

**HARISH RAMNANI, CHANDRU P. PESSUMAL, MAUREEN RAMNANI,
AND JOSE MANACOP, PETITIONERS, VS. QBE INSURANCE
PHILIPPINES, INC., RESPONDENT.***G.R. No. 165855. October 31, 2007*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-165855/>**TINGA, J.:**

Lavine Loungewear Mfg. Inc. (Lavine) is a corporation engaged in the manufacture and export of loungewear. It procured six (6) fire insurance contracts from different insurers in order to insure its buildings and supplies. The insurers were Philippine Fire and Marine Insurance Corporation (PhilFire), Rizal Surety and Insurance Company (Rizal Surety), Tabacalera Insurance Company (Tabacalera), First Lepanto-Taisho Insurance Corporation (First Lepanto), Equitable Insurance Corporation (Equitable Insurance), and Reliance Insurance Corporation (Reliance Insurance).

On 1 August 1998, a fire in Pasig City destroyed in whole or in part two of Lavine's buildings and the supplies stored therein. Lavine filed claims with the various insurers. It was later determined by the Office of the Insurance Commission that the total amount payable to Lavine was P112,245,324.34. A controversy arose as to how the claims were to be paid out. It appears that all of the insurance policies, with the exception of the First Lepanto policy, had earlier been endorsed to Equitable PCI Bank on account of loans procured by Lavine through its authorized representative, petitioner Harish Ramnani (Harish). The insurance companies were thus willing to release the payments on the claims to Equitable Bank, a result which Harish encouraged. However, on 17 March 2000, the board of directors of Lavine appointed Chandru Ramnani (Chandru) as president of the corporation and designated him, together with Atty. Mario Aguinaldo, as Lavine's representatives and agents to negotiate with the insurance companies. Chandru demanded that the insurance companies course their payments to Lavine, which would thereafter pay Equitable Bank.

When the insurance companies insisted on paying Equitable Bank directly, Lavine filed a Complaint dated 22 January 2001[1] against them and the bank before the Regional Trial Court (RTC) of Pasig City, seeking that the companies be restrained from paying the proceeds of the insurance policies directly to Equitable Bank and that they be directed to pay such proceeds directly to Lavine instead.

The case was docketed as Civil Case No. 68287 and raffled to Branch 71 presided by Judge Celso D. Laviña. Harish and the other present petitioners, namely: Jose F. Manacop, Chandru P. Pessumal, Maureen M. Ramnani and Salvador Cortez, moved to intervene in the case. They alleged they were Lavine's incumbent directors, that Harish remained the authorized representative of Lavine, and that Harish had not been validly elected president of Lavine and bore no authority to institute the complaint. In addition, they alleged that Lavine's obligations to Equitable Bank had totaled around P71 million and that Equitable Insurance and Reliable Insurance had already paid the bank more than said amount out of the insurance proceeds. Thus, petitioners prayed that the remaining insurance proceeds be delivered to them by the insurance companies.

After trial, the RTC rendered a Decision in favor of the intervenors on 2 April 2002,[2] the dispositive portion of

which reads:

WHEREFORE, judgment is hereby rendered:

- DISMISSING the Complaint dated January 22, 2001, for lack of merit, with costs against Chandru C. Ramnani.
- ORDERING the defendant Bank to refund to plaintiff through the Intervenor the amount of P63,819,936.05 representing the overpayment as actual or compensatory damages, with legal rate of interest at six (6%) per cent per annum from the date of this decision until full payment.
- ORDERING:
 - Defendant Philippine Fire and Marine Insurance Corporation to pay plaintiff through Intervenor the total amount of P15,111,670.48, representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.
 - Defendant Rizal Surety and Insurance Company to pay plaintiff through Intervenor the amount of P17,100,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.
 - Defendant First Lepanto-Taisho Insurance Corporation to pay plaintiff through Intervenor the total amount of P18,250,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.
 - Defendant Tabacalera Insurance Company to pay plaintiff through Intervenor the amount of P25,690,000.00[,] representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.
- ORDERING all defendants to pay, jointly and severally, plaintiff through Intervenor the amount equivalent to ten (10%) per cent of the actual damages due and demandable as and by way of attorney's fees.
- CANCELLING the loan mortgage annotations and RETURNING to plaintiff through Intervenor TCT No. 23906, CCT Nos. PT-17871, PT-17872 and PT-17873.
- Costs of suit.

Counterclaims filed by plaintiff against intervenors and cross-claims filed by all defendants against intervenors and counterclaims are hereby DISMISSED for lack of merit.

SO ORDERED.[3]

On 3 April 2002, the day after the decision was rendered, petitioners filed a motion for execution pending appeal, alleging that Tabacalera was on the brink of insolvency; that Lavine was in imminent danger of extinction; and that any appeal from the trial court's judgment would be merely dilatory. The motion was granted by the RTC on 17 May 2002, and petitioners posted a surety bond in the amount of P40 million. On 20 May 2002, the RTC issued a Writ of Execution Pending Appeal, directing Branch Sheriff Cresenciano K. Rabello, Jr. (Sheriff Rabello) to cause the execution of the 2 April 2002 decision.[4]

On 24 May 2002, Sheriff Rabello filed an Urgent Ex-Parte Manifestation/Motion[5] with the RTC wherein he stated that the copy of the writ of execution had not yet been served against Rizal Surety because that company had "recently changed its corporate name to QBE Insurance (Phils.) Inc." Sheriff Rabello likewise recounted that despite the failure to serve the writ of execution on Rizal Surety, the bank deposits of said company were garnished; hence, he sought an order from the court directing him to lift and/or cancel the notice of garnishment served to all banks where Rizal Surety maintained bank deposits.

On 27 May 2002, the RTC favorably acted upon the manifestation/motion filed by Sheriff Rabello per its Order of even date. In the order, the trial court stated, among other things, that “[c]onsidering that defendant [Rizal Surety] has recently changed its name and transferred its operation to Q.B.E. Insurance Philippines, Inc., the writ [of execution] may be implemented against said defendant Rizal Surety under its new name Q.B.E. Insurance Philippines, Inc.”[6]

On 24 March 2003,[7] Sheriff Rabello served a Notice of Garnishment, citing as basis the earlier writ of execution, on the Ayala Avenue Branch of ANZ Bank, levying the bank deposits therein of “Rizal Surety and Ins. Co., and/or QBE Ins. (Phils), Inc.” In response, respondent QBE Insurance Philippines, Inc. (QBE) filed with the RTC an Urgent Motion to Lift 27 May 2002 Order and 24 March 2003 Notice of Garnishment.[8] It argued that contrary to the “deliberate lie put forth by the branch sheriff”[9] before the RTC, QBE is a corporation distinct and separate from Rizal Surety. QBE also stated that it was not a party to Civil Case No. 68287 and thus could not be prejudiced by any decision or order in the case. Petitioners filed an Opposition[10] to QBE’s motion. The RTC duly heard the incident and on 15 May 2003, it issued an Order denying QBE’s urgent motion for lack of merit.[11]

QBE filed a petition for certiorari with the Court of Appeals challenging the RTC orders directed against it, imputing grave abuse of discretion to Judge Laviña for ordering the execution pending appeal of the decision in Civil Case No. 68287 against QBE even though the latter was not a party to the case, and for unduly considering QBE and Rizal Surety as effectively one entity. The petition was granted by the Court of Appeals in a Decision[12] dated 31 May 2004, which set aside the assailed RTC orders dated 27 May 2002 and 15 May 2003.[13] In essence, the Court of Appeals ruled that the RTC all too readily accepted the unverified, capricious and unsubstantiated claim of Sheriff Rabello that Rizal Surety had merely changed its name to QBE and that the resulting order directing the execution of the judgment against QBE, which is not a party to the instant case, was null and void for being violative of due process. The Court of Appeals concluded that based on the documentary evidence presented, particularly the Business Run-Off Agreement between QBE and Rizal Surety, the two entities are distinct from each other and that QBE was merely a management agent of Rizal Surety.

Hence, the present petition, which posits that the Court of Appeals erred in not holding that QBE and Rizal Surety are one and the same entity and in reversing the RTC order directing execution pending appeal of the decision against QBE. Petitioners pray for the reinstatement of the RTC orders to pave the way for the implementation of the writ of execution pending appeal against QBE, as well as for the garnishment of the latter’s bank deposits pursuant to the writ of execution.

Apart from contesting the arguments of petitioners, in its Comment,[14] QBE chides petitioners for neglecting to mention that on 29 May 2003, or more than a year before the filing of the present petition, the Court of Appeals promulgated a Decision[15] in CA-G.R. SP. No. 70292 which set aside the 2 April 2002 Decision in Civil Case No. 68287, the subsequent RTC Order dated 17 May 2002 allowing execution pending appeal, and the Writ of Execution Pending Appeal dated 20 May 2002. QBE pointed out that with the setting aside of the decision and the nullification of the orders allowing execution pending appeal, the subsequent RTC orders subject of the present petition had become *functus officio*. On that point, petitioners replied that they had timely appealed from the Court of Appeals decision to this Court, with the appeal docketed as G.R. No. 162814, and that until a final decision is rendered therein the decision and orders of the RTC remain.

On 25 August 2005, the Court promulgated its Decision[16] in G.R. No. 162814, affirming the Court of Appeals in CA-G.R. SP. No. 70292 “insofar as it declared null and void the Special Order dated May 17, 2002 [granting execution pending appeal] and the Writ of Execution dated May 20, 2002” of the RTC. On 7 September 2005, QBE filed a Manifestation and Motion[17] citing the said decision of this Court as ground for the dismissal of the

present petition. It argued that the orders challenged in the petition were issued by the RTC pursuant to the 17 May 2002 Order granting execution pending appeal and that the nullification of such “mother order” also rendered the challenged orders moot or null and void. Petitioners filed a Counter-Manifestation^[18] dated 23 September 2005 pointing out that the 25 August 2005 Decision of the Court was not yet final as they had timely filed a motion for reconsideration.

We agree with QBE that the 25 August 2005 Decision of this Court, affirming the nullification of the 17 May 2002 Order and the 20 May 2002 Writ of Execution, has mooted the present petition as a consequence.

The 25 August 2005 Decision of this Court, which has since attained finality,^[19] unequivocally ruled that petitioners were not entitled to execution pending appeal. The Court extensively discussed why that was so, thus:

The general rule is that only judgments which have become final and executory may be executed. However, discretionary execution of appealed judgments may be allowed under Section 2 (a) of Rule 39 of the Revised Rules of Civil Procedure upon concurrence of the following requisites: (a) there must be a motion by the prevailing party with notice to the adverse party; (b) there must be a good reason for execution pending appeal; and (c) the good reason must be stated in a special order. The yardstick remains the presence or the absence of good reasons consisting 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. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.

In the case at bar, petitioners insist that execution pending appeal is justified because respondent insurance companies admitted their liabilities under the insurance contracts and thus have no reason to withhold payment.

We are not persuaded. The fact that the insurance companies admit their liabilities is not a compelling or superior circumstance that would warrant execution pending appeal. On the contrary, admission of their liabilities and willingness to deliver the proceeds to the proper party militate against execution pending appeal since there is little or no danger that the judgment will become illusory.

There is likewise no merit in petitioners' contention that the appeals are merely dilatory because, while the insurance companies admitted their liabilities, the matter of how much is owing from each of them and who is entitled to the same remain unsettled. It should be noted that respondent insurance companies are questioning the amounts awarded by the trial court for being over and above the amount ascertained by the Office of the Insurance Commission. There are also three parties claiming the insurance proceeds, namely: petitioners, Equitable Bank, and Lavine as represented by the group of Chandru.

Besides, that the appeal is merely dilatory is not a good reason for granting execution pending appeal. As held in *BF Corporation v. Edsa Shangri-la Hotel*:

... it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as basis for finding good reasons to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal. . .

Lastly, petitioners assert that Lavine's financial distress is sufficient reason to order execution pending appeal. Citing *Borja v. Court of Appeals*, they claim that execution pending appeal may be granted if the prevailing party is already of advanced age and in danger of extinction.

Borja is not applicable to the case at bar because its factual milieu is different. In *Borja*, the prevailing party was a natural person who, at 76 years of age, "may no longer enjoy the fruit of the judgment before he finally passes away." Lavine, on the other hand, is a juridical entity whose existence cannot be likened to a natural person. Its

precarious financial condition is not by itself a compelling circumstance warranting immediate execution and does not outweigh the long standing general policy of enforcing only final and executory judgments.[20]

The present petition was filed because the writ of execution pending appeal was sought to be enforced against QBE. The writ, in turn, was issued only because the RTC ordered the execution of its decision pending appeal. It may be so that the issue of whether petitioners were entitled to execution pending appeal was not directly raised in the petition, yet it cannot be denied that the RTC rulings, assailed by QBE and set aside by the Court of Appeals, were issued as a sole consequence of petitioner's motion for execution pending appeal. Since it has been ruled with finality that petitioners had no right to an execution pending appeal and that the RTC issuances directly infusing life to that right have been irretrievably nullified, it follows that the RTC rulings challenged in the present petition have been rendered *functus officio*.

Given the situation at hand, any extraneous pronouncement by the Court on the merits of the case would be dicta. Hence, there is no genuine need to delve into the other issues raised in the petition. However, it should be pointed out that in two administrative cases, the Court has respectively found Sheriff Rabella and Judge Laviña administratively liable on account of their actions which led to the implementation of the writ of execution against QBE. Said actions, in particular, concerned the sheriff's manifestation and motion and of the judge's corresponding 27 May 2002 Order acting on said manifestation and motion.

In *QBE Insurance (Phils.), Inc. v. Sheriff Rabello, Jr.*,[21] the Court observed of the sheriff:

In the instant case, respondent asserted that the manifestation he filed before the trial court stating that Rizal Surety and Insurance Co. had recently changed its corporate name to QBE Insurance (Phils.) was based on what he saw in the office of Rizal Surety and information relayed to him by its employees. Respondent ought to be aware that execution could only be issued against a party and not against one who was not accorded his day in court and it was his bounden duty to see to it that the writ of execution would be implemented only upon properties unquestionably belonging to the judgment debtor. Property belonging to third persons cannot thus be levied upon.

It behooved respondent to confirm and establish the veracity of the information he received by making his own verification with the SEC. Instead of doing so, he unthinkingly accepted the representations of the employees of Rizal Surety and hastily filed the Urgent Ex-Parte Manifestation and Motion dated 24 May 2002, informing the trial court, among others, that Rizal Surety had changed its corporate name to QBE Ins. (Phils.), Inc. This prompted the trial court to issue its 27 May 2002 Order, directing the implementation of the Writ of Execution against the properties of QBE. While respondent's acts may not have been tainted with bad faith or malice, he nevertheless failed to discharge his duties with prudence, caution and attention which careful men usually exercise in the management of their affairs.[22]

In the recently promulgated case of *QBE Insurance v. Judge Laviña*,[23] the Court stated:

There is no question that the writ of execution was issued against the judgment debtors (Rizal Surety, among other insurance companies) in Civil Case No. Q-68287, before the RTC of Pasig City. There was no mention of the name of QBE Insurance. However, Sheriff Rabello included the properties allegedly owned by QBE Insurance based on Judge Laviña's belief that Rizal Surety and the former are one and the same. xxx Being the owner of the property garnished, QBE Insurance possesses property rights entitled to be protected by law. Their property rights cannot be arbitrarily interfered with without running afoul of the due process rule enshrined in the Bill of Rights. In a real sense, it is a deprivation of property without due process of law. For failure to observe due process, Judge Laviña acted without jurisdiction.

Hence, QBE Insurance remains a third person to the judgment in Civil Case No. 68287 and cannot be bound by it. Nor can the writ of execution issued pursuant to said judgment be enforced against QBE Insurance since it was not afforded its day in court.

We agree with the Investigating Justice that Judge Laviña is guilty of gross ignorance of the law when he issued the 27 May 2002 Order allowing the implementation of the writ of execution pending appeal against Rizal Surety under its new name QBE Insurance. In disregarding the rules and settled jurisprudence, Judge Laviña showed gross ignorance of the law, amounting to bad faith.

x x x Sections 36 and 37 of Rule 39 of the 1997 Rules of Civil Procedure already provide for the proper procedure if the judgment is unsatisfied against the judgment obligor, or if another person or other juridical entity has property of such judgment obligor. Whichever rule is applied, there is a requirement that the judgment obligor, or the person who has property of such judgment obligor, to appear before the court and be examined concerning the same. The failure of respondent to observe the procedure in Sections 36 and 37 of Rule 39 contributed to the finding of Gross Ignorance of the Law or Knowingly Rendering an Unjust Interlocutory Order.

We reiterate that the cause for the dismissal of this petition is mootness, as the RTC rulings sought to be reinstated were rendered *functus officio* by the 25 August 2005 Decision of this Court declaring that petitioners were not entitled to execution pending appeal. Still, the above-cited passages of the decisions in *QBE v. Rabello* and *QBE v. Laviña* serve as an appropriate commentary, at least insofar as the 27 May 2002 Order is concerned.

WHEREFORE, the petition is DENIED. Costs against petitioners.

SO ORDERED.

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

[1] Rollo, pp. 105-110.

[2] *Id.* at 141-172.

[3] *Id.* at 170-172.

[4] *Id.* at 173-175.

[5] *Id.* at 176. The Motion likewise alleged similar circumstances and sought a similar prayer with respect to Tabacalera Insurance, which allegedly was not served a writ of execution because it was under receivership with the Insurance Commission.

[6] *Id.* at 178.

[7] *Id.* at 188-189.

[8] *Id.* at 179-181.

[9] *Id.* at 180.

[10] *Id.* at 217-221.

[11] *Id.* at 477-484.

[12] *Id.* at 55-70. Penned by Associate Justice A. Reyes, Jr. of the Former Fifth Division, concurred in by Associate Justices E. Labitoria and R. Maambong.

[13] The records bear some confusion on this point. While the Court of Appeals likewise annulled an RTC Order dated 19 May 2003, described in the Decision as one which “upheld the 24 March 2003 Notice of Garnishment of Branch Sheriff Cresencio Rabello, Jr.” See rollo, p. 56. Petitioners do not advert to any such ruling, and no copy

of it appears in the rollo. Further, the 15 May 2003 RTC Order already denied QBE's Urgent Motion to lift the 24 March 2003 Notice of Garnishment, and any subsequent RTC ruling reaffirming said Notice of Garnishment against QBE's claims would be superfluous. In any event, these matters ultimately bear no impact on our present decision.

[14] Id. at 526-549.

[15] Id. at 552-597; Penned by Associate Justice Remedios Salazar-Fernando, concurred in by Associate Justices Conrado Vasquez, Jr. and Danilo Pine.

[16] Entitled *Manacop v. Equitable PCIBank*, G.R. Nos. 162814-17, 25 August 2005, 468 SCRA 256. Penned by Associate Justice Consuelo Ynares-Santiago, and concurred in by then Chief Justice Hilario G. Davide Jr., Associate Justices Leonardo A. Quisumbing, Antonio T. Carpio and Adolfo S. Azcuna.

[17] Rollo, pp. 618-624.

[18] Id. at 626-627.

[19] The motions for reconsideration thereof having been denied with finality on 5 December 2005.

[20] *Manacop v. Equitable PCIBank*, supra at 275-277.

[21] A.M. No. P-04-1884, 9 December 2004, 445 SCRA 554. Penned by the author of this present Resolution, concurred in by then Associate Justice (now Chief Justice) Reynato S. Puno, and Associate Justices Alicia Austria-Martinez, Romeo J. Callejo, Sr. and Minita V. Chico-Nazario.

[22] Id. at 562.

[23] A.M. No. RTJ-06-1971, promulgated in 17 October 2007. Penned by Associate Justice Minita V. Chico-Nazario for the Court en banc.

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