

## FIRST DIVISION

[ G.R. No. 92462, June 02, 1997 ]

**SANTIAGO GOKING, PETITIONER, VS. HON. ROLANDO R. VILLARAZA, AS PRESIDING JUDGE OF THE RTC OF MISAMIS ORIENTAL, 10TH JUDICIAL REGION, BR. 23, CAGAYAN DE ORO CITY, PEOPLE'S TRANS-EAST ASIA INSURANCE CORP. AND FIRESTONE TIRE & RUBBER CO. OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**HERMOSISIMA, JR., J.:**

To assail as tainted with grave abuse of discretion the Order<sup>[1]</sup> of Hon. Judge Rolando R. Villaraza which denied the Motion for Execution<sup>[2]</sup> filed by petitioner Santiago Goking on the ground that the prayer therein to collect from private respondent People's Trans-East Asia Insurance Corporation (hereafter, "People's"), the sum of P76,222.93 representing refund for premium payments, had neither factual nor legal basis, petitioner inevitably filed the herein petition for *certiorari*. The Decision<sup>[3]</sup> of the Regional Trial Court,<sup>[4]</sup> as modified by the Decision<sup>[5]</sup> of the Court of Appeals,<sup>[6]</sup> was then due for execution.

The following facts are not disputed:

"xxx [S]ometime on March 18, 1982, [petitioner] mortgaged his property covered by TCT No. T-21615 to the [private respondent] Firestone to secure an obligation of Three G Distributors, Inc. with the latter company in the amount of P500,000.00 pursuant to an agreement previously entered into between Firestone on one hand and Three G and its directors (Santiago Goking, Rufino Inocian, Sulpicio Tancinco, and Pedro Guerzon) on the other. It was likewise agreed that plaintiff's property would be released by Firestone upon the assumption by said directors in their personal capacity of the aforestated obligation of Three G and the submission of the required surety bonds.

Pursuant thereto, [petitioner] entered into an indemnity agreement with Aggregated Underwriters Corporation, General Agent of [private respondent] People's Trans-East Asia Insurance Corporation, through Roque Villadores, Rodolfo Esculto and Federico Garcia Jr. for the insurance of surety bonds to the individual members of the Board of Directors of Three G in connection with their obligation to Firestone .

The premiums for the surety bonds issued were paid by [petitioner] to [private respondent] People's General Agent on January 21, 1983 in the total amount of P76,222.93 per receipt issued by Aggregated

Underwriters Corporation.

Thereafter, in spite of several demands, [private respondent] People's failed and refused to honor the commitment and obligation entered into by it through its General Agent [and] to return the premiums paid. As a result, plaintiff's mortgaged property was foreclosed by Firestone on August 7, 1984. x x x

The case against Firestone was, however, dropped in view of an amicable settlement entered into with [petitioner] on August 17, 1987, leaving People's Trans-East Asia Insurance Corporation as sole defendant. Said defendant, in its, Answer, denies the authority of its General Agent, Aggregate Underwriter[s] Corporation, to enter into the indemnity agreement with [petitioner] x x x in spite of its admission and due execution of the Special Power of Attorney x x x authorizing Aggregated to conduct and transact insurance business as General Agent of People's. x x x

x x x

x x x [A]s a result of the refusal of defendant People's to honor the indemnity agreement entered into by Aggregated Underwriters Corporation through Roque Villadores, Rodolfo Esculto and Federico Garcia, Jr. with [petitioner] and to issue the necessary surety bonds, [petitioner] together with the other directors of Three G x x x filed a personal complaint against Roque Villadores and his companions with the Regional Trial Court of Misamis Oriental, Branch 22, Cagayan de Oro City, in Civil Case No. 9114, for a refund of the premiums paid in the amount of P76,222.93 plus damages.

On October 19, 1984, a decision x x x was rendered in said [Civil Case No. 9114] in favor of the plaintiffs and against the defendants, in this wise:

'WHEREFORE, considering all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, ordering the latter to pay the following:

- 1) P76,222.93 as refund for the premium;
- 2) P5,000.00 as attorney's fees;
- 3) P3,000.00 as litigation expenses;
- 4) P50,000.00 as moral and exemplary damages;
- 5) The total amount of P134,222.93 shall earn interest at the rate of 12% per annum from the date of finality of this decision until fully paid.'

There being no appeal in said [Civil Case No. 9114], the same became final and executory.

On December 5, 1985, a decision was also rendered in the case at bar [i.e., Civil Case No. 9800], the dispositive portion of which reads:

'WHEREFORE, considering all the foregoing, judgment is hereby rendered in favor of the plaintiff [Santiago Goking] and against the defendant [People's Trans-East Asia Insurance Corporation], ordering the latter to do the following:

- 1) To issue approved surety bonds in compliance with the commitment of its authorized agent in case the premium in the amount of P76,222.93 is not yet refunded to the plaintiff;
- 2) To pay the amount of P5,000.00 as litigation expenses and P5,000.00 as attorney's fees;
- 3) To pay solidarily with defendants in Civil Case No. 9114 the amounts in the decision for the attorney's fees and litigation expenses, moral and exemplary damages.

SO ORDERED.'"<sup>[7]</sup>

While the decision of the trial court in Civil Case No. 9114 became final and executory, private respondent People's appealed from the decision of the trial court in Civil Case No. 9800, to the Court of Appeals. Said appellate court, however, found no merit in the appeal, except that it deleted the portion of the trial court's decision ordering "defendant to pay solidarily with defendants in Civil Case No. 9114 the amounts in the decision for attorney's fees and litigation expenses plus moral and exemplary damages."<sup>[8]</sup>

On December 12, 1988, petitioner filed with the Court of Appeals a Motion for Delineation, Definition and/or Enforcement of Decision and/or Motion for Reconsideration<sup>[9]</sup> praying for, among others, a modification of the Decision of the Court of Appeals to the effect that private respondent People's be ordered to pay the amount of P76,222.93 as refund for the premiums payments plus interest of 12% until full reimbursement is made.

On January 10 , 1989, the Court of Appeals denied the aforescribed Motion on the ground that the records having been remanded to the trial court for execution, said appellate court had already lost jurisdiction over the case and could not, thus, act on said Motion.

On August 29, 1989, petitioner filed in the trial court a Motion for Execution in Civil Case No. 9800. In said Motion, petitioner reiterated its prayer for a modification of the order of the trial court "to issue approved surety bonds in compliance with the commitment of its authorized agent in case the premium in the amount of P76,222.93 is not yet refunded to the plaintiff"<sup>[10]</sup> and accordingly asked the trial court to instead order private respondent People's to directly pay the said amount to petitioner as reimbursement for the premiums paid by petitioner, including legal interest of 12%.

On August 29, 1989, petitioner filed in the trial court his Bill of Costs.<sup>[11]</sup>