

## FIRST DIVISION

[ G.R. No. 155838, January 13, 2004 ]

### DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. UNION BANK OF THE PHILIPPINES, RESPONDENT.

#### DECISION

**YNARES-SATIAGO, J.:**

The antecedents of the instant petition for review on *certiorari* lie in a Complaint<sup>[1]</sup> filed against petitioner Development Bank of the Philippines (hereafter, "DBP") by Union Bank of the Philippines (hereafter, "Union Bank") on June 20, 1984, docketed as Civil Case No. 7648. The case was raffled to the Regional Trial Court of Makati, Branch 58. Union Bank sought the collection of monthly rentals and damages from defendant DBP. DBP, for its part, claimed that its liability to Union Bank did not attach until it was paid, and actually received, rentals due it under a lease agreement entered into with Foodmasters Worldwide, Inc. (hereafter, "Foodmasters"). DBP subsequently filed a Third-Party Complaint against Foodmasters.<sup>[2]</sup>

After trial on the merits, the trial court rendered a decision in favor of Union Bank, which DBP appealed to the Court of Appeals. On May 27, 1994, the Court of Appeals rendered its decision,<sup>[3]</sup> the dispositive portion of which reads:

WHEREFORE, the decision appealed from is SET ASIDE and another one is RENDERED,

- (i) Ordering third-party defendant-appellee Foodmasters Worldwide, Inc. to pay defendant and third-party plaintiff-appellant Development Bank of the Philippines the sum of P32,441,401.85, representing the unpaid rentals from August 1981 to June 30, 1987, as well as P10,000.00 for attorney's fees; and
- (ii) Ordering defendant and third-party plaintiff-appellant Development Bank of the Philippines after having been paid by third-party defendant-appellee the sum of P32,441,401.85, to remit 30% thereof to plaintiff-appellee Union Bank of the Philippines.

SO ORDERED.<sup>[4]</sup>

Separate petitions for review were filed with the Supreme Court by DBP and Union Bank. On December 13, 1995, the Supreme Court issued a Resolution<sup>[5]</sup> denying both petitions, on the ground that both petitioners failed to show that the Court of Appeals committed reversible error.

On August 2, 2000, the Resolution became final and executory.

On May 14, 2001, Union Bank filed a Motion for Execution<sup>[6]</sup> with the trial court, praying that DBP be ordered to pay Union Bank the sum of 30% of P32,441,401.85 or P9,732,420.55.<sup>[7]</sup>

On September 12, 2001, DBP filed its own Motion,<sup>[8]</sup> praying that a Writ of Execution be issued against Foodmasters, in accordance with the 1994 Decision of the Court of Appeals.<sup>[9]</sup>

On October 15, 2001, the trial court issued a Consolidated Order<sup>[10]</sup> (hereafter, the "Order of Execution"), the pertinent portion of which reads:

While it is true that the Honorable Court of Appeals categorized that payment to Union Bank shall be demandable only upon payment by Foodmasters to DBP, the same must be viewed in light of the date when the Appellate Court and the Honorable Supreme Court rendered their respective decisions on the matter. Notably, the decision of the Court of Appeals was promulgated only on 27 May 1994, a time when the proscription on Union Bank's right to collect was still in effect, DBP having been given a period until 29 December 1998 within which to fully pay its obligation to Union Bank. It would, thus, be too strained to argue that payment by DBP of its assumed obligation to Union Bank shall be dependent on Foodmaster's (sic) ability, if not availability, to pay. Neither would it be logical to opine that the suspension of Union Banks (sic) right to claim payment be made to go beyond the very deadline set by the Honorable Collective Courts themselves having declared that DBP is accountable for its assumed obligation. At most, and as mandated by the decision of the Court of Appeals, a mechanism was merely fixed when Union Bank could realize on its credit, viz:

x x x

x x x

x x x

The decision of the Court of Appeals, stamped with the imprimatur of the High Tribunal is unambiguous and in actuality does not require any further interpretation. Mere application is needed. Assuming, gratis arguendo, that an ambiguity exists, resulting from the simplicity of the dispositive portion, the rationale behind its judgment, contained in the body of the decision must be resorted to bearing in mind, however, the cardinal postulate that where there is an ambiguity, such interpretation as will avoid inconvenience and absurdity must be adopted. x x x

x x x

x x x

x x x

There being no dispute that third party defendant Foodmasters is liable also to defendant and third party plaintiff DBP, a writ of execution against the former must likewise be issued in accordance with the judgment of the Honorable Court of Appeals. In line with DBP's prayer for the service of the Writ of Execution to the officers of Foodmasters as enumerated and reflected in their motion, the Court hereby grants the same. x x x

WHEREFORE, the Motion for Execution filed by Union Bank of the Philippines against defendant and third party plaintiff Development Bank of the Philippines and the latter's subsequent Motion for Execution against third party defendant Foodmasters Worldwide Inc. are hereby GRANTED. Let copies of this order be served on the parties herein as well as the officers and directors of third party defendant Foodmasters Worldwide Inc. as prayed for.

SO ORDERED. (Citations omitted)<sup>[11]</sup>

On the same day, October 15, 2001, the respondent pairing judge Winlove M. Dumayas issued a Writ of Execution, addressed to respondent sheriff Antonio O. Mendoza, Deputy Sheriff, Regional Trial Court, Branch 58, Makati City.<sup>[12]</sup> The pertinent portion of said Writ of Execution reads:

NOW, THEREFORE, you are hereby commanded to cause the satisfaction of the Decision rendered by the Court of Appeals on May 27, 1994 and demand from the obligors the immediate payment of the full amount of the obligation and all lawful fees in cash, certified bank check payable to the obligee or other modes of payment acceptable to the latter x x x. If the obligors cannot pay any or all part of the obligation, you shall levy upon their properties of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving said obligors the option to immediately choose which property or part thereof may be levied upon; if the option is not exercised, you shall first levy on the personal properties, if any, and then on the real properties if the personalties are insufficient to answer the Decision, and sell the same in the manner provided by law for the satisfaction of the Decision and all lawful fees x x x. (Citations omitted, underscoring supplied)<sup>[13]</sup>

Respondent sheriff proceeded to implement the Writ of Execution against DBP.<sup>[14]</sup> The records do not show that the Writ of Execution was implemented against Foodmasters.

On October 19, 2001, DBP filed a Motion for Reconsideration with Prayer to Quash Notice of Garnishment and Hold in Abeyance the Immediate Implementation of the Writ of Execution against DBP.<sup>[15]</sup> This Motion was denied by the trial court in an Order dated December 5, 2001.<sup>[16]</sup> In said Order, respondent judge held that the Order dated October 15, 2001 was in "faithful adherence to the mandate and express findings made by both the Court of Appeals and the Supreme Court."<sup>[17]</sup>

On December 28, 2001, DBP filed a petition for *certiorari* with prayer for temporary restraining order with the Court of Appeals,<sup>[18]</sup> which was denied due course and dismissed in a Decision dated July 26, 2002,<sup>[19]</sup> on the ground that there was no abuse of discretion in the issuance of either the assailed Order of Execution or the Writ of Execution.<sup>[20]</sup> In a Resolution dated October 25, 2002,<sup>[21]</sup> the Court of Appeals denied DBP's Motion for Reconsideration.

Hence, the instant petition for review based on the following grounds:

- I. The Court of Appeals acted in a way not in accord with jurisprudence and the Rules of Civil Procedure in upholding the lower court's Order of Execution against DBP – despite the fact that said Order varied/altered the final and executory decision dated May 27, 1994.<sup>[22]</sup>
- II. The Court of Appeals acted in a manner contrary to sec. 8(e), Rule 39 of the 1997 Rules of Civil [Procedure] in upholding the Writ of Execution issued by the lower court – despite the fact that said Writ failed to state the amount of principal obligation and interest therein (sic), if any.<sup>[23]</sup>
- III. The Court of Appeals departed from the accepted and usual course of judicial proceedings in upholding the Order of the lower court for the payment of attorney's fees and litigation expenses to Union Bank out of DBP's garnished funds – despite the fact that no attorney's fees or litigation expenses were awarded to Union Bank in the decision dated May 27, 1994.<sup>[24]</sup>

On September 10, 2003, we gave due course to the petition and required the parties to submit their respective Memoranda. Petitioner and respondent both filed their Memoranda, which we noted in our Resolution dated December 10, 2003.

In essence, petitioner questions the Order of Execution, the Writ of Execution issued pursuant thereto, and the manner in which the Writ of Execution was implemented by respondent sheriff.

We find merit in the petition.

It is a fundamental legal axiom that a Writ of Execution must conform *strictly* to the dispositive portion of the decision sought to be executed.<sup>[25]</sup> A Writ of Execution may not vary, or go beyond, the terms of the judgment it seeks to enforce.<sup>[26]</sup> When a Writ of Execution does not conform strictly to a decision's dispositive portion, it is null and void.<sup>[27]</sup> To maintain otherwise would be to ignore the constitutional prohibition against depriving a person of his property without due process of law.<sup>[28]</sup>

To our mind, there are significant points of variance between the Court of Appeals' decision, the Order of Execution, and the Writ of Execution that was issued by the court *a quo*.

As correctly pointed out by petitioner, the Court of Appeals' decision provided a two-step process for the satisfaction of DBP's obligation to Union Bank. The first was the *prior* satisfaction of Foodmasters' lease obligation to DBP in the amount of P32,441,401.85, representing unpaid rentals from August 1981 to June 30, 1987, as well as P10,000.00 for attorney's fees. DBP was to remit 30% thereof to Union Bank only *after* this obligation had been satisfied.