

SECOND DIVISION

[G.R. No. 129598, August 15, 2001]

PNB MADECOR, PETITIONER, VS. GERARDO C. UY, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

This is a petition for review on certiorari filed by petitioner PNB Management and Development Corporation (PNB MADECOR) seeking to annul the decision of the Court of Appeals dated February 19, 1997, and its resolution dated June 19, 1997 in CA-G.R. CV No. 49693, affirming the order of the Regional Trial Court of Manila, Branch 38, dated August 21, 1995 in Civil Case No. 95-72685. In said order, the RTC directed the garnishment of the credits and receivables of Pantranco North Express, Inc. (PNEI), also known as Philippine National Express, Inc., in the possession of PNB MADECOR, and if these were insufficient to cover the debt of PNB MADECOR to PNEI, to levy upon the assets of PNB MADECOR.

The facts of this case, culled from the decision of the CA,^[1] are as follows:

Guillermo Uy, doing business under the name G.U. Enterprises, assigned to respondent Gerardo Uy his receivables due from Pantranco North Express Inc. (PNEI) amounting to P4,660,558.00. The deed of assignment included sales invoices containing stipulations regarding payment of interest and attorney's fees.

On January 23, 1995, Gerardo Uy filed with the RTC a collection suit with an application for the issuance of a writ of preliminary attachment against PNEI. He sought to collect from PNEI the amount of P8,397,440.00. He alleged that PNEI was guilty of fraud in contracting the obligation sued upon, hence his prayer for a writ of preliminary attachment.

A writ of preliminary attachment was issued on January 26, 1995, commanding the sheriff "to attach the properties of the defendant, real or personal, and/or (of) any person representing the defendant"^[2] in such amount as to cover Gerardo Uy's demand.

On January 27, 1995, the sheriff issued a notice of garnishment addressed to the Philippine National Bank (PNB) attaching the "goods, effects, credits, monies and all other personal properties"^[3] of PNEI in the possession of the bank, and requesting a reply within five days. PNB MADECOR received a similar notice.

On March 1995, the RTC, through the application of Gerardo Uy, issued a subpoena *duces tecum* for the production of certain documents in the possession of PNB and PNB MADECOR: (1) from PNB, books of account of PNEI regarding trust account nos. T-8461-I, 8461-II, and T-8565; and (2) from PNB MADECOR, contracts showing PNEI's receivables from the National Real Estate Development Corporation

(NAREDECO), now PNB MADECOR, from 1981 up to the period when the documents were requested.

At the hearing in connection with the subpoena, PNB moved to be allowed to submit a position paper on its behalf and/or on behalf of PNB MADECOR. In its position paper dated April 3, 1995, PNB MADECOR alleged that it was the owner of the parcel of land located in Quezon City that was leased to PNEI for use as bus terminal. Moreover, PNB MADECOR claimed:

"2. PNEI has not been paying its rentals from October 1990 to March 24, 1994 -- when it (PNEI) vacated the property. As of the latter date, PNB MADECOR's receivables against PNEI amounted to P8,784,227.48, representing accumulated rentals, inclusive of interest;

3. On the other hand, PNB MADECOR has payables to PNEI in the amount of P7,884,000.00 as evidenced by a promissory note executed on October 31, 1982 by then NAREDECO in favor of PNEI;

4. Considering that PNB MADECOR is a creditor of PNEI with respect to the P8,784,227.48 and at the same time its debtor with respect to the P7,884,000.00, PNB MADECOR and PNEI are therefore creditors and debtors of each other; and

5. By force of the law on compensation, both obligations of PNB MADECOR and PNEI are already considered extinguished to the concurrent amount or up to P7,884,000.00 so that PNEI is still obligated to pay PNB MADECOR the amount of P900,227.48. xxx"^[4]

On the other hand, Gerardo Uy filed an omnibus motion controverting PNB MADECOR's claim of compensation. Even if compensation were possible, according to him, PNEI would still have sufficient funds in the hands of PNB MADECOR to fully satisfy his claim. He explained that:

"The allegation of PNB MADECOR that it owes PNEI only x x x (P7,884,000.00) is not accurate. Apparently, PNB MADECOR only considered the principal amount. In the first place, to be precise, the principal debt amounts to exactly x x x (P7,884,921.10) as clearly indicated in the Promissory Note dated 31 October 1982 x x x. In accordance with the stipulations contained in the promissory note, notice of demand was sent by PNEI to PNB MADECOR (then NAREDECO) through a letter dated 28 September 1984 and received by the latter on 1 October 1984 x x x. The second paragraph of the subject promissory note states that '[F]ailure to pay the above amount by NAREDECO after due notice has been made by PNEI would entitle PNEI to collect an 18% [interest] per annum from date of notice of demand'. Hence, interest should be computed and start to run from November 1984 until the present in order to come up with the outstanding debt of PNB MADECOR to PNEI. And to be more precise, the outstanding debt of PNB MADECOR to PNEI as of April 1995 amounts to x x x (P75,813,508.26). Hence, even

if the alleged debt of PNEI to PNB MADECOR amounting to x x x (P8,784,227.48) shall be compensated and deducted from PNB MADECOR's debt to PNEI, there shall still be a remainder of x x x (P67,029,380.78), largely sufficient enough to cover complainant's claim."^[5]

Also in his omnibus motion, he prayed for an order directing that levy be made upon all goods, credits, deposits, and other personal properties of PNEI under the control of PNB MADECOR, to the extent of his demand.

PNB MADECOR opposed his omnibus motion, particularly the claim that its obligation to PNEI earned an interest of 18 percent annually. It argued that PNEI's letter dated September 28, 1984 was not a demand letter but merely a request for the implementation of the arrangement for set-off of receivables between PNEI and PNB, as provided in a dacion en pago executed on July 28, 1983.^[6] Gerardo Uy again controverted PNB MADECOR's arguments.

Meanwhile, in the main case, the RTC rendered judgment on July 26, 1995 against PNEI. The corresponding writ of execution was issued on August 18, 1995.

As regards the issue between PNEI and PNB MADECOR, the RTC issued the assailed order on August 21, 1995, the decretal portion of which provided:

"WHEREFORE, the Sheriff of this Court is hereby directed to garnish/levy or cause to be garnished/levied the amount stated in the writ of attachment issued by this Court from the credits and receivables/collectibles of PNEI from PNB MADECOR (NAREDECO) and to levy and/or cause to levy upon the assets of the debtor PNB MADECOR should its personal assets be insufficient to cover its debt with PNEI.

Furthermore, Mr. Roger L. Venarosa, Vice-President, Trust Department, Philippine National Bank, and other concerned officials of said bank, is/are hereby directed to submit the books of accounts of Pantranco North Express, Inc./Philippine National Express, Inc. under Trust Account Nos. T-8461-I, T-8461-II, T-8565 with its position paper within five (5) days from notice hereof.

SO ORDERED."

Petitioner appealed said order to the CA which, however, affirmed the RTC in a decision dated February 19, 1997. Petitioner's motion for reconsideration was denied in a resolution dated June 19, 1997.

According to the CA, there could not be any compensation between PNEI's receivables from PNB MADECOR and the latter's obligation to the former because PNB MADECOR's supposed debt to PNEI is the subject of attachment proceedings initiated by a third party, herein respondent Gerardo Uy. This is a controversy that would prevent legal compensation from taking place, per the requirements set forth in Article 1279 of the Civil Code. Moreover, the CA stressed that it was not clear

whether, at the time compensation was supposed to have taken place, the rentals being claimed by petitioner were indeed still unpaid. The CA pointed out that petitioner did not present evidence in this regard, apart from a statement of account.

The CA also questioned petitioner's inaction in claiming the unpaid rentals from PNEI, when the latter started defaulting in its payment as early as 1994. This, according to the CA, indicates that the debt was either already settled or not yet demandable and liquidated.

The CA rejected petitioner's contention that Rule 39, Section 43 of the Revised Rules of Court applies to the present case. Said rule sets forth the procedure to follow when a person alleged to have property or to be indebted to a judgment obligor claims an interest in the property or denies the debt. In such a situation, under said Rule the judgment obligee is required to institute a separate action against such person. The CA held that there was no need for a separate action here since petitioner had already become a forced intervenor in the case by virtue of the notice of garnishment served upon it.

Hence, this petition. Petitioner now assigns the following alleged errors for our consideration:

I

THE [COURT OF APPEALS] COMMITTED A CLEAR ERROR IN THE INTERPRETATION OF THE APPLICABLE LAW HEREIN WHEN IT RULED THAT THE REQUISITES FOR LEGAL COMPENSATION AS SET FORTH UNDER ARTICLES 1278 AND 1279 OF THE CIVIL CODE DO NOT CONCUR IN THE CASE AT BAR.

II

THE [COURT OF APPEALS] COMMITTED A CLEAR ERROR IN INTERPRETING THE PROVISIONS OF SECTION 45, RULE 39 OF THE RULES OF COURT, NOW SECTION 43, RULE 39 OF THE REVISED RULES OF COURT, AS AMENDED ON 1 JULY 1997, BY RULING THAT PETITIONER PNB-MADECOR, UPON BEING CITED FOR AND SERVED WITH A NOTICE OF GARNISHMENT BECAME A FORCED INTERVENOR, HENCE, DENYING THE RIGHT OF HEREIN PETITIONER TO VENTILATE ITS POSITION IN A FULL-BLOWN TRIAL AS PROVIDED FOR UNDER SEC. 10, RULE 57, WHICH REMAINS THE SAME RULE UNDER THE REVISED RULES OF COURT AS AMENDED ON 1 JULY 1997.

III

THE [COURT OF APPEALS] COMMITTED AN ERROR IN FINDING THAT A DEMAND WAS MADE BY PANTRANCO NORTH EXPRESS, INC. TO PNB MADECOR FOR THE PAYMENT OF THE PROMISSORY NOTE DATED 31 OCTOBER 1982.^[7]

After considering these assigned errors carefully insofar as they raise issues of law, we find that the petition lacks merit. We shall now discuss the reasons for our conclusion.

Petitioner admits its indebtedness to PNEI, in the principal sum of P7,884,921.10, per a promissory note dated October 31, 1982 executed by its precursor NAREDECO in favor of PNEI. It also admits that the principal amount should earn an interest of 18 percent per annum under the promissory note, in case NAREDECO fails to pay the principal amount after notice. Petitioner adds that the receivables of PNEI were thereafter conveyed to PNB in payment of PNEI's loan obligation to the latter, in accordance with a dacion en pago agreement executed between PNEI and PNB.

Petitioner, however, maintains that there is nothing now that could be subject of attachment or execution in favor of respondent since compensation had already taken place as between its debt to PNEI and the latter's obligation to it, consistent with Articles 1278, 1279, and 1290 of the Civil Code. Petitioner assails the CA's ratiocination that compensation could not have taken place because the receivables in question were the subject of attachment proceedings commenced by a third party (respondent). This reasoning is contrary to law, according to petitioner.

Petitioner insists that even the Asset Privatization Trust (APT), which now has control over PNEI, recognized the set-off between the subject receivables as indicated in its reply to petitioner's demand for payment of PNEI's unpaid rentals.^[8] The APT stated in its letter:

"xxx

While we have long considered the amount of SEVEN MILLION EIGHT HUNDRED EIGHTY FIVE THOUSAND PESOS (P7,885,000.00) which PNEI had earlier transmitted to you as its share in an aborted project as partial payment for PNEI's unpaid rentals in favor of PNB-Madecor, being a creditor like your goodself of PNEI, we are unable to be of assistance to you regarding your claim for the balance thereof. We trust that you will understand our common predicament.

xxx"

Petitioner argues that PNEI's letter dated September 28, 1984 did not contain a demand for payment but only notice of the implementation of the dacion en pago agreement between PNB and PNEI.

Petitioner contends that the CA's statement that PNEI's obligation to petitioner had either been settled or was not yet demandable is highly speculative and conjectural. On the contrary, petitioner asserts that its failure to institute a judicial action against PNEI proved that the receivables of petitioner and PNEI had already been subject to legal compensation.

Petitioner submits that Rule 39, Section 43 of the Revised Rules of Court applies to the present case. It asserts that it stands to lose more than P7 million if not given