

## SECOND DIVISION

[ G.R. No. 125008, June 19, 1997 ]

**COMMODITIES STORAGE & ICE PLANT CORPORATION, SPOUSES  
VICTOR & JOHANNAH TRINIDAD, PETITIONERS, VS. COURT OF  
APPEALS, JUSTICE PEDRO A. RAMIREZ, CHAIRMAN AND FAR  
EAST BANK & TRUST COMPANY, RESPONDENTS.**

### DECISION

**PUNO, J.:**

In this petition for *certiorari*, petitioner seeks to annul and set aside the decision and resolution of the Court of Appeals<sup>[1]</sup> in CA-G.R. SP No. 36032 dismissing the complaint in Civil Case No. 94-72076 before the Regional Trial Court, Branch 9, Manila.

The facts show that in 1990, petitioner spouses Victor and Johannah Trinidad obtained a loan of P31,000,000.00 from respondent Far East Bank & Trust Company to finance the purchase of the Sta. Maria Ice Plant & Cold Storage in Sta. Maria, Bulacan. The loan was secured by a mortgage over the ice plant and the land on which the ice plant stands. Petitioner spouses failed to pay their loan. The bank extrajudicially foreclosed the mortgage and the ice plant was sold by public bidding on March 22, 1993. Respondent bank was the highest bidder. It registered the certificate of sale on September 22, 1993 and later took possession of the property.

On November 22, 1993, petitioner spouses filed Civil Case No. 956-M-93 against respondent bank before the Regional Trial Court, Malolos, Bulacan for reformation of the loan agreement, annulment of the foreclosure sale and damages.<sup>[2]</sup> The trial court dismissed the complaint for petitioners' failure to pay the docket fees. The dismissal was without prejudice to refiling of the complaint.<sup>[3]</sup>

On October 28, 1994, petitioners filed Civil Case No. 94-72076 against respondent bank before the Regional Trial Court, Branch 9, Manila for damages, accounting and fixing of redemption period.<sup>[4]</sup> As a provisional remedy, petitioners filed on November 16, 1994 an "Urgent Petition for Receivership." They alleged that respondent bank took possession of the ice plant forcibly and without notice to them; that their occupation resulted in the destruction of petitioners' financial and accounting records making it impossible for them to pay their employees and creditors; the bank has failed to take care of the ice plant with due diligence such that the plant has started emitting ammonia and other toxic refrigerant chemicals into the atmosphere and was posing a hazard to the health of the people in the community; the spouses' attention had been called by several people in the barangay who threatened to inform the Department of Environment and Natural Resources should they fail to take action. Petitioners thus prayed for the appointment of a receiver to save the ice plant, conduct its affairs and safeguard its

records during the pendency of the case.<sup>[5]</sup>

Instead of an answer, respondent bank filed on November 25, 1994 a "Motion to Dismiss and Opposition to Plaintiff's Petition for Receivership." It alleged that the complaint states no cause of action and that venue had been improperly laid. It also alleged that petitioners failed to pay the proper docket fees and violated the rule on forum-shopping.<sup>[6]</sup>

In an order dated December 13, 1994, the trial court granted the petition for receivership and appointed petitioners' nominee, Ricardo Pesquera, as receiver. The order disposed as follows:

"WHEREFORE, premises considered the Urgent Petition for Receivership is GRANTED and Mr. Ricardo Pesquera to whose appointment no opposition was raised by the defendant and who is an ice plant contractor, maintainer and installer is appointed receiver. Accordingly, upon the filing and approval of the bond of TWO MILLION (P2,000,000.00) pesos which shall answer for all damages defendant may sustain by reason of the receivership, said Ricardo Pesquera is authorized to assume the powers of a receiver as well as the obligation as provided for in Rule 59 of the Rules of Court after taking his oath as such receiver.

SO ORDERED."<sup>[7]</sup>

Respondent bank assailed this order before the Court of Appeals on a petition for certiorari. On January 11, 1996, the Court of Appeals annulled the order for receivership and dismissed petitioners' complaint for improper venue and lack of cause of action. The dispositive portion of the decision reads:

"WHEREFORE, the petition for certiorari is GRANTED. Accordingly, the assailed order dated December 13, 1994 (Annex A, petition) is ANNULLED and SET ASIDE and respondent's complaint in Civil Case No. 94-72076 in the respondent court (Annexes F, petition; 4, comment), is DISMISSED. Costs against respondents except the court.

SO ORDERED."

Reconsideration was denied on May 23, 1996.<sup>[8]</sup> Hence, this petition.

Section 1 of Rule 59 of the Revised Rules of Court provides that:

"Sec. 1. When and by whom receiver appointed.-- One or more receivers of the property, real or personal, which is the subject of the action, may be appointed by the judge of the Court of First Instance in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court, in the following cases:

(a) When the corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

(b) When it appears from the complaint or answer, and such other proof as the judge may require, that the party applying for the appointment of receiver has an interest in the property or fund which is the subject of the action, and that such

property or fund is in danger of being lost, removed or materially injured unless a receiver be appointed to guard and preserve it;

(c) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(d) After judgment, to preserve the property during the pendency of the appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment debtor refuses to apply his property in satisfaction of the judgment, or otherwise carry the judgment into effect;

(e) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation."

A receiver of real or personal property, which is the subject of the action, may be appointed by the court when it appears from the pleadings or such other proof as the judge may require, that the party applying for such appointment has (1) an actual interest in it; and (2) that (a) such property is in danger of being lost, removed or materially injured; or (b) whenever it appears to be the most convenient and feasible means of preserving or administering the property in litigation.<sup>[9]</sup>

A receiver is a person appointed by the court in behalf of all the parties to the action for the purpose of preserving and conserving the property in litigation and prevent its possible destruction or dissipation, if it were left in the possession of any of the parties.<sup>[10]</sup> The appointment of a receiver is not a matter of absolute right. It depends upon the sound discretion of the court<sup>[11]</sup> and is based on facts and circumstances of each particular case.<sup>[12]</sup>

Petitioners claim that the appointment of a receiver is justified under Section 1 (b) of Rule 59. They argue that the ice plant which is the subject of the action was in danger of being lost, removed and materially injured because of the following "imminent perils":

"6.1 Danger to the lives, health and peace of mind of the inhabitants living near the Sta. Maria Ice Plant;

6.2 Drastic action or sanctions that could be brought against the plaintiff by affected third persons, including workers who have claims against the plaintiff but could not be paid due to the numbing manner by which the defendant took the Sta. Maria Ice Plant;

6.3 The rapid reduction of the Ice Plant into a scrap heap because of evident incompetence, neglect and vandalism."<sup>[13]</sup>

A petition for receivership under Section 1 (b) of Rule 59 requires that the property or fund which is the subject of the action must be in danger of loss, removal or material injury which necessitates protection or preservation. The guiding principle

is the prevention of imminent danger to the property. If an action by its nature, does not require such protection or preservation, said remedy cannot be applied for and granted.<sup>[14]</sup>

In the instant case, we do not find the necessity for the appointment of a receiver. Petitioners have not sufficiently shown that the Sta. Maria Ice Plant is in danger of disappearing or being wasted and reduced to a "scrap heap." Neither have they proven that the property has been materially injured which necessitates its protection and preservation.<sup>[15]</sup> In fact, at the hearing on respondent bank's motion to dismiss, respondent bank, through counsel, manifested in open court that the leak in the ice plant had already been remedied and that no other leakages had been reported since.<sup>[16]</sup> This statement has not been disputed by petitioners.

At the time the trial court issued the order for receivership of the property, the problem had been remedied and there was no imminent danger of another leakage. Whatever danger there was to the community and the environment had already been contained.

The "drastic sanctions" that may be brought against petitioners due to their inability to pay their employees and creditors as a result of "the numbing manner by which [respondent bank] took the ice plant" does not concern the ice plant itself. These claims are the personal liabilities of petitioners themselves. They do not constitute "material injury" to the ice plant.

Moreover, the receiver appointed by the court appears to be a representative of petitioners. Respondent bank alleges that it was not aware that petitioners nominated one Mr. Pesquera as receiver.<sup>[17]</sup> The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested.<sup>[18]</sup> The receiver is not the representative of any of the parties but of all of them to the end that their interests may be equally protected with the least possible inconvenience and expense.<sup>[19]</sup>

The power to appoint a receiver must be exercised with extreme caution. There must be a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage.<sup>[20]</sup> It is only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavouring to avoid that the injury thereby caused be greater than the one sought to be avoided.<sup>[21]</sup>

The Court of Appeals correctly found that the trial court gravely abused its discretion in issuing the order for receivership. The respondent court, however, went further and took cognizance of respondent bank's motion to dismiss. And finding merit in the motion, it dismissed the complaint. Petitioners now claim that the respondent court should have refrained from ruling on the motion to dismiss because the motion itself was not before it.<sup>[22]</sup>

Again, we reject petitioners' contention. The motion to dismiss is anchored on improper venue, lack of cause of action and forum-shopping. We agree with the