

**ROSARIO T. FLORENDO, FOR HERSELF AND THE OTHER HEIRS OF
THE LATE DR. REGALADO FLORENDO, PETITIONER, VS.
PARAMOUNT INSURANCE CORP. (NOW RENAMED AS MAA GENERAL
ASSURANCE, INC.), R...**

G.R. No. 167976. January 21, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about what a trial court may consider "good reasons" for allowing the execution of its judgment pending appeal.

The Facts and the Case

On March 11, 1999 petitioner Rosario Florendo (Rosario) and the other heirs of her late husband, Regalado Florendo, (collectively, the Florendos) filed before the Regional Trial Court (RTC) of Imus, Cavite, an action against respondent Paramount Insurance Corp. (Paramount) for annulment of its liens over their lands.

The Florendos claimed that on February 26, 1980 Rosario and her husband bought five agricultural lots, consisting of about 9.5 hectares, in Dasmariñas, Cavite, from Adolfo C. Aguirre (Aguirre). The five lots were covered by Transfer Certificates of Title T-80998, T-80999,[1] T-81000 and T-81001, in Aguirre's name. Unfortunately, although the Florendos religiously paid the real estate taxes on the properties from then on, they did not cause the titles to be transferred in their names.[2]

Eighteen years later, in 1998, after the Municipal Treasurer of Dasmariñas refused to receive their tax payments, the Florendos discovered that respondent Paramount had earlier caused the attachment of the lots and, after judgment had been rendered in its favor by the Court of First Instance of Manila in Civil Case 134374, also caused the sheriff's sale in its favor to be annotated on the titles.[3]

In its defense, respondent Paramount claimed that, when it caused the annotations of its notices of lis pendens, attachment, and execution and the sheriff's certificate of sale on Aguirre's registered titles, the same were free of any adverse claim.

On November 15, 2002 the RTC rendered judgment in favor of the Florendos,[4] upholding their right over the subject lots. The RTC also ordered Aguirre to pay the Florendos P500,000.00 in actual damages and P200,000.00 in attorney's fees. The court, however, ordered the Florendos to reimburse Paramount its bid of P1,750,000.00 with 6% interest as well as the sum that it paid in real estate taxes also with 6% interest. Finally, the RTC granted the Florendos the right to be reimbursed by Aguirre the full amount of what they would have paid Paramount under the decision, with 6% interest.

On December 20, 2002 Paramount appealed the RTC decision to the Court of Appeals[5] (CA) in CA-G.R. CV 85397. On the same day, however, the Florendos filed a motion with the RTC for execution pending appeal, citing

the following as "good and special reasons" for it:[6]

- Rosario T. Florendo's advanced age and illness;
- Paramount's dilatory and frivolous appeal and strong likelihood of becoming insolvent during the pendency of the appeal; and
- The Florendos' readiness and willingness to post a bond to answer for whatever damage Paramount might suffer on account of such execution.

Respondent Paramount opposed the motion,[7] pointing out that with the filing of its notice of appeal, the RTC already lost jurisdiction to act on the motion. Paramount also said that execution pending appeal might render its appeal moot and academic. And it is not true, it said, that it might become insolvent while the case is on appeal. In reply,[8] the Florendos submitted Rosario's medical certificate and medical abstract showing her various life-threatening ailments and Paramount's corporate papers showing recent changes in its corporate name and capital structure.[9]

On February 11, 2003 the trial court issued a "Special Order," directing the execution of its judgment pending appeal upon the posting of a bond of P4 million.[10] The RTC explained the special and good reasons it had for ordering execution pending appeal, thus:

As to the existence or non-existence of good reasons for the issuance of a writ of execution pending appeal, the court finds that there are special and good reasons to justify the grant of the motion under consideration, namely:

- That the principal plaintiff (Rosario T. Florendo), although admittedly 62 years old, is presently suffering from various ailments which in the words of the attending physician, are life-threatening medical conditions. Because of this fact, she may not be able to live long enough or survive to enjoy the reliefs and rights granted to her under the decision sought to be executed pending appeal (*De Leon, et al. vs. Soriano*, L-7648, September 17, 1954; *PBC vs. CA*, 279 SCRA 364; and *Ma-ao Sugar Central vs. Canete*, 19 SCRA 646);
- That apparently there are indications of dilatory tactics and frivolous legal moves undertaken by defendant Paramount existing in the records of this case, numerous postponements and tactics that prolonged the pendency of this case. It would also appear that the tactics it had taken brought forth the fact that defendant Paramount has not only changed its corporate name from Paramount Insurance Corporation to MAA General Assurance (Phils.), Inc. but has also assigned its ownership and capital structure way back September 2001 (Exhs. "B" and "C" of the plaintiff's instant motion, and "N", "O", "P" and "R" offered in the main case) without even divulging the same to the Court. "The insolvency of a defeated party, as a ground for immediate execution of a decision, may be inferred from a number of circumstances appearing on the record" (*Astraquillo vs. Javier*, 13 SCRA 125);
- The offer may be made by the plaintiffs to put up a bond to guarantee or secure the payments of whatever amounts are due defendant Paramount under the decision under consideration may also be considered as another special or good reason for execution pending appeal (*Lu vs. Valeriano*, 111 SCRA 87; *PVTA vs. Lucero, et al.*, 125 SCRA 337).[11]

On February 14, 2003 the RTC issued the corresponding writ of execution pending appeal.[12] Feeling aggrieved, on May 13, 2003 respondent Paramount filed with the CA in CA-G.R. SP 77213 a special civil action of certiorari with application for a temporary restraining order and preliminary injunction, assailing the RTC order.[13] On August 31, 2004 the CA rendered judgment, granting respondent Paramount's petition.[14] While conceding that the RTC still had jurisdiction to act on the Florendos' motion for execution pending appeal, the CA found no special reasons to warrant such execution. The Florendos moved for the reconsideration of the decision[15] but

the CA denied the same on February 8, 2005,[16] hence, the Florendos' present recourse.

Parenthetically, in the appeal from the main case in CA-G.R. CV 85397, the CA meantime rendered judgment in respondent Paramount's favor and ordered the issuance of titles over the subject properties in its name. Nothing in the record indicates whether such judgment has already become final.

The Issues Presented

At any rate, the Florendos present the following issues in this case:

- 1) Whether or not the CA erred in giving due course to the petition considering Paramount's failure to file a motion for reconsideration of the RTC's special order granting execution pending appeal;
- 2) Whether or not the CA erred in taking cognizance of the present action (re: execution pending appeal) considering how Paramount addressed the same matters in its appeal to the CA in the main case; and
- 3) Whether or not the CA erred in reversing the RTC's special order for lack of good reasons to justify the issuance of a writ of execution pending appeal.

The Court's Rulings

One. The Florendos argue that the CA should not have taken cognizance of respondent Paramount's special civil action of certiorari considering its failure to first seek the RTC's reconsideration of its questioned special order.

The general rule is of course that a motion for reconsideration of the challenged order is a prerequisite to the filing of a special civil action of certiorari in a higher court to annul such order. This gives the lower court a chance to correct the errors imputed to it. But one of the exceptions to such requirement is where the matter involved is urgent. Here, the CA correctly dispensed with the requirement since the RTC had already issued a writ of execution and so its enforcement was imminent. Besides, the issue of the validity of the execution pending appeal in this case was a pure question of law.[17]

Two. The Florendos also point out that a special civil action of certiorari can no longer be resorted to when, as in this case, the matter raised in such action may be deemed already covered by the appeal that respondent Paramount had taken from the RTC decision. These two remedies, they argue, are mutually exclusive and, when instituted, the second constitutes forum shopping.

There is no forum shopping in this case. What respondent Paramount imputes in the certiorari action is the RTC's grave abuse of discretion in allowing the execution pending appeal of its decision. In the ordinary appeal from the main case, what Paramount challenges is the merit of the trial court's decision.[18]

Three. The Florendos insist that the CA erred in rejecting as reasonable basis for execution pending appeal a) Rosario's old age, given that precedents exist for such justification; b) respondent Paramount's delaying tactics and its possible insolvency; and c) the P4 million bond that the Florendos posted.

Normally, execution will issue as a matter of right only (a) when the judgment has become final and executory; (b) when the judgment debtor has renounced or waived his right of appeal; (c) when the period for appeal has lapsed without an appeal having been filed; or (d) when, having been filed, the appeal has been resolved and the records of the case have been returned to the court of origin. Execution pending appeal is the exception to the general rule. [19]

As such exception, the court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. "Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the

injury or damages that might result should the losing party secure a reversal of the judgment.[20] Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity.[21]

The Florendos point out that Rosario is already in her old age and suffers from life threatening ailments. But the trial court has allowed execution pending appeal for all of the Florendos, not just for Rosario whose share in the subject lands had not been established. No claim is made that the rest of the Florendos are old and ailing. Consequently, the execution pending appeal was indiscreet and too sweeping. All the lands could be sold for P42 million, the value mentioned in the petition, and distributed to all the Florendos for their enjoyment with no sufficient assurance that they all will and can return such sum in case the CA reverses, as it has in fact done, the RTC decision. Moreover, it is unclear how much of the proceeds of the sale of the lands Rosario needed for her old age.

The RTC also justified the execution pending appeal on respondent Paramount's delaying tactics and the possibility that it could become insolvent during the appeal. But these justifications are purely speculative. The RTC has already decided the case and whether the proceedings on appeal will be delayed is not in the hands of Paramount. The CA has control of the time elements in appealed cases. As for the Florendos' fear of Paramount's insolvency, such is wholly irrelevant since the judgment did not require it to pay them any form of damages. Indeed, the Florendos are the ones required by the RTC to reimburse Paramount the value of its bid and the amounts of real estate taxes that it had paid on the properties.

Lastly, the Florendos' posting of a P4 million bond to answer for the damages that respondent Paramount might suffer in case the RTC decision is reversed on appeal is quite insufficient.[22] The lands had a market value of P42 million in 2001.[23]

What is more, on October 28, 2008 the CA decided in the main case [24] to reverse and set aside the decision of the RTC, dismiss the Florendos' complaint, and order the issuance of new titles to the lands in the name of respondent Paramount. Assuming that such decision has not yet become final, the RTC decision subject of execution pending appeal has nonetheless already lost its presumptive validity. This development gives the Court all the more reason to affirm the CA decision subject of the present petition.

ACCORDINGLY, the Court DENIES the petition and AFFIRMS the decision of the Court of Appeals in CA-G.R. SP 77213 dated August 31, 2004.

SO ORDERED.

Carpio, Nachura,[*] Del Castillo, and Perez, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Arturo D. Brion, per raffle dated January 6, 2010.

[1] Covering two lots.

[2] Complaint, records, pp. 1-4.

[3] Id.

[4] Id. at 681-691.

[5] Id. at 695- 697.

- [6] Id. at 700-702.
- [7] Id. at 706-713.
- [8] Id. at 714-717.
- [9] Id. at 726-732.
- [10] Id. at 737-739.
- [11] Id. at 737-738.
- [12] Id. at 754-758.
- [13] Id. at 795.
- [14] Rollo, pp. 142-150.
- [15] CA rollo, pp. 243-256.
- [16] Id. at 259.
- [17] *Geologistics, Inc. v. Gateway Electronic Corp.*, G.R. Nos. 174256-57, March 25, 2009.
- [18] See *Paradero v. Abragan*, 468 Phil. 277 (2004).
- [19] *City of Iligan v. Principal Management Group, Inc.*, 455 Phil. 335, 344 (2003).
- [20] *Flexo Manufacturing Corporation v. Columbus Foods, Inc.*, 495 Phil. 254, 260 (2005).
- [21] *Heirs of Macabangkit Sangkay v. National Power Corp.*, G.R. No. 141447, May 4, 2006, 489 SCRA 401, 403.
- [22] *BF Corporation v. Edsa Shangri-la Hotel*, 355 Phil. 541, 548 (1998).
- [23] Records, p. 243-C.
- [24] Docketed as CA-G.R. CV 85397, rollo, pp. 334-351.

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