

FIRST DIVISION

[G.R. NO. 164857, April 11, 2005]

**FLEXO MANUFACTURING CORPORATION, PETITIONER, VS.
COLUMBUS FOODS, INCORPORATED AND PACIFIC MEAT
COMPANY, INCORPORATED, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure, assailing the decision dated November 20, 2003,^[1] of the Court of Appeals in CA-G.R. SP No. 75642, which annulled and set aside the order dated February 19, 2003,^[2] of the Regional Trial Court of Caloocan City, Branch 131 granting petitioner's motion for execution pending appeal, and its resolution dated July 27, 2004^[3] denying reconsideration thereof.

The facts are as follows:

On February 6, 2002, Flexo Manufacturing Corporation (Flexo) filed a complaint^[4] against Columbus Foods Incorporated (Columbus) and Pacific Meat Company Incorporated (Pacific) for sum of money with preliminary attachment. Flexo alleged that on August 27, 1999 and September 28, 1999, it executed Contract Nos. 6150 and 6288 with Columbus for the manufacture of 48 million and 6 million foil pouches, respectively.

Flexo made partial deliveries which were paid by Pacific. Subsequently, Flexo demanded the payment of manufactured but undelivered foil pouches amounting to P2,957,270.00 but both respondents denied any liability. Thus, the complaint where Flexo sought for the payment of the foil pouches valued at P2,957,270.00 with 24% interest per annum from April 2000 until fully paid, as well as 25% of the obligation as attorney's fees and cost of suit.

In their answer with counterclaim,^[5] respondents claimed that Flexo had no cause of action against them. They alleged that the two contracts executed by them were general agreements subject to specific instructions and confirmation to be relayed periodically to Flexo. On March 31, 2000, they informed Flexo to deliver all outstanding orders by April 14, 2000. Since the latter was unable to deliver the outstanding orders on time, respondents argued that they had been relieved from the obligation.

After trial, the Regional Trial Court of Caloocan City, Branch 131, rendered judgment,^[6] to wit:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Columbus Foods, Inc. and Pacific Meat Co., Inc., ordering them:

1. To pay solidarily to the plaintiff the principal obligation of P2,957,270.00, with interest thereon at the rate of 24% per annum starting July 26, 2001 until the same is fully paid;
2. To pay solidarily the amount equivalent to 25% of the principal obligation, or P739,317.50, as attorney's fees and liquidated damages; and
3. To pay the cost of suit.

SO ORDERED.^[7]

On December 27, 2002, Columbus and Pacific appealed to the Court of Appeals. On the same day, Flexo filed a motion for execution pending appeal^[8] which the trial court granted considering the deteriorating condition of the pouches and the insolvency of Columbus as valid grounds for execution.

Aggrieved, respondents filed a petition for certiorari^[9] with the Court of Appeals which granted the petition and set aside the order of the RTC of Caloocan City dated February 19, 2003.

The Court of Appeals held that no good reasons or superior circumstances demanding urgency justified the grant of the motion for execution pending appeal.^[10] It noted that when the complaint was filed, the foil pouches which had a shelf life of six months, had already deteriorated. In effect, the foil pouches had become unfit and there is no more right to be protected by the execution pending appeal.^[11] Furthermore, Columbus' alleged insolvency was not duly established. Notwithstanding, it observed that Flexo could still collect from Pacific as the latter was a solidary debtor.

Flexo filed the instant petition^[12] after denial of its motion for reconsideration.

The principal issue to be resolved is whether good reasons exist to justify the grant of execution pending appeal.

Flexo maintains that the deteriorating condition of the foil pouches, the insolvent state of Columbus, and the posting of bond were good reasons to warrant execution pending appeal. It avers that the Court of Appeals erroneously held that the foil pouches had already become unfit at the time the complaint was filed and thus, there was no right to be protected by the execution pending appeal. It insists that the evidence on record proves that Columbus is insolvent. Lastly, the five million pesos (P5,000,000.00) bond it posted was sufficient to answer for the money garnished on execution pending appeal from Pacific.

The petition lacks merit.

As a general rule, the execution of a judgment should not be had until and unless

the judgment has become final and executory, i.e., the period of appeal has lapsed without an appeal having been taken, or appeal having been taken, the appeal has been resolved and the records of the case have been returned to the court of origin, in which event, execution "shall issue as a matter of right." Execution pending appeal in accordance with Section 2 of Rule 39 of the Rules of Court is, therefore, the exception.^[13]

Execution pending appeal requires the observance of the following requisites: (a) there must be a motion therefor by the prevailing party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order.^[14]

Since the execution of a judgment pending appeal is an exception to the general rule, the existence of "good reasons" is essential.^[15] "Good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.^[16] The rules do not specify the "good reasons" to justify execution pending appeal, thus, it is the discretion of the court to determine what may be considered as such.

In the instant case, the first demand letter for the undelivered goods was sent on June 6, 2000. Therefore, it can be assumed that the foil pouches have been processed prior to this date. Since the lifetime of the product is one year after which they start to deteriorate,^[17] the foil pouches had deteriorated when Flexo filed the complaint on February 6, 2002. When the trial court promulgated its decision on December 11, 2002, two and a half years had already elapsed. As such, the foil pouches were over and beyond its shelf life and unfit to be utilized.

In *Yasuda v. Court of Appeals*,^[18] we discussed cases where the court granted execution pending appeal on the ground of deteriorating goods, to wit:

In *Federation of United Namarco Distributors, Inc. v. National Marketing Corp.*, this Court sustained the good reasons stated by the trial court in its order, namely: that the goods subject matter of the judgment will deteriorate during the pendency of the appeal; and that a slight deterioration of said goods will be sufficient to impair their market value as first-hand goods; hence, keeping them in storage pending petitioner's appeal will render the judgment in favor of respondents ineffectual, as respondents' interest in the goods is not that of consuming, but of marketing, them.

In the case of *Bell Carpets International Trading Corp. v. Court of Appeals*, a writ of execution pending appeal was likewise allowed on the ground that "the finished goods [yarn] that were attached easily deteriorate and go out of fashion insofar as the shades and colors are concerned, thus making them unsaleable, and their continued storage will only make them dirty and further depreciate their value.

In the present case, petitioner, in his Motion for Execution Pending Appeal, cites as a ground for its allowance, the deteriorating condition of