

THIRD DIVISION

[G.R. No. 183753, June 19, 2009]

**ARCHINET INTERNATIONAL, INC. AND SEOKWHAN HAHN,
PETITIONERS, VS. BECCO PHILIPPINES, INC. AND BECCOMAX
PROPERTY AND DEVELOPMENT CORP., RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the January 25, 2008 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 96030 which set aside the July 10, 2006, August 18, 2006, October 22, 2007, and November 19, 2007 Orders of Branch 56 of the Regional Trial Court of Makati City in Civil Case No. 02-722. The Court of Appeals found no good reasons to justify discretionary execution pending appeal; thus, it ordered the reinstatement of Condominium Certificates of Title (CCTs) to 12 condominium units in the name of respondent Beccomax Property and Development Corporation (Beccomax). Likewise assailed is the July 11, 2008 Resolution^[2] denying petitioners' motion for reconsideration.

The facts are as follows:

Respondent Beccomax was the owner and developer of The Infinity Tower, later renamed as The Stamford Court-Salcedo, Makati. On June 14, 1995, Beccomax engaged the services of its sister company, respondent Becco Philippines, Inc. (Becco), as general contractor for the construction of the said building. In turn, Becco entered into contracts with several sub-contractors, one of which was petitioner Archinet International, Inc. (Archinet), which is engaged in the business of construction and providing architectural and interior design services. Petitioner Seokwhan Hahn is its Chairman and President.

On July 25, 1997, Becco and Archinet entered into contract for the construction of the interior portions of 24 floors of The Infinity Tower. Subsequently, they entered into another contract for the supply and provision of materials to be used in the interior portions, and additional works on the lobby, the 6th Floor common areas, and the penthouse. By March 2000, the construction of The Infinity Tower was completed.

However, respondents allegedly failed to make timely payments despite demands. Thus, petitioners filed on June 21, 2002 a complaint^[3] for breach of contract, sum of money and damages with an application *ex-parte* for a writ of preliminary attachment/garnishment. The case was raffled to Branch 56 of the Regional Trial Court of Makati City and docketed as Civil Case No. 02-722.

Petitioners alleged that as a result of Becco's delayed payments, Archinet suffered delays in settling its own obligations, incurred higher interest charges and exchange

rate costs in its bank financing arrangements, manpower employment, overhead, purchases from suppliers, transportation and shipping costs and charges.^[4] Petitioners also contended that respondents are liable for the costs of additional construction works on The Infinity Tower, as well as the contract price for the designs and drawings for respondents' another condominium project known as Uptown 21.

On July 17, 2002, the trial court ordered the issuance of a writ of preliminary attachment against the properties of respondents after petitioners posted an injunctive bond in the amount of Php33,781,741.17.^[5]

On July 24, 2002, the trial court issued a writ of attachment.^[6] Consequently, 10 condominium units of the Stamford Court-Salcedo were attached, namely unit nos. 2701 to 2707 and 2801 to 2803, which are under the name of Beccomax and covered by CCT Nos. 74067 to 74076.

On May 24, 2006,^[7] the trial court found in favor of petitioners and awarded them a total sum of Php56,697,741.92 representing various money claims. Respondents filed a motion for reconsideration on June 23, 2006.

Meanwhile, on June 9, 2006, petitioners filed a Motion for Discretionary Execution^[8] pursuant to Section 2 (a), Rule 39 of the Rules of Court. Petitioners alleged that there are good reasons which warrant execution pending appeal, to wit: a) respondents' President, Chan Shik Kim, is a fugitive from justice and has not returned to the Philippines since October 25, 2002; b) Becco caused its corporate dissolution by shortening its corporate term effective October 31, 2002; and c) Beccomax is in imminent danger of insolvency.

On July 10, 2006, the trial court issued an Omnibus Order^[9] denying the motion for reconsideration filed by respondents while granting discretionary execution prayed for by petitioners, to wit:

In view thereof, and coupled with the failure of the said defendant to present any proof that it has already recovered from such a shaky business operation, it can safely be concluded that indeed it is in "imminent danger of insolvency".

Surely, such fact of the dissolution of defendant Becco Philippines, Inc. on October 31, 2002, while the instant case was still pending, and the other defendant Beccomax Property and Development Corporation's being in imminent danger of insolvency will serve as good reasons which would warrant the issuance of this Special Order directing the execution of the decision of this Court dated May 24, 2006 even before the expiration of the period of appeal.

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One of the good reasons to be stated in a special order on which the Court, in its discretion, may order execution even before the judgment has become executory and before appeal has been perfected is where the judgment debtor is in imminent danger of insolvency (Santos vs. Mojica,

L-24266, Jan. 24, 1969) or is actually insolvent (Padilla, et al. vs. CA, et al., L-31569, Sept. 28, 1973).

WHEREFORE, premises considered, the Court rules as follows:

1. Denying defendants' [herein respondents] motion for reconsideration of the decision of this Court dated May 24, 2006, for lack of merit; and
2. Ordering the execution of the aforesaid Court's decision dated May 24, 2006, pending appeal; and
3. Directing the issuance of the corresponding Writ of Execution to enforce the decision against the properties of the defendants.

SO ORDERED.^[10]

Respondents appealed^[11] the May 24, 2006 Decision of the RTC of Makati, Branch 56 to the Court of Appeals. Likewise, they filed a motion for partial reconsideration^[12] of the July 10, 2006 Omnibus Order before the trial court insofar as it allowed discretionary execution.

On July 27, 2006, respondents' personal properties were auctioned where petitioners and Mr. Jong Woo Chung emerged as the highest bidders for the total amount of Php103,620.00.^[13] On August 31, 2006, another auction sale was held where 12 condominium units under the name of Beccomax and covered by CCT Nos. 74069, 74071, 74072, 74076 to 74079, 74085, 74086, 74090, 74092, and 74093 were sold to petitioners as the highest bidders for the total amount of Php18,600,000.00.^[14] The Sheriff issued in favor of petitioners a Certificate of Sale^[15] dated August 31, 2006, which was subsequently annotated on each of the CCTs on September 4, 2006.

In an Order dated August 18, 2006,^[16] the trial court denied respondents' motion for partial reconsideration of the July 10, 2006 Omnibus Order allowing discretionary execution.

On September 8, 2006, respondents filed a petition for *certiorari* with application for a temporary restraining order and/or writ of preliminary injunction^[17] before the Court of Appeals assailing the July 10, 2006 and August 18, 2006 Orders of the trial court which granted discretionary execution and denied respondents' motion for partial reconsideration, respectively. The case was docketed as CA-G.R. SP No. 96030.

Pending resolution of the aforementioned case, the Sheriff conducted another auction sale of respondents' personal properties on September 15, 2006 where petitioners were the highest bidders for the amount of Php1,257,500.00.^[18] On even date, the Court of Appeals issued a temporary restraining order^[19] holding in abeyance the effects of the August 31, 2006 sale and setting aside the September 15, 2006 auction sale.

On November 29, 2006, the Court of Appeals issued a resolution advising the

parties "to observe judicial courtesy and maintain the status quo so as not to render moot and academic the outcome of the case."^[20] However, no writ of preliminary injunction was issued by the appellate court. On December 18, 2006, the petition for *certiorari* with application for the issuance of a writ of preliminary injunction was deemed submitted for resolution/decision.^[21]

Petitioners subsequently filed three (3) motions for early resolution^[22] and two (2) motions^[23] to resolve respondents' application for injunction with the Court of Appeals, but to no avail.

Meanwhile, on September 17, 2007, petitioners filed with the trial court a "*Motion to Order Defendants (herein respondents) to Surrender the Owner's Duplicate Copies of the CCTs Issued in the name of defendant Beccomax for the Twelve (12) Condominium Units Sold on Execution.*"^[24] They alleged that more than one year has lapsed without respondents having redeemed the 12 condominium units which were sold in the August 31, 2006 auction sale, and that all the requisite taxes and charges have been paid to effect the registration of the final sale.

On October 22, 2007, the trial court granted petitioners' motion.^[25] Respondents moved for reconsideration but was denied in an order dated November 19, 2007. At the same time, the trial court directed the issuance of new titles in the name of Archinet.^[26] Accordingly, the Register of Deeds of Makati City cancelled the CCTs under the name of Beccomax and issued new ones in lieu thereof in the name of Archinet.

On November 26, 2007, respondents filed a motion for leave to file a supplemental petition^[27] with the Court of Appeals. In the supplemental petition,^[28] respondents prayed that the October 22, 2007 and November 19, 2007 Orders of the trial court be nullified for having been issued in grave abuse of discretion. They argued that the trial court has lost jurisdiction over the case; that the issuance of new titles is outside the coverage of the execution process; that judicial courtesy must be observed as the legality of the execution pending appeal is being questioned in CA-G.R. SP No. 96030; and that the period to redeem the subject properties has not lapsed. Moreover, respondents moved that petitioners and the trial court be cited in contempt for disregarding the November 29, 2006 *status quo* order.

On January 25, 2008, the Court of Appeals rendered the assailed decision admitting respondents' supplemental petition and finding that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction. Meanwhile, respondents' motion for contempt was denied.

The Court of Appeals found no good reasons to justify discretionary execution and that the existing preliminary attachment on 10 of respondents' condominium units sufficed as security for the satisfaction of a judgment in favor of Archinet, *viz*:

We disagree that the grounds relied upon by the RTC constitute "good reasons" for discretionary execution to issue.

"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. 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.

A review of the evidence on record convinces this Court that the case at bar does not demonstrate superior circumstances demanding urgency.

We agree with the petitioners [herein respondents] that the preliminary attachment on their 10 condominium units obviate the supposed compelling circumstance of petitioners' alleged financial uncertainty and even impending insolvency which may render ineffectual any judgment favorable to private respondents [herein petitioners].

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Consequently, the existence of a preliminary attachment, the validity and effectivity of which is not challenged in this case, provides private respondents the necessary security for the satisfaction of any favorable judgment. We, thus, find no urgency in immediate execution pending appeal in this case based on petitioner Becco's state of liquidation/dissolution and petitioner Beccomax's financial condition as a "material uncertainty."^[29]

The Court of Appeals also noted that on January 5, 2005, the Board of Directors of Becco issued a Resolution withdrawing its "*Application for Liquidation Proceedings and/or Notice of Cessation of Operations*."^[30]

Further, the Court of Appeals held that the orders allowing execution pending appeal were issued without jurisdiction and are therefore void. It ruled that the October 22, 1997 and November 19, 1997 Orders of the trial court are likewise void for being issued in furtherance of the orders allowing discretionary execution.^[31] Thus -

WHEREFORE, the petition for certiorari is GRANTED. The Orders dated July 10, 2006, August 18, 2006, October 22, 2007 and November 19, 2007, of the Regional Trial Court of Makati City are hereby declared NULL AND VOID for having been rendered in excess of jurisdiction. Accordingly, these Orders, the execution sales conducted pursuant thereto and the transfer of the subject condominium titles are hereby SET ASIDE. The Register of Deeds of Makati is, thus, ORDERED to:

- 1) CANCEL Condominium Certificate of Title Nos. 104939, 104940, 104941, 104942, 104943, 104944, 104945, 104946, 104947, 104948, 104949, and 104950 in the names of Archinet International, Inc. and Seokwhan Hahn; and,
- 2) REINSTATE Condominium Certificate of Title Nos. 74069, 74071, 74072, 74076, 74077, 74078, 74079, 74085, 74086, 74090, 74092, and 74093 in the name of Beccomax Property and Development Corporation.