

## FIRST DIVISION

[ G.R. NO. 149053, March 07, 2007 ]

**CENTRAL SURETY AND INSURANCE COMPANY, PETITIONER,  
PLANTERS PRODUCTS, INC., RESPONDENT.**

### D E C I S I O N

#### **CORONA, J.:**

This appeal on certiorari under Rule 45 of the Rules of Court hinges on a pure question of law, that is, whether execution of judgment can be ordered by mere motion despite the lapse of five years from entry of judgment.

The antecedent facts follow.

Sometime in 1977, Ernesto Olson entered into a dealership agreement with respondent Planters Products, Inc. whereby he agreed to purchase, in cash or credit, fertilizers and agricultural chemicals from respondent for resale. To secure Olson's faithful compliance of his obligations, Vista Surety and Insurance, Co. (Vista Insurance) and petitioner executed a surety undertaking in favor of respondent.

After several deliveries, Olson failed to pay respondent prompting the latter to claim the amount due from petitioner and Vista Insurance. However, both refused to settle their liabilities to respondent as Olson's sureties.

On June 25, 1979, respondent filed an action for collection of sum of money<sup>[1]</sup> against Olson, Vista Insurance and petitioner in the Regional Trial Court (RTC) of Makati, Branch 58. Summons were accordingly served (except as to Olson whose address could not be located).

In a decision<sup>[2]</sup> dated November 6, 1991, the trial court found petitioner and Vista Insurance liable to respondent. They were ordered to pay the following: (1) P372,502 representing the unpaid principal amount plus interest; (2) 25% of the total amount recoverable as attorney's fees and (3) cost of suit.

Petitioner alone appealed to the Court of Appeals (CA). On December 7, 1992, the CA dismissed petitioner's appeal for failure to pay the required docket fees.<sup>[3]</sup> On March 12, 1993, the dismissal of petitioner's appeal became final and executory; entry of judgment followed on May 27, 1993.<sup>[4]</sup>

On October 12, 1993, respondent filed in the RTC a motion for execution of judgment following the CA's dismissal of petitioner's appeal.<sup>[5]</sup> The RTC issued the writ on October 21, 1993.<sup>[6]</sup> The writ, however, was not implemented so respondent filed an *ex parte* motion for the issuance of an alias writ of execution which the trial court granted on February 24, 1994.

In the CA, petitioner filed a "Very Urgent Motion to Set Aside the CA Resolution of December 7, 1992 and to Re-Open Appeal with Prayer for Preliminary Injunction/Temporary Restraining Order."<sup>[7]</sup> On March 3, 1994, the appellate court issued a resolution restraining the RTC judge and the deputy sheriff from enforcing the writ but, on motion of respondent, the CA lifted the TRO and dismissed petitioner's urgent motion on March 24, 1994.<sup>[8]</sup>

Through a petition for certiorari under Rule 65 of the Rules of Court, petitioner elevated the CA's dismissal of its urgent motion to this Court. In its petition, petitioner argued that it failed to pay the docket fees only because the CA's judicial records division did not "re-send" the notice for it to pay said fees. On July 11, 1994, we dismissed the petition<sup>[9]</sup> and this dismissal became final on September 14, 1994.<sup>[10]</sup>

On June 18, 1999 or 6 years from the entry of judgment of the RTC's decision,<sup>[11]</sup> respondent filed another motion for issuance of alias writ of execution in the trial court.<sup>[12]</sup> On August 20, 1999, the trial court issued an order granting the writ. Petitioner filed an MR of said order but the RTC denied it.

Petitioner thereafter went to the CA via a special civil action for certiorari under Rule 65 of the Rules ascribing grave abuse of discretion on the part of the RTC judge for issuing the writ despite the fact that more than five years had elapsed since the RTC's decision of November 6, 1991 became final and executory. Invoking Rule 39, Section 6 of the Rules, petitioner insisted that the RTC decision could no longer be enforced by mere motion but only by court action.

The CA dismissed the petition for patent lack of merit.<sup>[13]</sup> It held that:

While it is true that the judgment sought to be executed became final and executory on March 12, 1993, it bears stressing that the delay was caused by petitioner's dilatory maneuvers filed in this Court and all the way to the Supreme Court, viz: the Very Urgent Motion to Set Aside Resolution of December 7, 1992 and to Re-Open the Appeal with Prayer for Preliminary Injunction/Temporary Restraining Order which resulted in the issuance of the Court of Appeals Resolution dated March 3, 1994 enjoining respondents from enforcing the subject decision; the Motion for Reconsideration of [the] Court of Appeals Resolution dated March 24, 1994; and Petition for Certiorari before the Supreme Court which was ultimately dismissed by the High Court on July 11, 1994.

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WHEREFORE, for patent lack of merit, the petition is **DISMISSED** pursuant to Rule 65, [S]ec. 8[,], 2nd par.[,] Rules of Civil Procedure.

Petitioner filed an MR but this was likewise denied by the CA.<sup>[14]</sup> Hence, this petition.

The only relevant issue for our resolution is whether the execution of a final judgment may be made by mere motion despite the lapse of five years.