

## THIRD DIVISION

[ G.R. No. 135128, August 26, 1999 ]

**BONIFACIO SANZ MACEDA, JR. AND TERESITA MACEDA-DOCENA, PETITIONERS, VS. DEVELOPMENT BANK OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

Movants have the burden of showing why the trial court decision should be executed without awaiting the result of the appeal. Absent such justification, its execution pending appeal cannot be granted.

#### **The Case**

Before this Court is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court seeking the reversal of the August 14, 1998 Decision<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR SP No. 47405, the dispositive portion of which reads:

"WHEREFORE, based on the foregoing, the instant Petition is hereby GRANTED. The challenged ORDER of respondent Court, dated October 2, 1997, is hereby ANNULLED and SET ASIDE insofar as it orders partial execution pending appeal. No pronouncement as to costs."

The Order<sup>[4]</sup> annulled by the CA was a modification by the trial court<sup>[5]</sup> of the latter's Decision<sup>[6]</sup> dated February 25, 1997 in Civil Case No. 8737, *Bonifacio Sanz Maceda Jr. and Teresita Maceda-Docena v. Development Bank of the Philippines and Oscar de Vera*.

#### **The Facts**

The facts of the case as summarized by the Court of Appeals are as follows:

"The case commenced on October 15, 1984, with the filing by [petitioners]<sup>[7]</sup> of a Complaint for Specific Performance with Damages against [private respondent]<sup>[8]</sup> and one of its managers, Oscar De Vera. In their Complaint, [petitioners] alleged that they were the owners of the old Gran Hotel in Tacloban City; that pursuant to their plan to build a new Gran Hotel, they applied for an Eleven Million Pesos (P11,000,000.00) loan with [private respondent], submitting to the latter a project study of the new hotel, the Philippine Tourism Authority's approval of the project, as well as the plans and specifications of the new Gran Hotel; that on July 28, 1976, petitioner approved a loan of Seven Million Three Hundred Thousand Pesos (P7,300,000.00) after setting the cost of the project at Ten Million Five Hundred Thousand Pesos (P10,500,000.00); that [private

respondent] required them to produce Two Million Nine Hundred Thirty Thousand Pesos (P2,930,000.00) by way of equity, to constitute a first mortgage on several parcels of land as well as on assets they would acquire out of the proceeds of said loan, to sign a Promissory Note in the amount of Seven Million Three Hundred Thousand Pesos (P7,300,000.00); that the contract for the new Gran Hotel was awarded to Moreman Builders Co., which demolished the old Gran Hotel and proceeded to build the new Gran Hotel; that payment to said contractor was to be taken from the approved Seven Million Three Hundred Thousand Pesos (P7,300,000.00) loan, on a progressive manner, based on actual construction or work accomplishment; that they were required to advance, as they did advance, to the contractor their required equity; that as of June 24, 1977, they have advanced to the contractor the sum of One Million Two Hundred Sixty Two Thousand Nine Hundred Ninety Eight Pesos and Thirty Eight Centavos (P1,262,988.38); that [private respondent] had also released a total of One Million Nine Hundred Eleven Thousand Three Hundred Sixty Pesos (P1,911,360.00), out of their loan, to the contractor; that [private respondent], through its officer in charge of the project, defendant Oscar De Vera, conspired with the contractor to enable the latter to secure undue fund releases from their loan; that this was done by the bloating of the value and percentage of construction work; that the contractor was able to acquire sixty percent (60%) of the cost of the projected hotel even as its actual accomplishment was only fifteen percent (15%); that [petitioners] were compelled to file a Complaint for Rescission of Contract and Damages against the contractor; that they also filed a complaint for Estafa against the contractor and defendant Oscar De Vera; that [private respondent] and Oscar De Vera spread negative information about them, thus influencing their suppliers to sue and repossess the items they had supplied; that [private respondent] engaged in a series of dilatory effects in the release of their loan funds until the period of their loan availment lapsed; that [private respondent] has threatened to foreclose on the mortgages they had executed for their loan; and that [private respondent's] acts prevented them from completing the new Gran Hotel and from realizing profits therefrom. [Petitioners] thus prayed (1) that [private respondent] be ordered to release the balance of their approved loan, (2) that the interests and other charges imposed on the loan be nullified, (3) that [private respondent] be made to pay them (a) unrealized earnings and/or loss of income, (b) actual damages representing additional costs or price increase in construction labor and materials, (c) moral damages, (d) exemplary damages, (e) attorney's fees, litigation expenses and costs of suit.

"In their Answer to the Complaint, [private respondent] and Oscar De Vera averred that releases on the loan of [petitioners] to the contractor were made through [Petitioner] Bonifacio Maceda, Jr., that on account of the civil case filed by [petitioners] against the contractor, [private respondent] was enjoined from making any further releases on [petitioners'] loan; that while the trial court decided in favor of [petitioners], still [private respondent] could not make any releases on their loan considering the appeal filed by the contractor; that while said case was pending, at least two suppliers filed cases against [petitioners]

for non-payment of salaries/wages and costs of suppliers; that said pending case also caused the construction of the hotel project to stop and the period of the loan availment to lapse; that during the negotiation for revival of the loan, [private respondent] requested [petitioners] to submit new cost estimates and quotations inasmuch as the original cost estimates prepared in 1976 were no longer sufficient to complete the project because of the intervening price increases in labor and materials; that [petitioners] insisted that the project be completed on the original cost estimates, with the project reduced to fifty (50) instead of the original planned seventy five (75) rooms; that during several conferences held between them, [private respondent] informed [petitioners] of the terms and conditions for the resumption of their loan; that on July 18, 1979, it authorized further releases on [petitioners'] loan; that said releases amounted to a total of Five Million Three Hundred Forty Seven Thousand Five Hundred Ten Pesos and Ninety Centavos (P5,347,510.90); that no further releases were thereafter made in view of [petitioners'] failure to comply with the equity build up requirement; that [petitioners] applied for an additional loan of Three Million Four Hundred Thousand Pesos (P3,400,000.00); that on July 29, 1982, [private respondent] informed [petitioners] that it had decided to reduce the approved loan amount to Five Million Three Hundred Forty Seven Thousand Five Hundred Ten Pesos and Ninety Centavos (P5,347,510.90), which was the amount of the total releases made on their original loan amount; that notwithstanding said reduction of amount of the loan, [petitioners] failed to make payments according to schedule; and that having agreed to all the terms of their transactions, [petitioners] are estopped from questioning the conditions of the loan as well as the releases thereof. After praying for dismissal of the Complaint, [private respondent] and defendant Oscar De Vera counterclaimed for P200,000.00 by way of attorney's fees and litigation expenses, P500,000.00 in moral damages and costs of suit.

"On February 25, 1997, [the trial] [c]ourt rendered a Decision in favor of [petitioners], disposing of the case as follows -

` WHEREFORE, in view of all the foregoing premises, the Court renders judgment, to wit:

1. The preliminary injunction issued on December 12, 1984 is hereby made permanent;

2. Defendant Development Bank of the Philippines is ordered, to wit:

a) To immediately release in favor of plaintiff Bonifacio Maceda, Jr. the unreleased loan balance of P1,952,489.10. In addition, as to the portion thereof amounting to P1.003M, DBP is further directed to pay interest thereon at the rate of 12% per annum beginning and counted from January 1978;

b) To immediately return to plaintiff Bonifacio Maceda, Jr. the sum of P797,988.95 representing the interest/other charges

for the period October 31, 1979 to April 1, 1980;

c) To pay plaintiff Bonifacio Maceda, Jr. the sum of Five Hundred Thousand Pesos as moral damages;

d) To pay plaintiff Bonifacio Maceda, Jr. the sum of One Hundred Thousand Pesos as exemplary damages;

e) To pay plaintiff Bonifacio Maceda, Jr. the sum of P17,547,510.90 representing the additional cost to complete and finish the New Gran Hotel;

f) To pay plaintiff Bonifacio Maceda, Jr. the sum of P100,000.00 as attorney's fees and litigation expense.

The counterclaims of defendants are hereby ordered dismissed.

SO ORDERED.'

"[Private Respondent] filed a Notice of Appeal, while [petitioners] filed a Motion for Reconsideration, seeking to increase the amount awarded to them by [the trial] [c]ourt. They also filed a Motion for Execution Pending Appeal. [Private respondent] filed its corresponding Opposition to the two Motions.

"On October 2, 1997, [the trial] court issued its first questioned Order, (1) modifying its Decision by increasing the amounts awarded to [Petitioner] Bonifacio Maceda, Jr. and (2) granting the Motion for Execution Pending Appeal of two awards in its Decision; namely, (a) the release of the loan balance of P1,952,489.10 as well as payment of 12% interest p.a. on the amount of P1.003M, from January, 1978; and (b) the payment of P17,547,510.90 representing the additional cost to finish the hotel together with 6% interest thereon p.a. from 1987.

"On November 5, 1997, [private respondent] filed its Notice of Appeal from the February 25, 1997 Decision, as amended by the October 2, 1997 Order of [the trial] [c]ourt. On the same date, it also filed a Motion for Reconsideration of the October 2, 1997 Order insofar as it grants execution pending appeal. Thereafter, or on March 26, 1998, it filed a Supplemental Motion for the approval of a supersedeas bond in the amount of P35M and to stay the execution pending appeal in the event that its Motion for Reconsideration be denied.

"On April 3, 1998, [the trial] [c]ourt denied its Motion for Reconsideration and Supplemental Motion."

The Development Bank of the Philippines (DBP) appealed the trial court Decision to the CA. Thereafter, it also filed with the appellate court a Petition for *Certiorari* challenging the lower court's October 2, 1997 Order granting execution of the said Decision pending appeal.

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

Ruling in favor of respondent bank, the CA concluded that there existed no sufficient ground or compelling reason to allow the execution of the judgment pending appeal. It held:

"There is nothing in the circumstances surrounding the case at bench which is of an urgent nature. As may be gleaned from the records and as admitted by private respondents, themselves, the project has reached 85% completion. With private respondents' undenied 'seven-figure assets and capability to put in the required equity participation', We see no urgent financial need on the part of private respondent. Then, too, with the financial standing of private respondents and their assets, including the hotel itself which they claim to have an appraised value of P16,632,129.40, private respondents can very well obtain loans for the project from other financial entities. On the other hand, considering that the amounts subject of the execution pending appeal form only a small percentage of the amount it would take to complete the project, We see no compelling reason to prematurely order its release since it would have no substantial effect anyway on the project. Moreover, measured against the injury or damage which such execution would pose on petitioner should it secure a reversal of the judgment, the reasons relied upon by respondent Court markedly pales in comparison. After all where execution made pending appeal is overturned, complete restitution is required.

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All things considered, respondent Court should have approved the Thirty Five Million (P35,000,000.00) supersedeas bond posted by petitioner. Said amount can adequately assure performance of whatever judgment may be awarded in favor of private respondents. Neither is there any danger that the awards in favor of private respondents will not be answered or that justice will be frustrated as petitioner is a government owned and controlled financial institution with an authorized capital stock of Five Billion Pesos (P5,000,000,000.00). With the stable and sound condition of petitioner, immediate execution is not justified as there is no danger of the judgment becoming illusory."<sup>[9]</sup>

Hence, this Petition.<sup>[10]</sup>

### **Issue**

The solitary issue in this case is whether or not the Court of Appeals erred when it reversed the October 2, 1997 Order of the trial court granting execution of the latter's Decision pending appeal. More simply stated, are there good reasons to justify execution of the trial court judgment pending appeal?

### **This Court's Ruling**

The Petition is not meritorious.