

## THIRD DIVISION

[ G.R. No. 144410, July 21, 2004 ]

**GENOVEVA TOMACRUZ-LACTAO, REPRESENTED BY HER  
ATTORNEY-IN-FACT ARABELA A. LASAM, PETITIONER, VS.  
JANNAH ANN ESPEJO, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the February 29, 2000 Decision<sup>[1]</sup> and August 8, 2000 Resolution<sup>[2]</sup> of the Court of Appeals.

Respondent Jannah Ann Espejo, along with four others, was tried for estafa before the Regional Trial Court (RTC) of Makati City, Branch 145 in Criminal Case No. 92-4182. By Decision<sup>[3]</sup> of August 27, 1997, the trial court acquitted the five accused, but rendered judgment with respect to the civil aspect of the case in this wise:

Further as to the civil liability arising from the acts proved at the trial of this case, it is hereby ordered that LERMA LEYCO and JANNAH ANN ESPEJO **render** within thirty <sup>[30]</sup> days from receipt of this judgment an accounting, Lerma Leyco as to the actual receipt by Nabati Ltd., of the P1,015,000.00 investment of Genoveva Tomacruz Lactao, for currency trading purposes and Jannah Ann Espejo of the actual placement and implementation of the foreign currency orders issued by her for the account of Genoveva Tomacruz Lactao and to pay, jointly and severally, Genoveva Tomacruz Lactao such sums which they may fail to account [for] or for damages they may be found to have caused due to non-performance of their duties as agents.<sup>[4]</sup> (Emphasis and underscoring supplied)

Respondent complied with the trial court's order for her to render an accounting. Her compliance was, however, found by the trial court, by Order<sup>[5]</sup> of November 14, 1997, "not to be in conformity of (*sic*) the requirement of accounting set out in the Decision." She was thus given a period of "fifteen (*sic*) days" to submit a "complying (*sic*) accounting as required in the Decision."<sup>[6]</sup>

It is gathered that respondent moved for the issuance of a subpoena *duces tecum/ad testificandum* addressed to a bank to enable her to comply with the required accounting but the trial court, by Order<sup>[7]</sup> of December 8, 1997, denied the same in this wise:

1. The issuance of the subpoena *duces tecum ad testificandum* is DENIED because it is not for a valid purpose.

The incident which may be considered by the Court is the compliance of Jannah Ann Espejo to the decision which is final and executory to account within 30 days from 27 August 1997 for " the actual placement and implementation of the foreign currency orders issued by her for the account of Genoveva Tomacruz Lactao."

The records sought to be obtained through the subpoena are the money transactions, i.e. deposits and withdrawals of Nabati Ltd. on its deposit account with UCPB will have no relevance whatsoever (*sic*) with the implementation of the foreign currency sales and purchase orders of Jannah Ann Espejo allegedly made in Hongkong.

2. The motion of Jannah Ann Espejo to allow her to present the UCPB records as evidence in her compliance of the accounting required in the decision is DENIED.

The 30-day period set in the decision which is final for Jannah Ann Espejo to present her accounting has expired and the 15-day grace period given her on 14 November 1997 before execution of the judgment may issue has likewise expired. At some time, litigations must end.

3. Accused Lerma Leyco and **Jannah Ann Espejo** have failed to account for the P1,015,000.00 for which they are under the judgment, liable to pay jointly and solidarily.
4. The issuance of a writ to execute a final judgment being ministerial, let issue the Writ to execute the civil judgment incorporated in the Decision of 27 August 1997 issue against Lerma Leyco and Jannah Ann Espejo to pay Genoveva Tomacruz Lactao jointly and severally, the sum of P1,015,000.00.

SO ORDERED.<sup>[8]</sup> (Underscoring and emphasis supplied)

And, as the immediately quoted trial court's order states, the issuance of a writ of execution of the August 27, 1997 was ordered.

Respondent filed a Motion for Reconsideration of the December 8, 1997 Order which was denied for lack of merit by Order<sup>[9]</sup> of February 2, 1999. The trial court reasoned:

From the foregoing, it is clear that Jannah Ann Espejo was given only fifteen (15) days from 14 November 1997 or until 29 November 1997 within which to comply with her accounting. Instead [of] complying with the required accounting within the time given, the movant Jannah Ann Espejo filed a her (*sic*) motion to set the case for hearing only on 3 December 1997. As correctly stated by the former Presiding Judge of this Court in the impugned order, the time given to her to render an accounting has already expired, hence the instant litigation must come to an end.

It is not correct for the movant-Jannah Ann Espejo to state that there has not yet been a decision with respect to [the] civil aspect in this case. The decision, dated 27 August 1997, is clear that Lerma Leyco and Jannah Ann Espejo were ordered to render an accounting and to pay, jointly and severally, Genoveva Tomacruz Lactao such sums which they may fail to account [for]. Lerma Leyco did not make any move to comply with the directive of this Court to make an accounting. As to movant-Espejo, her attempt to do so was done outside of time, hence the Court ruled that the time given to her has expired.

It is likewise incorrect to state that movant-Espejo was not given the opportunity to present evidence. A decision in the instant case has already been rendered as to the criminal and civil aspect of the case. The decision rendered by the Court did not mandate for (sic) the continuation of the hearing with respect to the civil aspect of the case. The Court rendered its' (sic) decision giving both Lerma Leyco and Jannah Ann Espejo an opportunity to account for the P1,015,000.00 investment of Genoveva Tomacruz Lactao with the condition that in case of failure to comply thereto, they shall be both held jointly and severally liable thereto.<sup>[10]</sup> (Underscoring supplied)

Respondent thereupon assailed by a petition for *certiorari*<sup>[11]</sup> before the Court of Appeals (CA) the December 8, 1997 and February 2, 1999 Orders of the trial court upon the following issues:

#### **I.**

THE HONORABLE JUDGE OF THE COURT A QUO COMMITTED A REVERSIBLE ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN DECLARING THAT THE PREVIOUS COUNSEL OF THE PETITIONER RECEIVED THE ORDER DATED 14 NOVEMBER 1997 ON THE SAME DATE AND THEREFORE ONLY HAD UNTIL 29 NOVEMBER 1997 TO COMPLY WITH THE REQUIREMENT OF ACCOUNTING WHEN IN FACT SAID ORDER WAS ONLY RECEIVED ON 21 NOVEMBER 1997 BY THE PETITIONER'S COUNSEL.

#### **II.**

THE HONORABLE JUDGE OF THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THAT THE DECISION DATED 27 AUGUST 1997 CLEARLY DECREED THAT THE PETITIONER BE HELD CIVILLY LIABLE WHEN IN FACT AFORESAID DECISION WAS CONDITIONAL AND THE CIVIL LIABILITY OF PETITIONER MADE DEPENDENT ON HER FUTURE COMPLIANCE WITH THE REQUIREMENT OF ACCOUNTING.

#### **III.**

THE COURT A QUO ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION IN RENDERING A DECISION THAT BY ITS TERMS WOULD LAPSE INTO FINALITY DURING THE PERIOD GIVEN TO THE PETITIONER

TO COMPLY WITH THE REQUIREMENT OF ACCOUNTING, HENCE,  
DEPRIVING SAID PETITIONER OF HER STATUTORY RIGHT TO APPEAL.<sup>[12]</sup>

By Decision of February 29, 2000, the CA found in favor of respondent. The dispositive portion of the decision reads, quoted *verbatim*:

WHEREFORE, the petition for certiorari is GRANTED. The Orders dated December 8, 1997 and February 2, 1999 are declared **null and void insofar only as they grant the issuance of a writ of execution of a judgment** that has **not** become final and executory.

SO ORDERED.<sup>[13]</sup> (Emphasis and underscoring supplied)

The appellate court ratiocinated as follows:

xxx By the very nature of the words used by the presiding judge in his decision on the civil aspect of the case, there was still something to be done which is the submission of accounting by petitioner [herein respondent] so as to determine the exact amount that petitioner together with Lerma Leyco had to pay to private complainant Genoveva Tomacruz Lactao. The RTC decision did not ipso facto become final and executory upon failure of petitioner to submit her accounting within the period granted by the court a quo.

Under the Rules of Court, upon the final declaration of the RTC that petitioner is liable for the full amount of P1,015,000.00 in its Order dated December 8, 1997 and upon the denial of the motion for reconsideration, petitioner may avail of the remedy of appeal within the reglementary period. The decision has not become final and executory. The granting of the motion for execution without giving petitioner opportunity to appeal the final declaration of the RTC in the Order dated December 8, 1997 that petitioner is liable to pay private complainant the full amount of P1,015,000.00, is an outright denial of due process which constitutes grave abuse of discretion amounting to lack of or in excess of jurisdiction.

<sup>[14]</sup> (Underscoring supplied)

Petitioner filed a Motion for Reconsideration<sup>[15]</sup> of the CA Decision.

By Order of August 8, 2000, the appellate court denied petitioner's Motion for Reconsideration of its Decision of February 29, 2000. Hence, the present petition assailing the appellate court's February 29, 2000 Decision and August 8, 2000 Resolution.

Petitioner argues that the August 27, 1997 Decision of the trial court, specifically the civil aspect thereof, became final and executory upon the expiration of the period granted to respondent for her to render an accounting without her complying therewith, hence, the issuance of a writ of execution became a ministerial duty of the said court.

This Court is not persuaded. While the August 27, 1997 Decision of the trial court is a final and executory judgment with respect to its criminal aspect, its civil aspect partakes of the nature of an interlocutory order.