

FIFTEENTH DIVISION

[CA-G.R. SP NO. 91135, August 08, 2006]

**E.C. DE LUNA CONSTRUCTION CORPORATION, PETITIONER, VS.
HON. AFABLE E. CAJIGAL, IN HIS CAPACITY AS THE PRESIDING
JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY,
BRANCH 96, CHRISTINE A. SAMSON-RODRIGUEZ AND
GERALDINE CHALLA S. RODRIGUEZ, RESPONDENTS.**

D E C I S I O N

REYES, JR., J., J.:

For consideration of this Court is a Petition for Certiorari and Mandamus filed by petitioner E.C. De Luna Construction Corporation from the Order (*Rollo*, pp. 30-31) dated August 8, 2005 of public respondent Judge Afable E. Cajigal which denied petitioner's Motion to File Supersedeas Bond (*Rollo*, pp. 101-102). Also being assailed is the Order (*Rollo*, pp. 32-33) of the same date which granted private respondents' Motion to Order the Land Bank of the Philippines to Release Deposits in the name of petitioner (*Rollo*, pp. 91-93). Petitioner also assails the Order dated August 24, 2005 which denied petitioner's Consolidated Motion for Reconsideration (*Rollo*, pp. 135-139).

The present case arose out of a Complaint for damages (*Rollo*, pp. 37-44) filed by private respondents Christine A. Samson-Rodriguez and Geraldine Challa S. Rodriguez against petitioner and one Romeo Castro. The complaint alleged that: private respondents are the wife and child of Gerardo C. Rodriguez (Gerardo, for brevity). On December 7, 2000, Gerardo's car was hit by petitioner's truck which was at the time being driven by Romeo Castro. As a result of the accident, Gerardo died. Private respondents prayed for the award of actual and compensatory damages, indemnity, funeral and burial expenses, litigation expenses and attorney's fees. After trial, the court below ruled in favor of private respondents.

Naturally, petitioner and Romeo Castro filed a Notice of Appeal (*Rollo*, p. 62). However, in the meantime, private respondents, on April 16, 2005, filed a Motion for Execution Pending Appeal (*Rollo*, pp. 65-71) which was granted in the Order of May 5, 2005 where the trial court held that:

"Considering the Court's finding, in its questioned decision that the case of the plaintiffs is clearly meritorious, it now becomes more apparent upon this Court that the appeal taken from the decision by the defendants is just intended by the latter to further delay the final and effective disposition of this case.

The foregoing holding is in line with the ruling enunciated in the case of RCPI v. CA, et al., and Engineering Construction, Inc. vs. NPC, wherein it was held that where from the decision of and the evidence presented before the trial court, the judgment creditor is clearly entitled to actual

damages, the same can be the subject of execution pending appeal, but not the other awards for moral and exemplary damages and attorney's fees.

The Court hastens to add that the grant of the execution pending appeal may be a matter of survival to the plaintiffs who had already suffered emotionally and financially with the loss of their breadwinner, who during his lifetime had provided them not only a subsistence but a comfortable living as well. If the Court can grant the relief of 'support pendent elite' in other cases, with more reasons can the Court also, in the interest of higher justice, allows the execution of actual and proven damages in this case.

Finally, to guarantee the rights of the defendants appurtenant to the execution of the case pending appeal, the Court is of the sound discretion to require the plaintiffs to secure first a bond equal to the awards made in the Decision for indemnity for the loss of the net earning capacity, indemnity for the death of Gerardo Rodriguez and compensatory damages." (*Rollo*, pp. 82-83)

In an attempt to prevent the execution of the decision pending appeal, petitioner and Romeo Castro filed a Motion to File Supersedeas Bond dated May 29, 2005 (*Rollo*, pp. 84-86) which was denied in the above-mentioned Order of August 8, 2005. On June 16, 2005 private respondents filed a Motion to Order Land Bank of the Philippines (LBP) to release bank deposits held in the name of petitioner which was granted in the questioned Order of August 8, 2005. Petitioner's Motion for Reconsideration was denied on August 24, 2005, hence, the present petition for certiorari and mandamus alleging that:

"PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION:

A) IN FAILING TO APPROVE PETITIONER'S *SUPERSEDEAS* BOND NOTWITHSTANDING THAT THE RULES OF COURT CLEARLY MANDATE PUBLIC RESPONDENT TO STAY THE EXECUTION PENDING APPEAL UPON THE FILING BY THE LOSING PARTY OF A SUFFICIENT *SUPERSEDEAS* BOND, AND CONSIDERING THAT THERE WAS NO SPECIAL OR COMPELLING REASON TO ALLOW EXECUTION PENDING APPEAL.

B) WHEN HE ALLOWED THE EXECUTION PENDING APPEAL DESPITE THE PENDENCY OF PETITIONER'S MOTION FOR RECONSIDERATION.

C) WHEN HE DISMISSED PETITIONER'S MOTION FOR RECONSIDERATION BASED ON A TECHNICALITY AFTER HE HAS GIVEN DUE COURSE THERETO.

D) WHEN PUBLIC RESPONDENT RAILROADED THE EXECUTION PENDING APPEAL AND MANIFESTLY SHOWED BIAS AND PARTIALITY.

PUBLIC RESPONDENT UNLAWFULLY AND OPPRESSIVELY REFUSED TO GRANT PETITIONER'S SUFFICIENT, VALID AND LAWFUL *SUPERSEDEAS* BOND, A DUTY SPECIFICALLY ENJOINED BY LAW DESPITE THE CLEAR