

## SECOND DIVISION

[ G.R. Nos. 174256-57, March 25, 2009 ]

**GEOLOGISTICS, INC., (FORMERLY LEP INTERNATIONAL PHILIPPINES, INC.), PETITIONER, VS. GATEWAY ELECTRONICS CORPORATION AND FIRST LEPANTO TAISHO INSURANCE, CORPORATION, RESPONDENTS.**

### DECISION

**TINGA, J.:**

This is a petition for review on certiorari,<sup>[1]</sup> praying for the reversal of the amended decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 68465 and CA-G.R. SP No. 69441 and the reinstatement of the order<sup>[3]</sup> of the Regional Trial Court (RTC), Branch 260, Parañaque City issuing a writ of partial execution.

As culled from the records of the case, the following factual antecedents appear:

Petitioner Geologistics, Inc., formerly known as LEP International Philippines, Inc., is a domestic corporation engaged in the business of freight forwarding and customs brokerage. On 17 October 1997, petitioner instituted an action for the recovery of sum of money against respondent Gateway Electronic Corporation (respondent Gateway) before the RTC of Parañaque.<sup>[4]</sup> The case was docketed as Civil Case No. 97-0496 and raffled to the sala of Judge Helen Bautista-Ricafort of Branch 260. Petitioner prayed for a judgment award in the amount of P4,769,954.32, representing the fees, including interest owed by respondent Gateway for petitioner's services as customs broker and freight forwarder.

The RTC subsequently issued a writ of preliminary attachment on the properties of respondent Gateway, prompting the latter to move for its dissolution. Respondent First Lepanto-Taisho Insurance Corporation (respondent surety) filed a counter-bond in the amount of P5 million to secure the payment of any judgment that petitioner could recover from respondent Gateway.<sup>[5]</sup>

After hearing on the merits, the RTC rendered a Decision<sup>[6]</sup> dated 19 October 2001, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendant to pay the plaintiff:

1. The sum of Four Million Seven Hundred Sixty Nine Thousand Nine Hundred Fifty Four and Thirty Two Centavos (P4,769,954.32) Pesos, plus the stipulated three (3%) interest per month computes starting August 1, 1997 until the same is fully paid;

2. The amount of Two Hundred Thousand (P200,000.00) Pesos as exemplary damages for wanton and fraudulent acts of defendants, to serve as an example for the public good and to deter other from doing same acts.
3. The amount of One Million One Hundred Ninety Two Thousand Four Hundred Eighty Eight pesos (P1,192,488.00) representing the stipulated Twenty Five percent (25%) attorney's fees; and,
4. Costs.

Accordingly, the defendant's counterclaim is hereby DISMISSED.

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

Petitioner filed a motion for execution pending appeal on 30 October 2001 which was opposed by respondent Gateway. The motion alleged the following "good reasons" to execute the RTC decision pending appeal: (1) respondent Gateway was guilty of fraud in contracting its obligations to petitioner; (2) the appeal was interposed to delay the case; (3) respondent Gateway had ceased operations and was in imminent danger of insolvency; and (4) the counter-bond posted by respondent Gateway could be the subject of execution.<sup>[8]</sup>

After petitioner's filing of a reply to respondent Gateway's opposition, the motion was submitted for resolution. Respondent Gateway also filed a notice of appeal on 07 November 2001.<sup>[9]</sup>

In an Order dated 10 December 2001,<sup>[10]</sup> Judge Helen Bautista-Ricafort granted petitioner's motion for execution pending appeal because respondent Gateway had admitted its principal obligation to petitioner and the case had been pending since 1997.<sup>[11]</sup> On 18 December 2001, Judge Ricafort issued a writ of execution, ordering the sheriff to execute respondent Gateway's counter-bond issued by respondent surety up to the amount of P4,769,954.32.<sup>[12]</sup> The writ of execution, directing respondent surety to comply with the order of the RTC within five days from notification, was served on 09 January 2002.<sup>[13]</sup>

Respondent surety filed a motion to set aside the 10 December 2001 Order of Judge Ricafort and to quash the writ of execution, but the motion was denied per Order dated 19 February 2002. In the same order, respondent surety was directed to pay petitioner the sum of P4,769,954.32 "without prejudice to the right of reimbursement thereafter" from respondent Gateway.<sup>[14]</sup>

On 04 March 2002, Sheriff Elosocje implemented the writ of execution through the garnishment of respondent surety's bank account with Banco de Oro. On 18 March 2002, Sheriff Elosocje received the garnished amount in the form of a manager's check which was then turned over to petitioner's counsel.<sup>[15]</sup>

Meanwhile, both respondents filed separate Rule 65 petitions before the Court of Appeals against Judge Ricafort, Atty. Clement Boloy, in his capacity as Ex-Officio Sheriff, Lucas Elosocje, in his capacity as Sheriff, and herein petitioner.

In the petition for certiorari, prohibition and mandamus (with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction),<sup>[16]</sup> docketed as CA-G.R. SP No. 68465, respondent Gateway advanced the following arguments: (1) no good reason existed to justify execution pending appeal especially considering the fact that the case had already been elevated on appeal; (2) the ground cited in the assailed order was not supported by the evidence on record; and (3) a writ of partial execution can implement only a partial judgment.<sup>[17]</sup>

Respondent Gateway's petition was initially dismissed by the appellate court, but upon motion for reconsideration, the appellate court ordered its reinstatement and the issuance of a temporary restraining order (TRO) against the enforcement of the RTC's Decision and the Order dated 10 December 2001.<sup>[18]</sup>

Respondent surety's petition for certiorari, docketed as CA-G.R. SP No. 69441, sought the nullification of the RTC orders issued on 10 December 2001 and 19 February 2002, the quashal of the writ of execution, the issuance of a TRO and a writ of preliminary injunction to enjoin the implementation of the writ of execution and the return of the garnished amount to respondent surety.<sup>[19]</sup>

During the pendency of the two petitions, the Board of Directors of respondent Gateway resolved on 18 October 2004 to file a petition for declaration of voluntary insolvency.<sup>[20]</sup>

On 28 February 2005, the Court of Appeals (First Division) rendered a Decision<sup>[21]</sup> in CA-G.R. SP No. 68465, granting respondent Gateway's petition. The dispositive portion of the decision reads:

WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.

SO ORDERED.<sup>[22]</sup>

Subsequently, on 31 March 2005, the Court of Appeals (Fifth Division) promulgated a Decision<sup>[23]</sup> in CA-G.R. SP No. 69441, adopting the prior decision in CA-G.R. SP No. 68465. The dispositive portion of the Decision states:

WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. The parties are ordered to comply with the Decision dated February 28, 2005 in CA-G.R. SP No. 68465, which disposed of the case as follows:

In other words, private respondent must return to First Lepanto (petitioner herein) the amount garnished by the sheriff pursuant to the notice of garnishment, otherwise, petitioner would be compelled to reimburse First Lepanto for the same.

WHEREFORE, the petition is GRANTED. The Order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to First Lepanto-Taisho Insurance Corporation's deposit account.

SO ORDERED.

Pursuant to Section 3, Rule III of the 2002 Internal Rules of the Court of Appeals, as amended, subject to the conformity of the Justice who penned the aforementioned Decision, let this case be consolidated with CA-G.R. SP No. 68465.

SO ORDERED.<sup>[24]</sup>

Petitioner moved for reconsideration<sup>[25]</sup> of the decision in CA-G.R. SP No. 68465 while respondent surety sought to modify the decision in CA-G.R. SP No. 69441 to include an award of interest on the amount ordered returned to it by the appellate court.<sup>[26]</sup>

On 17 August 2006, the Court of Appeals promulgated the assailed consolidated amended decision, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court resolves as follows:

1. In CA-G.R. SP No. 68465. -

For lack of merit, private respondent's motion for reconsideration of the decision dated February 28, 2005 is DENIED. However, the dispositive portion of said decision is MODIFIED, such that it shall now read:

"WHEREFORE, the petition is GRANTED. The order dated December 10, 2001 of the Regional Trial Court of Parañaque City (Branch 260) and the writ of execution issued pursuant thereto are hereby ANNULLED and SET ASIDE.

SO ORDERED."

2. In CA-G.R. SP No. 69441 -

Petitioner's motion for partial reconsideration of the decision dated March 31, 2005 is GRANTED. The first paragraph of the dispositive portion of said decision shall now read:

"WHEREFORE, the petition is partly granted and the Order dated February 19, 2002 is nullified. Respondent LEP International Phils., Inc. is hereby ordered to return the amount of P4,769,954.32 to petitioner First Lepanto-Taisho Insurance Corporation's deposit account plus interest thereon at the rate of 6% per annum from filing of the petition until