

## SECOND DIVISION

[ G.R. No. 175339, December 16, 2008 ]

**PREMIERE DEVELOPMENT BANK, PETITIONER, VS. ALFREDO C. FLORES, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT OF PASIG CITY, BRANCH 167, ARIZONA TRANSPORT CORPORATION AND PANACOR MARKETING CORPORATION, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This is a Rule 45 petition for review<sup>[1]</sup> of the Court of Appeals' decision<sup>[2]</sup> in CA-G.R. SP No. 92908 which affirmed the Regional Trial Court's (RTC's) orders<sup>[3]</sup> granting respondent corporations' motion for execution of the Court's 14 April 2004 decision in G.R. No. 159352<sup>[4]</sup> and denying<sup>[5]</sup> petitioner Premiere Development Bank's motion for reconsideration, as well as the appellate court's resolution<sup>[6]</sup> denying Premiere Development Bank's motion for reconsideration.

The factual antecedents of the case, as found by the Court in G.R. No. 159352, are as follows:

The undisputed facts show that on or about October 1994, Panacor Marketing Corporation (Panacor for brevity), a newly-formed corporation, acquired an exclusive distributorship of products manufactured by Colgate Palmolive Philippines, Inc. (Colgate for short). To meet the capital requirements of the exclusive distributorship, which required an initial inventory level of P7.5 million, Panacor applied for a loan of P4.1 million with Premiere Development Bank. After an extensive study of Panacor's creditworthiness, Premiere Bank rejected the loan application and suggested that its affiliate company, Arizona Transport Corporation (Arizona for short), should instead apply for the loan on condition that the proceeds thereof shall be made available to Panacor. Eventually, Panacor was granted a P4.1 million credit line as evidenced by a Credit Line Agreement. As suggested, Arizona, which was an existing loan client, applied for and was granted a loan of P6.1 million, P3.4 million of which would be used to pay-off its existing loan accounts and the remaining P2.7 million as credit line of Panacor. As security for the P6.1 million loan, Arizona, represented by its Chief Executive Officer Pedro Panaligan and spouses Pedro and Marietta Panaligan in their personal capacities, executed a Real Estate Mortgage against a parcel of land covered by TCT No. T-3475 as per Entry No. 49507 dated October 2, 1995.

Since the P2.7 million released by Premiere Bank fell short of the P4.1 million credit line which was previously approved, Panacor negotiated for

a take-out loan with IBA-Finance Corporation (hereinafter referred to as IBA-Finance) in the sum of P10 million, P7.5 million of which will be released outright in order to take-out the loan from Premiere Bank and the balance of P2.5 million (to complete the needed capital of P4.1 million with Colgate) to be released after the cancellation by Premiere of the collateral mortgage on the property covered by TCT No. T-3475. Pursuant to the said take-out agreement, IBA-Finance was authorized to pay Premiere Bank the prior existing loan obligations of Arizona in an amount not to exceed P6 million.

On October 5, 1995, Iba-Finance sent a letter to Ms. Arlene R. Martillano, officer-in-charge of Premiere Bank's San Juan Branch, informing her of the approved loan in favor of Panacor and Arizona, and requesting for the release of TCT No. T-3475. Martillano, after reading the letter, affixed her signature of conformity thereto and sent the original copy to Premiere Bank's legal office. x x x

On October 12, 1995, Premiere Bank sent a letter-reply to [IBA]-Finance, informing the latter of its refusal to turn over the requested documents on the ground that Arizona had existing unpaid loan obligations and that it was the bank's policy to require full payment of all outstanding loan obligations prior to the release of mortgage documents. Thereafter, Premiere Bank issued to IBA-Finance a Final Statement of Account showing Arizona's total loan indebtedness. On October 19, 1995, Panacor and Arizona executed in favor of IBA-Finance a promissory note in the amount of P7.5 million. Thereafter, IBA-Finance paid to Premiere Bank the amount of P6,235,754.79, representing the full outstanding loan account of Arizona. Despite such payment, Premiere Bank still refused to release the requested mortgage documents specifically, the owner's duplicate copy of TCT No. T-3475.

On November 2, 1995, Panacor requested IBA-Finance for the immediate approval and release of the remaining P2.5 million loan to meet the required monthly purchases from Colgate. IBA-Finance explained however, that the processing of the P2.5 million loan application was conditioned, among others, on the submission of the owner's duplicate copy of TCT No. 3475 and the cancellation by Premiere Bank of Arizona's mortgage. Occasioned by Premiere Bank's adamant refusal to release the mortgage cancellation document, Panacor failed to generate the required capital to meet its distribution and sales targets. On December 7, 1995, Colgate informed Panacor of its decision to terminate their distribution agreement.

On March 13, 1996, Panacor and Arizona filed a complaint for specific performance and damages against Premiere Bank before the Regional Trial Court of Pasig City, docketed as Civil Case No. 65577.

On June 11, 1996, IBA-Finance filed a complaint-in-intervention praying that judgment be rendered ordering Premiere Bank to pay damages in its favor.

On May 26, 1998, the trial court rendered a decision in favor of Panacor

and IBA-Finance, the decretal portion of which reads: x x x

Premiere Bank appealed to the Court of Appeals contending that the trial court erred in finding, *inter alia*, that it had maliciously downgraded the credit-line of Panacor from P4.1 million to P2.7 million.

In the meantime, a compromise agreement was entered into between IBA-Finance and Premiere Bank whereby the latter agreed to return without interest the amount of P6,235,754.79 which IBA-Finance earlier remitted to Premiere Bank to pay off the unpaid loans of Arizona. On March 11, 1999, the compromise agreement was approved.

On June 18, 2003, a decision was rendered by the Court of Appeals which affirmed with modification the decision of the trial court, the dispositive portion of which reads:<sup>[7]</sup> x x x

Incidentally, respondent corporations received a notice of sheriff's sale during the pendency of G.R. No. 159352. Respondent corporations were able to secure an injunction from the RTC but it was set aside by the Court of Appeals in a decision dated 20 August 2004.<sup>[8]</sup> The appellate court denied respondent corporations' motion for reconsideration in a resolution dated 5 November 2004.<sup>[9]</sup>

The Court, in a resolution dated 16 February 2005, did not give due course to the petition for review of respondent corporations as it did not find any reversible error in the decision of the appellate court.<sup>[10]</sup> After the Court had denied with finality the motion for reconsideration,<sup>[11]</sup> the mortgaged property was purchased by Premiere Development Bank at the foreclosure sale held on 19 September 2005 for P6,600,000.00.<sup>[12]</sup>

Respondent corporations filed a motion for execution dated 25 August 2005<sup>[13]</sup> asking for the issuance of a writ of execution of our decision in G.R. No. 159352 where we awarded P800,000.00 as damages in their favor.<sup>[14]</sup> The RTC granted the writ of execution sought. The Court of Appeals affirmed the order.

Hence, the present petition for review.

The only question before us is the propriety of the grant of the writ of execution by the RTC.

Premiere Development Bank argues that the lower courts should have applied the principles of compensation or set-off as the foreclosure of the mortgaged property does not preclude it from filing an action to recover any deficiency from respondent corporations' loan. It allegedly did not file an action to recover the loan deficiency from respondent corporations because of the pending Civil Case No. MC03-2202 filed by respondent corporations before the RTC of Mandaluyong City entitled *Arizona Transport Corp. v. Premiere Development Bank*. That case puts into issue the validity of Premiere Development Bank's monetary claim against respondent corporations and the subsequent foreclosure sale of the mortgaged property. Premiere Development Bank allegedly had wanted to wait for the resolution of the civil case before it would file its deficiency claims against respondent corporations.

Moreover, the execution of our decision in G.R. No. 159352 would allegedly be iniquitous and unfair since respondent corporations are already in the process of winding up.<sup>[15]</sup>

The Court finds the petition unmeritorious.

A judgment becomes "final and executory" by operation of law. In such a situation, the prevailing party is entitled to a writ of execution, and issuance thereof is a ministerial duty of the court.<sup>[16]</sup> This policy is clearly and emphatically embodied in Rule 39, Section 1 of the Rules of Court, to wit:

SECTION 1. *Execution upon judgments or final orders.* — **Execution shall issue as a matter of right**, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis supplied.)

Jurisprudentially, the Court has recognized certain exceptions to the rule as where in cases of special and exceptional nature it becomes imperative in the higher interest of justice to direct the suspension of its execution; whenever it is necessary to accomplish the aims of justice; or when certain facts and circumstances transpired after the judgment became final which could render the execution of the judgment unjust.<sup>[17]</sup>

None of these exceptions avails to stay the execution of this Court's decision in G.R. No. 159352. Premiere Development Bank has failed to show how injustice would exist in executing the judgment other than the allegation that respondent corporations are in the process of winding up. Indeed, no new circumstance transpired after our judgment had become final that would render the execution unjust.

The Court cannot give due course to Premiere Development Bank's claim of compensation or set-off on account of the pending Civil Case No. MC03-2202 before the RTC of Mandaluyong City. For compensation to apply, among other requisites, the two debts must be liquidated and demandable already.<sup>[18]</sup>

A distinction must be made between a debt and a mere claim. A debt is an amount actually ascertained. It is a claim which has been formally passed upon by the courts or quasi-judicial bodies to which it can in law be submitted and has been declared to be a debt. A claim, on the other hand, is a debt in embryo. It is mere evidence of a debt and must pass thru the process prescribed by law before it develops into what is properly called a debt.<sup>[19]</sup> Absent, however, any such