

**VENANCIO TOLEDO, PETITIONER, VS. SILANG TRAFFIC CO., INC.,
COURT OF FIRST INSTANCE OF CAVITE, AND PROVINCIAL SHERIFF
OF CAVITE, RESPONDENTS.***G.R. No. 48442. October 22, 1941*

Ponente: OZAETA, J.

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This is an original petition for prohibition with preliminary injunction to restrain the Court of First Instance of Cavite from executing a final judgment for a sum of money which the respondent Silang Traffic Co., Inc., obtained against the petitioner Venancio Toledo in civil case No. 3466 of said court, C. A.-G. R. No. 5657, pending the termination of a separate complaint for injunction subsequently filed by the herein petitioner against the respondent corporation to prevent the execution of said judgment.

The judgment above-mentioned is for the total sum of P341.51 plus legal interest and costs, and was rendered by the Court of Appeals on December 16, 1940. On February 28, 1941, a writ of execution was issued thereon and the provincial sheriff levied on eight shares of stock of the judgment debtor Venancio Toledo in the creditor corporation. Thereupon Venancio Toledo instituted a separate action in the Court of First Instance of Cavite (case No. 3827) for injunction and, upon the filing of a bond in the sum of P450, procured from Judge Ceferino Hilario a writ of preliminary injunction restraining the sheriff from selling the said shares of stock at public auction until further order of the court.

The basis of said complaint for injunction was the claim of Venancio Toledo against the Silang Traffic Co., Inc., for the sums of P421 alleged to be due him as dividend and P482.71 as his alleged share plus interest in the supposed surplus of 1940, which he contended should be applied in satisfaction of the judgment against him. A motion filed by the respondent corporation to dissolve the said preliminary injunction was denied by Judge Roberto Regala on June 16, 1941.

Subsequently, and on June 20, 1941, the respondent Silang Traffic Co., Inc., filed a petition for an alias writ of execution, alleging that the plaintiff (respondent corporation herein) had discovered other properties of the defendant aside from the eight shares of stock mentioned in the sheriff's return on the original execution. That petition was granted by Judge Eulalio Garcia on the same date. Pursuant to said alias writ of execution, the provincial sheriff levied upon and advertised for sale on July 21, 1941, a residential house and lot belonging to Venancio Toledo. Alleging that the respondent Court of First Instance of Cavite acted with grave abuse of discretion in issuing the said alias writ of execution, the petitioner instituted the present proceeding in this court and obtained a writ of preliminary injunction restraining the respondents from taking further steps in the premises.

The question raised herein is whether an action for injunction lies to prevent the execution of a final judgment for a sum of money, upon the mere allegation of the judgment debtor that the judgment creditor is indebted to him. In our opinion, the procedure adopted by the herein petitioner finds no sanction in law or in jurisprudence. Since his claim against his judgment creditor is denied by the latter, he should have brought an action thereon in order to

reduce it to judgment. If that claim arose subsequent to the judgment against him, he might procure a stay of the execution of said judgment pending the litigation of that claim, if the trial court, in its discretion, found an equitable ground for such stay, as was done in the case of *Lee vs. Mapa* (51 Phil., 624).

The present petitioner relies upon that case but did not adopt the procedure therein followed. The facts of that case are different from the case of the herein petitioner. In that case the spouses Cornelio Cruz and Ciriaca Serrano were sentenced to pay to Chua Lee the sum of P6,520, which was secured by certain pledges. The said spouses offered to pay the amount provided the pledges were re- turned to them. Chua Lee was unable to return the pledges because they had been lost. Thereupon the spouses Cruz instituted an action against Chua Lee for damages in the sum of P6,729 arising from the loss of the pledges, and moved the court to stay the execution of Chua Lee's judgment against them pending the termination of their action against him. The loss occurred subsequent to the trial of the case of Chua Lee against the spouses Cruz. This court held that Judge Mapa acted advisedly and within the jurisdiction conferred upon him by law in staying the execution of Chua Lee's judgment against the spouses Cruz pending the latter's action for damages against Chua Lee.

In the instant case it does not appear that petitioner Toledo has brought an action against the respondent Silang Traffic Co., Inc., for a sum of money on a claim arising subsequent to the judgment the execution of which is sought to be stayed. The petitioner has no right to require his judgment creditor and the sheriff to compensate the judgment against him with his claim against his judgment creditor, which the latter denies.

We find that Judge Garcia acted properly and within the jurisdiction conferred upon him by law in issuing the alias writ of execution complained of.

The writ of preliminary injunction heretofore issued by this court is hereby dissolved, and the petition herein is dismissed, with costs. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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