel-Apts., Inc.[,] the sum of P561,033.66; the liability of all the respondents shall be joint and solidary;

x x x x x x x x

"Claiming that Mrs. Caridad Espina, a certified public accountant of the parties, should participate in the accounting process, the petitioners asked in their 'Motion to Stay Execution,' that a hearing be held before the writ of execution shall issue.

"On January 24, 2003, the SEC issued an Order denying the motion, viz:

'WHEREFORE, the Motion to Stay Execution dated January 17, 2003 is hereby DENIED, and the Writ of Execution is to be enforced forthwith, without delay, and the respondents are directed not to file any more Motions that would delay the execution of the DECISION in this case.

'SO ORDERED.'"[5]

Petitioners then filed a Rule 65 Petition for Certiorari before the CA, seeking the nullification of the Writ of Execution dated January 14, 2003, for allegedly altering the terms of the Decision of January 15, 1998.[6]

#### Ruling of the Court of Appeals

The appellate court did not find grave abuse of discretion on the part of the SEC in issuing the assailed Writ of Execution.

The CA noted that paragraphs 3 and 4 of the January 15, 1998 Decision had ordered an accounting of the corporate finances; and an offsetting of the shares of petitioners in the profits against their liabilities, as adjudged under paragraphs 1 and 2 of the same Decision. In compliance with that directive, the appointed certified public accountant (CPA) conducted an accounting review and incorporated in his report the amounts stated in paragraphs 1 and 2. Consequently, the CA ruled that the Writ had not modified the original Decision, but only carried into effect the SEC's previous disposition.[7]

The appellate court also debunked petitioners' claim that the SEC had issued the Writ of Execution *motu proprio*.

According to the CA, private respondent twice filed a Motion for a Writ of Execution, resulting in the issuance of the first Writ dated April 17, 2001. The execution was, however, stayed to give way to the accounting that had been ordered. After receiving the CPA's Financial Report, the SEC issued the second Writ. Another motion for the issuance of this second one, being a mere continuation of the first, was deemed by the CA to be unnecessary.

Finally, the appellate court emphasized that the parties had bound themselves to abide fully by the CPA Report as the final and sole basis for the execution of the SEC Decision.

Hence, this Petition.[8]

Issue

Petitioners raise this sole issue for our consideration:

"The Honorable Court of Appeals has departed from the accepted and usual course of judicial proceedings and contravened applicable legal principles and jurisprudence in denying petitioners' Petition for Certiorari, etc. and Motion for Reconsideration, despite clear showing that the writ of execution being assailed therein was issued by the respondent director with grave abuse of discretion amounting to lack or excess of jurisdiction because it amended and varied the terms of the decision sought to be executed and violated petitioners' right to due process of law."[9]

Otherwise stated, the issue is whether the Writ of Execution dated January 14, 2003, altered the terms of the Decision of January 15, 1998.

The Court's Ruling

The Petition has no merit.

Sole Issue:

Whether the Writ Modified the Decision

Well-settled is the rule that after a judgment becomes final upon the expiration of the reglementary period to perfect an appeal, "no additions can be made thereto, and nothing can be done therewith, except its execution."[10] In the present case, we stress at the outset that the SEC Decision, which was the subject of the assailed Writ of Execution, became final and executory on April 10, 2000. The execution of a final judgment is a matter of right on the part of the prevailing party -- in this case, private respondent -- and mandatory and ministerial on that of the court or tribunal issuing the judgment.[11]

The proper and orderly execution of the final and executory Decision, which involved accounting and payment of sums of money, entailed (1) the enforcement of the directive to render an accounting and (2) a demand for payment from petitioners. After the results of the accounting had been submitted and approved, the execution of the Decision through the collection of the amount due in accordance with the accounting became finally proper. Precisely, this was the procedure adopted by the SEC.

Writ of Execution

Petitioners are, however, intent on deferring the second stage of execution. They argue that the Writ of Execution was a nullity for allegedly modifying the terms of the SEC Decision on two points; namely, by ordering (1) Petitioner Baguio Garden Hotel-Apartments, Inc. to pay Respondent Lau the sum of P1,193,814.99, whereas the Decision did not; and (2) individual petitioners to pay the corporation P2,172,027.38, whereas the Decision held them liable for the sum of P1,536,669.84 only.[12] On the basis of these alleged modifications, petitioners now ask this Court to nullify the Writ.

It is a fundamental legal axiom that a writ of execution must substantially conform to the dispositive portion of the promulgated decision. The writ cannot vary or go beyond the terms of the judgment. If it does, it becomes null and void.[13]

In the present case, we do not find any inconsistency between the SEC Decision of January 15, 1998, and its Writ of Execution dated January 14, 2003. A careful examination of the Decision and the Writ would readily reveal the paucity of petitioners' arguments.

Petitioners insist on a literal reading of the Decision. While it is true that it did not literally order Baguio Garden Hotel-Apartments, Inc., to pay more than one million pesos to Respondent Ester Lau, it clearly ordered the distribution of surplus profits accumulated from 1993 to 1997 and the payment to her of the costs of litigation and attorney's fees.[14] Considering that the individual petitioners had deprived her of her monthly shares in the corporation's income since July 1994,[15] it should not be surprising that the final money judgment in her favor amounted to more than P1 million.

Moreover, the Decision ordered a proper accounting for the years 1994-1997, with a proviso that "in the event [that] the practice of cash advances and non-payment of rentals was likewise done by the [individual petitioners] for the years 1996-1997, then their repayments should be made in accordance with the procedure described x x x." [16] It appears to this Court that the increase in their liabilities resulted from the audit, which had revealed their subsisting liabilities to the corporation and to private respondent. Therefore, the supposed variance in the amounts resulted from the accounting of cash advances and nonpayment of rentals. In effect, the questioned Writ did not modify the Decision in substance; it merely enforced it in full.

Notably, petitioners do not deny the liabilities. They only complain that the specified amounts do not appear in the Decision. Significantly, they were the ones who had sought an accounting in their first Motion to Stay Execution,[17] which we quote:

"WHEREFORE, [petitioners] respectfully pray:

- that items 1 and 2 of the decretal portion of the decision be stayed and, accordingly, the Writ of Execution be quashed and/or its enforcement stayed; and
- that items 3 and 4 of the decretal portion of the decision be enforced and executed with the appointment of a Certified Public Accountant from two (2) nominees of both parties to make the proper accounting of the finances of the corporation and, thereafter, the surplus profits accumulated from 1994 to 1997, if any, be distributed to the stockholders so that respondents' share in said profits may be used to compensate or offset the amounts due from them as ordered."

Having sought the execution of the Order for an accounting, petitioners should have known that the process might result in changes in the amounts appearing on the Decision. Needless to say, those changes were the logical outcome, considering that the Decision had ordered the distribution of surplus profits, the determination of the amounts advanced and of unpaid rentals, and the offsetting of the latter two.

#### Petitioners Bound by the Results of the Accounting

Moreover, petitioners cannot complain about the incorporation of the CPA Report into the Decision. First, in their Motion to Stay Execution, they specifically asked for an accounting; and, second, in a Joint Memorandum dated October 9, 2001, they agreed that the results of the accounting shall be the sole and irrefutable basis for the execution of the Decision.[18]

Because their undertaking in that Joint Memorandum took the form of a contract, the Memorandum has the force of law between the parties.[19] It is binding upon them, unless there is proof of vitiated consent or fraud in the

execution of the Joint Memorandum or in the conduct of the accounting.[20] No such assertion has been made by petitioners, however. Hence, their consent to abide by the results of the accounting stands.

Parenthetically, we add that the incidents leading to the issuance of the Writ of Execution in the present case are analogous to a submission to the findings of fact of a commissioner, pursuant to the Rules of Civil Procedure. Under Section 2 of Rule 32, the court may order a reference to a commissioner when the taking of an account becomes necessary to carry out a judgment or an order. If the parties stipulate that the commissioner's findings of fact shall be final, only questions of law may be entertained afterwards.[21]

#### No Denial of Due Process

Petitioners further contend that they were denied due process when the SEC issued the Writ *motu proprio*. They claim that the issuance effectively denied them of their right to raise objections and to resort to available remedies.[22]

It should be recalled that private respondent had previously filed a Motion for Execution,[23] which resulted in the issuance of the April 17, 2001 Writ of Execution. On the basis of petitioners' Motion, however, the execution was stayed by the SEC with respect to the payment of the adjudged amounts, but was enforced as regards the appointment of a CPA to conduct an accounting in accordance with the terms of the Decision.[24] As the CA aptly observed, the Writ of Execution had not been quashed.[25]

When the CPA rendered a Report on the task he had accomplished, it was only logical for the SEC to lift the stay on the execution. The CA correctly held that Respondent Lau did not have to file another motion for the issuance of the "second Writ of Execution," which was a mere continuance of the first.[26]

Furthermore, a perusal of the June 5, 2001 SEC Order shows that the parties were duly notified that "after receipt of the findings of the CPA, this Commission shall issue a Writ of Execution based thereon." [27] Notably, that pronouncement did not evoke any objection from the parties. By remaining silent despite their actual knowledge of a possible ground for objection, petitioners are deemed to have waived their right to object to the Order.

Not only did they fail to object; in their Joint Memorandum dated October 9, 2001, they even expressly ratified the findings of the CPA. In that Memorandum, the parties had agreed to "abide fully by the findings of said (accountant) as final and as the sole and irrefutable basis for the commission for the execution of the decision." [28] Petitioners cannot claim denial of due process, in view of their express concurrence in an execution after the accounting.

At any rate, their objections were actually heard when they filed a Motion to Stay Execution.[29] In its Order denying that Motion, the SEC sufficiently explained its reasons for finding their objections unmeritorious.[30] Hence, the denial was not arbitrary or whimsical.

Nevertheless, we went over those same objections and found that the SEC had indeed correctly denied them. The accountant of petitioners themselves, in his Comment annexed to the Motion to Stay Execution, assailed the propriety of holding them liable for the unaccounted cash of P519,488.12, the P378,123.88 loan, and the P639,057.84 deficit.[31] Readily apparent is the fact that these liabilities were already adjudged in paragraph 1 of the dispositive portion of the SEC Decision,[32] which concluded as follows:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Ordering [petitioners] to pay to the corporation jointly and solidarily the unaccounted cash of P519,488.12 shown in the financial records of 1995; to pay back the corporation the amount of P378,123.89 which they disbursed as a loan and reflected as cash outlay although not paid by the corporation as shown in the Cash

Flow Statement of 1994; and the deficit of Retainer Earnings of 1994 in the amount of P639,057.83;"  
[Emphasis supplied]

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In actuality, therefore, petitioners are objecting to the amounts adjudged in the final and executory Decision, not to the findings of the SEC-appointed CPA. In effect, they are attempting to modify their liabilities at the time of the execution of the judgment. By that time, however, all that was left to be done was to carry out the terms of the Decision. It is now too late for them to seek its modification.

Thus, the SEC correctly denied their Motion on the ground that "the findings of facts in said Decision cannot be altered, modified, or substituted in any manner." [33] That action was demanded by settled jurisprudence. Jurisdiction over the final and executory judgment, which could by then be enforced only according to its tenor, had already been lost by the SEC. [34]

Moreover, petitioners failed to show that they had unduly been prejudiced by the alleged *motu proprio* issuance of the Writ. On the contrary, it appears that the execution proceedings were not impaired by any extrinsic fraud or lack of due process. There is no showing, either, that the SEC and its appointed accountant committed any mistake or abuse of discretion, or that the proceedings before them were vitiated by collusion and collateral fraud.

Having failed to show prejudice as a result of the issuance of the Writ, petitioners cannot invoke due process. Their incantations appear to be hollow attempts to forestall the execution of the Decision, which has long become final and executory.

WHEREFORE, the Petition is DENIED. Costs against petitioners.

**SO ORDERED.**

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

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[\*] The "Court of Appeals," included as a respondent in the Petition, was omitted from the title of the case by this Court. Under Section 4 of Rule 45 of the Rules of Court, the CA need not be impleaded in petitions for review.

[1] Rollo, pp. 11-30.

[2] *Id.*, pp. 71-78. Penned by Justice Romeo A. Brawner (chairperson of the Special Twelfth Division), with the concurrence of Justices Jose L. Sabio Jr. and Jose C. Reyes Jr. (members).

[3] *Id.*, p. 86.

[4] Assailed Decision, p. 8; rollo, p. 78.

[5] *Id.*, pp. 2-5 & 72-75. Citations omitted. Emphasis in the original.

[6] *Id.*, pp. 5 & 75.

[7] *Id.*, pp. 6 & 76.

[8] This case was deemed submitted for decision on July 19, 2005, upon this Court's receipt of petitioners' Memorandum, signed by Atty. Renante P. Caba. Private respondent's Memorandum, signed by Atty. Stephanie Rachel Tenefrancia-Castro of the law office Tenefrancia & Associates, was received by this Court on June 21, 2005.

- [9] Petitioners' Memorandum, p. 6; rollo, p. 178. Original in bold uppercase.
- [10] King Integrated Security Services, Inc. v. Gatan, 405 SCRA 376, 379, July 7, 2003, per Sandoval-Gutierrez, J.; Duenas v. Mandi, 151 SCRA 530, 545, June 30, 1987; Fabular v. CA, 119 SCRA 329, 331, December 15, 1982.
- [11] See King Integrated Security Services, Inc. v. Gatan, supra; Napilan v. IAC, 183 SCRA 126, 131, March 14, 1990.
- [12] Petitioners' Memorandum, pp. 8; rollo, p. 180.
- [13] Flores v. Conanan, 362 SCRA 710, 714, August 14, 2001; Philippine Bank of Communications v. CA, 279 SCRA 364, 378, September 23, 1997; Ex-Bataan Veterans Security Agency, Inc. v. NLRC, 250 SCRA 418, 427, November 29, 1995.
- [14] SEC Decision, p. 7; rollo, p. 49.
- [15] Id., pp. 6 & 48.
- [16] Id., pp. 7 & 49.
- [17] Rollo, pp. 54-55.
- [18] Writ of Execution, p. 61.
- [19] Article 1159, Civil Code of the Philippines.
- [20] Article 1330, id.
- [21] Section 12 of Rule 32 of the Rules of Court.
- [22] Petitioners' Memorandum, p. 11; rollo, p. 187.
- [23] CA Decision, p. 7; id., p. 77. The Writ of Execution dated April 17, 2000, likewise mentions a Motion by private respondent to "Reiterate Issuance of Writ of Execution."
- [24] Order dated June 5, 2001; rollo, pp. 59-60.
- [25] CA Decision, p. 7; id., p. 77.
- [26] Supra.
- [27] Rollo, p. 60. All uppercase in the original.
- [28] Id., p. 61.
- [29] Id., pp. 64-67.
- [30] Id., pp. 68-69.
- [31] Id., p. 66.
- [32] Id., p. 49.
- [33] SEC Order dated January 24, 2003, p. 68.
- [34] See Gabaya v. Mendoza, 113 SCRA 400, 405-406, March 30, 1982; Vda. De Emnas v. Emnas, 95 SCRA 470, 474, January 28, 1980.

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