

**GEOLOGISTICS, INC., (FORMERLY LEP INTERNATIONAL PHILIPPINES, INC.), PETITIONER, VS. GATEWAY ELECTRONICS CORPORATION AND FIRST LEPANTO TAISHO INSURANCE, CORPORATION, RESPONDENTS.**

*G.R. Nos. 174256-57. March 25, 2009*

Ponente: TINGA, J.

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**TINGA, J.:**

This is a petition for review on certiorari,[1] praying for the reversal of the amended decision[2] of the Court of Appeals in CA-G.R. SP No. 68465 and CA-G.R. SP No. 69441 and the reinstatement of the order[3] of the Regional Trial Court (RTC), Branch 260, Parañaque City issuing a writ of partial execution.

As culled from the records of the case, the following factual antecedents appear:

Petitioner Geologistics, Inc., formerly known as LEP International Philippines, Inc., is a domestic corporation engaged in the business of freight forwarding and customs brokerage. On 17 October 1997, petitioner instituted an action for the recovery of sum of money against respondent Gateway Electronic Corporation (respondent Gateway) before the RTC of Parañaque.[4] The case was docketed as Civil Case No. 97-0496 and raffled to the sala of Judge Helen Bautista-Ricafort of Branch 260. Petitioner prayed for a judgment award in the amount of P4,769,954.32, representing the fees, including interest owed by respondent Gateway for petitioner's services as customs broker and freight forwarder.

The RTC subsequently issued a writ of preliminary attachment on the properties of respondent Gateway, prompting the latter to move for its dissolution. Respondent First Lepanto-Taisho Insurance Corporation (respondent surety) filed a counter-bond in the amount of P5 million to secure the payment of any judgment that petitioner could recover from respondent Gateway.[5]

After hearing on the merits, the RTC rendered a Decision[6] dated 19 October 2001, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendant to pay the plaintiff:

- The sum of Four Million Seven Hundred Sixty Nine Thousand Nine Hundred Fifty Four and Thirty Two Centavos (P4,769,954.32) Pesos, plus the stipulated three (3%) interest per month computes starting August 1, 1997 until the same is fully paid;
- The amount of Two Hundred Thousand (P200,000.00) Pesos as exemplary damages for wanton and fraudulent acts of defendants, to serve as an example for the public good and to deter other from doing same acts.
- The amount of One Million One Hundred Ninety Two Thousand Four Hundred Eighty Eight pesos (P1,192,488.00) representing the stipulated Twenty Five percent (25%) attorney's fees; and,

- Costs.

Accordingly, the defendant's counterclaim is hereby DISMISSED.

SO ORDERED.[7]

Petitioner filed a motion for execution pending appeal on 30 October 2001 which was opposed by respondent Gateway. The motion alleged the following "good reasons" to execute the RTC decision pending appeal: (1) respondent Gateway was guilty of fraud in contracting its obligations to petitioner; (2) the appeal was interposed to delay the case; (3) respondent Gateway had ceased operations and was in imminent danger of insolvency; and (4) the counter-bond posted by respondent Gateway could be the subject of execution.[8]

After petitioner's filing of a reply to respondent Gateway's opposition, the motion was submitted for resolution. Respondent Gateway also filed a notice of appeal on 07 November 2001.[9]

In an Order dated 10 December 2001,[10] Judge Helen Bautista-Ricafort granted petitioner's motion for execution pending appeal because respondent Gateway had admitted its principal obligation to petitioner and the case had been pending since 1997.[11] On 18 December 2001, Judge Ricafort issued a writ of execution, ordering the sheriff to execute respondent Gateway's counter-bond issued by respondent surety up to the amount of P4,769,954.32.[12] The writ of execution, directing respondent surety to comply with the order of the RTC within five days from notification, was served on 09 January 2002.[13]

Respondent surety filed a motion to set aside the 10 December 2001 Order of Judge Ricafort and to quash the writ of execution, but the motion was denied per Order dated 19 February 2002. In the same order, respondent surety was directed to pay petitioner the sum of P4,769,954.32 "without prejudice to the right of reimbursement thereafter" from respondent Gateway.[14]

On 04 March 2002, Sheriff Elosocje implemented the writ of execution through the garnishment of respondent surety's bank account with Banco de Oro. On 18 March 2002, Sheriff Elosocje received the garnished amount in the form of a manager's check which was then turned over to petitioner's counsel.[15]

Meanwhile, both respondents filed separate Rule 65 petitions before the Court of Appeals against Judge Ricafort, Atty. Clement Boley, in his capacity as Ex-Officio Sheriff, Lucas Elosocje, in his capacity as Sheriff, and herein petitioner.

In the petition for certiorari, prohibition and mandamus (with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction),[16] docketed as CA-G.R. SP No. 68465, respondent Gateway advanced the following arguments: (1) no good reason existed to justify execution pending appeal especially considering the fact that the case had already been elevated on appeal; (2) the ground cited in the assailed order was not supported by the evidence on record; and (3) a writ of partial execution can implement only a partial judgment.[17]

Respondent Gateway's petition was initially dismissed by the appellate court, but upon motion for reconsideration, the appellate court ordered its reinstatement and the issuance of a temporary restraining order (TRO) against the enforcement of the RTC's Decision and the Order dated 10 December 2001.[18]

Respondent surety's petition for certiorari, docketed as CA-G.R. SP No. 69441, sought the nullification of the RTC orders issued on 10 December 2001 and 19 February 2002, the quashal of the writ of execution, the issuance of a TRO and a writ of preliminary injunction to enjoin the implementation of the writ of execution and the return of the garnished amount to respondent surety.[19]

During the pendency of the two petitions, the Board of Directors of respondent Gateway resolved on 18 October

2004 to file a petition for declaration of voluntary insolvency.[20]

On 28 February 2005, the Court of Appeals (First Division) rendered a Decision[21] in CA-G.R. SP No. 68465, granting respondent Gateway's petition. The dispositive portion of the decision reads:

WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.

SO ORDERED.[22]

Subsequently, on 31 March 2005, the Court of Appeals (Fifth Division) promulgated a Decision[23] in CA-G.R. SP No. 69441, adopting the prior decision in CA-G.R. SP No. 68465. The dispositive portion of the Decision states:

WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. The parties are ordered to comply with the Decision dated February 28, 2005 in CA-G.R. SP No. 68465, which disposed of the case as follows:

In other words, private respondent must return to First Lepanto (petitioner herein) the amount garnished by the sheriff pursuant to the notice of garnishment, otherwise, petitioner would be compelled to reimburse First Lepanto for the same.

WHEREFORE, the petition is GRANTED. The Order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.

SO ORDERED.

Pursuant to Section 3, Rule III of the 2002 Internal Rules of the Court of Appeals, as amended, subject to the conformity of the Justice who penned the aforequoted Decision, let this case be consolidated with CA-G.R. SP No. 68465.

### **SO ORDERED.[24]**

Petitioner moved for reconsideration[25] of the decision in CA-G.R. SP No. 68465 while respondent surety sought to modify the decision in CA-G.R. SP No. 69441 to include an award of interest on the amount ordered returned to it by the appellate court.[26]

On 17 August 2006, the Court of Appeals promulgated the assailed consolidated amended decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court resolves as follows:

1. In CA-G.R. SP No. 68465. -

For lack of merit, private respondent's motion for reconsideration of the decision dated February 28, 2005 is DENIED. However, the dispositive portion of said decision is MODIFIED, such that it shall now read:

"WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE.

SO ORDERED."

## 2. In CA-G.R. SP No. 69441 -

Petitioner's motion for partial reconsideration of the decision dated March 31, 2005 is GRANTED. The first paragraph of the dispositive portion of said decision shall now read:

"WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to petitioner First Lepanto-Taisho Insurance Corporation's deposit account plus interest thereon at the rate of 6% per annum from filing of the petition until finality of this judgment, after which the interest shall be at the rate of 12% per annum until said amount is fully deposited."

For lack of merit, the motion for reconsideration filed by respondent LEP International Phils., Inc. is DENIED.

### **SO ORDERED.[27]**

Hence, the instant petition, arguing that the Court of Appeals' decision erred in holding that no good reasons existed to warrant the discretionary execution of the RTC decision and that it would render nugatory the RTC judgment to the prejudice of petitioner. The petition also assails the appellate court's ruling that the filing of a motion for reconsideration was not a condition precedent to the filing of respondents' petition for certiorari. Last, the petition reiterates the claim that petitioner was neither in possession nor in control of the goods subject of respondent Gateway's counterclaim.[28]

Respondent Gateway filed a motion, praying that it be excused from filing a comment on the petition on the ground that it had filed a petition for voluntary insolvency before the RTC of Imus, Cavite, where an order was issued declaring respondent Gateway as insolvent and forbidding the transfer of its property. Petitioner did not oppose respondent Gateway's motion and in a Resolution dated 26 September 2007, the Court granted said motion.[29]

At the core of the instant petition is the question of whether a sufficient ground exists warranting the discretionary execution of the RTC decision. In granting petitioner's motion for execution pending appeal, the RTC gave weight to the fact that the case had been pending since 1997 and the alleged admission of liability on the part of respondent Gateway, which the Court of Appeals found to be unsupported by the evidence on record. Petitioner now counters that only the exact amount of liability is disputed but not respondent's admission of liability. It claims that in the certiorari proceeding, even the Court of Appeals acknowledged that respondent Gateway did admit owing petitioner the principal amount of P4,138,864.70 and not P4,769,954.32 which was the amount garnished pursuant to the writ of execution and the dispositive portion of the RTC decision.

The rule on execution pending appeal, which is now termed discretionary execution under Rule 39, Section 2 of the Rules of Court, must be strictly construed being an exception to the general rule.[30] Discretionary execution of appealed judgments may be allowed 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. 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. Since the execution of a judgment pending appeal is an exception to the general rule, the existence of good reasons is essential.[31]

The Rules of Court does not state, enumerate, or give examples of "good reasons" to justify execution. The determination of what is a good reason must, necessarily, be addressed to the sound discretion of the trial court. In other words, the issuance of the writ of execution must necessarily be controlled by the judgment of the judge in accordance with his own conscience and by a sense of justice and equity, free from the control of another's

judgment or conscience. It must be so for discretion implies the absence of a hard and fast rule.[32]

The grounds cited by the RTC in allowing the discretionary execution of its decision cannot be considered "good reasons." The alleged admission by respondent Gateway of its liability is more apparent than real because the issue of liability is precisely the reason the case was elevated on appeal. The exact amount of respondent Gateway's liability to petitioner remains under dispute even if, as claimed by petitioner, the evidence on record indicates that respondent Gateway's obligation is almost a certainty. Precisely the appeal process must be allowed to take its course all the way to the finality of judgment to determine once and for all the incidents of the suit.

The fact alone that in the certiorari proceeding, the Court of Appeals also found respondent Gateway to have admitted its liability for a different amount is not automatically considered as a "good reason" to order discretionary execution. Petitioner is preempting the Court of Appeals' review of the RTC decision in insisting that in the certiorari proceeding, the Court of Appeals should have simply ordered the discretionary execution of the amount which it found to have been admitted by respondent Gateway.

Another factor that militates against petitioner's claim that any judgment in its favor may become illusory if execution pending appeal is not allowed is the fact that petitioner is considered a secured creditor on account of the counterbond posted by respondent surety. The said counterbond, posted as it was to discharge the attachment in favor of petitioner, serves as security for the payment of any judgment that petitioner may recover in the instant action.[33] Following its argument that respondent Gateway's obligation to petitioner is almost a certainty, petitioner will not find it hard to recover its monetary claim once final judgment is rendered in its favor because petitioner can certainly garnish the counterbond.

As regards petitioner's assigned error that there was no basis for the Court of Appeals to declare that respondent Gateway's principal liability would be offset by its counterclaim for the recovery of the goods allegedly held by petitioner, suffice it to say that this controversy should be properly ventilated on appeal. All the more, petitioner's prayer for execution pending appeal should be denied because there are questions in the instant controversy, other than the issue of respondent Gateway's principal liability, that need to be resolved on appeal. Thus, the order allowing execution pending appeal would render nugatory the decision of the Court of Appeals on the appeal.

Petitioner argues that the Court of Appeals erred in holding that the filing of a motion for reconsideration was not a requirement for the appellate court to acquire jurisdiction over the petition for certiorari, prohibition and mandamus.

As a general rule, a petition for certiorari before a higher court will not prosper unless the inferior court has not been given, through a motion for reconsideration, a chance to correct the errors imputed to it. This rule, though, has certain exceptions: (1) when the issue raised is purely of law, (2) when public interest is involved, or (3) in case of urgency.[34]

Respondent Gateway's explanation on this aspect, which the Court of Appeals found sufficient, is that the assailed order of discretionary execution was already being implemented, thereby leaving it with no plain, speedy and adequate remedy other than to file the petition for certiorari, prohibition and mandamus before the Court of Appeals. Considering the urgency of the matter, the Court finds that under the circumstances of the case, the filing of a motion for reconsideration was properly dispensed with, more so since the issue of validity of the execution pending appeal is a pure question of law.

For respondent surety's part, it did observe the requirement of a motion for reconsideration. Before filing the petition for certiorari before the Court of Appeals, respondent surety filed a motion to set aside the 10 December 2001 Order of Judge Ricafort and to quash the writ of execution. However, the RTC denied the motion,

prompting respondent surety to elevate the matter to the Court of Appeals via a petition for certiorari, which was the only plain speedy and adequate remedy available to it.

Thus, the Court sustains the lifting of the garnishment on the amount of P4,769,954.32 under respondent surety's deposit account in Banco de Oro. However, the Court of Appeals' award of interest on said amount has no legal or factual basis and must be deleted. Notably, said amount was garnished by virtue of a court order. Petitioner cannot be faulted and be held liable for the errors committed by the RTC and the sheriffs concerned in the discretionary execution.[35]

WHEREFORE, the instant petition for review on certiorari is DENIED. The Amended Decision dated 17 August 2006 of the Court of Appeals in CA-G.R. SP No. 68465 and CA-G.R. SP No. 69441 is AFFIRMED with the MODIFICATION that the interest imposed on the amount to be refunded to respondent First Lepanto-Taisho Insurance Corporation is DELETED.

**SO ORDERED.**

Austria-Martinez[\*], Corona[\*\*], Velasco, Jr., and Brion, JJ., concur.  
Quisumbing, (Chairperson), J., on official leave.

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[\*]Additional member per res dated 10 March 2009 in lieu of J. Quisumbing who is on official business.

[\*\*]Additional member per Special Order No. 600 in lieu of J. Carpio Morales who is on official business.

[1] Rollo, pp. 16-41.

[2] Dated 17 August 2006 and penned by Edgardo P. Cruz, J., Chairman of the Special Former First Division, and concurred in by Rosmari D. Carandang and Jose C. Mendoza, JJ.; id. at 8-13.

[3] Id. at 84; Penned by Judge Helen Bautista-Ricafort.

[4] CA rollo (CA-G.R. SP No. 68465) pp. 60-62.

[5] Id. at 130-132.

[6] Id. at 26-28.

[7] Id. at 27-28.

[8] Id. at 455-58.

[9] Id. at 29.

[10] Id. at 43.

[11] Rollo, p. 84.

[12] Id. at 85-86.

[13] Id. at 87.

[14] CA rollo (CA-G.R. SP No. 68465) p. 192.

[15] Id. at 192-193.

[16] Id. at 5-20.

- [17] Id. at 12-18.
- [18] Id. at 185.
- [19] CA rollo (CA-G.R. SP No. 69441) pp. 24-25.
- [20] Rollo, p. 523-525.
- [21] CA rollo (CA-G.R. SP No. 69441) p.179.
- [22] Id. at 185.
- [23] CA rollo (CA-G.R. SP No. 69441), pp. 129-139.
- [24] Id. at 138-139.
- [25] CA rollo (CA-G.R. SP No. 68465) pp. 212-228.
- [26] CA rollo (CA-G.R. SP No. 69441) p. 148; Motion for Partial Reconsideration of First Lepanto-Taisho Insurance Corporation.
- [27] Rollo, pp. 12-13.
- [28] Id. at 25.
- [29] Id. at 536-537.
- [30] *Planters Products Inc. v. Court of Appeals*, 375 Phil. 615, 624 (1999).
- [31] *Manacop v. Equitable PCI Bank*, G.R. No. 162814-17, 25 August 2005, 468 SCRA 256, citing *Maceda, Jr. v. Development Bank of the Philippines*, 372 Phil. 107, 117; 313 SCRA 233, 242 ; *Diesel Construction Company, Inc. v. Jollibee Foods Corp.*, 380 Phil. 813, 829; 323 SCRA 844, 859 (2000); *Flexo Manufacturing Corporation v. Columbus Foods, Inc. and Pacific Meat Company, Inc.*, G.R. No. 164857, 11 April 2005, 455 SCRA 272.
- [32] *Far East Bank and Trust Co. v. Toh, Sr.*, 452 Phil. 734, 742-743 (2003), citing *City of Manila v. Court of Appeals*, G.R. No. L-35253, 26 July 1976, 72 SCRA 98, 103-104.
- [33] Rules of Court, Rule 57, Section 12 states: Discharge of attachment upon giving counterbond. -- After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. x x x In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. x x x (Emphasis supplied.)
- [34] *Government of the United States of America v. Puruganan*, 438 Phil. 417, 437 (2003).
- [35] See *Solidbank Corporation v. Court of Appeals*, 428 Phil. 949 (2002).

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