

## FIRST DIVISION

[ G.R. No. 154623, March 13, 2009 ]

**JIMMY T. GO, PETITIONER, VS. THE CLERK OF COURT AND EX-OFFICIO PROVINCIAL SHERIFF OF NEGROS OCCIDENTAL, ILDEFONSO M. VILLANUEVA, JR., AND SHERIFF DIOSCORO F. CAPONPON, JR. AND MULTI-LUCK CORPORATION, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Before us is a petition for review on *certiorari* assailing the Decision<sup>[1]</sup> dated April 30, 2002 and Resolution<sup>[2]</sup> dated July 31, 2002, of the Court of Appeals (CA) in CA-G.R. SP No. 64473, which reversed and set aside the November 23, 2000 and December 7, 2000 Orders of the Regional Trial Court (RTC) of Pasig City, Branch 266 which in turn, granted petitioner's motion for issuance of a writ of preliminary injunction and denied respondents' motion to dismiss, respectively.

The present controversy stemmed from the execution of the Decision of RTC, Bacolod City, Branch 45 in a complaint for collection of a sum of money<sup>[3]</sup> docketed as Civil Case No. 98-10404. As culled from the CA decision and from the pleadings filed by the parties in the present case, the factual and procedural antecedents are as follows:

On August 10, 1998, respondent Multi-Luck Corporation (Multi-Luck) filed a collection suit against Alberto T. Looyuko (Looyuko) as sole proprietor of Noah's Ark Merchandising Inc. (NAMI). The complaint pertained to three (3) dishonored United Coconut Planters Bank (UCPB) checks with an aggregate amount of P8,985,440.00 issued by Looyuko/NAMI to Mamertha General Merchandising. These checks were indorsed to Multi-Luck, who claimed to be a holder in due course of such checks.

On January 27, 2000, upon Multi-Luck's motion for judgment on the pleadings, the Bacolod RTC rendered a Decision<sup>[4]</sup> ordering Looyuko/NAMI to pay Multi-Luck the value of the three (3) UCPB checks. Looyuko/NAMI did not file an appeal. Hence, the Decision became final and executory.

Upon Multi-Luck's motion, the Bacolod RTC issued a writ of execution<sup>[5]</sup> over a house and lot covered by TCT No. T-126519 registered in the name of Looyuko and one share in the Negros Occidental Golf and Country Club, Inc. in the name of NAMI. The auction sales were scheduled on November 10, 2000<sup>[6]</sup> (for the house and lot) and November 6, 2000 (for the stock certificate),<sup>[7]</sup> respectively.

On October 25, 2000, petitioner filed a complaint for injunction with a prayer for temporary restraining order and/or writ of preliminary injunction against

respondents before the RTC, Pasig City, Branch 266, where the case was docketed as Civil Case No. 68125.<sup>[8]</sup> The complaint alleged that petitioner is a "business partner" of Looyuko and that the former co-owned the properties of Looyuko/NAMI including the properties subject of the aforementioned auction sales. It was further alleged that the intended public auction of the subject properties would unduly deprive him of his share of the property without due process of law considering that he was not impleaded as a party in Civil Case No. 98-10404.

Multi-Luck filed a motion to dismiss<sup>[9]</sup> on the ground, among others, that the Pasig RTC had no jurisdiction over the subject matter of petitioner's claim and over the public respondent sheriffs as well as over Multi-Luck.

In the Order<sup>[10]</sup> dated October 30, 2000, the Pasig RTC granted petitioner's prayer for issuance of a Temporary Restraining Order (TRO).

Thereafter, in the Order<sup>[11]</sup> dated November 23, 2000, the Pasig RTC issued a writ of preliminary injunction enjoining public respondent sheriffs Caponpon, Jr. and Villanueva, Jr. from holding the public auction.

In the Order<sup>[12]</sup> dated December 7, 2000, the Pasig RTC denied respondents' motion to dismiss.

Multi-Luck moved for the reconsideration of the November 23, 2000 and December 7, 2000 Orders but both motions were also denied by the Pasig RTC in separate Orders<sup>[13]</sup> both dated February 2, 2001.

Multi-Luck elevated the case to the CA *via* a petition for certiorari and prohibition with prayer for the issuance of restraining order and/or injunction.

As previously stated herein, in the Decision<sup>[14]</sup> dated April 30, 2002, the CA granted Multi-Luck's petition and reversed the ruling of the Pasig RTC. The CA ruled that the November 23, 2000 Order issued by the Pasig RTC interfered with the order of the Bacolod RTC, which is a co-equal and coordinate court. The CA held that the Pasig RTC gravely abused its discretion when it granted the injunctive relief prayed for by petitioner despite the glaring lack of a clear legal right on the part of the latter to support his cause of action. Petitioner filed a motion for reconsideration but the CA denied the same in its equally challenged Resolution dated July 31, 2002.

Hence, this present petition for review on *certiorari*.

Petitioner theorizes that since he was a "stranger" to Civil Case No. 98-10404, he should be considered a "third party claimant" pursuant to Rule 39, Section 16 of the Rules of Court.<sup>[15]</sup> Corollarily, whatever judgment or decision rendered in the Civil Case No. 98-10404 did not bind him or his properties. Petitioner adds that as a co-owner of all properties and monies belonging to Looyuko/NAMI, he was unduly prejudiced by the Decision in Civil Case No. 98-10404. Petitioner insists that he should have been impleaded in Civil Case No. 98-10404 so that there could be a final determination of the action as to him. He argues that the principle on "non-intervention of co-equal courts" does not apply where, as here, a third party claimant is involved.

We are not persuaded.

We have time and again reiterated the doctrine that no court has the power to interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction.<sup>[16]</sup> This doctrine of non-interference is premised on the principle that a judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction.<sup>[17]</sup> As correctly ratiocinated by the CA, cases wherein an execution order has been issued, are still *pending*, so that all the proceedings on the execution are still proceedings in the suit.<sup>[18]</sup> Since the Bacolod RTC had already acquired jurisdiction over the collection suit (Civil Case No. 98-10404) and rendered judgment in relation thereto, it retained jurisdiction to the exclusion of all other coordinate courts over its judgment, including all incidents relative to the control and conduct of its ministerial officers, namely public respondent sheriffs. Thus, the issuance by the Pasig RTC of the writ of preliminary injunction in Civil Case No. 68125 was a clear act of interference with the judgment of Bacolod RTC in Civil Case No. 98-10404.

The jurisprudential "exception" adverted to by petitioner, *i.e. Santos v. Bayhon*, 199 SCRA 525 (1991), finds no application in this case. In *Santos*, we allowed the implementation of a writ of execution issued by the Labor Arbiter to be enjoined by order of the RTC where a third party claimant had filed his action to recover property involved in the execution sale, since the Labor Arbiter had no jurisdiction to decide matters of ownership of property and the civil courts are the proper venue therefor. In the case at bar, the Bacolod RTC had jurisdiction and competence to resolve the question of ownership of the property involved had petitioner filed his claim with the said court.

To reiterate, a case, in which an execution order has been issued, is still pending, so that all proceedings on the execution are still proceedings in the suit.<sup>[19]</sup> Hence, any questions that may be raised regarding the subject matter of Civil Case No. 98-10404 or the execution of the decision in said case is properly threshed out by the Bacolod RTC.

As to petitioner's argument that he was unduly prejudiced by the Decision in Civil Case No. 98-10404 as a co-owner of all properties and monies belonging to Looyuko/NAMI, the Court finds the same to be without basis.

Section 3, Rule 58 of the Rules of Court enumerates the grounds for the issuance of a preliminary injunction:

SEC. 3. *Grounds for issuance of preliminary injunction.* - A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance, or non-performance of the act or

acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Pursuant to the above provision, a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right.<sup>[20]</sup> There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.<sup>[21]</sup>

The purpose of a preliminary injunction is to prevent threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Thus, to be entitled to an injunctive writ, the petitioner has the burden to establish the following requisites:

- (1) a right in esse or a clear and unmistakable right to be protected;
- (2) a violation of that right;
- (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.<sup>[22]</sup>

To bolster his claim of interest on the attached properties, petitioner presented the Agreement dated February 9, 1982,<sup>[23]</sup> which provides in part:

2. That while on record the aforementioned business ventures (companies) are registered in the name of the FIRST PARTY, the founder and who initially provided the necessary capital for the very first business venture which they have established, the management expertise and actual operation thereof are provided by the SECOND PARTY who by mutual consent and agreement by the parties themselves, is entitled to ½ or 50% of the business, goodwill, profits, real and personal properties owned by the companies now existing as well as those that will be organized in the future, bank deposits, (savings and current) money market placements, stocks, time deposits inventories and such other properties of various forms and kinds. It is, however, clearly and explicitly understood that the foregoing do not include the individual properties of the parties.

3. That for official record purposes and for convenience, the aforesaid business ventures will remain registered in the name of the FIRST PARTY until the parties decide otherwise.

Petitioner further claimed that the February 9, 1982 Agreement was complimented by another Agreement dated October 10, 1986,<sup>[24]</sup> viz:

WHEREAS, the above-named parties, have equally pooled their talents, expertise and financial resources in forming NOAH'S ARK MERCHANDISING, which includes, among others -

- Noah's Ark International
- Noah's Sugar Carriers
- Noah's Ark Sugar Truckers
- Noah's Ark Sugar Repackers
- Noah's Ark Sugar Insurers
- Noah's Ark Sugar Terminal
- Noah's Ark Sugar Building (including the land on which the building stands)
  
- Noah's Ark Sugar Refinery (including the plant/buildings/machinery situated in the compound including the land on which the refinery is situated)

and which business enterprise are otherwise collectively known as the NOAH'S ARK GROUP OF COMPANIES.

WHEREAS, the above-enumerated business firms are all registered in the name of ALBERTO T. LOOYUKO only as Proprietor for purposes of expediency;

xxx xxx xxx

NOW, THEREFORE, and in consideration of the above premises, the parties hereby agree as follows:

1. That the profits and losses of any of the above firms shall be equally apportioned between the two parties;
2. In case of the dissolution of any of the above firms, or in the event of destruction of [sic] loss of any property of the above firm, all the assets thereof, including the insurance proceeds in the event of total/partial destruction shall likewise be divided EQUALLY between the parties; xxx xxx xxx

However, the Court notes that the authenticity and the due execution of these documents are presently under litigation in other proceedings which are not pending before the Pasig RTC. There appears to be a pending case, wherein Looyuko claims that his signatures on these Agreements were a forgery.<sup>[25]</sup>

Moreover, as correctly observed by the CA, NAMI had already been in existence as early as the middle part of the 1970's. It is undeniable that for a little more than two (2) decades pending the advent of the present controversy, NAMI has been doing business as a registered single proprietorship with Looyuko as single proprietor. On this score, we quote the following discussion of the CA:

At this juncture, this Court notes that even assuming the validity of the foregoing partnership agreements, for all legal intents and purposes and in terms of binding effect against third persons, the *Noah's Ark Merchandising* is a registered single proprietorship. Corollarily, third