

SECOND DIVISION

[G.R. No. 177121, March 16, 2009]

JP LATEX TECHNOLOGY, INC., PETITIONER, VS. BALLONS GRANGER BALLOONS, INC. AND CHRISTOS SANTORINEOS, THE OFFICE OF THE CLERK OF COURT AND EX-OFFICIO SHERIFF OF BIÑAN, LAGUNA, TATSUYA OGINO AND KATSUMI WATANABE, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before the Court is a petition for review on certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure, which seeks the reversal of the Court of Appeals decision^[2] and resolution^[3] in CA-G.R. SP No. 96926 and the issuance of a temporary restraining order to enjoin respondents from enforcing the order of execution pending appeal issued by Hon. Romeo C. De Leon, Presiding Judge of the Regional Trial Court (RTC), Branch 24 of Biñan, Laguna.

The following factual antecedents are matters of record.

Respondent Ballons Granger Balloons, Inc. (Granger) is a foreign corporation duly organized and existing under the laws of Canada. Anchoring on an isolated transaction, respondent Granger filed a complaint for rescission and damages against petitioner JP Latex Technology, Inc., a domestic corporation primarily engaged in the manufacture of latex and balloons. Also named defendants were the officers of the corporation, namely; Katsumi Watanabe and Tatsuya Ogino, and several John and Jane Does. Respondent Granger's president and chief executive officer, Christos Santorineos, who is also a respondent in this case, joined as plaintiff.

The complaint,^[4] docketed as Civil Case No. B-6527, alleged that Ogino, representing himself as the president of petitioner corporation, and respondent Santorineos entered into a contract for the sale of respondent Granger's machinery consisting of four dipping lines and all associated equipment for the amount of US\$1,230,000.00 and other non-cash considerations consisting of a 20% shareholding in petitioner's distribution company and the distributorship of its balloons in Canada and Greece. Although respondent Granger had performed its end of the bargain by re-assembling the subject machinery in petitioner's factory in Biñan and transferring its dipping formulations and technology to petitioner, the latter allegedly paid only a partial sum of US\$748,262.87 and reneged on its other non-cash commitments. According to respondent Granger, it made several written and verbal demands for the full payment of the purchase price to no avail. The complaint was accompanied by an application for the issuance of a writ of replevin.

^[5]

Petitioner and Ogino separately filed their respective answers with counterclaims while Watanabe failed to submit any responsive pleading. Watanabe was thereafter declared in default. After declaring in default for his non-appearance at the scheduled pre-trial conference, the RTC allowed respondent Granger to present *ex-parte*. On 10 August 2006, the RTC rendered its decision in favor of respondent Granger.

While the case was pending or on 05 August 2006, respondent Granger moved for the execution pending appeal^[6] of the RTC decision,^[7] which was promulgated on 10 August 2006 or a few days after it filed the motion. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered:

- a. Resolving/rescinding the subject agreement between the parties and confirming plaintiffs' right of ownership and possession over the subject machines/equipments and their accessories including plaintiffs' dipping technology, formulations and recipes;
- b. Ordering defendant JP LATEX Technology, Inc., its officers or any other person in possession thereof to immediately return and deliver to the plaintiffs or any of its representatives the ownership and possession of dipping lines one (1) and two (2) including their accessories;
- c. Ordering defendant JP LATEX Technology, Inc., its officers or any of its representatives to cease and desist from using the plaintiffs' dipping formulations and technology;
- d. Ordering defendants to pay the plaintiffs jointly and severally the amount of U.S. \$1,500,000.00 by way of actual damages plus legal interest until fully paid; and
- e. Ordering defendants to pay plaintiff Christos Santorineos the amount of P1,000,000.00 by way of moral damages and to pay plaintiffs the amount of P500,000.00 by way of exemplary damages and P500,000.00 as attorney's fees and expenses of litigation.

Send copy of this decision to the parties in this case.

SO ORDERED.^[8]

After it received a copy of the RTC decision on 30 August 2006, petitioner filed a motion for reconsideration^[9] thereof on 13 September 2006. Petitioner also opposed^[10] respondent Granger's motion for execution "pending appeal," which was denied in an Order^[11] dated 01 September 2006. Respondent Granger then filed on 05 October 2006 an Omnibus Motion for Reconsideration and Ocular Inspection,^[12] which petitioner opposed.

In the Order^[13] dated 10 November 2006, the RTC denied respondent Granger's prayer for an ocular inspection but granted the plea for execution "pending appeal." The RTC reconsidered its earlier position and consequently granted the execution

"pending appeal" after finding that the equipment under litigation were deteriorating and that petitioner might not have sufficient funds to pay for the damages, thereby leaving respondents with an empty judgment.

On 15 November 2006, the writ of execution "pending appeal" was issued.^[14] On the following day, Joel Arellano, in his capacity as Sheriff IV of the RTC of Biñan, served on petitioner at its office address a copy each of the writ and the Order dated 10 November 2006. Thereupon, Arellano successfully effected the dismantling of the machinery.

Thus, petitioner and Ogino filed a special civil action for certiorari under Rule 65 before the Court of Appeals. Named respondents were Judge Romeo C. De Leon, Clerk of Court Rowena A.M. Galeon, Sheriff Joel Arellano, respondents Granger and Santorineos.^[15] The petition for certiorari averred that Judge De Leon had seriously erred and gravely abused his discretion amounting to lack or in excess of jurisdiction in arbitrarily and unreasonably issuing the Order dated 10 November 2006 and in directing the Clerk of Court to issue the writ of execution "pending appeal."

On 22 December 2006, the Court of Appeals promulgated the assailed decision, denying the petition for certiorari mainly on the ground that petitioner failed to file a motion for reconsideration of the assailed RTC Order dated 10 November 2006.^[16] Petitioner sought reconsideration but its motion was denied per the appellate court's Resolution dated 23 March 2007.^[17]

Hence, the instant petition with urgent application for immediate issuance of a temporary restraining order (TRO) or writ of preliminary injunction.

In a Resolution dated 23 May 2007, the Court issued a TRO to prevent respondents from implementing the writ of execution "pending appeal" conditioned upon the filing of a cash or surety bond.^[18] Forthwith, petitioner posted a bond^[19] and the TRO was released and served.^[20] Upon motion by petitioner,^[21] the Court directed the Office of the Ex-Officio Sheriff to release to petitioner the properties levied under the restrained order of execution "pending appeal."^[22]

The petition raises the following questions of law:

- A. WHETHER EXECUTION PENDING APPEAL MAY BE ISSUED AND IMPLEMENTED WHEN THE DECISION SOUGHT TO BE EXECUTED IS NOT YET FINAL BECAUSE OF THE PENDING AND UNRESOLVED MOTION FOR RECONSIDERATION OF THE DECISION SOUGHT TO BE EXECUTED PENDING APPEAL.
- B. WHETHER A MOTION FOR RECONSIDERATION IS A MANDATORY REQUIREMENT FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 UNDER THE CIRCUMSTANCES OF THE CASE.^[23]

The Court of Appeals denied the petition for certiorari only because petitioner had failed to seek reconsideration of the RTC order directing the execution "pending appeal" of its decision or to show that the circumstances of the case fall under any of the exceptions to the rule that a motion for reconsideration is an indispensable condition to the filing of a special civil action for certiorari.