

FIRST DIVISION

[G.R. No. 175733, July 08, 2015]

**WESTMONT BANK (NOW UNITED OVERSEAS BANK PHILS. *)
PETITIONER, VS. FUNAI PHILIPPINES CORPORATION, SPOUSES
ANTONIO AND SYLVIA YUTINGCO, PANAMAX CORPORATION,
PEPITO ONG NGO, RICHARD N. YU, AIMEE R. ALBA, ANNABELLE
BAESA, NENITA RESANE, AND MARIA ORTIZ, RESPONDENTS.**

[G.R. No. 180162]

**CARMELO V. CACHERO, PETITIONER, VS. UNITED OVERSEAS
BANK PHILS. AND/OR WESTMONT BANK, RESPONDENTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court are petitions for review on *certiorari*^[1] assailing: (a) the Decision^[2] dated November 8, 2006 of the Court of Appeals (CA) in CA G.R. CV No. 71933, which affirmed with modification the Decision^[3] dated June 20, 2001 rendered by the Regional Trial Court of Manila, Branch 49 (RTC) in Civil Case No. 98-868531, and awarded five percent (5%) of the principal amount as attorney's fees; (b) the Decision^[4] dated April 23, 2007 of the CA-G.R. SP. Nos. 65785 and 66410, which nullified the Orders dated July 17, 2001^[5] and July 23, 2001^[6] of the RTC in the same civil case, and adjudged petitioner Sheriff Carmelo V. Cachero (Sheriff Cachero) guilty of indirect contempt with the penalty of a fine; and (c) the Resolution^[7] dated October 24, 2007 of the CA in CA-G.R. SP. Nos. 65785 and 66410, which denied Sheriff Cachero's motion for reconsideration.

The Facts

Sometime in April and May 1997, respondents Funai Philippines Corporation (Funai) and Spouses Antonio and Sylvia Yutingco (Sps. Yutingco) obtained loans from Westmont Bank (Westmont), now United Overseas Bank Phils., in the aggregate amount of P10,000,000.00, secured by several promissory notes^[8] (PNs) with different maturity dates.^[9] The PNs commonly provide that in case the same are referred to an attorney-at-law or a collection agency, or a suit is instituted in court for collection, Sps. Yutingco will be liable to pay twenty percent (20%) of the total amount due as attorney's fees, exclusive of costs of suit and other expenses.^[10]

However, Funai and Sps. Yutingco (original defendants) defaulted in the payment of the said loan obligations when they fell due, and ignored Westmont's demands for payment.^[11] Hence, the Westmont filed a complaint^[12] for sum of money, with prayer for the issuance of a writ of preliminary attachment before the RTC on

January 16, 1998, docketed as Civil Case No. 98-86853.

The RTC Proceedings

After an *ex-parte* hearing, the RTC issued a Writ of Preliminary Attachment^[13] dated February 19, 1998 ordering the attachment of the personal and real properties of the original defendants. Furthermore, the RTC issued another Order^[14] dated March 24, 1998, directing the attachment of properties appearing under the names of other persons, but which were under the control of the original defendants. In view of the foregoing directives, Sheriff Gerry C. Duncan (Sheriff Duncan) and Sheriff Cachero levied and seized the properties situated at: (a) No. 9 Northpark Avenue, Bellevue, Grace Village, Quezon City; and (b) 2nd Level, Phase III, Sta. Lucia East Grand Mall, Cainta, Rizal (Sta. Lucia).^[15]

Pepito Ong Ngo (Ngo), as Acting President of Panamax Corporation (Panamax), filed an Affidavit of Third-Party Claim^[16] over the properties seized in Sta. Lucia, claiming that Panamax is the true and lawful owner thereof.^[17]

On April 20, 1998, Westmont filed an Amended Complaint^[18] impleading as additional defendants, Panamax, Ngo, Aimee R. Alba, Richard N. Yu, Annabelle Baesa, and Nenita Resane^[19] (additional defendants), and praying that they be declared as mere alter egos, conduits, dummies, or nominees of Sps. Yutingco to defraud their creditors, including Westmont.^[20] On August 6, 1998, Westmont filed a Second Amended Complaint^[21] adding Maria Ortiz to the roster of additional defendants.^[22]

On August 14, 1998,^[23] the original defendants submitted their Answer^[24] explaining that their "non-payment was due to circumstances beyond their control and occasioned by [Westmont's] sudden treacherous manipulation leaving no room for [original] defendants to make arrangements for payment,"^[25] and interposing a counterclaim for actual and moral damages and attorney's fees for the alleged irregular levy.^[26]

On the other hand, the additional defendants moved to dismiss^[27] the complaints and, thereafter, filed their Answer,^[28] alleging that: (a) the complaints stated no cause of action against them, considering the lack of legal tie or *vinculum juris* with Westmont; and (b) they were not parties-in interest in the case absent any proof linking them to the transaction between Westmont and the original defendants.^[29] They thereby interposed a counterclaim for actual, moral, and exemplary damages, as well as attorney's fees, and costs of suit.^[30]

On December 11, 1998, Westmont moved for a judgment on the pleadings.^[31] During its pendency, a public auction sale of the seized properties was conducted on March 16, 2001 that realized net proceeds in the amount of P1,030,000.00.^[32]

In a Decision^[33] dated June 20, 2001 (June 20, 2001 RTC Decision), the RTC adjudged the original defendants jointly and severally liable to Westmont for the amount of P10,000,000.00 less the amount of P1,030,000.00 realized from the

public auction sale, plus nineteen percent (19%) legal interest from the filing of the complaint until fully paid.^[34] However, it dismissed the amended and second amended complaints for failure to state a cause of action against the additional defendants and ordered the return of the items wrongfully seized, to the premises of Panamax in Sta. Lucia.^[35]

The RTC ruled that the additional defendants had no participation or any corresponding duty whatsoever relative to the subject PNs, which were executed only by the original defendants in favor of Westmont; hence, the latter cannot maintain an action against said additional defendants. The RTC further held that Westmont's imputation that the additional defendants acted as dummies, conduits, and alter egos of the original defendants are but mere inferences of fact, and not a narration of specific acts or set of facts or ultimate facts required in a complaint to entitle the plaintiff to a remedy in law. Thus, it concluded that the complaint **failed to state a cause of action** against the additional defendants.^[36]

Westmont's partial motion for reconsideration^[37] from the June 20, 2001 RTC Decision, dismissing the complaints against the additional defendants, was denied in an Order^[38] dated July 19, 2001. Hence, it filed a notice of partial appeal,^[39] docketed as CA-G.R. CV No. 71933.^[40]

On the other hand, the additional defendants filed on July 6, 2001 a Motion for Execution Pending Appeal,^[41] praying for the return of the seized items which were in danger of becoming obsolescent and useless, and whose value had considerably gone down in the market.^[42] The said motion was granted in an Order^[43] dated July 17, 2001 (July 17, 2001 Execution Order). Accordingly, the RTC issued a writ of execution^[44] of even date, directing Sheriff Duncan and Sheriff Cachero to cause the immediate return of the wrongfully seized items to the additional defendants.^[45] However, Westmont refused to release the seized items, hence, the RTC issued an Order^[46] dated July 23, 2001 (July 23, 2001 Execution Order), enjoining Westmont to comply with the order of execution, otherwise, a break-open order shall be issued.^[47]

Aggrieved, Westmont filed a petition for *certiorari*^[48] with very urgent motion/prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction before the CA, docketed as CA-G.R. SP. No. 65785, seeking to prevent the RTC and the additional defendants from implementing the July 17 and 23, 2001 Execution Orders (Execution Orders).^[49]

Due to Westmont's continued refusal to release the seized items, the RTC issued a Break-Open Order^[50] dated July 25, 2001 to enforce the writ. However, the following day, or on July 26, 2001, the CA issued a TRO^[51] enjoining Sheriffs Duncan and Cachero from enforcing the writ of execution.^[52] The CA process server, Alfredo Obrence, Jr. (Obrence), duly served a copy of the TRO to the RTC Clerk of Court at around 2:30 p.m.^[53] and informed Sheriff Cachero thereof over the phone. Notwithstanding, the latter proceeded with the implementation of the writ of execution.^[54]

At around 3:00 p.m., Westmont's representative who was able to secure a facsimile copy of the TRO showed the same to Sheriff Cachero who merely ignored it. Meanwhile, various audio, video, and electrical appliances were taken out from the warehouse and loaded into a truck.^[55] At around 4:15 p.m., Obrence arrived at the site and served on Sheriff Cachero a duplicate original copy of the TRO.^[56] Nonetheless, the items on the truck were not unloaded and the truck was allowed to leave the premises.^[57] Consequently, a case for indirect contempt was filed by Westmont against Sheriffs Cachero and Duncan, and Ngo, docketed as CA-G.R. SP. No. 66410, which was consolidated with the petition for *certiorari* in CA-G.R. SP. No. 65785.^[58]

The Ruling in CA-G.R. CV No. 71933

In a Decision^[59] dated November 8, 2006, the CA affirmed the June 20, 2001 RTC Decision, with the modification awarding five percent (5%) of the principal amount as attorney's fees.^[60]

The CA ruled that Westmont has **no cause of action** against the additional defendants as they had no participation whatsoever in the execution of the subject PNs.^[61] It further struck down the writ of attachment issued in the case, considering that the same was implemented against the additional defendants prior to the acquisition of jurisdiction over their persons.^[62] Finally, it declared Westmont entitled to the award of attorney's fees on the basis of the express stipulation in the PNs, but in the reduced amount of five percent (5%), which it found reasonable under the premises.^[63]

Dissatisfied, Westmont filed a petition for partial review on *certiorari*^[64] before the Court, docketed as G.R. No. 175733.

The Ruling in CA-G.R. SP. Nos. 65785 and 66410

In a Decision^[65] dated April 23, 2007, the CA: (a) nullified the Execution Orders, granting the additional defendants' Motion for Execution Pending Appeal, and enjoining Westmont to comply with the Execution Orders; and (b) adjudged Sheriff Cachero guilty of indirect contempt and ordered him to pay a fine of P30,000.00.^[66]

The CA found no good reasons stated in a special order to justify the RTC's grant of discretionary execution pending appeal in favor of the additional defendants.^[67] On the petition for indirect contempt, the CA found that Sheriff Cachero had prior knowledge of the TRO, even before he broke the padlock of the warehouse,^[68] warranting the inference that he had the intention to defy the same.^[69] Moreover, despite actual receipt of the TRO, he failed to rectify his acts.^[70] On the other hand, the CA found no evidence to hold Sheriff Duncan and Ngo liable, absent any showing that they knew of the TRO.^[71]

Sheriff Cachero filed a motion for reconsideration,^[72] which was, however, denied in a Resolution^[73] dated October 24, 2007, hence the instant petition for review on *certiorari*^[74] before the Court, docketed as G.R. No. 180162.

In a Resolution^[75] dated August 15, 2012, the Court, resolved to consolidate G.R. Nos. 175733 and 180162.

In the meantime, records show that the accounts involved in the instant cases were assigned by Westmont to the Philippine Deposit Insurance Corporation.^[76]

The Issues Before the Court

The essential issues for the Court's resolution are as follows:

In G.R. No. 175733:

Westmont argues that the CA gravely erred in: (a) not applying the alter ego doctrine;^[77] (b) not considering additional defendants as necessary parties to the case;^[78] (c) not awarding exemplary damages in its favor;^[79] and (d) disregarding the express stipulation of the PNs regarding attorney's fees.^[80]

In G.R. No. 180162:

Sheriff Cachero asserts that the CA committed gross abuse of discretion when it adjudged him guilty of indirect contempt in implementing the writ of execution and the Break-Open Order despite the want of proper, timely, and adequate notice of the TRO.^[81]

The Court's Ruling

The petitions lack merit.

Re: G.R. No. 175733

At the outset, it must be stressed that Civil Case No. 98-86853 was submitted for judgment on the pleadings, on Westmont's motion.^[82] Hence, other than the hearing on the motion to discharge the attached items,^[83] no full-blown trial was conducted on the case.

In the case at bar, both the RTC and the CA were one in dismissing Westmont's Amended and Second Amended Complaints as to the additional defendants, but differed on the grounds therefor *i.e.*, the RTC held that said complaints failed to state a cause of action, while the CA ruled that there was no cause of action, as to the additional defendants.

"Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action. Dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff."^[84]