

THIRD DIVISION

[G.R. No. 109648, November 22, 2001]

**PH CREDIT CORPORATION, PETITIONER, VS. COURT OF APPEALS
AND CARLOS M. FARRALES, RESPONDENTS.**

DECISION

PANGANIBAN, J.:

When there is a conflict between the dispositive portion or *falla* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. An order of execution is based on the disposition, not on the body, of the decision.

The Case

Before us is a Petition for Review under Rule 45^[1] of the Rules of Court, assailing the October 28, 1992 Decision^[2] and the April 6, 1993 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP Nos. 23324 and 25714. The dispositive portion of the said Decision reads as follows:

"WHEREFORE, judgment is hereby rendered DISMISSING: a) CA-G.R. SP No. 23324, for being moot and academic, and b) CA-G.R. SP No. 25714, for lack of merit."^[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The facts of the case are summarized by the Court of Appeals in this wise:

"These two cases have been consolidated because they involve the same parties and/or related questions of [f]act and/or law.

x x x x x x x x x

"I. CA-G.R. SP NO. 23324

"PH Credit Corp., filed a case against Pacific Lloyd Corp., Carlos Farrales, Thomas H. Van Seville and Federico C. Lim, for [a] sum of money. The case was docketed as Civil Case No. 83-17751 before the Regional Trial Court, Branch 51, Manila. After service of summons upon the defendants, they failed to file their answer within the reglementary period, hence they were declared in default. PH Credit Corp., was then allowed to present its evidence ex-parte.

"On January 31, 1984, a decision was rendered, the dispositive portion of which reads as follows:

` WHEREFORE, judgment is hereby rendered in favor of plaintiff PH Credit Corporation and against defendants Pacific Lloyd Corporation, Thomas H. Van Seville, Carlos M. Farrales, and Federico C. Lim, ordering the latter to pay the former, the following:

` A) The sum of P118, 814.49 with interest of 18% per annum, starting December 20, 1982 until fully paid;

` B) Surcharge of 16% per annum from December 20, 1982;

` C) Penalty Charge of 2% per month from December 20, 1982, computed on interest and principal compounded;

` D) Attorney's fees in an amount equivalent to 25% of the total sum due; and

` E) Costs of suit.

` SO ORDERED.'

"After the aforesaid decision has become final and executory, a Writ of Execution was issued and consequently implemented by the assigned Deputy Sheriff. Personal and real properties of defendant Carlos M. Farrales were levied and sold at public auction wherein PH Credit Corp. was the highest bidder. The personal properties were sold on August 2, 1984 at P18,900.00 while the real properties were sold on June 21, 1989 for P1,294,726.00.

"On July 27, 1990, a motion for the issuance of a writ of possession was filed and on October 12, 1990, the same was granted. The writ of possession itself was issued on October 26, 1990. Said order and writ of possession are now the subject of this petition.

"Petitioner claims that she, as a third-party claimant with the court below, filed an `Urgent Motion for Reconsideration and/or to Suspend the Order dated October 12, 1990', but without acting there[on], respondent Judge issued the writ of possession on October 26, 1990. She claims that the actuations of respondent Judge was tainted with grave abuse of discretion.

"We deem it unnecessary to pass upon the issue raised in view of the supervening event which had rendered the same moot and academic.

"It appears that on January 31, 1991, respondent Judge issued an order considering the assailed Order dated October 12, 1990 as well as the writ of possession issued on October 26, 1990 as `of no force and effect.'

"The purpose of the petition is precisely to have the aforesaid order and

writ of possession declared null and void, but the same had already been declared 'of no force and effect' by the respondent Judge. It is a well-settled rule that courts will not determine a moot question or abstract proposition nor express an opinion in a case in which no practical relief can be granted.

"II. CA-G.R. SP NO. 25714

"Petitioner claims that the respondent Judge's Order dated January 31, 1991 was tainted with grave abuse of discretion based on the following grounds:

"1. Respondent Judge refused to consider as waived private respondent's objection that his obligation in the January 31, 1984 decision was merely joint and not solidary with the defendants therein. According to petitioner, private respondent assailed the levy on execution twice in 1984 and once in 1985 but not once did the latter even mention therein that his obligation was joint for failure of the dispositive portion of the decision to indicate that it was solidary. Thus, private respondent must be deemed to have waived that objection, petitioner concludes.

"2. The redemption period after the auction sale of the properties had long lapsed so much [so] that the purchaser therein became the absolute owner thereof. Thus, respondent Judge allegedly abused his discretion in setting aside the auction sale after the redemption period had expired.

"3. Respondent Judge erred in applying the presumption of a joint obligation in the face of the conclusion of fact and law contained in the decision showing that the obligation is solidary."^[5] (Citations omitted)

Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's ruling declaring null and void (a) the auction sale of Respondent Ferrales' real property and (b) the Writ of Possession issued in consequence thereof. It held that, pursuant to the January 31, 1984 Decision of the trial court, the liability of Farrales was merely joint and not solidary. Consequently, there was no legal basis for levying and selling Farrales' real and personal properties in order to satisfy the whole obligation.

Hence, this Petition.^[6]

The Issues

In its Memorandum,^[7] petitioner submits the following issues for our consideration:

"I

Whether or not the Court of Appeals disregarded the basic policy of avoiding multiplicity of motions.

"II

Whether or not the Court of Appeals erred when it disregarded the body of the decision and concluded that the obligation was merely a joint obligation due to the failure of the dispositive portion of the decision dated 31 January 1984 to state that the obligation was joint and solidary.

"III

Whether or not the Court of Appeals disregarded the policy of upholding executions."^[8]

The Court's Ruling

The Petition is devoid of merit.

First Issue: **Omnibus Motion Rule**

Petitioner contends that because private respondent did not question the joint and solidary nature of his liability in his (a) Motion to Quash Levy Execution^[9] dated August 23, 1984, (b) Urgent Motion to Order Sheriff to Suspend Sale on Execution^[10] dated December 3, 1984, and (c) Motion to Declare Certificate of Sale Null and Void^[11] dated January 9, 1985, he cannot now raise it as an objection. Petitioner argues that the "Omnibus Motion Rule" bars private respondent's belated objection. We do not agree.

The Omnibus Motion Rule is found in Section 8 of Rule 15 of the Rules of Court, which we quote:

"Subject to the provisions of section 1 of Rule 9, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (8a)"

As an aid to the proper understanding of this case, we should at the outset point out that the objections of private respondent contained in his Omnibus Motion^[12] dated November 5, 1990 were directed at the proceedings and the orders issued after the auction sale of his real property covered by TCT No. 82531. In his Omnibus Motion, he asked for the recall and quashal of the Writ of Possession issued on October 26, 1990; the annulment of the June 21, 1989 auction sale of the said real property and the recomputation of his liability to petitioner.

However, the three (3) Motions that petitioner referred to above were clearly directed against the execution of private respondent's personal properties. A perusal of these Motions will show that at the time, his objections were directed at the acts of execution against his personal properties.

In his Motion to Quash Levy Execution,^[13] private respondent pointed to the "properties of herein moving defendant x x x located at his residence at No. 17, Bunker Hill St., New Manila, Quezon City, per the Notice of Levy and Sale,"^[14] and asked for the quashal and setting aside of such Notice. He was thus referring to the

levy on his personal properties. By the same token, in his Urgent Motion to Order Sheriff to Suspend Sale on Execution,^[15] he referred to "a copy of a sheriff's notice of sale dated November 22, 1984,"^[16] which in turn alluded to the sale of his levied personal properties. Similarly, in his Motion to Declare Certificate of Sale Null and Void,^[17] he once again assailed the sale at public auction of his personal properties. It is thus clear that up to that point, he was questioning the levy and sale of his personal properties. He could not have known at the time that he would be made to answer for the entire liability, which he and his co-respondents were adjudged to pay petitioner by reason of the trial court's judgment of January 31, 1984.

After private respondent realized that he was being made to answer on the entire liability as a *solidary* debtor, he filed his Omnibus Motion questioning the Writ of Possession and all incident orders and proceedings relevant thereto. This realization dawned on him, because his real property was levied and sold despite the previous sale of his personal property. Only at this point was he in a position to assert his objections to the auction sale of his real property and to put up the defense of joint liability among all the respondents.

The Rules of Court requires that all available objections to a judgment or proceeding must be set up in an Omnibus Motion assailing it; otherwise, they are deemed waived. In the case at bar, the objection of private respondent to his *solidary* liability became *available* to him, only after his real property was sold at public auction. At the time his personal properties were levied and sold, it was not evident to him that he was being held solely liable for the monetary judgment rendered against him and his co-respondents. That was why his objections then did not include those he asserted when his *solidary* liability became evident.

Prior to his Omnibus Motion, he was not yet being made to pay for the *entire* obligation. Thus, his objection to his being made solidarily liable with the other respondents was not yet available to him at the time he filed the Motions referred to by petitioner. Not being available, these objections could not have been deemed waived when he filed his three earlier Motions, which pertained to matters different from those covered by his Omnibus Motion.

True, the Omnibus Motion Rule requires the movant to raise all available exceptions in a single opportunity to avoid multiple piecemeal objections.^[18] But to apply that statutory norm, the objections must have been available to the party at the time the Motion was filed.

Second Issue: **Basis of Private Respondent's Liability**

Petitioner argues that the CA erred in disregarding the text of the January 31, 1984 Decision of the trial court. In concluding that the obligation was merely joint, the CA was allegedly mistaken in relying on the failure of the dispositive portion of the Decision to state that the obligation was solidary.

We are not impressed. A *solidary* obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors. On the other hand, a *joint* obligation is one in which each debtors is liable only for a proportionate