

**CITIBANK, N.A. (FORMERLY FIRST NATIONAL CITY BANK),
PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND
DOUGLAS F. ANAMA, RESPONDENTS.**

G.R. No. 61508. March 17, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a special civil action for certiorari with prayer for a temporary restraining order faulting the Court of Appeals[1] with grave abuse of discretion for nullifying the lower court's order of seizure of mortgaged properties subject of a case for sum of money and replevin.

The facts leading to the institution of the case are as follows:

In consideration for a loan obtained from Citibank, N.A. (formerly First National City Bank), the defendant (private respondent herein) Douglas Anama executed a promissory note, dated November 10, 1972,[2] to pay the plaintiff bank the sum of P418,000.00 in sixty (60) equal successive monthly installments of P8,722.25, starting on the 10[th] day of December 1972 and on the 10[th] of every month thereafter. The said Promissory Note stipulated further that:

"(a) the loan is subject to interest at the rate of twelve percent (12%) per annum;

(b) the promissory note and the entire amount therein stated shall become immediately due and payable without notice or demand upon -

(aa) default in the payment of any installment of principal or interest at the time when the same is due;

(bb) the occurrence of any change in the condition and affairs of the defendant, which in the opinion of the plaintiff shall increase its credit risk;

(c) the defendant agrees to pay all costs, expenses, handling and insurance charges incurred in the granting of the loan;

(d) in case the services of a lawyer is made necessary for collection, defendant shall be liable for attorney's fees of at least ten percent (10%) of the total amount due."[3]

To secure payment of the loan, private respondent Anama also constituted a Chattel Mortgage of even date in favor of petitioner, on various machineries and equipment located at No. 1302 Epifanio delos Santos Avenue, Quezon City, under the following terms and conditions:

"(a) The machineries and equipment, subject of the mortgage, stand as security for defendant's account.

(b) All replacements, substitutions, additions, increases and accretions to the properties mortgaged shall also be subject to the mortgage.

(c) The defendant appoints the plaintiff as his attorney-in-fact with authority to enter the premises of the

defendant and take actual possession of the mortgaged chattels without any court order, to sell said property to any party.

(d) All expenses in carrying into effect the stipulations therein shall be for the account of the defendant and shall form part of the amount of the obligation secured by the mortgage.

(e) In case the plaintiff institutes proceedings for the foreclosure of the mortgage, the plaintiff shall be entitled to the appointment of a receiver without a bond.

(f) In case of default, the defendant shall be liable for attorney's fees and cost of collection in the sum equal to twenty-five percent (25%) of the total amount of the indebtedness outstanding and unpaid."[4]

On November 25, 1974, for failure and refusal of the private respondent to pay the monthly installments due under the said promissory note since January 1974, despite repeated demands, petitioner filed a verified complaint against private respondent Anama for the collection of his unpaid balance of P405,820.52 on the said promissory note, for the delivery and possession of the chattels covered by the Chattel Mortgage preparatory to the foreclosure thereof as provided under Section 14 of the Chattel Mortgage Law, docketed as Civil Case No. 95991 before the then Court of First Instance of Manila.

On February 20, 1975, the defendant Anama submitted his Answer with Counterclaim, denying the material averments of the complaint, and averring, inter alia (1) that the remedy of replevin was improper and the writ of seizure should be vacated; (2) that he signed the promissory note for P418,000.00 without receiving from plaintiff Citibank any amount, and was even required to pay the first installment on the supposed loan in December 1974; (3) that the understanding between him and the Citibank was for the latter to release to him the entire loan applied for prior to and during the execution of his promissory note, but Citibank did not do so and, instead, delayed the release of any amount on the loan even after the execution of the promissory note thereby disrupting his timetable of plans and causing him damages; (4) that the amount released by Citibank to him up to the present was not the amount stated in the promissory note, and his alleged default in paying the installments on the loan was due to the delay in releasing the full amount of the loan as agreed upon; (5) that the machineries and equipment described in the chattel mortgage executed by him are really worth more than P1,000,000.00 but he merely acceded to the valuation thereof by Citibank in said document because of the latter's representation that the same was necessary to speed up the granting of the loan applied for by him; (6) that the properties covered by said chattel mortgage are real properties installed in a more or less permanent nature at his (defendant's) premises in Quezon City, as admitted by Citibank in said mortgage document; (7) that the mortgage contract itself stipulated that the manner and procedure for effecting the sale or redemption of the mortgaged properties, if made extrajudicially, shall be governed by Act No. 1508 and other pertinent laws which all pertain to real properties; and (8) that because of the filing of this complaint without valid grounds therefor, he suffered damages and incurred attorney's fees; the defendant, now private respondent, averred.

On December 2, 1974, the trial court, upon proof of default of the private respondent in the payment of the said loan, issued an Order of Replevin over the machineries and equipment covered by the Chattel Mortgage.

However, despite the issuance of the said order of seizure of subject chattels, actual delivery of possession thereof to petitioner did not take place because negotiations for an amicable settlement between the parties were encouraged by the trial court.

On March 24, 1975, a pre-trial conference was held and the lower court issued an order for joint management by the petitioner and the private respondent of the latter's business for ten (10) days, after which the former would be appointed receiver for the said business.

On April 1, 1975, the petitioner took over private respondent's business as receiver. When further proposals to settle the case amicably failed, the lower court proceeded to try the case on the merits.

On January 29, 1977, petitioner presented a Motion for the Issuance of an Alias Writ of Seizure, ordering the sheriff to seize the properties involved and dispose of them in accordance with the Revised Rules of Court. The lower court then gave private respondent five (5) days to oppose the said motion and on February 22, 1977, he sent in his opposition thereto on the grounds: (1) that Citibank's P400,000 replevin bond to answer for damages was grossly inadequate because the market value of the properties involved is P1,710,000 and their replacement cost is P2,342,300.00 per the appraisal report of the Appraisal and Research Corp.; (2) that he was never in default to justify the seizure; (3) that the Civil Case No. 18071 of the Court of First Instance, entitled *Hernandes vs. Anama, et al.*, which, according to Citibank, supposedly increased its credit risk in the alleged obligation, had already been dismissed as against him and the case terminated with the dismissal of the complaint against the remaining defendant, First National City Bank, by the Court in its orders of January 12, 1977 and February 7, 1977; (4) that his (defendant's) supposed obligations with Citibank were fully secured and his mortgaged properties are more than sufficient to secure payment thereof; and (5) that the writ of seizure if issued would stop his business operations and contracts and expose him to lawsuits from customers, and also dislocate his employees and their families entirely dependent thereon for their livelihood.

On February 28, 1977, acting on the said Motion and private respondent's opposition, the trial court issued an Order granting the Motion for Alias Writ of Seizure, ruling thus:

"WHEREFORE , the motion for alias writ of seizure is hereby granted. At any rate, this Order gives another opportunity for defendant and the intervenor who claims to be a part owner to file a counterbond under Sec. 60 of Rules of Court." [5]

Private respondent moved for reconsideration of the aforesaid order but the same was denied by the Resolution of March 18, 1977, to wit:

"In view of the foregoing, the motion for reconsideration is hereby denied.

At any rate, as already stated, the defendant has still a remedy available which is to file a bond executed to the plaintiff in double the value of the properties as stated in the plaintiff's affidavit. The Court at this instance therefore has no authority to stop or suspend the writ of seizure already ordered." [6]

Accordingly, by virtue of the Alias Writ of Seizure, petitioner took possession of the mortgaged chattels of private respondent. As a consequence, the sheriff seized subject properties, dismantled and removed them from the premises where they were installed, delivered them to petitioner's possession on March 17, 18 and 19, 1977 and advertised them for sale at public auction scheduled on March 22, 1977.

On March 21, 1977, private respondent filed with the Court of Appeals a Petition for Certiorari and Prohibition [7] with Injunction to set aside and annul the questioned resolutions of the trial court on the ground that they were issued "in excess of jurisdiction and with grave abuse of discretion" because of the "lack of evidence and clear cut right to possession of First National City Bank (herein petitioner)" to the machineries subject of the Chattel Mortgage.

On July 30, 1982, finding that the trial court acted with grave abuse of discretion amounting to excess or lack of jurisdiction in issuing the assailed resolutions, the Court of Appeals granted the petition, holding that the provisions of the Rules of Court on Replevin and Receivership have not been complied with, in that (1) there was no Affidavit of Merit accompanying the Complaint for Replevin; (2) the bond posted by Citibank was insufficient; and (3) there was non-compliance with the requirement of a receiver's bond and oath of office. The

decretal portion of the assailed decision of the Court of Appeals, reads :

"WHEREFORE, the petition is granted. The questioned resolutions issued by the respondent judge in Civil Case No. 95991, dated February 28, 1977 and March 18, 1977, together with the writs and processes emanating or deriving therefrom, are hereby declared null and void ab initio.

The respondent ex-officio sheriff of Quezon City and the respondent First National City Bank are hereby ordered to return all the machineries and equipment with their accessories seized, dismantled and hauled, to their original and respective places and positions in the shop flooring of the petitioner's premises where these articles were, before they were dismantled, seized and hauled at their own expense. The said respondents are further ordered to cause the repair of the concrete foundations destroyed by them including the repair of the electrical wiring and facilities affected during the seizure, dismantling and hauling.

The writ of preliminary injunction heretofore in effect is hereby made permanent. Costs against the private respondents.

SO ORDERED"[8]

Therefrom, Citibank came to this Court via its present petition for certiorari, ascribing grave abuse of discretion to the Court of Appeals and assigning as errors, that:

I

THE RESPONDENT COURT ERRED IN PRACTICALLY AND IN EFFECT RENDERING JUDGMENT ON THE MERITS AGAINST THE HEREIN PETITIONER BY ORDERING THE RETURN OF THE MACHINERIES AND EQUIPMENT AND ITS ACCESSORIES TO THEIR ORIGINAL AND RESPECTIVE PLACES AND POSITIONS.

II

THE RESPONDENT COURT ERRED IN FINDING THAT THE COMPLAINT OF THE PETITIONER DID NOT COMPLY WITH THE PROVISIONS OF SEC. 2, RULE 60 OF THE RULES OF COURT.

III

THAT THE RESPONDENT COURT ERRED IN FINDING THAT THE BOND POSTED BY THE PETITIONER IS QUESTIONABLE AND/OR INSUFFICIENT.

IV

THE RESPONDENT COURT ERRED IN FINDING THAT THE PETITIONER DID NOT COMPLY WITH THE PROVISIONS OF SEC. 5, RULE 59 BY FAILING TO POST A RECEIVER'S BOND.

V

THE RESPONDENT ERRED IN FINDING THAT THE HON. JORGE R. COQUIA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DEALING WITH THE SITUATION.

I

Anent the first assigned error, petitioner contends that the Court of Appeals, by nullifying the writ of seizure issued below, in effect, rendered judgment on the merits and adjudged private respondent Anama as the person lawfully entitled to the possession of the properties subject of the replevin suit. It is theorized that the same cannot be done, as the case before the court below was yet at trial stage and the lower court still had to determine whether or not private respondent was in fact in default in the payment of his obligation to petitioner Citibank, which default would warrant the seizure of subject machineries and equipment.

The contention is untenable. A judgment is on the merits when it determines the rights and liabilities of the parties

on the basis of the disclosed facts, irrespective of formal, technical or dilatory objections, and it is not necessary that there should have been a trial.[9] The assailed decision of the Court of Appeals did not make any adjudication on the rights and liabilities between Citibank and Douglas Anama. There was no finding yet of the fact of default. The decision only ruled on the propriety of the issuance of the writ of seizure by the trial court. As worded by the respondent court itself, "the main issues to be resolved are whether there was lack or excess of jurisdiction, or grave abuse of discretion, in the issuance of the orders in question, and there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law." [10]

In resolving the issue posed by the petition, the Court of Appeals limited its disposition to a determination of whether or not the assailed order of seizure was issued in accordance with law, that is, whether the provisions of the Rules of Court on delivery of personal property or replevin as a provisional remedy were followed. The Court of Appeals relied on Rule 60 of the Rules of Court, which prescribes the procedure for the recovery of possession of personal property, which Rule, provides:

Sec. 2. Affidavit and Bond. - Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:

(a) That the plaintiff is the owner of the property claimed particularly describing it, or is entitled to the possession thereof;

(b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof according to his best of knowledge, information and belief;

(c) That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or is so seized, that is exempt from such seizure; and

(d) The actual value of the property.

The plaintiff must also give a bond, executed to the defendant in double of the value of the property as stated in the affidavit aforementioned, for the return of the property to the defendant of such sum as he may recover from the plaintiff in the action.

The Court of Appeals did not pass upon the issue of who, as between Douglas Anama and Citibank, is entitled to the possession of subject machineries, as asserted by the latter. When it ordered the restoration of the said machineries to Douglas Anama (now the private respondent), it merely brought the parties to a status quo, by restoring the defendant to the possession of his properties, since there was a finding that the issuance of the writ was not in accordance with the specific rules of the Rules of Court.

II

In its second assignment of errors, petitioner theorizes that the Court of Appeals erred in finding that it did not comply with Section 2, Rule 60 of the Rules of Court requiring the replevin plaintiff to attach an affidavit of merit to the complaint.

Petitioner maintains that although there was no affidavit of merit accompanying its complaint, there was nonetheless substantial compliance with the said rule as all that is required to be alleged in the affidavit of merit was set forth in its verified complaint. Petitioner argues further that assuming *arguendo* that there was non-compliance with the affidavit of merit requirement, such defense can no longer be availed of by private respondent Anama as it was not alleged in his Answer and was only belatedly interposed in his Reply to the Petitioner's Comment on the Petition for Certiorari before the Court of Appeals.

Petitioner is correct insofar as it contends that substantial compliance with the affidavit requirement may be permissible. There is substantial compliance with the rule requiring that an affidavit of merit to support the

complaint for replevin if the complaint itself contains a statement of every fact required to be stated in the affidavit of merit and the complaint is verified like an affidavit. On the matter of replevin, Justice Vicente Francisco's Comment on the Rules of Court, states:

"Although the better practice is to keep the affidavit and pleading separate, if plaintiff's pleading contains a statement of every fact which the statute requires to be shown in the affidavit, and the pleading is verified by affidavit covering every statement therein, this will be sufficient without a separate affidavit; but in no event can the pleading supply the absence of the affidavit unless all that the affidavit is required to contain is embodied in the pleading, and the pleading is verified in the form required in the case of a separate affidavit." (77 CJS 65 cited in Francisco, Rules of Court of the Philippines, Vol. IV-A, p. 383)

And similarly, in the case of an attachment which likewise requires an affidavit of merit, the Court held that the absence of an affidavit of merit is not fatal where the petition itself, which is under oath, recites the circumstances or facts constitutive of the grounds for the petition.[11]

The facts that must be set forth in the affidavit of merit are (1) that plaintiff owns the property particularly describing the same, or that he is entitled to its possession; (2) wrongful detention by defendant of said property; (3) that the property is not taken by virtue of a tax assessment or fine pursuant to law or seized under execution or attachment or, if it is so seized, that it is exempt from such seizure; and the (4) the actual value of the property.[12]

But, as correctly taken note of by the Court of Appeals, petitioner's complaint does not allege all the facts that should be set forth in an affidavit of merit. Although the complaint alleges that petitioner is entitled to the possession of subject properties by virtue of the chattel mortgage executed by the private respondent, upon the latter's default on its obligation, and the defendant's alleged "wrongful detention" of the same, the said complaint does not state that subject properties were not taken by virtue of a tax assessment or fine imposed pursuant to law or seized under execution or attachment or, if they were so seized, that they are exempt from such seizure.

Then too, petitioner stated the value of subject properties at a "probable value of P200,000.00, more or less". Pertinent rules require that the affidavit of merit should state the actual value of the property subject of a replevin suit and not just its probable value. Actual value (or actual market value) means "the price which an article would command in the ordinary course of business, that is to say, when offered for sale by one willing to sell, but not under compulsion to sell, and purchased by another who is willing to buy, but under no obligation to purchase it".[13] Petitioner alleged that the machineries and equipment involved are valued at P200,000.00 while respondent denies the same, claiming that per the appraisal report, the market value of the said properties is P1,710,000.00 and their replacement cost is P2,342,300.00. Petitioner's assertion is belied by the fact that upon taking possession of the aforesaid properties, it insured the same for P610,593.74 and P450,000.00, separately. It bears stressing that the actual value of the properties subject of a replevin is required to be stated in the affidavit because such actual value will be the basis of the replevin bond required to be posted by the plaintiff. Therefore, when the petitioner failed to declare the actual value of the machineries and equipment subject of the replevin suit, there was non-compliance with Section 2, Rule 60 of the Revised Rules of Court.

It should be noted, however, that the private respondent interposed the defense of lack of affidavit of merit only in his Reply to the Comment of Citibank on the Petition for Certiorari which respondent filed with the Court of Appeals. Section 2, Rule 9 of the Revised Rules of Court, provides:

SEC. 2. Defenses and objections not pleaded deemed waived - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, x x x.

This Rule has been revised and amended, as follows:

SEC. 1. Defenses and objections not pleaded. - Defenses and objections not pleaded in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

Thus, although respondent's defense of lack of affidavit of merit is meritorious, procedurally, such a defense is no longer available for failure to plead the same in the Answer as required by the omnibus motion rule.

III

Petitioner also faults the Court of Appeals for finding that the bond posted by the petitioner is questionable and/or insufficient. It is averred that, in compliance with Section 2, Rule 60 requiring the replevin plaintiff to post a bond in double the value of the properties involved, it filed a bond in the amount of P400,000.00 which is twice the amount of P200,000.00 declared in its complaint.

The Court reiterates its findings on the second assignment of errors, particularly on the issue of the actual value of subject properties as against their probable value. Private respondent, at the onset, has put into issue the value of the said properties. In the Special Defenses contained in his Answer, private respondent averred:

"That while defendant admits that he executed a Chattel Mortgage in favor of plaintiff, he vigorously denies that the machineries covered therein are only worth P200,000.00. The fact is that plaintiff knew fully well that said chattels are worth no less than P1,000,000.00, said defendant having acceded to said valuation upon plaintiff's representation that it would be necessary to speed up the granting of the loan."

As there was a disagreement on the valuation of the properties in the first place, proper determination of the value of the bond to be posted by the plaintiff cannot be sufficiently arrived at. Though the rules specifically require that the needed bond be double the value of the properties, since plaintiff merely denominated a probable value of P200,000.00 and failed to aver the properties' actual value, which is claimed to be much greater than that declared by plaintiff, the amount of P400,000.00 would indeed be insufficient as found by the Court of Appeals. The Rules of Court requires the plaintiff to "give a bond, executed to the defendant in double the value of the property as stated in the affidavit x x x ." Hence, the bond should be double the actual value of the properties involved. In this case, what was posted was merely an amount which was double the probable value as declared by the plaintiff and, therefore, inadequate should there be a finding that the actual value is actually far greater than P200,000.00. Since the valuation made by the petitioner has been disputed by the respondent, the lower court should have determined first the actual value of the properties. It was thus an error for the said court to approve the bond, which was based merely on the probable value of the properties.

It should be noted that a replevin bond is intended to indemnify the defendant against any loss that he may suffer by reason of its being compelled to surrender the possession of the disputed property pending trial of the action.[14] The same may also be answerable for damages if any when judgment is rendered in favor of the defendant or the party against whom a writ of replevin was issued and such judgment includes the return of the property to him.[15] Thus, the requirement that the bond be double the actual value of the properties litigated upon. Such is the case because the bond will answer for the actual loss to the plaintiff, which corresponds to the value of the properties sought to be recovered and for damages, if any.

Petitioner also maintains that, assuming for the sake of argument that its replevin bond was grossly inadequate or insufficient, the recourse of the respondent should be to post a counterbond or a redelivery bond as provided under Section 5 of Rule 60.

Sections 5 and 6, Rule 60 of the Rules of Court, read:

"SEC. 5. Return of property. - If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney.

SEC. 6. Disposition of property by officer. - If within five (5) days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects, and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the plaintiff, the officer must return it to the defendant."

The Court held in a prior case^[16] that the remedies provided under Section 5, Rule 60, are alternative remedies. "xxx If a defendant in a replevin action wishes to have the property taken by the sheriff restored to him, he should, within five days from such taking, (1) post a counter-bond in double the value of said property, and (2) serve plaintiff with a copy thereof, both requirements - as well as compliance therewith within the five-day period mentioned - being mandatory."^[17] This course of action is available to the defendant for as long as he does not object to the sufficiency of the plaintiff's bond.

Conformably, a defendant in a replevin suit may demand the return of possession of the property replevined by filing a redelivery bond executed to the plaintiff in double the value of the property as stated in the plaintiff's affidavit within the period specified in Sections 5 and 6.

Alternatively, "the defendant may object to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon;" but if he does so, "he cannot require the return of the property" by posting a counter-bond pursuant to Sections 5 and 6.^[18]

In the case under consideration, the private respondent did not opt to cause redelivery of the properties to him by filing a counter-bond precisely because he objected to the sufficiency of the bond posted by plaintiff. Therefore, he need not file a counter-bond or redelivery bond. When such objection was not given due course in the court below - when, instead of requiring the plaintiff to post a new bond, the court approved the bond in the amount of P400,000.00, claimed by respondent to be insufficient, and ordered the seizure of the properties - recourse to a petition for certiorari before the Court of Appeals assailing such order is proper under the circumstances.

IV

As its fourth assignment of errors, petitioner contends that the Court of Appeals made an error of judgment in finding that the petitioner did not comply with the provisions of Section 5, Rule 59 by failing to post a receiver's bond. Petitioner contends that although it is in agreement with the Court of Appeals that a receiver's bond is separate and distinct from a replevin bond, under the circumstances it was not required to file a receiver's bond because it did not assume receivership over the properties. It is further argued that assuming that it did assume receivership, the Chattel Mortgage expressly provides, that:

"In case the MORTGAGEE institutes proceedings, judicially or otherwise, for the foreclosure of this Chattel Mortgage, or to enforce any of its rights hereunder, the MORTGAGEE shall be entitled as a matter of right to the appointment of a receiver, without bond, of the mortgaged properties and of such other properties, real or personal, claims and rights of the MORTGAGOR as shall be necessary or proper to enable the said receiver to properly control and dispose of the mortgaged properties."^[19]

The order of the trial court dated March 24, 1975 provided, among others, that the properties shall be under joint management for a period of ten days, after which period "the bank, by virtue of the stipulations under the chattel mortgage, becomes the Receiver to perform all the obligations as such Receiver" and "in the event that the bank decides not to take over the receivership, the joint management continues." [20]

From the evidence on record, it is palpably clear that petitioner Citibank did, in fact, assume receivership. A letter [21] dated April 1, 1975 sent by petitioner to the private respondent, reads:

April 1, 1975

Anama Engineering Service Group

114 R. Lagmay Street

San Juan, Rizal

Attention: Mr. Douglas Anama

Gentlemen:

Pursuant to the Court order, we have decided to take over your machine shop as Receiver.

We are hereby appointing Mr. Artemio T. Gonzales as our representative.

Very truly yours,

FIRST NATIONAL CITY BANK

By:

P.R. REAL, JR.

Assistant Manager

Petitioner cannot therefore deny that nine days after the trial court issued the order of receivership, it informed the private respondent that it would, as it did, assume receivership.

The Court of Appeals found that the requirements of Section 5, Rule 59 on receivership were not complied with by the petitioner, particularly the filing or posting of a bond and the taking of an oath.

It should be noted that under the old Rules of Court which was in effect at the time this case was still at trial stage, a bond for the appointment of a receiver was not generally required of the applicant, except when the application was made ex parte. [22] Therefore, petitioner was not absolutely required to file a bond. Besides, as stipulated in the chattel mortgage contract between the parties, petitioner, as the mortgagee, is entitled to the appointment of a receiver without a bond.

However, the Court of Appeals was right in finding a defect in such assumption of receivership in that the requirement of taking an oath has not been complied with. Section 5, Rule 59, states:

"SEC. 5 Oath and bond of receiver - Before entering upon his duties, the receiver must be sworn to perform them faithfully, and must file a bond, executed to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein."

Consequently, the trial court erred in allowing the petitioner to assume receivership over the machine shop of private respondent without requiring the appointed receiver to take an oath.

V

In light of the foregoing, the answer to the fifth assignment of errors is in the negative. For erroneously issuing the alias writ of seizure without inquiring into the sufficiency of the replevin bond and for allowing petitioner to assume receivership without the requisite oath, the Court of Appeals aptly held that the trial court acted with grave abuse of discretion in dealing with the situation.

Under the Revised Rules of Court, the property seized under a writ of replevin is not to be delivered immediately to the plaintiff.[23] This is because a possessor has every right to be respected in its possession and may not be deprived of it without due process.[24]

As enunciated by this Court in the case of *Filinvest Credit Corporation vs. Court of Appeals*,[25]

"The reason why the law does not allow the creditor to possess himself of the mortgaged property with violence and against the will of the debtor is to be found in the fact that the creditor's right of possession is conditioned upon the fact of default, and the existence of this fact may naturally be the subject of controversy. The debtor, for instance, may claim in good faith, and rightly or wrongly, that the debt is paid, or that for some other reason the alleged default is nonexistent. His possession in this situation is as fully entitled to protection as that of any other person, and in the language of Article 446 of the Civil Code, he must be respected therein. To allow the creditor to seize the property against the will of the debtor would make the former to a certain extent both judge and executioner in his own cause - a thing which is inadmissible in the absence of unequivocal agreement in the contract itself or express provision to the effect in the statute."

WHEREFORE, for lack of merit, the petition is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Former Third Division with Associate Justice Mama Busran, ponente; Associate Justice Jose Melo and Associate Justice Serafin Cuevas, members.

[2] Annex "B", Rollo, p. 32.

[3] Rollo, p. 27.

[4] Rollo, pp. 28-29.

[5] Annex "E", Rollo, p. 49.

[6] Annex "F", Rollo, p. 51.

[7] Annex "G", Rollo, pp. 52-61.

[8] Ca Decision, p. 10; Rollo, p. 171.

[9] *Mendiola vs. Court of Appeals*, 258 SCRA 492.

[10] CA decision, p. 7; Rollo, p. 417.

[11] *Bayog, et al. Vs. Natino, et al.* 258 SCRA 378, 400.

[12] Section 2, Rule 60, Revised Rules of Court; *Normal Holdings and Development Corporation vs. Court of Appeals*, 194 SCRA 383

- [13] Moreno, Federico, Philippine Law Dictionary, (Vera-Reyes Inc., Quezon City), 1972, p.17.
- [14] Alim vs. Court of Appeals, 200 SCRA 450, 458; Sapugay, et al. vs. Court of Appeals, et al., G.R. No. 86792, March 21, 1990.
- [15] Stronghold Insurance Co., vs. Court of Appeals, 179 SCRA 117
- [16] La Tondeña Distillers, Inc. vs. Court of Appeals, 209 SCRA 553.
- [17] La Tondeña, id.; Ong vs. Intermediate Appellate Court, 201 SCRA 543; Chan vs. Villanueva, etc., et al., April 30, 1952; Case and Nantz vs. Jugo, et al., 77 Phil. 517; Bachrach Motor Co., Inc. vs. Albert, 60 Phil. 308.
- [18] La Tondeña, supra.
- [19] Annex "B", Rollo, p. 35.
- [20] Rollo, p. 22.
- [21] Annex "4", Rollo, p. 142.
- [22] Regalado, Florenz, Remedial Law Compendium, Volume I, pp. 663-664 (Under the new rules, a bond shall always be required from the applicant.)
- [23] Sebastian vs. Valino, 224 SCRA 256
- [24] Vilorio vs. Puno, etc., et al., 95 Phil. 802; Rodriguez vs. Tiño, 16 Phil. 301; Maglasang vs. Maceren et al., 46 O.G. No. 11, 90.

[25] 248 SCRA 549.

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