

## FIRST DIVISION

[ G.R. NO. 164196, June 22, 2007 ]

**CONSTANTINO T. GUMARU, PETITIONER, VS. QUIRINO STATE COLLEGE, RESPONDENT.**

### D E C I S I O N

**PUNO, C.J.:**

Assailed in this petition for review is the Decision<sup>[1]</sup> dated November 25, 2003 of the Court of Appeals in CA-G.R. SP No. 72603, which reversed and set aside the Order dated June 26, 2002 of the Regional Trial Court (RTC) of Quezon City, Branch 88, denying the motion to quash the writ of execution issued in Civil Case No. Q-97-32470, as well as its Resolution dated June 17, 2004, which denied petitioner's motion for reconsideration.

The facts are as follows:

On June 25, 1985, C.T. Gumaru Construction and Quirino State College, an educational institution organized and existing under *Batas Pambansa (B.P.) Blg. 440*,<sup>[2]</sup> through its president, Julian A. Alvarez, entered into an Agreement<sup>[3]</sup> for the construction of the state college's building in Diffun, Quirino Province. Construction was done in stages and was covered by supplemental agreements, because funding depended on the state college's annual budget allocation and fund releases from the government.

On October 17, 1997, Constantino T. Gumaru, owner and proprietor of C.T. Gumaru Construction, filed a complaint for damages<sup>[4]</sup> before the RTC of Quezon City against the state college and Julian A. Alvarez, asking for (1) P368,493.35, the expected profits which he would have realized from the construction of an unfinished portion of the project which was allegedly awarded by the defendants to another contractor in violation of his preferential right to finish the project; (2) P592,136.51, the escalation costs of construction materials and supplies; (3) P50,000.00, the value of plaintiff's bodega allegedly demolished by the defendants; and (4), P200,000.00 for moral and exemplary damages, attorney's fees and costs of litigation.<sup>[5]</sup>

On May 8, 1998, Atty. Carlos T. Aggabao, purportedly acting as counsel for the defendants, moved to dismiss the complaint on the ground of improper venue. The motion was denied. Defendants were directed to file an answer. When they failed to answer within the prescribed period, they were declared in default and plaintiff was allowed to present evidence *ex parte*.

On February 22, 2001, the trial court decided the case in favor of the plaintiff, viz:

WHEREFORE, x x x judgment is rendered in favor of the plaintiff Gumaru and against the defendants College and Alvarez directing the latter to JOINTLY and SEVERALLY pay the former as follows:

1. The sum P368,493.35 for the First Cause of action;
2. The amount of P592,136.51 for the Second Cause of action;
3. The amount of P50,000.00 for the Third Cause of action;
4. P100,000.00 for moral damages and P100,000 for attorney's fees, plus costs.
5. The first three awards are with legal interests reckoned from the filing of this case until the amounts are paid in full.<sup>[6]</sup>

Defendants failed to appeal from the decision, a copy of which was duly served on Atty. Aggabao on March 6, 2001.<sup>[7]</sup> The decision became final and executory, and plaintiff moved for the issuance of a writ of execution. On December 5, 2001, a Writ of Execution<sup>[8]</sup> was issued, directing the *Ex-Officio* Provincial Sheriff of Quirino Province to seize the personal properties or, if insufficient, the real properties of the defendants to satisfy the judgment awards. The awards amounted to P1,739,725.30, inclusive of interests and sheriff's fees.

On January 11, 2002, the Office of the Solicitor General (OSG) entered its appearance for the first time as counsel for the defendants. At the same time, it filed a "Motion to Quash Writ of Execution" on the following grounds: (a) defendants were not duly represented in court, since the OSG was not notified of the proceedings; and (b) writs of execution may not be issued against government funds and properties to satisfy court judgments.

Meanwhile, a Sheriff's Notice of Levy and Auction Sale<sup>[9]</sup> was issued against two (2) parcels of land in the name of Quirino State College,<sup>[10]</sup> viz:

WHEREAS, by virtue of a Writ of Execution issued by the Hon. Abednego O. Adre, Presiding Judge of the Regional Trial Court, x x x Branch 38, Quezon City x x x the undersigned provincial Sheriff of Quirino in order to satisfy the amount of ONE MILLION SEVEN HUNDRED THIRTY NINE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 30/100 PESOS (P1,739,725.30) with interest thereon from the date of execution until fully paid aside from other incidental expenses incurred in connection with enforcement of this Writ of Execution is HEREBY LEVIED upon all rights, interest and participation of the defendant over the property described below, to wit:

LAND

A parcel of land under ARP. No. 00411-15003 in the name of Quirino State College, Diffun, Quirino of which land is situated at Bonifacio, Diffun, Quirino, Philippines, containing an area of THIRTY THOUSAND (30,000) SQM. more or less.

LAND

A portion of land under ARP. No. 00415-16002 in the name of Quirino

State College, Diffun, Quirino of which land situated at Bonifacio, Diffun, Quirino, Philippines, containing an area of 11.13110161 HA. more or less.

In an "Urgent Motion" dated March 13, 2002,<sup>[11]</sup> the OSG reiterated its plea for the quashal of the writ of execution and asked the court to take judicial notice of Supreme Court Administrative Circular No. 10-2000,<sup>[12]</sup> as well as Commission on Audit (COA) Resolution No. 2000-366<sup>[13]</sup> dated December 19, 2000, which finally adjudged plaintiff liable to the state college for P4,681,670.00 in overpayments, and liquidated damages for delay in the construction of the college building.

The trial court denied the motion to quash the writ of execution.<sup>[14]</sup> Without ruling on the issue of the defendants' alleged lack of legal representation, the court ruled that the properties of the state college may be seized under the writ of execution, since it is an incorporated agency of the government given specific powers to sue and be sued. A separate appropriation to satisfy the judgment awards was not considered necessary, because the state college's charter provides that funds for the construction and repair of its buildings, machinery, equipment, and facilities shall be taken from its annual appropriation.

The OSG filed a petition for *certiorari* before the Court of Appeals. On November 25, 2003, the Court of Appeals granted the petition.<sup>[15]</sup> In quashing the writ of execution, the Court of Appeals ruled that although the funds and properties of government agencies with personalities separate and distinct from the government are not exempt from execution or garnishment, the rule does not apply where the incorporated government agency concerned is performing a vital governmental function, like herein state college. In such cases, the money claim should be filed first with the COA as provided in Presidential Decree No. 1445, otherwise known as the **Government Auditing Code of the Philippines**.

Gumaru's motion for reconsideration was denied. Hence, this petition raising the following issues:

- I. Whether or not, upon the facts and circumstances obtaining herein, the consent given by the State to respondent to sue and be sued is plenary and not limited only to proceedings anterior to the stage of execution;
- II. Whether or not the money claim subject of the case below is required to be filed first with the Commission on Audit (COA);
- III. Whether or not the enforcement of the money judgment here involved is subject to rules and procedures under Sections 49-50 of Presidential Decree No. 1445;
- IV. Whether or not, being an incorporated agency of the Government, respondent's liability is controlled by the rulings on incorporated or chartered government agencies;
- V. Whether or not further appropriation is required for the enforcement of the money judgment against respondent herein;

and

VI. Whether or not respondent's representation below by counsel of its own choice instead of by the OSG was proper.

Stated differently, the proper issues to be resolved are: (a) whether respondent state college was properly represented before the trial court; (b) if in the negative, whether the lack of proper legal representation was enough to nullify the proceedings; and (c) whether the properties of respondent state college may be seized under the writ of execution issued by the trial court.

On the issue of legal representation, Section 35, Chapter 12, Title III, Book IV of Executive Order No. 292, otherwise known as the **Administrative Code of 1987**, provides:

The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. x x x x

Under the foregoing, the OSG is mandated to act as the law office of the government, its agencies, instrumentalities, officials and agents in any litigation or proceeding requiring the services of a lawyer.<sup>[16]</sup> With respect to government-owned or controlled corporations (GOCCs), the OSG shall act as counsel only when authorized by the President or by the head of the office concerned. The principal law office of GOCCs, as provided in Section 10, Chapter 3, Title III, Book IV, of the **Administrative Code of 1987**,<sup>[17]</sup> is the Office of the Government Corporate Counsel (OGCC).

In the case at bar, respondent state college is classified under the **Code** as a chartered institution,<sup>[18]</sup> viz:

(12) *Chartered institution* refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. **This term includes the state universities and colleges and the monetary authority of the State.** (*emphasis ours*)

as opposed to a GOCC defined in the following segment,<sup>[19]</sup> viz:

(13) *A government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise