

EN BANC

[A.M. No. RTJ-06-1971 (Formerly OCA IPI No.03-1775-RTJ), October 17, 2007]

QBE INSURANCE PHILS., INC., REPRESENTED BY MARCELINA VALLES, COMPLAINANT, VS. JUDGE CELSO D. LAVIÑA, REGIONAL TRIAL COURT, BRANCH 71, PASIG CITY, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

This is an administrative complaint^[1] filed by QBE Insurance Phils., Inc. (QBE Insurance), represented by Marcelina Valles, against Judge Celso D. Laviña (Judge Laviña), Presiding Judge of the Regional Trial Court (RTC), Pasig City, Branch 71, for Grave Abuse of Discretion, Gross Ignorance of the Law and Knowingly Rendering Unjust Interlocutory Orders, relative to Civil Case No. 68287 entitled, "*Lavine Loungewear Mfg., Inc. v. Philippine Fire and Marine Insurance Corporation, Inc., Rizal Surety and Insurance Company, Tabacalera Insurance Company, First Lepanto-Taisho Insurance Corporation and Equitable Insurance Corporation.*"

Lavine Loungewear Manufacturing, Inc. (Lavine) insured its buildings and supplies against fire with Philippine Fire and Marine Insurance Corporation (PhilFire), Rizal Surety and Insurance Company (Rizal Surety), Tabacalera Insurance Company (TICO), First Lepanto-Taisho Insurance Corporation (First Lepanto), Equitable Insurance Corporation (Equitable Insurance), and Reliance Insurance Corporation (Reliance Insurance).

On 1 August 1998, a fire gutted Lavine's buildings and their contents. Thus, claims were made against the policies. As found by the Insurance Commission, the insurance proceeds payable to Lavine amounted to P112,245,324.34.

Lavine demanded payment of the insurance proceeds from the insurers. The latter paid minimal amounts but refused to pay the balance.

A complaint for collection of unpaid fire insurance proceeds was filed by Lavine against PhilFire, Rizal Surety, TICO, First Lepanto and Equitable Insurance before the RTC of Pasig, which was docketed as Civil Case No. 68287.

On 2 April 2002, the trial court rendered a Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

x x x x

B. Defendant Rizal Surety and Insurance Company to pay plaintiff through Intervenor's the amount of P17,100,000.00 representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine (29%) per cent interest per annum from October 1, 1998 until full payment.^[2]

On 3 April 2002, a motion for execution pending appeal was filed by certain intervenors (Harish C. Ramnani, Jose F. Manacop, Chandru P. Pessumal, Maureen M. Ramnani and Salvador Cortez) who claimed that they were Lavine's incumbent directors. The motion was granted by Judge Laviña in a Special Order dated 17 May 2002. As a consequence, a writ of execution was issued on 20 May 2002, directing, among other insurance companies, Rizal Surety and Insurance Company to pay Lavine the amount of P17,100,000.00 representing unpaid insurance proceeds as actual or compensatory damages, with twenty-nine per cent (29%) interest per annum from 1 October 1998 until full payment.

Apparently, notices of garnishment were served on all banks wherein Rizal Surety and TICO maintained bank accounts/deposits. On 24 May 2002, respondent's Branch Sheriff, Cresenciano Rabello, Jr., filed an "Urgent *Ex-Parte* Manifestation/Motion"^[3] which states:

That in this particular case, due to deliberate haste by which simultaneous move to immediately implement said writ, the bank deposits of Rizal Surety and Insurance Company and Tabacalera Insurance Company were inadvertently garnished/levied considering that both insurance companies were not properly served and/or they have not officially received and acknowledged copy of the writ of execution pending appeal, hence, the Court has no jurisdiction over them as far as the execution of the said writ is concerned;

That the copy of the writ of execution against Rizal Surety and Insurance Co., has not been served because said defendant recently changed its corporate name to QBE Insurance (Phils.) Inc., and that Tabacalera Insurance Company was under receivership with the Insurance Commission;

That under the circumstances, it is necessary that an Order be issued directing the Sheriff to lift and/or cancel the notice of garnishment served to all banks wherein Rizal Surety & Insurance Co., and Tabacalera Insurance Company maintained bank accounts/deposits. (Underscoring supplied.)

On 27 May 2002, Judge Laviña issued an Order^[4] directing the lifting of the previous notices of garnishment (with respect to Rizal Surety and TICO) since service of the Special Order and the Writ of Execution had yet to be made to the latter. **The Order also stated that the "writ may be implemented against said defendant Rizal Surety under its new name Q.B.E. Insurance Philippines, Inc."** Thus:

Considering that defendant Rizal Surety and Insurance Company has recently changed its name and transferred its operation to Q.B.E. Insurance Philippines, Inc., the writ may be implemented

against said defendant Rizal Surety under its new name Q.B.E. Insurance Philippines, Inc.

The Urgent Ex-parte Manifestation/Motion filed by Branch Sheriff IV Cresenciano Rabello, Jr. to allow him to lift and/or cancel the notices of garnishment previously served upon banks wherein defendant Rizal Surety and Insurance Company and defendant Tabacalera Insurance Company maintained their bank accounts/deposits, with its merit, is hereby NOTED and GRANTED. The previous notices of garnishment, without service yet of the special order and the writ are LIFTED.

Almost a year later, or on 24 March 2003, notices of garnishment were served by the sheriff on several banks in Makati City levying on the bank accounts of "Rizal Surety and Ins. Co., and/or QBE Ins. (Phils.), Inc."

On 25 March 2003, QBE Insurance filed an "Urgent Motion^[5] to lift the 27 May 2002 Order and the 24 March 2003 Notice of Garnishment," which were set for hearings and heard in March, April and May, 2003.

It appears that QBE Insurance also filed with the sheriff an affidavit^[6] of third-party claim on 11 April 2003.

On 15 May 2003, Judge Laviña denied^[7] QBE Insurance's urgent motion to lift the previously issued Order and Notice of Garnishment on the basis of his finding that QBE Insurance was merely a conduit or alter ego of Rizal Surety and they were one and the same, apparently basing his conclusion on the manifestation dated 24 May 2002 of Sheriff Rabello that Rizal Surety recently changed its corporate name to QBE Insurance. In the same Order, Judge Laviña deleted the phrase "recently changed its name" mentioned in his previous Order dated 27 May 2002. On 19 May 2003, Judge Laviña issued an Order^[8] stating that the issue of QBE Insurance's third-party claim had been rendered moot by the aforementioned Order dated 15 May 2003; however, it also directed the lifting of the garnishment with respect to the excess money that may have been garnished on QBE Insurance's bank accounts.

The Orders dated 27 May 2002, 15 May 2003 and 19 May 2003 were the subjects of a Petition for *Certiorari* filed with the Court of Appeals in CA-G.R. SP No. 77073, wherein the Court of Appeals rendered a Decision dated 31 May 2004 nullifying said Orders on the basis of its finding that the same were issued with grave abuse of discretion. The Decision was elevated to this Court, where it is now docketed as G.R. No. 165855 and is still pending up to this time.

It must be emphasized that although this case assails the orders of Judge Laviña (Orders dated 27 May 2002, 15 May 2003 and 19 May 2003), it is distinct from G.R. No. 165855. The latter is a petition for *certiorari* alleging grave abuse of discretion. The one before us is an administrative complaint alleging gross ignorance of the law, knowingly rendering unjust interlocutory orders, and grave abuse of discretion. To avoid conflicting conclusions, we refrain from ruling on the question anent the allegations of grave abuse of discretion as this is the subject of G.R. No. 165855.

QBE Insurance filed an administrative complaint^[9] against Judge Laviña for Grave

Abuse of Discretion, Gross Ignorance of the Law and Knowingly Rendering Unjust Interlocutory Orders. QBE Insurance alleged that on 24 March 2003, Deputy Sheriff Cresenciano Rabello, Jr. of Branch 71, RTC, Pasig City, served a notice of garnishment levying on the bank accounts of Rizal Surety and Insurance Company "and/or QBE Insurance, Phils., Inc.," as a result of which, QBE Insurance's bank accounts were frozen and were not allowed to earn interest by the banks. It was only then that QBE Insurance learned that the garnishment was in connection with the execution pending appeal of a Decision dated 2 April 2002 against Rizal Surety in Civil Case No. 68287 entitled, "*Lavine Loungewear Mfg., Inc. v. Philippine Fire and Marine Insurance Corporation, Inc., et al.*" of Branch 71, RTC, Pasig City. Judge Laviña allegedly acted with grave abuse of discretion when he issued the Order dated 27 May 2002, directing the execution of the judgment against QBE Insurance which was not a party to the case. The Order dated 27 May 2002 was based on the mere manifestation and motion of Judge Laviña's sheriff who was not required to present any evidence to prove that Rizal Surety had changed its corporate name to QBE Insurance Phils., Inc. Judge Laviña also rendered unjust interlocutory Orders dated 15 May 2003 and 19 May 2003 which respectively denied QBE Insurance's urgent motion to lift the 27 May 2002 Order and the 24 March 2003 Notice of Garnishment and held that the motion to quash the third-party claim of QBE Insurance had been mooted. QBE Insurance also averred that Judge Laviña totally disregarded the overwhelming evidence it presented in support of said motion to lift the 27 May 2002 Order and 24 March 2003 Notice of Garnishment, as Judge Laviña mistakenly relied on the "Business Run-Off Agreement" between Rizal Surety and QBE Insurance. Said agreement was terminated in 2002, and it did not make QBE Insurance answerable for any of Rizal Surety's obligations. Further, QBE Insurance averred that Judge Laviña disregarded the certifications issued by the Securities and Exchange Commission and the Insurance Commission showing that Rizal Surety and QBE Insurance were separate entities.

In his Comment, Judge Laviña alleged that his Order dated 15 May 2003 denying QBE Insurance's motion to lift the Order dated 27 May 2002 and Notice of Garnishment dated 24 March 2003 were issued after hearing, wherein the parties presented their respective evidence; that he was personally convinced that there was sufficient proof to justify the piercing of the veil of corporate existence due to the close relationship between Rizal Surety and QBE Insurance. It was not correct for QBE Insurance to claim that his Order of 27 May 2002 authorized the sheriff to enforce the writ of execution, as said Order merely granted the sheriff's motion to allow him to lift the garnishment issued against the accounts of Rizal Surety and TICO with certain banks. From 27 May 2002 until the issuance of the notice of garnishment on 24 March 2003 against the accounts belonging to Rizal Surety and/or QBE Insurance, no execution of the writ had been made, and he rectified his previous Order dated 27 May 2002 by deleting therefrom the phrase "recently changed its name." He found, on the basis of the evidence presented during the hearings on QBE Insurance's motion to lift the Order dated 27 May 2002 and Notice of Garnishment dated 24 March 2003, that Rizal Surety had transferred the operation of its underwriting/insurance business to QBE Insurance by virtue of the "Business Run-Off Agreement" dated 3 December 1999 between Rizal Surety and QBE Insurance; and Rizal Surety's "Affidavit of Cessation of Underwriting Business Operation" dated 16 May 2001 stating that defendant Rizal Surety had ceased its underwriting business effective 31 December 1999. It was also only after a full dress hearing that Judge Laviña issued his Order of 19 May 2003 holding that the motion to quash a third-party claim had been rendered moot and academic by the

Order of 15 May 2003. He believed that the circumstances surrounding the unpaid balance of the fire insurance proceeds which Rizal Surety admitted but failed and refused to pay, showed that the two entities, Rizal Surety and QBE Insurance, cannot be deemed as separate and distinct from each other as there was a showing that QBE Insurance was merely a continuation or conduit of Rizal Surety. The grounds of the Petition for *Certiorari* filed by QBE Insurance with the Court of Appeals, docketed as CA-G.R. SP No. 77073, assailing the Orders dated 27 May 2002, 15 May 2003 and 19 May 2003, are the very same grounds in the present administrative complaint and "it is more proper if judicial remedies would first be exhausted."

In its Reply^[10] to the Comment of Judge Laviña, QBE Insurance alleged that his admission that he had taken the word of his sheriff that Rizal Surety had recently changed its corporate name to QBE Insurance, showed his abuse of discretion, gross ignorance of the law and deliberate issuance of the Order dated 27 May 2002. Judge Laviña's Order of 27 May 2002 clearly authorized the sheriff to execute the judgment against QBE Insurance. The fact that no execution was made from 27 May 2003 until the issuance of the Notice of Garnishment on 27 March 2003 is of no moment, because the non-service by the sheriff of the writ was pursuant to a request made by the judgment obligor not to proceed with its implementation. The Orders dated 15 May 2003 and 19 May 2003 were not based on the hearings conducted because Judge Laviña relied solely on the "Business Run-Off Agreement" and the "Affidavit of Cessation of Underwriting Business."

Pursuant to the report and recommendation of the Court Administrator, the case was re-docketed as an administrative matter in a Resolution dated 13 February 2006 and referred to Court of Appeals Associate Justice Martin S. Villarama, Jr. for investigation, report and recommendation, but the latter inhibited himself from handling the case.

Per Resolution^[11] dated 7 June 2006, the subject administrative matter was referred to Court of Appeals Associate Justice Fernanda Lampas-Peralta for investigation, report and recommendation. During the preliminary conference held on 15 August 2006, the main issue was defined as follows:

Whether the issuance by respondent of the subject Order dated May 27, 2002, May 15, 2003 and May 19, 2003 in Civil Case No. 68287 were tainted with fraud, dishonesty, bad faith, corrupt motives or manifest partiality.

On 23 February 2007, Investigating Justice Lampas-Peralta submitted her report and recommended that:

Re: Order dated May 27, 2002

The foregoing considerations show that [Judge Laviña] acted with gross ignorance of the law and procedure (Section 8, paragraph 9, Rule 140, Rules of Court) when he denied [QBE Insurance] the opportunity to be heard before issuing the Order of May 27, 2002 on the basis solely of the sheriff's ex parte manifestation/motion. Under Section 11, paragraph (A) of Rule 140, Rules of Court, [Judge Laviña] may be dismissed, suspended or meted a fine of more than P20,000.00 but not exceeding P40,000.00.