

FIRST DIVISION

[G.R. No. 148483, June 29, 2011]

BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. ORIENT COMMERCIAL BANKING CORPORATION, JOSE C. GO, GEORGE C. GO, VICENTE C. GO, GOTESCO PROPERTIES, INC., GO TONG ELECTRICAL SUPPLY INC., EVER EMPORIUM, INC., EVER GOTESCO RESOURCES AND HOLDINGS INC., GOTESCO TYAN MING DEVELOPMENT INC., EVERCREST CEBU GOLF CLUB AND RESORTS, INC., NASUGBU RESORTS INC., GMCC UNITED DEVELOPMENT CORP., GULOD RESORT, INC., OK STAR, EVER PLAZA, INC. AND EVER ELECTRICAL MFG., INC., RESPONDENTS.

RESOLUTION

VILLARAMA, JR., J.:

The present petition although captioned as one for certiorari is hereby treated as a petition for review on certiorari under Rule 45, with prayer for issuance of temporary restraining order and writ of preliminary injunction. It seeks to annul and set aside the June 11, 2001 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 60509. The CA nullified the writs of preliminary attachment issued by the Regional Trial Court (RTC) of Manila, Branch 12 in Civil Case No. 99-95993 and ordered the dismissal of the amended complaint as against some of the named defendants.

Briefly, the facts as set forth in the CA Decision:

On February 13, 1998, herein respondent Orient Commercial Banking Corporation (OCBC) declared a bank holiday on account of its inability to pay all its obligations to depositors, creditors and petitioner *Bangko Sentral ng Pilipinas* (BSP).

On March 17, 1998, OCBC filed a petition for rehabilitation with the Monetary Board. The bank was placed under receivership and the Philippine Deposit Insurance Corporation (PDIC) was designated as Receiver. Pursuant to the Monetary Board's Resolution No. 1427, PDIC took over all the assets, properties, obligations and operations of OCBC. Respondent Jose C. Go, the principal and biggest stockholder of OCBC, with his affiliate companies (respondent corporations), challenged the said action of the PDIC before the RTC of Manila, Branch 44 (Civil Case No. 98-91265). Said case was dismissed and the dismissal was appealed to the CA.

During the pendency of Civil Case No. 98-91265, the Monetary Board adopted Resolution No. 602 dated May 7, 1999 directing the Receiver to proceed with the liquidation of OCBC. In June, 1999, the PDIC instituted Special Proceeding No. 99-94328 before the RTC of Manila, Branch 51 entitled "In Re: Petition for Assistance in the Liquidation of Orient Commercial Banking Corporation, Philippine Deposit Insurance Corporation, *Petitioner*".

On December 17, 1999, petitioner filed in the RTC of Manila (Branch 12) a complaint for sum of money with preliminary attachment (Civil Case No. 99-95993) against the respondents seeking to recover deficiency obligation owed by OCBC which then stood at P1,273,959,042.97 with interest at 8.894 % per annum, overdraft obligation of P1,028,000,000.00, attorney's fees and costs of suit.

On January 14, 2000, the RTC of Manila, Branch 12 issued an Order^[2] in Civil Case No. 99-95993 granting petitioner's motion for preliminary attachment. On January 19, 2000, following the posting by petitioner of P50 million attachment bond issued by the Government Service Insurance System (GSIS), the corresponding writ was issued ordering the Deputy Sheriffs to attach the real and personal properties of respondents to the value of petitioner's demand in the amount of P2,301,951,042.97, exclusive of interests and costs, as security for the said claim.
^[3]

Respondents filed with the CA a petition for certiorari questioning the aforesaid orders (CA-G.R. SP No. 60509). They also filed a consolidated motion to dismiss Civil Case No. 99-95993, which the trial court denied.^[4]

On June 1, 2001, respondents filed an Urgent Motion to Resolve and/or to Issue a Temporary Restraining Order or a Writ of Preliminary Injunction. On June 11, 2001, the CA rendered the assailed decision dissolving the writ of attachment and ordering the RTC to desist from proceeding with Civil Case No. 99-95993 as against the respondents except Jose C. Go, Vicente C. Go and George C. Go. It appears, however, that a Manifestation with Motion to Admit Attached Opposition (to the Urgent Motion to Resolve and Issue a Temporary Restraining Order)^[5] was filed by petitioner on June 6, 2001.

On June 27, 2001, petitioner filed a Very Urgent Manifestation^[6] stating that: (1) the June 11, 2001 decision had to await finality as it was rendered without requiring the petitioner to file its comment, and because the complaint was dismissed despite massive evidence presented before the trial court on the participation of respondents in the commission of fraud against BSP; (2) of the total outstanding amount of P2,301,959,042.97 being collected by petitioner from the respondents, only P200 million was garnished and it is doubtful if the taxpayers' interest can be satisfied there being no assets that can be found in the name of respondents and no assets of OCBC were levied or garnished; and (3) petitioner had filed a Vigorous Opposition before the trial court as the respondents are prematurely implementing the CA decision, even as the petitioner still can elevate the case to this Court.

On July 2, 2001, the CA recalled its June 11, 2001 decision and granted a ten-day period for petitioner to file its comment. The *ponente* likewise inhibited himself from the case.^[7]

On July 3, 2001, BSP filed the instant petition with the following prayer:

WHEREFORE, it is respectfully prayed that this Honorable Court:

1. Give due course to this petition.

2. Upon its filing and, before the application for the issuance of a writ of preliminary injunction is heard, order the issuance of a temporary restraining order immediately restraining the respondents from proceeding in any manner with the enforcement of the assailed decision [dated] June 11, 2001 in CA-G.R. SP No. 60509 until this petition is resolved with finality.

3. After hearing the application, order the issuance of a writ of preliminary injunction restraining the respondents from proceeding in any manner with the enforcement of the assailed decision June 11, 2001 in CA-G.R. SP No. 60509 until the instant case shall have been adjudicated on its merits.

4. After hearing the instant case on its merits, order that the writ of preliminary injunction be made permanent, nullifying the assailed decision [dated] June 11, 2001 in CA-G.R. SP No. 60509 which is sought to be reviewed and directing the resumption of the proceedings in Civil Case No. 99-95993.^[8]

Respondents moved to dismiss the petition on grounds of forum shopping and submission of a defective certificate of non-forum shopping. Subsequently, petitioner filed an Omnibus Motion for clarification and for leave of court to admit comment on the motion to dismiss, to which the respondents filed their opposition. On February 22, 2002, respondents' Comment was filed and petitioner filed its Reply on July 2, 2002. On January 31, 2003, respondents filed an Urgent Motion to Lift, Quash and Dissolve the Writ of Preliminary Attachment Against the Properties of the Respondents Except Orient Commercial Banking Corporation. Petitioner filed its comment on the said motion on May 5, 2003.^[9]

On January 5, 2004, petitioner filed a manifestation informing this Court that on December 16, 2003, the parties have agreed to settle their differences and executed a Compromise Agreement, which was approved by the RTC of Manila, Branch 12 on December 29, 2003. Attached to the said manifestation is the motion to approve judgment based on compromise agreement and the trial court's Order approving the same.^[10]

Under the Compromise Agreement, the parties agreed to cause the dismissal of nineteen (19) pending civil cases in various courts, including the present case before this Court, CA-G.R. SP No. 60509 and Civil Case No. 95-95993, in consideration for the faithful compliance by the respondents of the agreed terms and conditions of payment of the total deficiency obligation of OCBC to petitioner amounting to Two Billion Nine Hundred Seventy-Four Million Nine Hundred Three Thousand Pesos (P2,974,903,000.00). Said outstanding indebtedness of OCBC is to be settled in the following manner:

A. A downpayment shall be made by the defendants through the DACION of certain real estate properties more particularly described in Annex "B" hereof.