

FIRST DIVISION

[G.R. No. 152672, October 02, 2007]

JIMMY T. GO A.K.A. JAIME T. GAISANO, PETITIONER, VS. HON. ZEUS ABROGAR, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 150, MAKATI CITY, & INTERNATIONAL EXCHANGE BANK, RESPONDENTS.

D E C I S I O N

AZCUNA, J.:

This is a petition for review on *certiorari*^[1] of the Court of Appeals' (CA) Decision promulgated on September 19, 2001 and its Resolution dated March 7, 2002 denying petitioner's motion for reconsideration.

The CA held that respondent, Judge Zeus Abrogar of the Regional Trial Court (RTC) of Makati City, Branch 150, did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's Motion to Direct China Banking Corporation To Show Cause and For Sheriff Renato C. Flora to Desist from Implementing the Unlawful Writ of Execution dated April 19, 2000.

The facts are as follows:

On March 31, 1998, private respondent International Exchange Bank filed a complaint for a sum of money with an application for a writ of attachment against Alberto Looyuko and petitioner Jimmy T. Go before the RTC of Makati City, Branch 150.

On April 14, 1998, the RTC issued a Writ of Attachment by virtue of which Sheriff Arturo Flores sent a Notice of Levy on Attachment to China Banking Corporation on the China Bank shares of stock of Looyuko and petitioner. The Notice of Levy on Attachment identified petitioner's shares of stock as follows: Stock Certificate Nos. 36964, 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713.

Per the Sheriff's Return dated April 29, 1998, Sheriff Flores levied on attachment parcels of land with the Register of Deeds of Pasig in the name of petitioner on April 17 and 20, 1998, and also on some shares of stock of China Banking Corporation belonging to Alberto Looyuko and petitioner.

On October 7, 1999, the RTC rendered a Decision in favor of private respondent, ordering Looyuko and petitioner jointly to pay P96 million to private respondent.

On January 3, 2000, private respondent filed a motion for the issuance of a writ of execution. On February 14, 2000, the RTC granted the motion and appointed Sheriff Renato Flora to implement the writ of execution which was issued on the same day.

On March 20, 2000, private respondent filed another motion for the issuance of a writ of execution against petitioner alone to obviate any technical question on whether a similar motion filed earlier was premature. The writ was issued on April 19, 2000.

On April 27, 2000, Sheriff Renato Flora sent a Notice of Garnishment to the Corporate Secretary of China Banking Corporation stating that garnishment was made upon all the monies, credits, shares, interests, claims and more particularly Stock Certificate Nos. 36964, 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 and all China Banking Corporation shares of stock of petitioner under the bank's control and possession. The Notice also required an answer from the Corporate Secretary within five days from receipt.

In a letter dated May 5, 2000, the Corporate Secretary of China Banking Corporation informed Sheriff Flora that they had noted through its Transfer Agent, RCBC Trust and Investment Division, the Sheriff's Notice of Garnishment as regards Stock Certificate No. 36964-V registered in the name of Alberto Looyuko, and that the other certificates subject of the Notice of Garnishment were "no longer outstanding."

On May 16, 2000, petitioner filed with the RTC a Motion to Direct China Banking Corporation To Show Cause and For Sheriff Renato C. Flora to Desist from Implementing the Unlawful Writ of Execution dated April 19, 2000. Petitioner prayed that the Court issue an Order directing China Banking Corporation to show cause, explain and account for the shares of stock registered in his name, particularly Stock Certificate Nos. 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 which were already in *custodia legis* as early as April 29, 1998 as per Sheriff Arturo C. Flores' return, but which were allegedly no longer in their custody per letter of the Corporate Secretary of China Banking Corporation dated May 9, 2000.

Petitioner also prayed that pending resolution of the said motion, Sheriff Renato Flora be directed to desist from implementing the writ of execution dated April 19, 2000 and/or also to hold in abeyance any further action on the said writ, particularly the levy/execution on his real properties for being premature pending the explanation of China Banking Corporation since under paragraph (b), Sec. 9, Rule 39 of the Revised Rules on Civil Procedure, levy is first made on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

Private respondent opposed the motion.

In an Order dated June 15, 2000, the RTC denied the motion stating that there was no reason for the Court to direct the Sheriff to desist from implementing a valid writ of execution. The RTC also stated that "whether or not China Banking Corporation explains the reason why the alleged shares of petitioner are no longer outstanding cannot affect at all the implementation of the writ of execution dated April 19, 2000."

Petitioner's motion for reconsideration was denied in an Order dated October 25, 2000.

Petitioner filed a petition for *certiorari* under Rule 65 with the CA seeking to set aside the RTC Orders dated June 15, 2000 and October 25, 2000 and raised this sole issue: Was there grave abuse of discretion tantamount to lack or excess of jurisdiction in denying petitioner's motion to direct China Banking Corporation to explain and account for petitioner's previously attached shares of stock?

The CA dismissed the petition in a Decision promulgated on September 19, 2001. It held that the RTC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Orders since the same are not tainted by capricious, arbitrary and whimsical exercise of power.

It held that at the time the levy on attachment was served upon China Banking Corporation on April 21, 1998, the subject shares of stock had already been transferred in February 1997 to Alberto T. Looyuko through a blank endorsement signed by petitioner. The CA declared that petitioner himself related this transfer in his Affidavit-Complaint for estafa against Looyuko subscribed on May 21, 1998. The Court also stated:

Significantly, the sheriff's return does not identify the shares of stock levied, specifically Stock Nos. 25447, 25449, 25450, 26481, 28418, 30916, 32501, 34697 and 36713 (the subject shares). And, petitioner never undertook to verify what those shares were. However, a month later he executed the affidavit-complaint for estafa against Alberto T. Looyuko admitting unequivocally and categorically that the subject shares of stock were no longer in his name. By such act, it is self-evident that petitioner was aware by then -- or as early as then --that there were no more China Bank shares of stock in his name that could have been placed in *custodia legis* by the levy on attachment.^[2]

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated March 7, 2002.

Hence, this petition for review on *certiorari*.

The issues are:

- I. Whether or not the appellate court may consider an issue raised for the first time on appeal?
- II. Whether or not the Honorable Court of Appeals erred in dismissing the petition for *certiorari* and consequently in finding that there was no grave abuse of discretion on the part of the presiding judge of the court *a quo*.^[3]

Petitioner argues as follows:

The CA erred in considering the Affidavit-Complaint for estafa filed by petitioner against Looyuko in a criminal case before the RTC of Makati City to show that petitioner knew about the whereabouts of the subject shares claimed to be "no longer outstanding" by China Banking Corporation.

Petitioner stated that the matter of the Affidavit-Complaint was raised for the first