

## SECOND DIVISION

**[ G.R. No. 149754, September 17, 2002 ]**

**MORTIMER F. CORDERO, PETITIONER, VS. ALAN G. GO, FELIPE LANDICHO, AND VINCENT TECSON, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals setting aside an order of execution pending appeal issued by the Regional Trial Court, Branch 85, Quezon City.

The facts are as follows:

On May 31, 2000, the Regional Trial Court, Branch 85, Quezon City, rendered judgment by default in Civil Case No. Q-98-35332, entitled "Mortimer F. Cordero v. Alan C. Go,<sup>[2]</sup> doing business under the name and style of ACG Express Liner, Tony Robinson, Felipe Landicho, and Vincent Tecson" (for breach of contract with damages), ordering the defendants, herein respondents Alan Go, Felipe Landicho, and Vincent Tecson, together with Tony Robinson, jointly and solidarily to pay to petitioner Mortimer F. Cordero damages in the total amount of P19,291,352.043.

Petitioner received a copy of the decision on June 19, 2000, while respondents received their copy on June 29, 2000. Prior to his receipt of the decision, petitioner had filed on June 14, 2000 a motion for execution pending appeal of the judgment. This was opposed by respondents, who moved for a new trial on the ground that their failure to attend the pre-trial conference of the case, on the basis of which they were declared in default, was due to the negligence of their counsel.

In its order of July 28, 2000, the trial court granted petitioner's motion for execution pending appeal and denied respondents' motion for new trial. In its order, the trial court stated:

Plaintiff's motion for execution pending appeal is well taken there being written proof/admission before this Court by the counsel for defendants that there is an impending bankruptcy proceeding [against defendant Tony Robinson] hence possibly rendering nugatory whatever judgment that has been rendered in this case (Astrakillo vs. Javier, No. L-20034, 30 January 1965, 13 SCRA 125).

. . . .

Moreover, the dire need for financial resources arising out of a plainly valid, just, and binding obligation, justifies execution pending appeal (Ma-ao Sugar central Co., Inc. vs. Canete, 19 SCRA 646). Lastly, it appears from the evidence presented during the hearing that defendants

are seeking to evade judgment in this case by disposing of or encumbering their properties to defeat execution.<sup>[3]</sup>

Respondents received a copy of this order on July 31, 2000. On August 1, 2000, they moved for a reconsideration but their motion was denied by the trial court on August 18, 2000. On August 21, 2000, the trial court ordered the issuance of the writ of execution, to implement which the sheriffs garnished the bank accounts of respondents and levied six parcels of land belonging to respondent Go. On November 8, 2000, the sheriffs issued a notice of sale of the levied real properties on December 14, 2000. But execution was stayed on September 29, 2000 in view of a temporary restraining order (TRO) issued by the Court of Appeals at the instance of respondents (CA G.R. SP No. 60354). On August 8, 2000, respondents also filed a notice of appeal of the trial court's decision of May 31, 2000. Initially, in its order of August 21, 2000, the trial court denied due course to the appeal for failure of respondents to pay the appellate docket fees on time. But, on November 29, 2000, it reconsidered its order and gave due course to respondents' appeal (CA G.R. CV No. 69113).

Petitioner filed two motions, one entitled "Ex-Parte Motion for Break Open Order" and another one entitled "Ex-Parte Motion for Encashment of Check," to implement the writ of execution earlier issued by the trial court. However, in view of the TRO issued by the Court of Appeals, which it received on October 4, 2000, the trial court, on November 27, 2000, denied the aforesaid motions of petitioner, set aside its earlier order for the release of garnished funds, and canceled the sheriff's notice of sale of November 8, 2000.

Petitioner sought a reconsideration of the order of November 29, 2000 giving due course to respondents' appeal and, after the expiration of the 60-day TRO, again moved for the issuance of a "break open" order and the encashment of checks. In addition, he filed two other motions entitled "Ex-Parte Motion to Proceed" and "Ex-Parte Motion to Appoint Cebu City Sheriff Jessie A. Belarmino as Special Sheriff." Respondents opposed the motion for the appointment of a special sheriff.

In an order dated December 18, 2000, the trial court denied petitioner's motion for reconsideration of the order giving due course to respondents' appeal. As to petitioner's motions for the implementation of the order of execution and respondents' opposition to the motion for the appointment of a special sheriff, it directed the parties to reiterate the same before the Court of Appeals in CA G.R. No. 69113 on the ground that the trial court had lost jurisdiction over the case by reason of the perfection of respondents' appeal.

On January 29, 2001, the Court of Appeals rendered judgment in CA G.R. SP. 60354, granting respondents' petition for certiorari and setting aside the trial court's orders of execution pending appeal. The appeals court subsequently denied petitioner's motion for reconsideration in its resolution of August 31, 2001. The Court of Appeals held in its decision:

True, at the time that the Motion for Execution Pending Appeal was filed, the court *a quo* had the jurisdiction to exercise its good discretion to direct discretionary execution. However, at the time it recalled its earlier Order dated August, 21, 2000 (denying due recourse to the appeal), and gave due course to the appeal, the TRO issued by the former Fifth Division of this Court was still in force and effect, the same to expire on

04 December 2000 [per] the Resolution dated 29 September 2000 declaring the TRO in full force and effect. Such recall gives due course to the appeal retroactive to the time of the actual filing of the Notice of Appeal on 08 August 2000.

However, what militates against the discretionary execution long prayed for by private respondent is the fact that the court *a quo* has no more discretion to order the same as it was already relinquished of jurisdiction over Civil Case Q-98-35332. Under paragraph 3, Section 9, Rule 41 of the [1997] Rules [of Civil Procedure] "(i)n appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time of appeal of the other parties." As to private respondent, [the] time to appeal expired on 05 July 2000, or on the sixteenth day after he was served a copy of the Decision of 31 May 2000 on 19 June 2000, he not having filed a motion for new trial or reconsideration which tolls the reglementary period to appeal. Discretionary execution was temporarily but effectively enjoined by the TRO issued by the former Fifth Division of this Court which expired on 04 December 2000. However, before the expiration of the TRO, the Court *a quo* issued the Omnibus Order dated 27 November 2000, canceling the Sheriff's Notice of Sale, the same being null and void, which consequently cancelled the public auction sale to be held on 14 December 2000. From such order, we could infer that on the motion for discretionary execution, action is deferred, if it is not altogether denied. This observation may be confirmed from the fact that on 29 November 2000, it issued an Order giving due course to petitioner's Notice of Appeal, and directing the Branch Clerk of Court to forward the entire records of Civil case No. Q-98-35332 to this Court for proper action and disposition, without reserving its right to act upon the Motion for Execution Pending Appeal because technically, prior to transmittal of the original record, it may order execution pending appeal in accordance with Section 2, Rule 39 (*Ultimate paragraph, Section 9, Rule 41*).

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It may be observed that the Order dated 28 July 2000 granting execution pending appeal as well as the Writ of Execution Pending Appeal issued on 21 August 2000 remained outstanding, for which an inquiry as to whether the same w[as] issued with grave abuse of discretion amounting to lack or excess of jurisdiction would have been ripe. However, the original records of Civil Case No. Q-98-35332 ha[ve] already been received by this Court on 19 December 2000, and the appeal docketed as CA-G.R. CV. No. 69113. Thus, granting that Sheriff Belarmino had the authority to issue the Sheriff's Notice of Sale of Real Properties, its implementation has been rendered moot by the loss of jurisdiction of the court which appointed him, coupled by the transmittal of the original records of Civil Case No. Q-98-35332. Whether execution pending appeal is warranted by the circumstances of the case is a matter for the better consideration of this Court, not in this petition but in the appeal of the case.[4]

Petitioner, therefore, brought this appeal. He alleges<sup>3/4</sup>