

## SPECIAL THIRD DIVISION

[ G.R. No. 164648, June 19, 2009 ]

**ERIC L. LEE, PETITIONER, VS. HON. HENRY J. TROCINO,  
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, SIXTH  
JUDICIAL REGION, BRANCH 62, BAGO CITY, THE OFFICE OF THE  
EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT, SIXTH  
JUDICIAL REGION, BRANCH 62, BAGO CITY, AND MAGDALENO  
M. PEÑA, RESPONDENTS.**

### R E S O L U T I O N

**YNARES-SANTIAGO, J.:**

For resolution are the petitioner's Motion for Reconsideration<sup>[1]</sup> and Supplement to Motion for Reconsideration<sup>[2]</sup> of the August 6, 2008 Decision disposing as follows:

WHEREFORE, the petition is DENIED for lack of merit. The March 19, 2004 Decision of the Court of Appeals in CA-G.R. SP No. 65023, dismissing the petition for indirect contempt and the petition for prohibition and certiorari instituted to enjoin the Regional Trial Court of Bago City, Branch 62, from further proceeding with Civil Case Nos. 754 and 1088, as well as the July 27, 2004 Resolution denying the motion for reconsideration, are AFFIRMED.

SO ORDERED.<sup>[3]</sup>

On October 13, 2008, petitioner filed an Urgent Motion for Consolidation seeking that the instant case be consolidated with the following petitions pending with the other Divisions of the Court, notably:

1. G.R. No. 145817 (*Urban Bank, Inc. v. Peña*), where the First Division of the Court resolved, on November 13, 2002, to suspend or stay the running of Urban Bank's one-year period to redeem its properties sold at the public auction held on October 4, 11 and 25, 2001, as well as the consolidation of the titles thereto in favor of the buyers at auction. In said case, Makati Sports Club, Inc. was prohibited from transferring Urban Bank's club shares therein to the winning bidders in the October 11, 2001 execution sale;
2. G.R. No. 145822 (*Gonzales, Jr. v. Peña*), which is a petition for review of the decision in CA-G.R. SP No. 55667, and which specifically assails the validity of the October 29, 1999 Special Order and Writ of Execution, and prays to set aside the levies, garnishments and auction sales conducted pursuant to said order and writ. The November 13, 2002 Resolution of the First Division of the Court covers this case as well; and

3. G.R. No. 162562 (*Peña v. Urban Bank*), which is a petition for review on certiorari of the November 6, 2003 Decision in CA-G.R. CV No. 65756 declaring the absence of an agency relationship between Urban Bank and Peña, but granting to the latter - on equitable considerations - damages in the amount of P3,000,000.00 for his efforts at settling the ejectment case.

Petitioner argues that there are good and compelling grounds to allow the consolidation of the instant case with the above-mentioned cases because they involve the same material facts and circumstances; consolidation would prevent any unwitting or unwarranted interference by one Division with the issues pending in or being resolved by the others; it would forestall "chaos that results from conflicting or divergent appreciation of facts, application of law and pronouncements by the different divisions" of the Court; and certain pronouncements in the August 6, 2008 Decision pre-empt the result of the other pending petitions, specifically on the following concerns:

1. Our ruling that Urban Bank is liable under an agency agreement. Petitioner claims that the issue is subject of the November 6, 2003 decision of the Court of Appeals in CA- G.R. CV No. 65756 and pending in this Court via G.R. No. 162562. Petitioner posits that since the judgment of the trial court in Civil Case No. 754 - which forms the basis for the grant of execution pending appeal - was reversed in CA-G.R. CV No. 65756, it is premature for us to declare Peña as the owner of the shares subject of the present petition, because there remains the possibility that the judgment in CA-G.R. CV No. 65756 could be affirmed or that respondent therein could be exonerated entirely from liability in G.R. No. 162562;
2. Our pronouncement that there was good ground to allow execution pending appeal. Petitioner asserts that the propriety of the trial court's grant of execution pending appeal is the issue sought to be resolved in the petition in G.R. No. 145822;
3. Our pronouncement that Civil Case No. 1088 is not considered as part of the execution proceedings in Civil Case No. 754 which would otherwise pose an obstacle to the transfer of title over EQLPI, Manila Polo Club, Manila Golf and Country Club, Sta. Elena Golf and Country Club and Tagaytay Highlands International Golf Club stock in favor of the buyers at auction thereof, which petitioner asserts, is contrary to the November 13, 2002 disposition of the Court's First Division in G.R. Nos. 145817 and 145822, which resolved as follows:

WHEREFORE, the Court hereby RESOLVES to clarify that, as a consequence of its approval of the supersedeas bond, the running of the one-year period for petitioner Urban Bank to redeem the properties sold at the public auctions held on October 4, 11 and 25, 2001, as well as the consolidation of the titles in favor of the buyers, is SUSPENDED OR STAYED. MSCI (Makati Sports Club, Inc.) is also prohibited from transferring petitioner Urban Bank's MSCI club shares to the winning bidders in the execution sale held on October 11, 2001.

SO ORDERED.

According to petitioner, the above Resolution of the First Division suspended or stayed the transfer or consolidation of titles in favor of buyers "at any prior execution sale," which includes buyers of petitioner's shares of stock at the execution proceedings in issue here.

On January 12, 2009, the Court issued a Resolution denying for lack of merit petitioner's Urgent Motion for Consolidation.

Petitioner's motion for reconsideration and the supplement thereto essentially assert the same arguments contained in his petition, to wit: that the August 18, 2000 Amended Decision of the Court of Appeals did not vacate the January 12, 2000 Decision and therefore the Special Order and Writ of Execution must unavoidably remain annulled and set aside, and the enjoining of the writ of execution and lifting of the garnishment and levy made pursuant thereto must necessarily subsist. This reiteration, of course, remains manifestly unsound. The August 18, 2000 Amended Decision<sup>[4]</sup> is an entirely new decision which superseded and extinguished the original January 12, 2000 decision.<sup>[5]</sup>

There is a difference between an amended judgment and a supplemental judgment. In an amended and clarified judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes the original decision.** Following the Court's differentiation of a supplemental pleading from an amending pleading, it can be said that a supplemental decision does not take the place or extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary decision. A supplement exists side by side with the original. It does not replace that which it supplements.<sup>[6]</sup> (Emphasis supplied)

Next, petitioner argues that execution pending appeal is not possible in the absence of an indemnity bond that was subsequently required of the judgment creditor. This argument is without basis, because the Rules do not require the posting of an indemnity bond before execution pending appeal may be made.

We need not review in length the justification of the Court of Appeals in allowing execution pending appeal. The standard set under Section 2(a), Rule 39 merely requires "good reasons," a "special order," and "due hearing." Due hearing would not require a hearing in open court, but simply the right to be heard, which SIDDCOR availed of when it filed its opposition to the motion for immediate execution. The *Resolution* dated 16 October 1998 satisfies the "special order" requirement, and it does enumerate at length the "good reasons" for allowing execution pending appeal. As to the appreciation of "good reasons," we simply note that the advanced age alone of Sandoval would have sufficiently justified execution pending appeal, pursuant to the well-settled jurisprudential rule. The wrongfulness of the attachment, and the length of time respondents have been deprived of their money by reason of the