

SECOND DIVISION

[G.R. No. 135786, July 23, 2004]

**JOSE P. TAMBUNTING, PETITIONER, VS. COURT OF APPEALS,
ESTANISLAWA PANER AND HON. JUDGE LEAH S. DOMINGO,
RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This refers to the petition for *certiorari* filed by Jose P. Tambunting assailing the decision^[1] promulgated by the Court of Appeals^[2] (CA for brevity) on September 24, 1998 which affirmed the Resolution dated July 17, 1997^[3] issued by the Regional Trial Court, Branch 226, Quezon City (RTC for brevity), affirming with modification the Order^[4] of Branch 41, Metropolitan Trial Court, Quezon City (MTC for brevity), granting the issuance of an alias writ of execution.

The factual background of the case is as follows:

In the ejectment case^[5] filed by respondent against petitioner, parties entered into a Compromise Agreement,^[6] to wit:

"COMPROMISE AGREEMENT"

PARTIES, assisted by their respective undersigned counsels, to this Honorable Court, respectfully submit the following Compromise Agreement:

1. The Defendant agrees to pay an increased rental from ₱12,589.05 to ₱19,000.00 per month effective upon the signing of this Compromise Agreement;
2. That in addition to the foregoing, the amount of ₱22,000.00 representing additional rentals from March, 1990 to January, 1991 shall be paid in equal proportions by the Defendant to the Plaintiff within a period of one (1) year, both of which amounts shall be payable in advance not later than the first five (5) days of the month;
3. This Lease agreement shall be effective for a period of one (1) year;
4. Both parties respectively waive their other claim/counter claims in the above-entitled case;
5. The parties agree that if any of the provisions of this Compromise agreement is violated by the Defendant, then execution shall issue

on the basis of this agreement.

(SGD) ESTANISLAWA
PANER
Plaintiff

(SGD) JOSE
TAMBUNTING
Defendant

(SGD) ATTY. DANIEL T.
SOLOMON
Counsel for the
Defendant

(SGD) ATTY. PEDRO T.
SANTOS, JR.
Counsel for the Plaintiff

which was approved by the MTC in its Decision dated January 17, 1991, enjoining the parties to abide by its terms and conditions.

A year later, upon motion for execution filed by respondent, the MTC issued a Writ of Execution dated April 7, 1992 reproducing the Compromise Agreement, and decreed as follows:

WHEREAS, upon motion of the plaintiff's counsel that a writ of execution be issued, the same was granted on April 7, 1992.

WHEREFORE, you are hereby commanded to cause the above-named defendant and all persons claiming rights under him to vacate the premises located at 490 Aurora Blvd., cor. Sgt. Catolos, Cubao, Quezon City and you likewise make a return of this writ of execution to this Court within sixty (60) days from the date of receipt hereof.^[7]

Petitioner questioned the same in the RTC which the latter dismissed upon subsequent Manifestation and Motion, dated March 9, 1993, filed by petitioner alleging that he had vacated the subject premises. Objecting to the dismissal of the case, on the ground that she intends to pursue her counterclaim against petitioner, respondent assailed the dismissal with the CA which affirmed the dismissal order. Unperturbed, respondent brought the CA decision to this Court docketed as G.R. No. 120913. The CA decision was affirmed by the Court, the dispositive portion of which reads as follows:

Considering the allegations, issues, and arguments adduced in the petition for review on certiorari, as well as private respondent's comment thereon, the Court further Resolved to DISMISS the petition without prejudice to his taking appropriate recourse re compulsory counterclaim for moral damages and attorney's fees.^[8]

and which became final and executory on January 3, 1996.^[9]

Respondent then filed a Motion for Alias Writ of Execution with the MTC, alleging, as follows:

. . .

7. That, however, during the time that the case was pending and before Defendant finally vacated the premises on March 9, 1993 in the absence of any specific date in his Manifestation and Motion of March 9, 1993, as to when he vacated the premises, it is safe to presume that he left the same on March 9, 1993, the date he filed said Manifestation and

Motion (Annex "A") which totals ₱259,033.00, itemized as follows:

Rentals from Jan. 18, 1992 to February 18, (13 mos. x ₱ 1993 19,000.00)	= ₱ 247,000.00
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Rentals from Feb. 18, 1993 to March 9, (19 days x ₱ 1993 633.33)	= <u>₱ 12,033.27</u>
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₱ 259,033.00
plus cost of
suit^[10]

and praying that an alias writ of execution be issued by the court for the amounts therein indicated. Over and above the opposition of petitioner, the MTC issued its Order dated March 11, 1997, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Alias Writ of Execution is hereby GRANTED. Let an Alias Writ of Execution be issued for the satisfaction and execution of the judgment herein rendered.

SO ORDERED.^[11]

Claiming that the MTC order is a patent nullity on the ground that it modified the tenor of the judgment based on the compromise agreement executed by the parties, petitioner went up to the RTC in a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction. In its Resolution dated July 17, 1997, the RTC denied the writ prayed for and dismissed the petition for failure of petitioner to show that the MTC Judge committed grave abuse of discretion in the issuance of the alias writ of execution. Petitioner assailed said RTC resolution before the CA which affirmed the RTC with the modification that the payment of back rentals should be computed from January 18, 1992 to February 15, 1993.

Hence, the present petition for review on certiorari claiming that the CA committed the following errors, to wit:

SPECIFICATION OF ERRORS

The Court of Appeals committed the following errors:

1. In, in effect, holding that the Alias Writ of Execution can go beyond the provisions of the Original Writ of Execution and the Compromise Agreement;
2. In holding that petitioner, will not suffer a grave and irreparable injury from the enforcement of a clearly void Alias Writ of Execution.^[12]

In her Comment, respondent submits that contrary to the claim of petitioner, the alias writ of execution did not go beyond the provisions of the original writ of execution and the compromise agreement; and petitioner would not suffer any grave and irreparable injury from the enforcement of a clearly valid alias writ of execution.