

FIRST DIVISION

[G.R. No. 133608, August 26, 2008]

TIONG ROSARIO, PETITIONER, VS. ALFONSO CO, RESPONDENT.

DECISION

AZCUNA, J.:

This is a Petition for Review on *Certiorari* under Rule 45, in relation to Section 2(c) of Rule 41 of the Rules of Court, assailing the Resolution^[1] dated April 6, 1998, issued by the Regional Trial Court (RTC), Branch 161, Pasig City, in SCA No. 1259.

Petitioner Tiong Rosario is the proprietor of TR Mercantile (TRM), a single proprietorship engaged in the business of selling and trading paper products and supplies of various kinds; while respondent Alfonso Co is the Chairman and President of Modern Paper Products, Inc. (MPPI). In the course of its business, MPPI purchased from TRM a variety of paper products on credit.^[2] As payment for his purchases, respondent issued the following China Banking Corporation checks in favor of TRM:

Check No.	Date	Amount
BO32101	February 15, 1995	P3,000,000
BO32122	February 27, 1995	P6,000,000
BO32138	March 6, 1995	P1,900,000

Subsequently, on presentment for payment, Check Nos. B032101,^[3] B032138^[4] and B032122^[5] were dishonored by the drawee bank on May 11, 1995, April 6, 1995, and April 28, 1995, respectively, for the reason that the payment was either stopped or that the checks were drawn against insufficient funds.^[6]

In a letter^[7] dated June 27, 1995, TRM demanded that respondent make good the checks and pay MPPI's outstanding obligations within five banking days from receipt of the letter, otherwise, it would be constrained to file both criminal and civil actions to protect its interest. Respondent, however, failed to heed the demand.

Thus, on July 21, 1995, petitioner filed a complaint against respondent for violation of Batas Pambansa (B.P.) Blg. 22 with the Office of the City Prosecutor, Pasig City. On November 6, 1995, finding probable cause against respondent, the investigating prosecutor filed three separate informations against him for violation of B.P. Blg. 22 before the Metropolitan Trial Court (MeTC), Pasig City, later docketed as Criminal Case Nos. 18521, 18522 and 18523.^[8]

Prior thereto, or on May 12, 1995, MPPI and its principal stockholders, the Spouses Alfredo and Elizabeth Co filed before the Securities and Exchange Commission

(SEC), under P.D. No. 902-A, a Petition for Suspension of Payments for Rehabilitation Purposes with prayer for the creation of a management committee and for a temporary restraining order and/or preliminary injunction, docketed as SEC Case No. 05-95-5054.

On October 3, 1995, the SEC issued an Omnibus Order creating a Management Committee and consequently suspending all actions for claims against MPPI pending before any court, tribunal, branch or body.^[9]

Meanwhile, in the criminal cases pending before the MeTC, respondent was arraigned, and the cases were set for trial.^[10]

Prior to initial trial, respondent filed a Motion to Suspend Proceedings.^[11] In support of his motion, movant relied on the following grounds:

I.

A corporation under suspension of payments and corporate rehabilitation pursuant to P.D. No. 902-A, as amended, may not be validly charged for violation of B.P. Blg. 22, when demand on said corporation for dishonored checks was made subsequent to the filing of said petition for suspension of payments.

II.

Pursuant to Sec. 6 (c) of P.D. 902-A, as amended, and in view of the pendency of SEC Case No. 05-95-5054, as well as of the issuance of by the SEC of an order creating a management committee to oversee the operations of the corporation and suspending all actions for claims against the corporation, the suspension of the proceedings in the instant suit is warranted.

III.

Pendency of SEC Case No. 05-95-5054 presents a prejudicial question within the scope of Sections 5 and 6, Rule 111, New Rules of Criminal Procedure, and therefore warrants the suspension of the instant proceedings.^[12]

Respondent prayed that the proceedings in the MeTC be suspended during the pendency of the SEC proceedings for rehabilitation and suspension of payments of MPPI.^[13] Petitioner opposed said motion.^[14]

Corollarilly, in an Order dated March 19, 1996, the SEC granted respondent's Motion to Compel Compliance and For Issuance of Orders of Suspension in the Criminal Cases. In said order, the SEC directed the creditors of MPPI, including TRM, to desist from filing and/or prosecuting cases for violations of B.P. Blg. 22, Estafa or other criminal cases against respondent and/or the officers of MPPI pursuant to its order dated October 3, 1995 and Sec. 6 (c) of P.D. No. 902-A.^[15]

On September 3, 1996, the MeTC issued an Order^[16] denying respondent's motion

to suspend proceedings. It held that the issue raised in SEC Case No. 05-95-5054 is not similar or intimately related to the issue involved in the criminal cases before it and therefore the elements of a prejudicial question do not exist. Respondent filed a Motion for Reconsideration^[17] but it was denied in the Order^[18] dated October 30, 1996.

Aggrieved, respondent filed on December 19, 1996 a petition for *certiorari*^[19] before the RTC questioning the above orders, later docketed as SCA No. 1259.

In his petition, respondent admitted that he issued the subject checks as a corporate officer of MPPI as payment for purchases made from TRM. He further claimed that he did not make good the checks upon demand because MPPI had already filed a petition for suspension of payments before the SEC which ordered that all actions for claims against MPPI be suspended.

On February 26, 1997, the RTC enjoined the MeTC from further proceeding with Criminal Case Nos. 18521-23 during the pendency of the action before it.^[20] On April 17, 1997, petitioner filed a Motion for Partial Reconsideration.^[21] However, upon agreement of the parties, resolution on the motion was held in abeyance awaiting the RTC resolution in the main case, the issues raised being identical.^[22]

On April 6, 1998, the RTC issued the assailed Resolution^[23] the decretal portion of which reads as follows:

IN VIEW OF THE FOREGOING, Respondent Court is directed to suspend the proceedings in Criminal Cases Nos. 18521-3 during the pendency of the petition in SEC Case No. 05-95-5054.^[24]

In granting the petition, the RTC ratiocinated that from the time MPPI placed itself under the operation of P.D. No. 902-A on May 12, 1995, it was temporarily legally restricted to pay the holder of the subject checks or make arrangements for payment in full by the drawee. To hold otherwise would lead to the inevitable conclusion that respondent, so as to avoid being criminally sued for the returned checks, would personally make good the same.^[25]

Hence, this petition assigning the following errors:

I

THE REGIONAL TRIAL COURT ERRED IN ORDERING THE SUSPENSION OF THE CRIMINAL PROCEEDINGS AGAINST RESPONDENT CO, IN THAT:

- A. THERE IS NO LAW WHICH AUTHORIZES THE SUSPENSION OF CRIMINAL PROCEEDINGS AGAINST A CORPORATE OFFICER FOR VIOLATION OF B.P. 22 ON ACCOUNT OF THE PENDENCY OF A PETITION FOR SUSPENSION OF PAYMENTS FILED BY HIS CORPORATION.

- B. CRIMINAL PROSECUTION CANNOT BE ENJOINED.

C. IN SEEKING SUSPENSION OF THE CRIMINAL PROCEEDINGS AGAINST HIM IN VIEW ALONE OF THE PENDENCY OF HIS CORPORATION'S PETITION FOR SUSPENSION OF PAYMENTS, RESPONDENT CO IN EFFECT PLEADS FINANCIAL HARDSHIPS AS A DEFENSE TO A B.P. 22 PROSECUTION, WHICH, HOWEVER, IS NOT RECOGNIZED.

II

IT WAS ERROR FOR THE REGIONAL TRIAL COURT, AS A CIVIL COURT IN A CIVIL PROCEEDING, TO TAKE COGNIZANCE OF MATTERS OF DEFENSE WHICH COULD BE RAISED ONLY AT THE TRIAL IN THE CRIMINAL CASE BEFORE THE METROPOLITAN TRIAL COURT. [26]

The issue is:

WHETHER A CRIMINAL CASE AGAINST A CORPORATE OFFICER FOR VIOLATION OF BP 22 COULD BE SUSPENDED ON ACCOUNT OF THE PENDENCY OF A PETITION FOR SUSPENSION OF PAYMENTS FILED BY THAT OFFICER'S CORPORATION WITH THE SECURITIES AND EXCHANGE COMMISSION. [27]

Petitioner argues that nowhere in the Insolvency Law or P.D. No. 902-A is it provided that criminal prosecution of a corporate officer for violation of B.P. Blg. 22 shall be suspended on account of the pendency of a petition for suspension of payments. Under the Insolvency Law, the filing of a petition for suspension of payments will only result in the suspension of any execution pending against the debtor, and only upon request by the debtor to this effect, and that, generally, from the time of filing of the petition, no creditor may sue to collect his claim against the debtor. [28]

Petitioner adds that under P.D. No. 902-A, the appointment of a management committee, rehabilitation receiver, board or body in a petition for suspension of payments would only have the effect of suspending "all actions for claims" against the corporation, partnership, or association under management or receivership. Prosecution for violation of B.P. Blg. 22 is not an "action for claim" against a corporation but a criminal proceeding brought by the State against a violator of the law. [29]

To buttress her claim, petitioner contends that criminal prosecution of the respondent is specifically mandated by law considering that B.P. Blg. 22 states that where a check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable. [30] Further, P.D. No. 902-A was never intended to suspend criminal proceedings for violation of B.P. Blg. 22.

Petitioner further argues that the general rule is that injunction or prohibition does not lie to restrain a criminal prosecution subject to well-defined exceptions which do not include the instant case. [31]

Petitioner maintains that a petition for suspension of payments is founded on the inability to pay a debt when it falls due which cannot stand as a ground to suspend criminal prosecution, especially where the individual defendant is not the party

seeking suspension of payment but a corporation.^[32]

Finally, petitioner contends that respondent's petition before the RTC presented an issue of whether his prosecution in the MeTC should be enjoined due to the pendency of MPPI's petition for suspension of payments in the SEC. However, the RTC, sitting in a civil court in a civil proceeding under Rule 65 of the Rules of Court, went beyond this issue and took cognizance of, and passed upon, an issue which could only be raised in the MeTC as a matter of defense.^[33]

For his part, respondent posits that the filing and pendency of SEC Case No. 05-95-5054 prevented him from making good the subject checks. He maintains that while he could have funded the checks when demand was made by the petitioner, he could not legally do so. Had he made arrangements for the payment of the checks notwithstanding the pendency of the SEC case, such act would have had the effect of the corporation paying a creditor and giving it undue preference over the others, which is disallowed by law.^[34]

The petition is meritorious.

Stripped of the non-essentials, the issue before this Court is the propriety of the suspension of Criminal Case Nos. 18521, 18522, and 18523 during the pendency of SEC Case No. 05-95-5054. Considering that the rehabilitation proceedings result in the suspension of all claims against a corporation, the issue of whether or not the suspension includes the criminal cases against the respondent must be resolved.

The resolution of the above issues hinges on the determination of the following: (1) the meaning of "actions for claims" against the distressed corporation; and (2) the effectivity of the suspension.

Section 6 (c) of P.D. No. 902-A, as amended, provides:

Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

xxx

c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: ... *Provided, finally, That upon appointment of a management committee, the rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships, or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.*(italics supplied)

As early as *Finasia Investment and Finance Corp. v. Court of Appeals*,^[35] this Court clarified that the word "claim" used in Sec. 6 (c) of P.D. No. 902-A, as amended, refers to debts or demands of a pecuniary nature and the assertion of a right to have money paid. It is used in special proceedings like those before AN