

## THIRD DIVISION

[ G.R. No. 145260, July 31, 2003 ]

**CITY OF ILIGAN, REPRESENTED BY HON. FRANKLIN M. QUIJANO  
IN HIS CAPACITY AS CITY MAYOR, PETITIONER, VS. PRINCIPAL  
MANAGEMENT GROUP, INC. (PMGI), REPRESENTED BY ITS  
PRESIDENT & CHIEF EXECUTIVE OFFICER, FERNANDO M. SOPOT,  
RESPONDENT.**

### D E C I S I O N

**PANGANIBAN, J.:**

The ascertainment of good reasons for execution pending appeal lies within the sound discretion of the trial court. Normally, its finding will not be disturbed by a reviewing court, in the absence of grave abuse of discretion.

#### The Case

Before this Court is a Petition<sup>[1]</sup> for Review under Rule 45 of the Rules of Court, assailing the May 4, 2000 Decision<sup>[2]</sup> and the July 14, 2000 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CV No. 56952. The decretal portion of the Decision reads as follows:

**"WHEREFORE, the Petition for Certiorari is hereby DISMISSED."**<sup>[4]</sup>

The assailed Resolution denied petitioner's Motion for Reconsideration.

#### The Facts

The facts of the case are summarized by the CA in this wise:

"On October 19, 1998, Mayor Franklin M. Quijano, acting for and in behalf of [petitioner] City of Iligan, requested from the Sangguniang Panlungsod for: (a) Resolution authorizing him to open a domestic Standby Letter of Credit (SLC) in the amount of P14,000,000.00 in favor of the Land Bank Realty Development Corporation and/or PNCC with the Principal Management Group, Inc. (herein private respondent) as the funder/financial managers in connection with the development of a project on a 'turn-key' basis; and (b) Resolution authorizing him to open a high yielding depository account with the Land Bank of the Philippines in the amount of P14,000,000.00 as a hold-out collateral for the domestic SLC.

"The City Council approved Mayor Quijano's requests and passed Resolutions Nos. 1050 and 1051 series of 1998 on October 20, 1998.

"On December 29, 1998, a Memorandum of Agreement (MOA) on a

'turn-key' arrangement was drawn by Mayor Quijano, representing the City of Iligan, with Land Bank Realty Development Corporation (LBRDC) as General Contractor and Principal Management Group, Inc. (PMGI) as Developer - Financing Manager. The project to be undertaken was the construction of a Sports Complex which upon completion shall be turned over to Iligan City for acceptance and the issuance of Certificate of Acceptance and Authority to Pay to enable Land Bank Realty-PMGI to call on the SLC.

"The project started on November 26, 1998 despite the fact that some drawings had not yet been completed, since the MOA provides for a construction period of one hundred twenty days from the date of the signing.

"The construction site of the Sports Complex was donated by San Miguel (Iligan) Enterprises, Inc. wherein the City of Iligan as donee was bound to provide for all expenses for the transfer of the occupants therein.

"On or about January 1999, the work on the project stopped due to the refusal of some of the occupants to vacate the premises claiming that they have not been paid x x x their disturbance compensation. By then, PMGI had already accomplished 78.27% of the contracted project equivalent to P10,957,800.00 of the total project cost of P14,000,000.00.

"On February 24, 1999, PMGI requested from the City of Iligan for a deductive change order to enable it to collect the above-stated amount based on the 78.27% accomplishment of the project. The City of Iligan, however, claimed that PMGI's accomplishment was only 52.89% or equivalent only to P6,958,861.59 based on the Accomplishment Report as of February 9, 1999.

"The City of Iligan refused to pay for the reason that the mutually agreed price of P14 Million shall only be paid after the completion of the project and acceptance by it and since the project is not yet complete, no payment can be paid.

"The problem on the payment of the affected occupant, which was the cause of the work stoppage, was accordingly brought to the attention of the Sangguniang Panlungsod which favorably acted on it through Resolution No. 99-765 dated June 8, 1999 authorizing the payment of the affected occupants in the project site.

"On November 8, 1999, PMGI filed a complaint against the City of Iligan for rescission of the MOA and damages. After the filing of City of Iligan's Answer, a Motion for Partial Summary Judgment was filed by PMGI which claimed that there was no genuine issue as to the fact of the obligation of the City of Iligan since it admitted the accomplishment of 52.89% or equivalent to P6,958,861.59 of PMGI and that the City of Iligan had not specifically denied under oath the genuineness of the Letter of Credit and Memorandum of Agreement.

"An Opposition to the Motion for Partial Summary Judgment was filed by

the City of Iligan on December 7, 1999 which stated that: it never admitted that PMGI made any accomplishment at all but merely stated that with respect to the work accomplishment, it was only 52.89% based on the report of Engr. Maata's team; the MOA or the contract for the construction of the sports complex is between the City of Iligan, as owner, and the Land Bank Realty Development Corporation as General Contractor, PMGI only entered into the picture to support LBRDC in accordance with their own separate agreement; the grounds of lack of cause of action and jurisdiction raised in the Answer should be set for hearing; LBRDC as an indispensable party should be impleaded; and the court does not have jurisdiction over the case in view of Sec. 4 of Executive Order No. 1008 which vests exclusive jurisdiction over construction disputes to Construction Industry Arbitration Commission (CIAC).

"In private respondent's Rejoinder to Opposition, it was alleged that PMGI and LBRDC are solidary creditors, hence, there was no need to implead the latter since the suit redounds to the benefit of LBRDC, there was no disagreement or dispute as to the accomplishment of 52.89% or equivalent to P6,958,861.59, hence, there was no need to resort to arbitration; and the 'turn-key' provision in the MOA is not applicable since the 120-day construction period lapsed due to the failure of the City of Iligan to perform its obligation.

"In the Order dated December 20, 1999, the trial court granted the Motion for Partial Summary Judgment and rendered the following judgment/order:

‘WHEREFORE, foregoing premises considered, [respondent's] motion is GRANTED.

‘Partial summary judgment is hereby issued in favor of [respondent] in the amount of Six Million Nine Hundred Fifty-eight Thousand Eight Hundred Sixty one & 59/100 (P6,958,861.59) Pesos Only.

‘The Manager of the LAND BANK OF THE PHILIPPINES (Iligan City Branch), or his authorized representative, or any competent officer of said bank is hereby ORDERED to pay the amount of P6,958,861.59 out of LC NO. 98003/D to Mr. Fernando M. Sopot, President and CEO of [respondent].

‘In the event said LC NO. 98003/D is insufficient or has expired, the Manager and/or any competent officer of said LAND BANK OF THE PHILIPPINES (Iligan City Branch) is hereby ORDERED to pay to said Mr. Fernando M. Sopot the amount of P6,958,861.59 out of any accounts or moneys of [petitioner].

‘SO ORDERED.’

"The Motion for Reconsideration filed by the City of Iligan to the December 20, 1999 Order was denied in the Resolution dated January 17, 2000.

"A Notice of Appeal was filed by the City of Iligan on January 26, 2000.

"A Motion for Execution Pending Appeal x x x filed on January 18, 2000 by PMGI which alleged that when the appeal is clearly dilatory, order for execution upon good reasons may be issued with the discretion of the court, was granted on January 24, 2000 over the opposition of the City of Iligan, to justify the same, the dispositive portion of which was earlier quoted. The trial court further stated that:

'The Court is convinced that there are good reasons to allow the immediate execution pending appeal. Its adjudication is based on [petitioner's] own admission hence, any appeal would be unmeritorious and would only serve to delay execution of the final order subject of the instant motion. The fact that an appeal in this case if taken by [petitioner] will be a merely dilatory tactic has been declared by the Supreme Court as a 'good and sufficient reason upon which to issue execution' of the order under Section 2, Rule 39 of the Revised Rules of Court.'

"A Demand Letter and Notice of Garnishment, both dated January 26, 2000, were served on even date by Sheriff Montoy B. Lomondot to herein petitioner."<sup>[5]</sup> (Citations omitted)

### **Ruling of the Court of Appeals**

The CA held that "the trial court did not commit grave abuse of discretion in granting the execution pending appeal since the appeal filed by petitioner was a dilatory tactic and is not allowed in the first place."<sup>[6]</sup> Ruling that the trial court could grant executions pending appeal, provided that a good reason therefor was stated in a special order, the appellate court upheld "dilatory tactic" as one such good reason.

The appellate court also ruled that certiorari would not be allowed in this case, because there were other remedies still available to petitioner, like the filing of a supersedeas bond to stay the execution or the filing of a motion for reconsideration.

Hence, this Petition.<sup>[7]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

"A

Whether or not the Honorable Court of Appeals erred in affirming the Order of the trial court granting a Writ of Execution Pending Appeal to