

**JOSE F. MANACOP, HARISH C. RAMNANI, CHANDRU P. PESSUMAL
AND MAUREEN M. RAMNANI, PETITIONERS, VS. EQUITABLE
PCIBANK, LAVINE LOUNGEWEAR MANUFACTURING INC.,
PHILIPPINE FIRE AND MAR...**

G.R. NOS. 162814-17. August 25, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Respondent Lavine Loungewear Manufacturing, Inc. ("Lavine") insured its buildings and supplies against fire with Philippine Fire and Marine Insurance Corporation ("PhilFire"), Rizal Surety and Insurance Company ("Rizal Surety"), Tabacalera Insurance Company ("TICO"), First Lepanto-Taisho Insurance Corporation ("First Lepanto"), Equitable Insurance Corporation ("Equitable Insurance"), and Reliance Insurance Corporation ("Reliance Insurance"). Except for Policy No. 13798 issued by First Lepanto, all the policies provide that:

Loss, if any, under this policy is payable to Equitable Banking Corporation-Greenhills Branch, as their interest may appear subject to the terms, conditions, clauses and warranties under this policy. (Underscoring supplied)

On August 1, 1998, a fire gutted Lavine's buildings and their contents thus claims were made against the policies. As found by the Office of the Insurance Commission, the insurance proceeds payable to Lavine is P112,245,324.34.[1]

Lavine was then represented by Harish C. Ramnani ("Harish") but his authority was withdrawn on March 17, 2000 by the Board of Directors due to his alleged failure to account for the insurance proceeds. Chandru C. Ramnani ("Chandru") was appointed in his stead and was designated, together with Atty. Mario A. Aguinaldo, as Lavine's representatives in negotiating with the insurance companies.

Prior to the release of the proceeds, the insurance companies required Lavine to sign a Sworn Statement in Proof of Loss and Subrogation Agreement[2] whereby the former would be absolved from their liabilities upon payment of the proceeds to Equitable Bank. Only Harish signed the document while the rest of Lavine's directors refused to sign.

Notwithstanding Chandru's request that payments be made first to Lavine who shall thereafter pay Equitable Bank as the latter's interest may appear, certain insurance companies released the proceeds directly to Equitable Bank thus Chandru filed, in behalf of Lavine, a Petition for the Issuance of a Writ of Preliminary Injunction with Prayer for a Temporary Restraining Order[3] before the Regional Trial Court (RTC) of Pasig City, against PhilFire, Rizal Surety, TICO, First Lepanto and Equitable Bank. The case was docketed as Civil Case No. 68287 and raffled to Branch 71 presided by Judge Celso D. Laviña.

Harish, Jose F. Manacop, Chandru P. Pessumal, Maureen M. Ramnani and Salvador Cortez, moved to intervene[4] claiming they were Lavine's incumbent directors and that Harish was Lavine's authorized representative.[5] They disclaimed Chandru's designation as president of Lavine as well as his and Atty.

Aguinaldo's authority to file the action. They also denied having refused to sign the Sworn Statement in Proof of Loss and Subrogation Agreement.[6]

On February 14, 2001, the trial court granted the motion for intervention[7] and thereafter denied Lavine's motion for reconsideration.[8]

In their respective Answer with Compulsory Counterclaim, Rizal Surety stated its willingness to pay the insurance proceeds but only to the rightful claimant,[9] while Equitable Bank alleged it had sufficiently established the amount of its claim and as beneficiary of the insurance policies, it was entitled to collect the proceeds.[10]

The intervenors in their Amended Answer-in-Intervention[11] with cross-claim against the insurance companies alleged that as of August 1, 1998, Lavine's obligations to Equitable Bank amounted to P71,000,000.00 and since Equitable Insurance and Reliance Insurance have already paid the bank more than this amount, respondent insurance companies should be ordered to immediately deliver to Lavine the remaining insurance proceeds through the intervenors and to pay interests thereon from the time of submission of proof of loss.

In its Answer[12] dated May 22, 2001 to Lavine's complaint and the intervenors' cross-claim, First Lepanto alleged that its share in the combined proceeds was P16,145,760.11, of which P6,000,000.00 had already been paid to Equitable Bank. It withheld payment of the balance since it could not determine to whom it should be made. It further alleged that the intervenors had no personality to intervene and prayed for the outright dismissal of their cross-claim against the insurance companies.

This was refuted by the intervenors who alleged that since Lavine and petitioners were already litigating, it was too late for First Lepanto to file an action for interpleader. They stressed that the latter must now deliver the balance of the insurance proceeds to either Equitable Bank or Lavine, through the intervenors.[13]

On June 18, 2001, PhilFire filed its Answer[14] admitting liability in the amount of P12,916,608.09, of which P4,288,329.52 had been paid to Equitable Bank but withheld paying the balance until the rightful claimant has been determined. TICO did not file an answer to Lavine's complaint and was declared in default.[15]

After pre-trial, the intervenors filed a Second Amended Answer-in-Intervention[16] alleging that Lavine's liabilities to Equitable Bank were extinguished since it received proceeds exceeding the amount of Lavine's obligations. Thus, the real estate mortgages given as security therefor be released and the excess amount returned to Lavine.

Equitable Bank denied that Lavine's obligations were fully paid, and averred that the loans were secured not only by the insurance policies and the real estate mortgages but also by several surety agreements executed by Harish and Maureen Ramnani. The bank prayed that: (a) the insurance companies be ordered to deliver to it the proceeds of the policies and/or for Lavine to be directed to pay the outstanding loans; (b) the spouses Harish and Maureen Ramnani be held solidarily liable for the payment of the outstanding obligations of Lavine; and (c) the mortgaged properties be foreclosed in case of failure of Lavine, the insurers and sureties to fully satisfy the loan obligations.[17]

In a Reply,[18] the intervenors denied that Lavine acquired further loans from the bank for the years 1998 and 1999. The promissory notes allegedly pertaining to these loans were obtained prior to 1998 and the surety agreements signed by Harish and Maureen Ramnani were consolidated in a Surety Agreement dated January 27, 1997[19] and that the loan covered by PN No. TL-GH-97-0292 had been fully paid.

In the meantime, Equitable Bank and First Lepanto manifested in open court that another pre-trial should be conducted on the intervenors' cross-claim under the Second Amended Answer-in-Intervention but the trial court

denied the same and proceeded with the hearing of the case.[20]

On April 2, 2002, the trial court rendered a decision, the dispositive part 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 P65,819,936.05 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.[21]

On April 3, 2002, the intervenors filed a Motion for Execution Pending Appeal[22] on the following grounds: (a) TICO was on the brink of insolvency; (b) Lavine was in imminent danger of extinction; and (c) any appeal from the trial court's judgment would be merely dilatory.

Meanwhile, Rizal Surety, First Lepanto, Equitable Bank and Lavine separately filed a Notice of Appeal.[23] PhilFire likewise filed a Notice of Appeal,[24] a Motion for Reconsideration (Ad Cautelam),[25] and a Motion to Dismiss.[26] PhilFire's Motion for Reconsideration and Motion to Dismiss were denied by the trial court on May 14, 2002.[27]

Without filing a motion for reconsideration from the decision of the trial court and even before the latter could rule on the motion for execution pending appeal, Equitable Bank filed on April 24, 2002 a Petition for Certiorari, Prohibition and Mandamus (with Prayer for Temporary Restraining Order and Preliminary Injunction)[28] before

the Court of Appeals docketed as CA-G.R. SP No. 70298. Lavine also filed a Petition for Certiorari with Prayer for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction[29] docketed as CA-G.R. SP No. 70292, after it withdrew its Notice of Appeal. Both claimed that appeal was not a plain, speedy and adequate remedy under the circumstances.

Judge Laviña granted intervenors' motion for execution pending appeal[30] and issued a writ of execution on May 20, 2002[31] which was implemented the following day. Personal properties of PhilFire and First Lepanto were seized; the latter's bank deposits garnished while real properties belonging to Equitable Bank were levied upon. The writ was not enforced against Rizal Surety because its corporate name and operations were transferred to QBE Insurance (Phils.) Incorporation ("QBE Insurance").[32]

First Lepanto assailed the trial court's order granting execution pending appeal and the writ of execution in a Petition for Certiorari[33] before the Court of Appeals docketed as CA-G.R. SP No. 70844. It allegedly did not file a motion for reconsideration of the trial court's order due to extreme urgency, as the ongoing execution of the appealed judgment was threatening to paralyze its operations. Before long, PhilFire also filed a Petition for Certiorari With Prayer for Temporary Restraining Order and Writ of Preliminary Injunction docketed as CA-G.R. SP No. 70799, against the same order and writ of execution.[34]

Rizal Surety, for its part, did not file a petition under Rule 65 of the Revised Rules of Civil Procedure but maintained its ordinary appeal from the April 2, 2002 decision of the trial court. However, acting on the report that Rizal Surety was now re-organized as QBE Insurance (Phils.) Inc., Judge Laviña issued an Order dated May 27, 2002 directing the implementation of the Writ of Execution against QBE Insurance.[35]

Subsequently, the certiorari petitions were consolidated before the Tenth Division of the Court of Appeals, which thereupon granted Lavine's prayer for the issuance of a writ of preliminary injunction upon posting a P50M bond.[36]

In view of the issuance of the writ of execution by the trial court, Equitable Bank filed an Amended and/or Supplemental Petition for Certiorari, Prohibition and Mandamus[37] in CA-G.R. SP No. 70298 on June 11, 2002, assailing the trial court's order granting execution pending appeal as well as the issuance of the writ of execution. In due course, the Court of Appeals promulgated a consolidated decision, the dispositive part of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

(1) SETTING ASIDE the decision dated April 2, 2001;

(2) declaring NULL and VOID the Special Order dated May 17, 2002 and the Writ of Execution dated May 20, 2002;

(3) remanding the case to the lower court for the conduct of pre-trial conference on the Second Amended Answer-in-Intervention and the subsequent pleadings filed in relation thereto; and

(4) in the event that the lower court decides that Lavine is the one entitled to the proceeds of the insurance policies, payment thereof should be withheld, subject to the outcome of the decision on the issue on the rightful members of the Board of Directors of Lavine which is pending before the intra-corporate court.

SO ORDERED.[38]

On March 17, 2004, the appellate court issued a resolution amending its earlier decision as follows:

WHEREFORE, premises considered, this Court hereby resolves to:

- CORRECT paragraph 1 of the dispositive portion of the Consolidated Decision dated May 29, 2003 to reflect

the correct date of the questioned decision of the court a quo which is April 2, 2002 and not April 2, 2001;

- CLARIFY paragraph 3 of the Consolidated Decision in the sense that the case is remanded to the lower court to enable to (sic) the parties to amend their respective pleadings and issues, as may be necessary and conduct pre-trial anew and other proceedings to the exclusion of the intervenors in view of the ruling that the latter should not have been allowed to intervene in the case;

- a) LIFT the order of levy and garnishment on the real and personal properties and bank deposits of Equitable PCIBank; b) LIFT the garnishment on the bank accounts of Philippine Fire and Marine Insurance Corporation which were made pursuant to the Special Order dated May 17, 2002 and the Writ of Execution dated May 20, 2002 which were declared null and void in this Court's Consolidated Decision; and

- DENY Equitable PCIBank's motion to disqualify respondent Judge Celso Laviña from hearing the case upon its remand to the lower court.

SO ORDERED.[39]

Upon proper motion, the Court of Appeals also subsequently ordered the lifting of the order of levy and notice of garnishment on the real properties and bank deposits of First Lepanto in a resolution dated April 20, 2004.

Equitable Bank then filed a petition for review before this Court docketed as G.R. Nos. 162842-45 assailing the appellate court's resolution insofar as it denied the bank's motion to disqualify Judge Laviña. However, the Third Division of this Court denied the petition[40] and its subsequent motion for reconsideration.[41]

On the other hand, the intervenors - now petitioners - took this recourse under Rule 45 alleging that:

- THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THE PETITION FOR CERTIORARI OF EQUITABLE PCIBANK IN CA-G.R. SP NO. 70298 AND THE PETITION FOR CERTIORARI OF LAVINE IN CA-G.R. SP NO. 70292 NOTWITHSTANDING THAT THE ORDINARY MODE OF APPEAL UNDER SECTION 2, RULE 41 OF THE REVISED RULES OF COURT HAD ALREADY BEEN AVAILED OF BY THEM.

- THE COURT OF APPEALS COMMITTED AN ERROR IN VOIDING THE DECISION OF THE TRIAL COURT DATED APRIL 2, 2002 FOR LACK OF PRE-TRIAL ON THE PETITIONERS AMENDED ANSWER-IN-INTERVENTION NOTWITHSTANDING THAT A PRE-TRIAL WAS ALREADY CONCLUDED AND THE PARTIES HAVE ALREADY ADDUCED THEIR RESPECTIVE EVIDENCES IN THE TRIAL.

- THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONERS WHO ARE THE RIGHTFUL MEMBERS OF THE BOARD OF DIRECTORS CANNOT INTERVENE TO PROSECUTE THE ACTION FILED BY LAVINE THROUGH A MINORITY STOCKHOLDER WHO HAS NO AUTHORITY THEREFOR.

- THE COURT OF APPEALS ERRED IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND FRUSTRATE THE FINDINGS THAT EQUITABLE PCIBANK IS NOT ENTITLED TO CLAIM THE INSURANCE PROCEEDS SINCE THE LOAN OF LAVINE TO IT HAD ALREADY BEEN FULLY PAID AS IN FACT THERE WAS AN OVERPAYMENT WHICH MUST BE RETURNED TO LAVINE.

- THE COURT OF APPEALS COMMITTED AN ERROR IN VOIDING THE WRIT OF EXECUTION PENDING APPEAL NOTWITHSTANDING THAT THE JUDGMENT LIABILITY IS ADMITTED BUT ITS SATISFACTION IS WITHHELD BY VIRTUE OF THE FLIMSY APPEAL.[42]

The petition is partly meritorious.

On the first assigned error, we agree that the Court of Appeals should have dismissed CA-G.R. SP Nos. 70292 and 70298. A perusal of these petitions show that Equitable Bank and Lavine inappropriately filed the petitions for certiorari when appeal was clearly a plain, speedy and adequate remedy from the decision of the trial court. In fact, both filed their respective notices of appeal from the trial court's decision, although Lavine later withdrew its notice of appeal. They therefore cannot be allowed to question the same decision on the merits and also invoke the extraordinary remedy of certiorari.

Simultaneous filing of a petition for certiorari under Rule 65 and an ordinary appeal under Rule 41 of the Revised Rules of Civil Procedure cannot be allowed since one remedy would necessarily cancel out the other. The existence and availability of the right of appeal proscribes resort to certiorari because one of the requirements for availment of the latter is precisely that there should be no appeal.[43] It is elementary that for certiorari to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction; the requirement that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied.[44]

In the instant case, Equitable Bank and Lavine assailed the trial court's decision through certiorari by alleging that Judge Laviña was biased. According to Equitable Bank, Judge Laviña's partiality was evident in his refusal to issue and serve summons on Jethmal Inc. and in conducting pre-trial on petitioners' Second Amended Answer-in-Intervention. On the other hand, Lavine alleged that Judge Laviña disregarded mandatory provisions of the Rules of Court when he allowed petitioners to intervene; that he also resolved the issue of corporate representation between the two groups of directors of Lavine when he had no jurisdiction over the subject matter.

Clearly, the foregoing allegations are proper under Rule 41. It should be pointed out that when Equitable Bank and Lavine filed their respective petitions before the Court of Appeals on April 24, 2002, the trial court had already rendered on April 2, 2002 a judgment on the merits. Both had notice of said final judgment as they even filed notices of appeal with the trial court. This only goes to show that Equitable Bank and Lavine unwittingly recognized ordinary appeal as the proper remedy in seeking reversal of the assailed decision.

It is well-settled that the remedy to obtain reversal or modification of the judgment on the merits is appeal. This is true even if the error, or one of the errors, ascribed to the trial court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.[45] Thus, while it may be true that a final order or judgment was rendered under circumstances that would otherwise justify resort to a special civil action under Rule 65, the latter would nonetheless be unavailing if there is an appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

Equitable Bank, however, posits that in certain exceptional cases, certiorari may be allowed even with the availability of an appeal, such as where valid and compelling considerations would warrant the same or where rigid application of the rules would result in a manifest failure or miscarriage of justice, as in this case.

Equitable Bank's reliance on *Estate of Salud Jimenez v. Philippine Export Processing Zone*[46] is misplaced. In that case, resort by the respondent to a special civil action was justified, even as the reglementary period for the proper remedy of appeal had already lapsed, because the assailed order of the trial court set aside an expropriation order that had long become final and executory. The Court declared therein that the trial court clearly acted beyond its jurisdiction for it cannot modify a final and executory order. The questioned order of the trial court in that case was a patent nullity.

In contrast, Equitable Bank has not shown any valid or extraordinary circumstance that would justify immediate resort to certiorari. It simply alleged grave abuse of discretion on the part of the trial judge as purportedly shown

by a pattern of questionable rulings in favor of petitioners. However, these rulings may not be corrected by certiorari no matter how irregular or erroneous they might be. If the court has jurisdiction over the subject matter and of the person, its rulings upon all questions involved are within its jurisdiction and may be corrected only by an appeal from the final decision.[47]

Another compelling reason for dismissing CA-G.R. Nos. 70292 and 70298 is that Equitable Bank and Lavine actually engaged in forum-shopping. As pointed out by petitioners, there is indeed parallelism between the instant case and Chemphil Export & Import Corp. v. CA.[48]

In Chemphil, PCIBank filed a special civil action for certiorari against final orders of the trial court, even as its co-parties likewise brought an ordinary appeal from the same final orders. Although PCIBank did not join its co-parties in the latter's appeal and instead separately filed its own petition under Rule 65, the Court nonetheless found PCIBank's acts as constituting forum-shopping:

We view with skepticism PCIB's contention that it did not join the consortium because it "honestly believed that certiorari was the more efficacious and speedy relief available under the circumstances." Rule 65 of the Revised Rules of Court is not difficult to understand. Certiorari is available only if there is no appeal or other plain, speedy and adequate remedy in the ordinary course of law. Hence, in instituting a separate petition for certiorari, PCIB has deliberately resorted to forum-shopping.

...

It alarms us to realize that we have to constantly repeat our warning against forum-shopping. We cannot over-emphasize its ill-effects, one of which is aptly demonstrated in the case at bench where we are confronted with two divisions of the Court of Appeals issuing contradictory decisions . . .

Forum-shopping or the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of certiorari), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition has been characterized as an act of malpractice that is prohibited and condemned as trifling with the Courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts. (Underscoring supplied)[49]

Thus, if we allow the instant petitions of Equitable Bank and Lavine to prosper, this Court would be confronted with the spectacle of two (2) appellate court decisions (one on the special civil actions brought by Equitable Bank and Lavine, and another on the ordinary appeals taken by Rizal Surety, Equitable Bank and the other respondents) dealing with the same subject matter, issues, and parties. Needless to say, this is exactly the pernicious effect that the rules against forum-shopping seek to avoid. Consequently, the certiorari petitions of Equitable Bank and Lavine must be struck down for being anathema to the orderly administration of justice.

In view of the preceding discussion, we find it no longer necessary to discuss petitioners' second to fourth assigned errors. The propriety of the intervention, the lack of pre-trial and the extent of Equitable Bank's interests in the insurance proceeds, among others, are issues that must properly be resolved in the ordinary appeals. Except for Lavine which apparently withdrew its notice of appeal, all the other respondents appealed the decision of the trial court under Rule 41. These appeals must consequently be allowed to proceed.

Anent petitioners' fifth assigned error, we find that the Court of Appeals did not err in giving due course and in granting the petitions in CA-G.R. SP Nos. 70799 and 70844. These certiorari petitions initiated by PhilFire and First Lepanto were directed against the trial court's orders granting execution pending appeal and the concomitant

issuance of a writ of execution. The proper recourse to be taken from these orders is a special civil action for certiorari under Rule 65, pursuant to Section 1, Rule 41 of the Revised Rules of Civil Procedure.[50]

Certiorari lies against an order granting execution pending appeal where the same is not founded upon good reasons. The fact that the losing party had also appealed from the judgment does not bar the certiorari proceedings, as the appeal could not be an adequate remedy from such premature execution. Additionally, there is no forum-shopping where in one petition a party questions the order granting the motion for execution pending appeal and at the same time questions the decision on the merits in a regular appeal before the appellate court. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice versa.[51]

The general rule is that only judgments which have become final and executory may be executed.[52] 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.[53] 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.[54] Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.[55]

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*: [56]

... 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...[57]

Lastly, petitioners assert that Lavine's financial distress is sufficient reason to order execution pending appeal. Citing *Borja v. Court of Appeals*, [58] 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."[59] 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.[60]

WHEREFORE, the petition is PARTIALLY GRANTED. CA-G.R. SP Nos. 70292 and 70298 are DISMISSED. The assailed decision of the Court of Appeals dated May 29, 2003 is AFFIRMED insofar as it declared null and void the Special Order dated May 17, 2002 and the Writ of Execution dated May 20, 2002 of the Regional Trial Court-Pasig City, Branch 71, in Civil Case No. 68287

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio, and Azcuna., JJ., concur.

[1] Rollo in CA-G.R. SP No. 70292, Vol. I, p. 143.

[2] Rollo, pp. 901-904.

[3] Id. at 180-187.

[4] Id. at 203-204.

[5] Id. at 205-206.

[6] Id. at 207-210.

[7] Id. at 218-219.

[8] RTC Records, Vol. I, pp. 283-285.

[9] Rollo, pp. 196-202.

[10] Id. at 188-191.

[11] Id. at 220-227.

[12] Id. at 231-239.

[13] RTC Records, Vol. I, pp. 370-371.

[14] Rollo, pp. 243-251.

[15] RTC Records, Vol. I, pp. 407-414.

[16] Rollo, pp. 252-263.

[17] Id. at 264-276.

[18] Id. at 277-282.

[19] Id. at 280.

[20] Rollo in CA-G.R. SP No. 70298, Vol. I, p. 050.

[21] Rollo, pp. 321-323.

[22] Id. at 324-332.

- [23] Rollo, pp. 333, 425 and 478.
- [24] Id. at 430.
- [25] Id. at 451-477.
- [26] Id. at 437-450.
- [27] Rollo in CA-G.R. SP No. 70292, Vol. I, pp. 325-327.
- [28] Rollo, pp. 364-424.
- [29] Id. at 480-532.
- [30] Id. at 533-536.
- [31] Rollo in CA-G.R. SP No. 70799, pp. 35-37.
- [32] Rollo in CA-G.R. SP No. 70292, Vol. I, pp. 594-596.
- [33] Rollo, pp. 537-570.
- [34] Rollo in CA-G.R. SP No. 70799, pp. 2-30.
- [35] Rollo in CA-G.R. SP No. 70292, Vol. I, pp. 946-947.
- [36] Id. at 396-400.
- [37] Rollo in CA-G.R. SP No. 70298, Vol. II, pp. 434-534.
- [38] Rollo, pp. 56-57.
- [39] Id. at 66-67.
- [40] Per Minute Resolution in G.R. Nos. 162842-45 dated May 31, 2004.
- [41] Per Minute Resolution in G.R. Nos. 162842-45 dated August 18, 2004.
- [42] Rollo, pp. 92-93.
- [43] Balindong v. Dacalos, G.R. No. 158874, 10 November 2004, 441 SCRA 607, 612.
- [44] UNWCF v. Nestle Philippines, Inc., 439 Phil. 807, 815 (2002).
- [45] Metropolitan Manila Devt. Authority v. Jancom Environmental Corp., 425 Phil. 961, 973 (2002).
- [46] G.R. No. 137285, 16 January 2001, 349 SCRA 240.
- [47] Metropolitan Manila Devt. Authority v. Jancom Environmental Corp., supra at 971.
- [48] 321 Phil. 619 (1995).
- [49] Id. at 655-656.
- [50] Rule 41, Section 1 of the Rules of Court provides:

SECTION 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

...

(f) An order of execution;

...

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[51] International School, Inc. (Manila) v. Court of Appeals, 368 Phil. 791, 798-799 (1999).

[52] BF Corporation v. EDSA Shangri-la Hotel, 355 Phil. 541, 547 (1998).

[53] Maceda, Jr. v. Development Bank of the Philippines, 372 Phil. 107, 117 (1999).

[54] Diesel Construction Company, Inc. v. Jollibee Foods Corp., 380 Phil. 813, 829 (2000).

[55] Flexo Manufacturing Corporation v. Columbus Foods, Inc. and Pacific Meat Company, Inc., G.R. No. 164857, 11 April 2005.

[56] Supra.

[57] Id. at 548.

[58] 274 Phil. 258 (1991).

[59] Id. at 261.

[60] Diesel Construction Company, Inc. v. Jollibee Foods Corp., supra at 830.

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