

## THIRD DIVISION

[ G.R. No. 190144, August 01, 2012 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. CARLITO LEE, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

In this Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court, petitioner Bank of the Philippine Islands (BPI) seeks to reverse and set aside the February 11, 2009 Decision<sup>[2]</sup> and October 29, 2009 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. No. 87911 which annulled the March 1, 2004<sup>[3]</sup> and September 16, 2004<sup>[4]</sup> Orders of the Regional Trial Court (RTC) of Makati City, Branch 61 and instead, entered a new one directing the RTC to issue a writ of execution and/or enforce garnishment against the bank deposit of Trendline Resources & Commodities Exponent, Inc. (Trendline) and Leonarda Buelva (Buelva) with the defunct Citytrust Banking Corporation (Citytrust), now merged with BPI.

#### The Facts

On April 26, 1988, respondent Carlito Lee (Lee) filed a complaint for sum of money with damages and application for the issuance of a writ of attachment against Trendline and Buelva (collectively called "defendants") before the RTC, docketed as Civil Case No. 88-702, seeking to recover his total investment in the amount of P5.8 million. Lee alleged that he was enticed to invest his money with Trendline upon Buelva's misrepresentation that she was its duly licensed investment consultant or commodity saleswoman. His investments, however, were lost without any explanation from the defendants.

On May 4, 1988, the RTC issued a writ of preliminary attachment whereby the Check-O-Matic Savings Accounts of Trendline with Citytrust Banking Corporation, Ayala Branch, in the total amount of P700,962.10 were garnished. Subsequently, the RTC rendered a decision on August 8, 1989 finding defendants jointly and severally liable to Lee for the full amount of his investment plus legal interest, attorney's fees and costs of suit. The defendants appealed the RTC decision to the CA, docketed as CA G.R. CV No. 23166.

Meanwhile, on April 13, 1994, Citytrust filed before the RTC an Urgent Motion and Manifestation<sup>[5]</sup> seeking a ruling on defendants' request to release the amount of P591,748.99 out of the garnished amount for the purpose of paying Trendline's tax obligations. Having been denied for lack of jurisdiction, Trendline filed a similar motion<sup>[6]</sup> with the CA which the latter denied for failure to prove that defendants had no other assets to answer for its tax obligations.

On October 4, 1996, Citytrust and BPI merged, with the latter as the surviving corporation. The Articles of Merger provide, among others, that "all liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations."<sup>[7]</sup>

On December 22, 1998, the CA denied the appeal in CA-G.R. CV No. 23166 and affirmed *in toto* the decision of the RTC, which had become final and executory on January 24, 1999.

Hence, Lee filed a Motion for Execution<sup>[8]</sup> before the RTC on July 29, 1999, which was granted. Upon issuance of the corresponding writ, he sought the release of the garnished deposits of Trendline. When the writ was implemented, however, BPI Manager Samuel Mendoza, Jr. denied having possession, control and custody of any deposits or properties belonging to defendants, prompting Lee to seek the production of their records of accounts with BPI. However, on the manifestation of BPI that it cannot locate the defendants' bank records with Citytrust, the RTC denied the motion on September 6, 2002.

On December 16, 2002, Lee filed a Motion for Execution and/or Enforcement of Garnishment<sup>[9]</sup> before the RTC seeking to enforce against BPI the garnishment of Trendline's deposit in the amount of P700,962.10 and other deposits it may have had with Citytrust. The RTC denied the motion for dearth of evidence showing that BPI took over the subject accounts from Citytrust and the fact that BPI was not a party to the case. Lee's motion for reconsideration was likewise denied.<sup>[10]</sup>

Lee elevated the matter to the CA on a petition for certiorari. In its February 11, 2009 Decision, the CA annulled the questioned orders, finding grave abuse of discretion on the part of the RTC in denying Lee's motion to enforce the garnishment against Trendline's attached bank deposits with Citytrust, which have been transferred to BPI by virtue of their merger. It found BPI liable to deliver to the RTC the garnished bank deposit of Trendline in the amount of P700,962.10, which Citytrust withheld pursuant to the RTC's previously-issued writ of attachment.

The CA refused to give credence to BPI's defense that it can no longer locate Trendline's bank records with the defunct Citytrust, as its existence was supported by evidence and by the latter's admission. Neither did it consider BPI a stranger to the case, holding it to have become a party in- interest upon the approval by the Securities and Exchange Commission (SEC) of the parties' Articles of Merger. BPI's Motion for Reconsideration<sup>[11]</sup> was denied in the CA's October 29, 2009 Resolution.

### **The Issues**

In this petition, BPI ascribes the following errors to the CA:

A.

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING CA-G.R. SP No. 87911, THE PETITION FOR CERTIORARI UNDER RULE 65 OF THE REVISED RULES OF COURT, FILED BY RESPONDENT CARLITO LEE

BEING [AN] IMPROPER REMEDY.

B.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI BECAME PARTY-IN- INTEREST IN THE CASE FILED BY RESPONDENT CARLITO LEE UPON THE APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF ITS MERGER WITH CITYTRUST BANKING CORPORATION.

C.

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE MOTION FOR EXECUTION AND/OR ENFORCEMENT OF GARNISHMENT IS NOT THE APPROPRIATE REMEDY IN THE EVENT THERE IS A THIRD PARTY INVOLVED DURING THE EXECUTION PROCESS OF A FINAL AND EXECUTORY JUDGMENT.

D.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI SHOULD BE HELD ACCOUNTABLE FOR THE AMOUNT OF PHP700,962.10.<sup>[12]</sup>

### **The Ruling of the Court**

Section 1, Rule 41 of the Revised Rules of Court provides:

SECTION 1. *Subject of appeal.* - x x x

No appeal may be taken from:

x x x

(b) *An interlocutory order;*

x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.<sup>[13]</sup>

A punctilious examination of the records will reveal that Lee had previously sought the execution of the final and executory decision of the RTC dated August 8, 1989 which was granted and had resulted in the issuance of the corresponding writ of execution. However, having garnished the deposits of Trendline with Citytrust in the amount of P700,962.10 by virtue of a writ of preliminary attachment, Lee filed anew a Motion for Execution and/or Enforcement of Garnishment before the RTC on December 16, 2002. While the RTC denied the motion in its March 1, 2004 Order, the denial was clearly with respect only to the *enforcement of the garnishment*, to

wit:

Acting on the Motion for Execution and/or Enforcement of Garnishment filed by plaintiff Carlito Lee, and there being no evidence shown that the accounts subject of the motion were taken over by the Bank of the Philippine Islands from Citytrust Bank and considering further that Bank of Philippine Islands is not a party to this case, the instant Motion is DENIED for lack of merit.

SO ORDERED.<sup>[14]</sup>

Consequently, the foregoing Order merely involved the implementation of a writ of execution, hence, *interlocutory* in nature. An interlocutory order is one that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done.<sup>[15]</sup>

Conformably with the provisions of Section 1, Rule 41 of the Revised Rules of Court above-quoted, the remedy from such interlocutory order is *certiorari* under Rule 65. Thus, contrary to the contention of BPI, the CA did not err in assuming jurisdiction over the petition for certiorari.

BPI likewise insists that the CA erred in considering it a party to the case by virtue of its merger with Citytrust, the garnishee of defendants' deposits.

The Court is not convinced.

Section 5, Rule 65 of the Revised Rules of Court requires that persons interested in sustaining the proceedings in court must be impleaded as private respondents. Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case.

It is a settled rule that upon service of the writ of garnishment, the garnishee becomes a "virtual party" or "forced intervenor" to the case and the trial court thereby acquires jurisdiction to bind the garnishee to comply with its orders and processes. In *Perla Compania de Seguros, Inc. v. Ramolete*,<sup>[16]</sup> the Court ruled:

In order that the trial court may validly acquire jurisdiction to bind the person of the garnishee, it is not necessary that summons be served upon him. The garnishee need not be impleaded as a party to the case. All that is necessary for the trial court lawfully to bind the person of the garnishee or any person who has in his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment.

The Rules of Court themselves do not require that the garnishee be served with summons or impleaded in the case in order to make him liable.