

JP LATEX TECHNOLOGY, INC., PETITIONER, VS. BALLONS GRANGER BALLOONS, INC. AND CHRISTOS SANTORINEOS, THE OFFICE OF THE CLERK OF COURT AND EX-OFFICIO SHERIFF OF BIÑAN, LAGUNA, TAT...

G.R. No. 177121. March 16, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before the Court is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, which seeks the reversal of the Court of Appeals decision[2] and resolution[3] in CA-G.R. SP No. 96926 and the issuance of a temporary restraining order to enjoin respondents from enforcing the order of execution pending appeal issued by Hon. Romeo C. De Leon, Presiding Judge of the Regional Trial Court (RTC), Branch 24 of Biñan, Laguna.

The following factual antecedents are matters of record.

Respondent Ballons Granger Balloons, Inc. (Granger) is a foreign corporation duly organized and existing under the laws of Canada. Anchoring on an isolated transaction, respondent Granger filed a complaint for rescission and damages against petitioner JP Latex Technology, Inc., a domestic corporation primarily engaged in the manufacture of latex and balloons. Also named defendants were the officers of the corporation, namely; Katsumi Watanabe and Tatsuya Ogino, and several John and Jane Does. Respondent Granger's president and chief executive officer, Christos Santorineos, who is also a respondent in this case, joined as plaintiff.

The complaint,[4] docketed as Civil Case No. B-6527, alleged that Ogino, representing himself as the president of petitioner corporation, and respondent Santorineos entered into a contract for the sale of respondent Granger's machinery consisting of four dipping lines and all associated equipment for the amount of US\$1,230,000.00 and other non-cash considerations consisting of a 20% shareholding in petitioner's distribution company and the distributorship of its balloons in Canada and Greece. Although respondent Granger had performed its end of the bargain by re-assembling the subject machinery in petitioner's factory in Biñan and transferring its dipping formulations and technology to petitioner, the latter allegedly paid only a partial sum of US\$748,262.87 and reneged on its other non-cash commitments. According to respondent Granger, it made several written and verbal demands for the full payment of the purchase price to no avail. The complaint was accompanied by an application for the issuance of a writ of replevin.[5]

Petitioner and Ogino separately filed their respective answers with counterclaims while Watanabe failed to submit any responsive pleading. Watanabe was thereafter declared in default. After declaring in default for his non-appearance at the scheduled pre-trial conference, the RTC allowed respondent Granger to present ex-parte. On 10 August 2006, the RTC rendered its decision in favor of respondent Granger.

While the case was pending or on 05 August 2006, respondent Granger moved for the execution pending

appeal[6] of the RTC decision,[7] which was promulgated on 10 August 2006 or a few days after it filed the motion. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- Resolving/rescinding the subject agreement between the parties and confirming plaintiffs' right of ownership and possession over the subject machines/equipments and their accessories including plaintiffs' dipping technology, formulations and recipes;
- Ordering defendant JP LATEX Technology, Inc., its officers or any other person in possession thereof to immediately return and deliver to the plaintiffs or any of its representatives the ownership and possession of dipping lines one (1) and two (2) including their accessories;
- Ordering defendant JP LATEX Technology, Inc., its officers or any of its representatives to cease and desist from using the plaintiffs' dipping formulations and technology;
- Ordering defendants to pay the plaintiffs jointly and severally the amount of U.S. \$1,500,000.00 by way of actual damages plus legal interest until fully paid; and
- Ordering defendants to pay plaintiff Christos Santorineos the amount of P1,000,000.00 by way of moral damages and to pay plaintiffs the amount of P500,000.00 by way of exemplary damages and P500,000.00 as attorney's fees and expenses of litigation.

Send copy of this decision to the parties in this case.

SO ORDERED.[8]

After it received a copy of the RTC decision on 30 August 2006, petitioner filed a motion for reconsideration[9] thereof on 13 September 2006. Petitioner also opposed[10] respondent Granger's motion for execution "pending appeal," which was denied in an Order[11] dated 01 September 2006. Respondent Granger then filed on 05 October 2006 an Omnibus Motion for Reconsideration and Ocular Inspection,[12] which petitioner opposed.

In the Order[13] dated 10 November 2006, the RTC denied respondent Granger's prayer for an ocular inspection but granted the plea for execution "pending appeal." The RTC reconsidered its earlier position and consequently granted the execution "pending appeal" after finding that the equipment under litigation were deteriorating and that petitioner might not have sufficient funds to pay for the damages, thereby leaving respondents with an empty judgment.

On 15 November 2006, the writ of execution "pending appeal" was issued.[14] On the following day, Joel Arellano, in his capacity as Sheriff IV of the RTC of Biñan, served on petitioner at its office address a copy each of the writ and the Order dated 10 November 2006. Thereupon, Arellano successfully effected the dismantling of the machinery.

Thus, petitioner and Ogino filed a special civil action for certiorari under Rule 65 before the Court of Appeals. Named respondents were Judge Romeo C. De Leon, Clerk of Court Rowena A.M. Galeon, Sheriff Joel Arellano, respondents Granger and Santorineos.[15] The petition for certiorari averred that Judge De Leon had seriously erred and gravely abused his discretion amounting to lack or in excess of jurisdiction in arbitrarily and unreasonably issuing the Order dated 10 November 2006 and in directing the Clerk of Court to issue the writ of execution "pending appeal."

On 22 December 2006, the Court of Appeals promulgated the assailed decision, denying the petition for certiorari mainly on the ground that petitioner failed to file a motion for reconsideration of the assailed RTC Order dated 10 November 2006.[16] Petitioner sought reconsideration but its motion was denied per the appellate court's

Resolution dated 23 March 2007.[17]

Hence, the instant petition with urgent application for immediate issuance of a temporary restraining order (TRO) or writ of preliminary injunction.

In a Resolution dated 23 May 2007, the Court issued a TRO to prevent respondents from implementing the writ of execution "pending appeal" conditioned upon the filing of a cash or surety bond.[18] Forthwith, petitioner posted a bond[19] and the TRO was released and served.[20] Upon motion by petitioner,[21] the Court directed the Office of the Ex-Officio Sheriff to release to petitioner the properties levied under the restrained order of execution "pending appeal." [22]

The petition raises the following questions of law:

- WHETHER EXECUTION PENDING APPEAL MAY BE ISSUED AND IMPLEMENTED WHEN THE DECISION SOUGHT TO BE EXECUTED IS NOT YET FINAL BECAUSE OF THE PENDING AND UNRESOLVED MOTION FOR RECONSIDERATION OF THE DECISION SOUGHT TO BE EXECUTED PENDING APPEAL.

- WHETHER A MOTION FOR RECONSIDERATION IS A MANDATORY REQUIREMENT FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 UNDER THE CIRCUMSTANCES OF THE CASE.[23]

The Court of Appeals denied the petition for certiorari only because petitioner had failed to seek reconsideration of the RTC order directing the execution "pending appeal" of its decision or to show that the circumstances of the case fall under any of the exceptions to the rule that a motion for reconsideration is an indispensable condition to the filing of a special civil action for certiorari.

For its part, petitioner claims before this Court that as exceptions to the aforesaid rule, the following circumstances exist in the instant case: (1) the question is purely legal; (2) juridical intervention is urgent; (3) the application of the general rule may cause great and irreparable damage; (4) the controverted acts violate due process.[24]

As a general rule, a petition for certiorari before a higher court will not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions, namely: (1) when the issue raised is purely of law; (2) when public interest is involved; or (3) in case of urgency. As a fourth exception, the Court has ruled that the filing of a motion for reconsideration before availment of the remedy of certiorari is not a sine qua non, when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.[25]

In the instant case, the issue raised is purely an issue of law. Moreover, following the fourth exception, a motion for reconsideration of the RTC order allowing the immediate execution of its decision is no longer necessary in view of the fact that the RTC had already passed upon the propriety of respondents' motion for execution "pending appeal" on two occasions. It should be noted that on the first occasion, the RTC denied respondents' motion for execution "pending appeal," prompting them to seek reconsideration of its denial. In the second instance, the RTC reversed itself and allowed the execution "pending appeal." On these two occasions, the parties had been accorded ample avenue to squarely and exhaustively argue their positions and the RTC more than enough opportunity to study the matter and to deliberate upon the issues raised by the parties. Thus, the filing of another motion for reconsideration of the order of execution "pending appeal" by petitioner could not be considered a plain and adequate remedy but a mere superfluity under the circumstances of the case.

Now to the issue of the propriety and viability of the order of immediate execution.

Execution pending appeal or immediate execution, which is now called discretionary execution under Rule 39, Section 2(a), 1997 Rules of Civil Procedure, as amended, is allowed pending appeal of a judgment or final order of the trial court, upon good reasons to be stated in a special order after due hearing.[26] Section 2 (a) of Rule 39 expressly states:

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.

It is clear from the caption of the provision that discretionary execution is allowed only when the period to appeal has commenced but before the trial court loses jurisdiction over the case. The period to appeal where a motion for reconsideration has been filed as in the instant case commences only upon the receipt of a copy of the order disposing of the motion for reconsideration. The pendency of a motion for reconsideration, therefore, prevents the running of the period to appeal.

In the instant case, petitioner filed a motion for reconsideration of the RTC decision. The records of the case show that the motion had not been acted upon by the RTC before it ruled on the motion for execution "pending appeal." That being the case, the pendency of the motion for reconsideration has prevented the period to appeal from even commencing. The period within which a party may move for an execution pending appeal of the trial court's decision has not yet also started.

Where there is a pending motion for reconsideration of the RTC decision, an order execution pending appeal is improper and premature. The pendency of the motion for reconsideration legally precludes execution of the RTC decision because the motion serves as the movant's vehicle to point out the findings and conclusions of the decision which, in his view, are not supported by law or the evidence[27] and, therefore, gives the trial judge the occasion to reverse himself. In the event that the trial judge finds the motion for reconsideration meritorious, he can of course reverse the decision.

In the absence of an appeal from the decision, as the motion for reconsideration is still unresolved, the execution ordered by the RTC cannot be properly considered as execution pending appeal. All references to the assailed order as an order of execution "pending appeal" are mislabeled.

The need to resolve first, or better still deny, petitioner's motion for reconsideration before the RTC could grant the discretionary execution becomes more imperative in the light of the rule that executions pending appeal are frowned upon. Without preempting the resolution of petitioner's motion for reconsideration one way or the other, a perusal thereof shows that petitioner had raised questions and issues which were not thoroughly discussed and passed upon in the RTC decision. The RTC should have resolved these issues first before allowing the discretionary execution of its judgment if only to preclude any speculation that the order of execution "pending appeal" was issued in haste. Said failure constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC judge.

In any event, the Court does not find any good reason to justify the execution of the RTC decision pending

finality. The RTC's finding that the machinery under litigation was deteriorating is not supported by the evidence on record. Nor is the possibility that petitioner would not be able to pay the judgment award a good reason to order discretionary execution. The good reasons allowing execution pending appeal must constitute superior circumstances demanding urgency that will outweigh the injuries or damages to the adverse party if the decision is reversed.[28]

WHEREFORE, the instant petition for review on certiorari is GRANTED and the decision and resolution of the Court of Appeals in CA-G.R. SP No. 96926, as well as the Order dated 10 November 2006 and the writ of execution issued pursuant thereto by the Regional Trial Court, Branch 24 of Biñan, Laguna in Civil Case No. B-6527, are REVERSED and SET ASIDE.

SO ORDERED.

Qusisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1]Rollo, pp. 18-37.

[2] Id. at 39-79; Dated 22 December 2006 and penned by Justice Arturo G. Tayag and concurred in by Justices Remedios A. Salazar-Fernando, Chairperson of the 10[th] Division, and Noel G. Tijam.

[3] Id. at 76-80; Dated 23 March 2007.

[4] Rollo, pp. 118-148.

[5] Id. at 118.

[6] Id. at 169.

[7]Id. at 336.

[8] Id. at 347.

[9]Id. at 439-469.

[10]Id. at 419-436.

[11]Id. at 437-438.

[12]Id. at 180-196.

[13] Id. at 331-332.

[14] Id. at 333-335.

[15]Id. at 310-330.

[16] Supra note 2.

[17] Supra note 3.

[18]Id. at 494-496.

[19]Id. at 510.

[20]Id. at 519-521.

[21] Id. at 639-644.

[22] Id. at 670-671.

[23] Id. at 27-28.

[24] Id. at 29.

[25] Government of the United States of America v. Hon. Purganan, 438 Phil. 417, 437 (2002).

[26] Heirs of the Late Justice Jose BL Reyes v. Court of Appeals, G.R. Nos. 135180-81; 135425-26, 16 August 2000.

[27] See Mauricio v. National Labor Relations Commission, G.R. No. 164635, 17 November 2005.

[28] Heirs of the Late Justice Jose BL Reyes v. Court of Appeals, *supra* note 26.

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