

SECOND DIVISION

[G.R. No. 172508, January 12, 2011]

HEIRS OF SANTIAGO C. DIVINAGRACIA, PETITIONER, VS. HON. J. CEDRICK O. RUIZ, PRESIDING JUDGE, BRANCH 39, REGIONAL TRIAL COURT, ILOILO CITY; GERRY D. SUMACULUB, AS CLERK OF COURT OF THE REGIONAL TRIAL COURT; BOMBO RADYO HOLDINGS, INC., AND ROGELIO M. FLORETE, SR., RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before this Court is a petition for review on *certiorari*,^[1] under Rule 45 of the Rules of Court, seeking to set aside the October 5, 2005 Decision^[2] and April 21, 2006 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86435. Said CA Decision dismissed the petition for *certiorari* seeking the nullification of the September 8, 2004 Resolution and September 15, 2004 Writ of Execution, respectively issued by the Presiding Judge and Clerk of Court of Branch 39 of the Regional Trial Court (RTC) of Iloilo City in Corporate Case No. 00-26557.

The facts of the case are as follows:

On February 25, 1999, Santiago Divinagracia (Divinagracia), in his capacity as a stockholder, filed a derivative suit on behalf of People's Broadcasting Service Incorporated (PBS) assailing a management contract entered into by PBS and Bombo Radyo Holdings Incorporated (Bombo Radyo) and Rogelio Florete, Sr. (Florete). Said suit was docketed as SEC Case No. IEO-99-00084. In response to the derivative suit, Bombo Radyo and Florete filed a counterclaim against Divinagracia claiming that the suit filed by him was unfounded and intended only to harass and molest them.

Pursuant to Section 5.2^[4] of Republic Act No. 8799, the derivative suit was transferred to Branch 39 of the RTC of Iloilo City sitting as a special commercial court. The derivative suit was then re-docketed as Corporate Case No. 00-26557 and governed by the Interim Rules of Procedure Governing Intra-Corporate Controversies. During the pendency of the case, however, Divinagracia died and was, thus, substituted by his heirs.

On July 28, 2004, the RTC rendered a Decision^[5] dismissing the derivative suit filed by Divinagracia and granting the counterclaims of Bombo Radyo and Florete, to wit:

WHEREFORE, in view of the foregoing disquisitions, the instant petition ought to be, as it is hereby DISMISSED for lack of merit.

The Counterclaim of respondents Bombo Radyo Holdings, Inc. (BRHI) and Rogelio Florete Sr. is given due course and granted and the Heirs of Santiago Divinagracia, namely:

NAME	RESIDENCE
1. Ma. Elena R. Divinagracia	23 Delgado St., Iloilo City
2. Elsa R. Divinagracia	1 st Street, Paradise Village Banilad, Cebu City
3. Ruth Marie R. Divinagracia	Unit 4-C, Torre de Salcedo St., Legaspi Village, Makati City
4. Liane Grace R. Divinagracia	23 Delgado St., Iloilo City
5. Ricardo R. Divinagracia	16 Fajardo St., Jaro, Iloilo City
6. Ma. Fe Emily R. Divinagracia	23 Delgado St., Iloilo City

are hereby ordered, jointly and severally, to pay each of the respondents Bombo Radyo Holdings, Inc. and Rogelio Florete Sr. the following, to wit:

1. The sum of Five Hundred Thousand Pesos (P500,000.00) as moral damages;
2. The sum of Two Hundred Thousand Pesos as and for exemplary damages;
3. The sum of One Hundred Thousand Pesos as and for attorney's fees; and
4. The costs of suit.

SO ORDERED.^[6]

On August 11, 2004, the Heirs of Divinagracia filed a Notice of Appeal^[7] with the RTC.

On August 12, 2004, Bombo Radyo and Florete filed with the RTC a Motion for Immediate Execution.^[8] The same was granted by the RTC in a Resolution^[9] dated September 8, 2004. Accordingly, on September 15, 2005, the RTC Clerk of Court issued a Writ of Execution.^[10]

Aggrieved by the issuance of the Writ of Execution, the Heirs of Divinagracia filed a petition for *certiorari*^[11] with the CA. They argued that the issuance of the writ of execution by the RTC was improper, considering that they had already appealed the decision to the CA. Also, the Heirs of Divinagracia contended that the RTC erred in granting the writ of execution for a counterclaim consisting of moral damages, exemplary damages and attorneys fees despite the fact that said damages under the counterclaim consisted of an ordinary action and was not an intra-corporate controversy.^[12]

On October 5, 2005, the CA issued a Decision dismissing the petition for *certiorari*, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed resolution issued by the respondent judge on September 8, 2004 in Corporate Case No. 00-26557.

SO ORDERED.^[13]

The CA ruled that Section 4 of Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies was very explicit in providing that "all decisions rendered in intra-corporate controversies shall be immediately executory." Thus, the CA held that the RTC did not err when it granted Bombo Radyo and Florete's motion for immediate execution on the grant of moral damages, exemplary damages and attorney's fees. Furthermore, the CA also ruled that since the Heirs of Divinagracia had already filed a notice of appeal, such act barred them from availing of the remedy of *certiorari*.

The Heirs of Divinagracia filed a Motion for Reconsideration,^[14] which was, however, denied by the CA in a Resolution^[15] dated April 21, 2006.

Hence, herein petition, with the Heirs of Divinagracia raising the following issues for this Court's consideration, to wit:

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE TRIAL COURT'S ORDER ALLOWING IMMEDIATE EXECUTION SINCE SAID ORDER CLASHES WITH THE SUPPLETORY APPLICATION OF THE RULES OF COURT PROVIDED FOR IN SECTION 2, RULE 1 OF THE INTERIM RULES, AND DISREGARDS RELEVANT JURISPRUDENCE REGARDING THE EXECUTION OF COUNTERCLAIMS UNDER THE RULES OF COURT.

II.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO RULE THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED PERTINENT AND WELL-ENTRENCHED JURISPRUDENCE STATING THAT A SEPARATE PETITION FOR *CERTIORARI* MAY PROSPER WHERE THE APPEAL DOES NOT APPEAR TO BE A PLAIN, SPEEDY AND ADEQUATE REMEDY UNDER LAW.

III.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT THE PRESENT PETITION FOR *CERTIORARI* WAS PROPER AND JUSTIFIED BECAUSE IT WAS MEANT TO PREVENT: (A) IRREPARABLE DAMAGE AND INJURY TO PETITIONER HEIRS FROM THE TRIAL COURT JUDGE'S CAPRICIOUS, ARBITRARY, AND WHIMSICAL EXERCISE OF HIS JUDGMENT; (B) THE DANGER OF CLEAR FAILURE OF JUSTICE; AND (C) BECAUSE THEIR APPEAL IS INADEQUATE TO RELIEVE THEM FROM THE

INJURIOUS EFFECTS OF THE TRIAL COURT'S JUDGMENT.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT IT WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR THE TRIAL COURT TO INSIST UPON THE EXECUTION OF A MANIFESTLY UNJUST AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

V.

THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE THAT THE TRIAL COURT, IN ALLOWING THE IMMEDIATE EXECUTION OF THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AGAINST THE PROPERTIES OF THE PETITIONER HEIRS, BLATANTLY DISREGARDED THE PROVISIONS OF THE CIVIL CODE ON SUCCESSION AND RULE 88 OF THE RULES OF COURT ON PAYMENT OF DEBTS OF THE ESTATE.^[16]

The petition is meritorious.

At the crux of the controversy is the determination of whether or not moral damages, exemplary damages, and attorney's fees, awarded as a result of a counterclaim in an intra-corporate case, are immediately executory despite the pendency of the appeal in the main case.

The issue is not novel as the same has been resolved in another petition filed before this Court by the Heirs of Divinagracia in G.R. No. 172023.

G.R. No. 172023

The controversy therein originated from Corporate Case No. 02-27050, which involved a Petition for Mandamus and Nullification of Delinquency Call and Issuance of Unsubscribed Shares filed by Divinagracia who claimed he was a stockholder of CBS Development Corporation, Inc. (CBSDC). Said action was also filed before the same RTC of the present petition.

In G.R. No. 172023, Divinagracia, as a stockholder of CBSDC, opposed a proposal to authorize Florete, in his capacity as President of CBSDC, to mortgage all, or substantially all, of CBSDC's real properties to secure a loan obtained by Newsounds Broadcasting Network, Inc., Consolidated Broadcasting System, and People's Broadcasting Services, Inc. However, majority of the stockholders approved the grant of authority to Florete and the Board. As a result, Divinagracia, as a dissenting stockholder wrote a letter exercising his appraisal right under Section 81 of the Corporation Code. CBSDC's Board of Directors approved Divinagracia's exercise of his appraisal right.

Thereafter, Divinagracia surrendered his stock certificates. The Board, however, deferred action on Divinagracia's request, an act to which Divinagracia protested to. Later, the corporate secretary informed Divinagracia that his shares were declared