

FIRST DIVISION

[G.R. No. 174189, October 05, 2007]

**ALBAY ELECTRIC COOPERATIVE, INCORPORATED, PETITIONER,
VS. SECURITY PACIFIC ASSURANCE CORPORATION,
RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court are the Decision^[1] dated May 26, 2006 of the Court of Appeals (CA), in *CA-G.R. SP No. 85324*, and its modificatory resolution^[2] of July 21, 2006 which denied the herein petitioner's motion for reconsideration. As thus modified, the assailed decision nullified (a) the orders of the Regional Trial Court (RTC) of Quezon City basically allowing execution against the counter-bond; and (b) the supplemental writs of execution and the notices of garnishment implementing said orders.

Records yield the following relevant facts:

Herein petitioner Albay Electric Cooperative, Inc. (ALECO), during the period material, operated the Polangui, Albay 10 MVA electric substation, while herein respondent Security Pacific Assurance Corporation (SPAC) is an insurance firm engaged in non-life insurance business.

The case started when, on September 24, 2001, in the RTC of Quezon City, ALECO, represented by Gil B. Medina, filed a complaint^[3] for a sum of money and breach of contract with prayer for a writ of preliminary attachment against Roberto D. Tuazon and/or R.D. Tuazon Construction (individually or collectively Tuazon, hereinafter). The contract^[4] Tuazon allegedly breached despite his receipt of a cash advance payment related to the construction of a power station project. The complaint was docketed in the said court as Civil Case No. Q-01-45171, which was eventually raffled to Branch 77 thereof.

On October 9, 2001, upon the submission of the required attachment bond, the trial court issued a writ of preliminary attachment against Tuazon's properties to satisfy ALECO's demand in the amount of P9,000,000.00. Following the issuance by the Quezon City sheriff of a notice of levy on attachment, Tuazon posthaste sought the dissolution of the attachment writ by filing and requesting approval of a counter-bond in the sum of P9,000.000.00. The offered dissolving bond - SPAC BOND No. 01163/2001- was under the signature of Aurora C. Galvez (Galvez), former president of SPAC. ALECO's opposition to the dissolution aforementioned, rooted on the alleged financial incapability of SPAC to undertake the counter-bond, prompted the trial court to schedule hearings on the matter.

Before the trial court could act on the request for approval of the counter-bond, Galvez, purportedly upon authority of the SPAC Board, filed on November 28, 2001 a *Manifestation*^[5] therein serving notice of the cancellation, effective as of said date, of SPAC BOND No. 01163/2001. She further manifested that SPAC effected the cancellation with Tuazon's prior conformity to enable him to secure the requisite bond from another surety acceptable to all parties concerned.

Galvez, by herself, would later reverse course as, on January 18, 2002, she filed an *"Urgent Motion for Withdrawal of the Manifestation dated 28 November 2001,"*^[6] therein praying for the revival of the cancelled bond, and declaring that there is no other bonding company that can acceptably assume the obligation of a surety for this particular case and that Tuazon has *posted ample security for said bond*. In connection with the hearing of this urgent motion, the SPAC board adopted on January 21, 2002 a resolution^[7] that the corporation shall participate in the case and that *"Mr. Ponce be authorized ... to represent [SPAC] in the proceedings of said case [but only] to attest the authenticity of the bond issued in favor of R.R. Tuazon Construction."*

Subsequently, Tuazon secured a new counter-bond, *i.e.*, SPAC BOND No. 01332/2002, in the amount of P9 Million. He then filed a new motion to approve counter-bond and for the discharge of the writ of preliminary attachment. On February 6, 2002, the trial court, over the objection of ALECO, issued an order^[8] therein granting Tuazon's motion to lift attachment. ALECO moved for reconsideration of the said order.

The intervening legal skirmishes, inclusive of the preliminary referral of the case to an arbitrator, are not material to this narration. The bottom line is that on **August 26, 2003**, the trial court, on the basis of the arbitrator's finding, rendered judgment^[9] for ALECO, as plaintiff, Tuazon being ordered, as defendant, to pay ALECO the amount of P9,000,000.00, as actual and compensatory damages, plus interest; P100,000.00 as and by way of exemplary damages; P100,000.00 as attorney's fees; and the costs of suit.

From the above August 26, 2003 decision, a copy of which he claimed receiving on August 28, 2003, Tuazon filed, on September 12, 2003, a motion for reconsideration, while ALECO filed, on September 13, 2003, a motion for execution of the August 26, 2003 decision^[10] which the trial court set to be heard on September 19, 2003.

At the **September 19, 2003** hearing, the trial court, in an open court order, denied^[11] Tuazon's motion for reconsideration under the *pro forma* rule, failing as it did to indicate a particular time and date for the hearing thereof. Tuazon would, three days later – September 22, 2003 – file a motion for reconsideration^[12] of the September 19, 2003 denial order, noting that the court allowed the parties to argue on his September 12, 2003 motion for consideration on the September 19, 2003 hearing.

Meanwhile, during the same September 19, 2003 hearing, SPAC moved for time – and was granted 10 days – within which to file a comment/opposition to ALECO's motion for execution.^[13] Another similar extension motion would later follow.

By Order^[14] of **October 3, 2003**, the trial court reconsidered and vacated its September 19, 2003 order denying Tuazon's motion for reconsideration, disposing as follows:

WHEREFORE, the **Order, dated 19 September 2003**, which found the defendant's [Tuazon's] motion for reconsideration **pro forma**, is hereby **reconsidered and set aside**. Accordingly, the plaintiff [Aleco] is hereby given ten (10) days from notice of this Order within which to file its comment on or opposition to the defendant's motion for reconsideration of the decision rendered in this case.

SO ORDERED. (Emphasis added and words in brackets.)

The reconsideration thus granted did not, as to be expected, sit well with ALECO as it filed on October 28, 2003 its own motion to have the October 3, 2003 order reconsidered.

Meanwhile, on December 8, 2003, the trial court issued an order^[15] declaring SPAC to have waived its right to submit comment or opposition to the motion for execution, having failed to submit the necessary pleading "*despite two (2) extensions granted by the Court.*"

Subsequent developments saw the trial court issuing another order^[16] dated **February 16, 2004, granting** ALECO's: (a) motion for reconsideration of the court's order of October 3, 2003^[17] reconsidering the denial, for being *pro forma*, of Tuazon's motion to reconsider the decision dated August 26, 2003;^[18] and (b) September 13, 2003 **motion for execution** of the August 26, 2003 decision. With respect to item (b), the trial court ordered that a writ of execution issue for the enforcement of the August 26, 2003 decision rendered against Tuazon and SPAC, as surety.

What transpired next is summarized in the appealed CA decision as follows:

On **February 26, 2004**, Branch Clerk of Court Joy Manalang Bulautitan issued a **writ of execution**^[19] for the enforcement of the August 26, 2003 judgment adverted to, basically commanding Deputy Sheriff Angel L. Doroni, ...

On February 27, 2004, ALECO in a letter addressed to [the] Branch Clerk of Court ... requested for "immediate issuance of a supplemental writ of execution to include the enforcement of the judgment against SPAC which issued the counter-attachment bond, conformably to the order of execution dated February 16, 2004 and Section 17, Rule 57 of tile Rules of Court." **On March 1, 2004, ... Atty. Joy Manalang Bulautitan issued a supplemental writ of execution against SPAC**, the material portions of which are quoted hereunder, thus:

"WHEREAS, in an Order, dated February 16, 2004, the Court ruled as follows:

'(1) The plaintiff's [ALECO's] motion for reconsideration is

hereby granted. Accordingly, the Order, dated October 3, 2003, is hereby reconsidered and set aside;

(2) The plaintiff's motion for execution is hereby granted. Accordingly, let a writ of execution issue for the enforcement of the Judgment, dated August 26, 2003, rendered in this case against the defendant [Tuazon] and [SPAC].

WHEREAS, in a Writ of Execution, dated February 26, 2004, you [Sheriff Doroni] were directed ... to enforce the Judgment, dated August 26, 2003, against defendant [Tuazon];

WHEREAS, in a Partial Sheriffs Return, dated February 27, 2004, ... [Tuazon] failed to satisfy the judgment.

WHEREAS, ...[ALECO has] requested for the immediate issuance of a Supplemental Writ of Execution to include the enforcement of the Judgment against ...[SPAC].

NOW THEREFORE, in accordance with: (1) the Judgment dated August 26, 2003; (2) the Order dated February 16, 2004; (3) the terms of the counter-bond executed between the defendant and [SPAC] on January 5, 2002; and (4) Section 17, Rule 57 the 1997 Rules of Civil Procedure, as amended, we command you to enforce the aforecited Judgment in this case against the Counter Bond No. 00133, issued by the [SPAC], up to the amount stated therein which is Nine Million Pesos (P9,000,000.00).

As a result of the enforcement of the supplemental writ of execution and notices of garnishment, private respondent ALECO managed to get P2,000.000.00 from [SPAC's] funds with the PCIB, Quezon Ave. Branch and remittances due petitioners from Toyota Cubao, Inc., including that garnished from the Bureau of Treasury.^[20] (Emphasis and words in brackets added.)

From the aforesaid February 16, 2004 Order,^[21] SPAC moved for reconsideration but the trial court denied the motion per its Order^[22] of **May 20, 2004**. In still another Order^[23] of **July 2, 2004**, the trial court denied due course to SPAC's "Notice of Appeal" on the ground that the order covered by the notice of appeal, *i.e.*, granting the motion to execute and issuance of the corresponding writ, is not subject to appeal.

Aggrieved, SPAC went to the CA on July 16, 2004 *via* a petition for *certiorari* in CA-G.R. SP No. 85324, thereunder ascribing to the trial court the commission of grave abuse of discretion in allowing execution on the subject counter-bond notwithstanding the fact –

1. xxx THAT AT THE TIME THE MOTION TO EXECUTE ON THE BOND WAS FILED, THE DECISION SOUGHT TO BE EXECUTED HAS NOT YET BECOME FINAL AND EXECUTORY.

2. xxx THAT PETITIONER [SPAC] WAS NOT NOTIFIED OF THE RECONSIDERATION SOUGHT BY [ALECO] ON THE ORDER DATED 3 OCTOBER 2003 GIVING DUE COURSE TO R.D. TUAZON'S MOTION FOR RECONSIDERATION OF THE DECISION OF 26 AUGUST 2003; WITHOUT CONDUCTING A SUMMARY HEARING WITH NOTICE TO THE SURETY PURSUANT TO SECTION 17, RULE 57, OF THE 1997 RULES AND UPHOLDING THE ACT OF THE BRANCH CLERK OF COURT WHO ISSUED THE ASSAILED SUPPLEMENTAL WRIT UPON A MERE LETTER OF PLAINTIFF, WHICH FAILURE, EFFECTIVELY DEPRIVED PETITIONER THE, RIGHT TO DUE PROCESS FOR LACK. OF NOTICE ON THE ILLEGAL AND UNJUST ISSUANCES OF WRIT AND SUPPLEMENTAL WRIT OF EXECUTION, AND NOTICES OF GARNISHMENT,

3. xxx MS. GALVEZ ..., THE PERSON WHO ISSUED THE BOND, WAS NOT CLOTHED WITH POWER OR AUTHORITY TO DO SO THEREBY MAKING HER ACT ULTRA VIRES AND THEREFORE, NULL AND VOID AND OF NO FORCE AND EFFECT.

To the petition, ALECO filed its *Comment*^[24] with a plea for summary dismissal, accusing SPAC of forum shopping by resorting to two (2) modes of review to nullify the assailed orders of the trial court.

The CA eventually issued its herein assailed decision^[25] granting the petition of SPAC, the appellate court predicating its ruling on the first two issues alone. It left the third issue untouched predicating its non-action thereon on the notion that the question delving on the validity of the counter-bond is factual which would thus require presentation of evidence, a proceeding that is beyond the scope of a *certiorari* action. In full, the *fallo* of the assailed CA's decision reads:

WHEREFORE, the petition is **GRANTED**. The Orders dated February 16, 2004, May 20, 2004 and July 2, 2004, rendered by the RTC of Quezon City, Branch 77 in Civil Case No. Q-01-45171 and the supplemental writ of execution and the notices of garnishment issued and implemented pursuant to the said Orders are **ANNULLED** and **SET ASIDE**.

SO ORDERED. (Emphasis in the original)

On June 20, 2006, ALECO filed a motion for reconsideration, raising anew the issue of forum shopping and claiming that the trial court's decision dated August 26, 2003 was ripe for execution when it filed, on September 13, 2003, the corresponding motion for execution. For its part, SPAC interposed an intervening motion to amend the dispositive portion of the May 26, 2006 decision to include the return of the SPAC's funds garnished by ALECO. By Resolution^[26] of July 21, 2006, the appellate court denied the reconsideration sought, but granted the desired modification, thus:

WHEREFORE, respondent ALECO'S Motion for Reconsideration is **DENIED** for lack of merit. Petitioner's Urgent Motion is **GRANTED** and the dispositive portion of the May 26, 2006 decision of this Court is modified, and shall read, as follows:

WHEREFORE, the petition is **GRANTED**. The Orders dated February 16, 2004, May 20, 2004 and July 2, 2004, rendered