

THIRD DIVISION

[G.R. No. 163156, December 10, 2008]

NEGROS NAVIGATION CO., INC., PETITIONER, VS. COURT OF APPEALS, SPECIAL TWELFTH DIVISION AND TSUNEISHI HEAVY INDUSTRIES (CEBU), INC., RESPONDENTS.

[G.R. NO. 166845]

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC., PETITIONER, VS. NEGROS NAVIGATION CO., INC., SULFICIO O. TAGUD, JR., AND THE REHABILITATION RECEIVER FOR NEGROS NAVIGATION CO., INC., RESPONDENTS.

DECISION

NACHURA, J.:

Before us are two consolidated cases, docketed as G.R. No. 163156 and G.R. No. 166845, which were filed by petitioners Negros Navigation Co., Inc. (NNC) and Tsuneishi Heavy Industries (Cebu), Inc. (THI), respectively. The first is a petition for *certiorari* and prohibition assailing the April 29, 2004 Resolution^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 83526. The second is a petition for review on *certiorari*, contesting the October 6, 2004 Decision^[2] and January 24, 2005 Resolution^[3] of the CA in the same case.

The Facts

The undisputed facts are as follows:

NNC is a shipping company that is primarily engaged in the business of transporting through shipping vessels, passengers and cargoes at various ports of call in the country.^[4] THI, on the other hand, is engaged in the business of shipbuilding and repair.^[5] NNC engaged the services of THI for the repair of its vessels.

On February 9, 2004, THI filed a case for sum of money and damages with prayer for issuance of writ of attachment against NNC before the Regional Trial Court of Cebu (Cebu RTC), docketed as Civil Case No. CEB-29899 entitled "Tsuneishi Heavy Industries (Cebu), Inc. v. Negros Navigation Co., Inc." The action is based on the unpaid services for the repair of NNC's vessels, otherwise known as repairman's lien.

On March 5, 2004, the Cebu RTC issued an Order^[6] granting the issuance of a writ of preliminary attachment against the properties of NNC.^[7] It reasoned that based on the affidavit in support of the application for the writ, NNC committed fraud in contracting the debt or in incurring the obligation upon which the action was

brought, thus, justifying the issuance of the writ^[8] as mandated by Section 1(d) of Rule 57. It added that the repairman's lien of THI constituted a superior maritime lien that is enforceable by suit *in rem*, as decreed by Presidential Decree No. 1521 (PD 1521).^[9]

On March 12, 2004, by virtue of the writ of preliminary attachment, Sheriff Rogelio T. Pinar levied on one of the vessels of NNC, the M/V St. Peter the Apostle.^[10]

On March 29, 2004, NNC filed a Petition for Corporate Rehabilitation with Prayer for Suspension of Payments^[11] with the RTC of Manila (Manila RTC), Branch 46, which was docketed as Special Proceeding No. 0409532. The Manila RTC granted the NNC's petition and issued a Stay Order^[12] on April 1, 2004. The said Order reads:

Petitioner Negros Navigation Co., Inc. filed a Petition alleging that it is a domestic corporation with principal place of business at Pier 2, North Harbor, Tondo, Manila; that since its incorporation, it had been very viable and financially profitable; that because of the Asian Currency Crisis and the devaluation of the Peso, it found itself in difficulty in paying its obligations with creditors; that as a consequence, petitioner foresees its inability to meet its obligations as they fall due; that since the obligations would not be met, complications and problems will arise that will impair and affect the operation of the corporation and its effort to rehabilitate its business; that one of its creditors, Tsuneishi Heavy Industries, Inc., already attached one shipping vessel of the corporation; and other creditors are threatening to sue; but despite the foregoing, petitioner still foresee the prospect of paying its debts if only given a "breathing spell." Hence, it is presenting a Rehabilitation Plan for approval of its creditors as well as this Court.

Finding the Petition, together with its annexes, sufficient in form and substance, the Court hereby:

1. Appoints Mr. Sulficio O. Tagud, Jr. as Rehabilitation Receiver with a bond in the amount of PhP150,000.00;
2. Stays the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the petitioner, its guarantors and sureties not solidarily liable with the debtor;
3. Prohibits petitioner from selling, encumbering, transferring, or disposing in any manner any of its properties, except in the ordinary course of business;
4. Prohibits petitioner from making any payment of its liabilities outstanding as of the date of filing of the petition;
5. Prohibits the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services

and goods supplied after the issuance of the stay order;

6. Directs the payment in full of all administrative expenses incurred after the issuance of the stay order;
7. Fixes the initial hearing of the petition on May 7, 2004 at 8:30 A.M.;
8. Directs petitioner to publish this Order in a newspaper of general circulation throughout the Philippines once a week for two (2) consecutive weeks;
9. Directs all creditors and all interested parties (*including the Securities and Exchange Commission*) to file and serve with the court and on the petitioner a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and
10. Directing the creditors and interested parties to secure from the court copies of the petition and its annexes to enable them to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The Rehabilitation Receiver, Mr. Sulficio O. Tagud, Jr., is requested to submit his oath of office within ten (10) days from receipt of this Order.

IT IS SO ORDERED.^[13]

Upon the issuance of the stay order by the Manila RTC, NNC filed a Manifestation and Motion to Suspend Proceedings and to Lift Preliminary Attachment with the Cebu RTC.^[14]

On April 5, 2004, THI filed an Amended Complaint^[15] in the Cebu RTC. In the amended complaint, THI impleaded the following vessels of NNC as co-defendants in the suit: M/V San Sebastian, M/S Princess of Negros, M/V Nossa Senhora (Nuestra Señora) De Fatima, M/V St. Peter the Apostle, M/V Santa Ana and M/V San Paolo.
^[16] THI prayed for the following in the amended complaint:

WHEREFORE, it is respectfully prayed that:

1. An *ex-parte* writ of preliminary attachment/arrest order be issued directing the sheriff to attach defendant's properties not exempt from execution as security for the satisfaction of the judgment in this action, and/or arrest the defendant vessels, upon approval by the Court of an appropriate attachment/arrest bond in accordance with the Rules of Court.
2. It is further respectfully prayed that after trial, judgment be rendered in favor of the plaintiff and against the defendant, Negros Navigation ordering the latter to pay the amount of

P104,464,000.00 plus interest and penalties, and in satisfaction thereof and/or to ensure the same:

a. In the *in personam* action, attaching the assets of defendant Negros Navigation, including the vessel, M/V St. Joseph; and

b. In the *in rem* action, an order/warrant of arrest of the Vessels based on plaintiff's lien which arose from repairs and dry docking furnished by plaintiff to the following:

a) San Sebastian	-	P2,212,925.00
b) Princess of Negros	-	21,389,575.00
c) Nuestra Sra. De Fatima	-	3,743,250.00
d) St. Peter the Apostle	-	43,483,000.00
e) Sta. Ana	-	264,000.00
f) San Paolo	-	33,371,250.00
TOTAL		P104,464,000.00

be issued ex-parte and, after hearing, judgment be rendered ordering the sale at public action of the Vessels, including all their accessories, equipments, riggings and appurtenances, and, under the manner provided for by law.

3. Attorney's fees in an amount not less than P2,000,000.00 plus refund of docket fees, bond premiums and litigation expenses of no less than P2,000,000.00.

4. Costs of suit.

Plaintiff prays for such other reliefs, cumulative and/or alternative, as this Honorable Court may deem just and equitable under the premises.^[17]

On April 6, 2004, the Cebu RTC issued two (2) Orders. The first was an Order^[18] admitting the amended complaint as a matter of right since NNC had not yet filed a responsive pleading when the same was filed. The second was an Order^[19] for the arrest of the vessels of NNC in the *in rem* aspect of the case. The *fallo* of the Order reads:

WHEREFORE, in view of the foregoing, the sheriff, or other proper officers of this court and such other person(s) as they may deputize, is/are hereby directed to arrest and detain the following vessels: M/V San Sebastian, M/S Princess of Negros, M/V Nossa Senhora de Fatima (Nuestra Senora de Fatima), M/V St. Peter the Apostle, M/V Sta. Ana and M/V San Paolo. The Philippine Ports Authority, the Philippine Coast Guard, the Maritime Industry Authority (MARINA), the Philippine National Police, the National Bureau of Investigation and other law enforcement agencies and all other government agencies and instrumentalities are hereby ordered to assist. Assistance shall include but not be limited to preventing the vessel from sailing or trading except as this admiralty court shall direct. Keep the vessels in custody until further order of this court, sitting as an admiralty court.

IT IS SO ORDERED.

On April 12, 2004, NNC's Rehabilitation Receiver filed with the Manila RTC a Motion^[20] for the clarification of the stay order. It sought to confirm whether the claim sought to be enforced by THI against the vessels of NNC is covered by the stay order. On the same date, the Manila RTC issued an Order^[21] addressing the said motion. The pertinent portion of the Order reads:

The Interim Rules of Procedure on Corporate Rehabilitation does not distinguish the kind of claims covered, whether in rem or in personam, due or not due. Hence, when the law does not distinguish, courts ought not to distinguish. So the stay order applies to all CLAIMS.

SO ORDERED.^[22]

On April 13, 2004, NNC filed a Motion to Suspend Proceedings and to Lift the Writ of Attachment and Arrest Orders^[23] before the Cebu RTC by virtue of the April 12, 2004 Order of the Manila RTC. However, on April 29, 2004, the CA issued the Resolution^[24] assailed in what is before this Court as G.R. No. 163156, wherein the appellate court temporarily restrained the implementation of the Orders of the Manila RTC dated April 1, 2004 and April 12, 2004. The pertinent portion of the assailed Resolution reads:

To preserve the *status quo* and so as not to render ineffectual and nugatory the judgment that will be rendered in this petition, a temporary restraining order valid for sixty (60) days is issued enjoining respondents and all persons acting for them and on their behalf or third persons from enforcing or implementing the Orders dated April 1, 2004 and April 12, 2004 of the public respondent.

SO ORDERED.^[25]

From this CA Resolution, NNC sought recourse before us. On May 4, 2004, this Court in G.R. No. 163156 issued a Temporary Restraining Order,^[26] the pertinent portion of which reads:

NOW, THEREFORE, YOU, RESPONDENTS are REQUIRED to file comment on the petition within ten (10) days from notice, and RESTRAINED from implementing the Court of Appeals resolution dated 29 April 2004, which issued a temporary restraining order in CA-GR SP No. 83526 entitled "Tsuneishi Heavy Industries (CEBU), Inc. vs. Hon. Artemio S. Tipon, Presiding Judge, Regional Trial Court, Manila, Br. 46, Negros Navigation Co., Inc. and Sulficio O. Tagud, Jr." enjoining the implementation of the Orders dated 1 April 2004 and 12 April 2004 of the Regional Trial Court of Manila, Br. 46 in SP Proc. No. 04-109532, effective immediately and continuing until further orders from this Court, and YOU, PETITIONER, are ordered to POST a BOND in the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) in cash or surety issued by a reputable bonding company of indubitable solvency with terms and conditions acceptable to this Court within five (5) days from notice hereof, otherwise this temporary restraining order shall be rendered of no force and effect.

On October 6, 2004, the CA issued the Decision^[27] assailed in what is now G.R. No. 166845, denying the petition of THI that sought to annul and enjoin the