



Republic of the Philippines
Supreme Court
Baguio City

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Wilfredo V. Latitan
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Division Clerk of Court
Third Division
JUN 01 2016

THIRD DIVISION

THE WELLEX GROUP, INC.,
Petitioner,

G.R. No. 211098

Present:

VELASCO, JR., J.,
Chairperson,
PEREZ,
REYES,
LEONEN,* and
JARDELEZA, JJ.

-versus-

SHERIFF EDGARDO A. URIETA
OF THE SANDIGANBAYAN
SECURITY AND SHERIFF
SERVICES, THE
SANDIGANBAYAN SECURITY
AND SHERIFF SERVICES, AND
BDO UNIBANK, INC. (FORMERLY
EQUITABLE PCI BANK, INC.),
Respondents.

Promulgated:

April 20, 2016

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DECISION

PEREZ, J.:

Before this Court is a Petition,¹ on pure questions of law, assailing the Order dated 9 January 2012 of the Regional Trial Court of Makati City, Branch 132 (trial court) in Civil Case No. 09-399,² with a prayer for the

* Additional Member per Raffle dated 15 February 2016.

¹ Rollo, pp. 42-75.

² Id. at 82-91; An action for the Recovery of the Possession and Delivery of the Stock Certificates and Injunction.

issuance of a temporary restraining order and preliminary injunction against respondents, enjoining them and persons acting under their authority from selling 450,000,000 shares of Waterfront Philippines Inc. (WPI shares) that are owned and registered in the name of petitioner The Wellex Group, Inc. (Wellex).³

In resolving the prayer of Wellex for the issuance of injunctive relief, this Court is constrained to examine the merits of the Petition and at once notes that this case is essentially intertwined with G.R. 187951,⁴ a landmark case, wherein this Court declared, among others, that the WPI shares are included among those assets of Investment Management Agreement with Account No. 101-78056-1, under the name of *Jose Velarde*, (IMA Account) formerly managed by respondent BDO Unibank, Inc., previously Equitable PCI Bank, Inc. (BDO). The said account was duly forfeited in favor of the State by virtue of the Resolution dated 24 September 2008 of the Sandiganbayan in Criminal Case No. 26558, the case for plunder against former President Joseph Ejercito Estrada.

The material facts of this case, as culled from the records,⁵ are as follows:

On 4 February 2000, Wellex obtained a loan in the principal amount of ₱500,000,000.00 from the IMA Account with BDO. As security for the loan, Wellex mortgaged the WPI shares.

By the time the loan obligation matured on 29 January 2001, Wellex was not able to settle the same; however, BDO, as investment manager of the IMA Account did not institute any foreclosure proceeding against the WPI shares.

Thereafter, BDO, through a Letter dated 14 March 2001, informed Wellex that it shall cease to manage the IMA Account effective 2 May 2001. In the same letter, BDO informed Wellex that on 29 January 2000, the Bureau of Internal Revenue (BIR) issued a Notice of Constructive Distraint against the IMA Account, which effectively froze all goods, chattels or personal property owned by Jose Velarde, including the WPI shares, which

³ These shares are covered by Stock Certificate Nos. 0000026465, 0000026466, 0000026467, 0000026468, 0000026469, 0000026470, 0000026471, 0000026472, and 0000026473 as evidenced by the Promissory Note and the Chattel Mortgage.

⁴ 689 Phil. 44 (2012).

⁵ Id.



BDO could consequently neither remove nor dispose of without the express authority of the BIR.

Subsequently, Wellex alleged that considering that BDO had relinquished its authority to act as the investment manager of the IMA Account, and that Wellex had supposedly settled its loan obligation in full *directly* with Jose Velarde, BDO, as the principal of the IMA Account, should return the WPI shares to Wellex. BDO, however, did not.

In the meantime, on 12 September 2007, the Sandiganbayan in Criminal Case No. 26558 found former President Estrada guilty of the crime of plunder. The conviction ultimately carried with it the penalty of forfeiture,⁶ wherein all ill-gotten wealth amassed by former President Estrada, including the IMA Account and the assets therein, were forfeited in favor of the State.

Former President Estrada was, thereafter, pardoned by former President Gloria Macapagal-Arroyo on 25 October 2007; nonetheless, the said forfeiture remained in force.

Consequently, the Sandiganbayan, in the same case, issued a Resolution dated 24 September 2008 directing the Sheriff of the Sandiganbayan to cause the forfeiture of, among others, the IMA Account, including the WPI shares in favor of the State.

Wellex sought to intervene in Criminal Case No. 26558 and moved for the reconsideration of the above-mentioned Resolution dated 24 September 2008. Wellex argued that the WPI shares should be excluded from the forfeiture order. However, the Sandiganbayan, in a Resolution dated 02 April 2009, denied the said reconsideration sought by Wellex.

By virtue of the foregoing resolutions, respondent Sheriff Edgardo A. Urieta (Urieta) of the Sandiganbayan issued to BDO a Notice to Deliver dated 20 April 2009. BDO delivered to Urieta, among others, the WPI shares, which shares Urieta subsequently scheduled⁷ for sale at a public auction on 15 May 2009.

⁶ Resolution dated 24 September 2008 of the Sandiganbayan in Criminal Case No. 26558.

⁷ Notice of Sale on Execution of Personal Property dated 5 May 2009.

As mentioned above, Wellex filed G.R. No 187951 to question the inclusion of the WPI shares among the forfeited assets; however, this Court affirmed the inclusion of the WPI shares as part of the assets covered by the forfeiture order.

Subsequently, Wellex filed Civil Case No. 09-399 with the trial court for the recovery of the possession of the WPI shares. In essence, Wellex claims that it is the owner of the WPI Shares; that it fully paid its loan obligation and that it is entitled to the return thereof. Wellex prayed that the trial court issue a temporary restraining order and a writ of preliminary injunction against the Sandiganbayan to enjoin them from selling the WPI shares at a public auction. Wellex alleged that it instituted the case as a third (3rd) party claimant because the Sandiganbayan failed to observe the requirements under Section 16, Rule 39 of the Rules of Court,⁸ and that Wellex was left with no recourse but to file an action with a competent court to recover ownership of the WPI shares by virtue of the extinguishment of the obligation through payment.

With the filing of the foregoing case, Urieta and the Sandiganbayan Security and Sheriff Services agreed to maintain *status quo* and to defer the public auction of the WPI shares until the resolution of the case.

Thereafter, Urieta and the Sandiganbayan Security and Sheriff Services, as well as BDO, filed their respective motions to dismiss in Civil Case No. 09-399, which motions were granted by the trial court in its Order

⁸ **Sec. 16. Proceedings where property claimed by third person.** If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.



dated 9 January 2012. The aforesaid order of the trial court directed the dismissal of Civil Case No. 09-399 on the grounds of lack of jurisdiction based on the principle of hierarchy of courts, and failure to state a cause of action.

Wellex moved for the reconsideration of the above-mentioned order dated 9 January 2012, which was, however, denied by the trial court in its Resolution dated 15 January 2014.

Hence, Wellex comes to this Court *via* the instant Petition, on pure questions of law.

Wellex contends that the trial court erred in its ruling dismissing Civil Case No. 09-399 because it can take cognizance of the same by determining the existence of legal and formal requirements for executing on a security, particularly on the WPI shares. Thus, Wellex seeks that this Court set aside the dismissal order and direct the resumption of proceedings.

We clarify.

Before delving into the merits of the Petition, this Court recognizes the crucial need to emphasize that as per the Decision in G.R. 187951, this Court had already declared with absolute finality that the WPI shares were and should rightfully be included among the forfeited assets in favor of the State. Therefore, this matter is beyond cavil. This Court aptly and succinctly ruled “[i]t is beyond doubt that IMA Trust Account No. 101-78056-1 and its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case”⁹ against former President Estrada.

However, this Court is cognizant of the fact that the issues in this case are, while novel, unambiguous: whether the Sandiganbayan may proceed to sell outright, at public auction, the forfeited WPI shares; and whether the trial court may take cognizance of Civil Case No. 09-399.

To resolve these issues, there is a need to first establish the nature of the WPI shares.

⁹ *The Wellex Group, Inc. v. Sandiganbayan*, supra note 4 at 65.

In its final and executory Decision in G.R. No. 187951, this Court had already ruled that:

There is no dispute that the subject shares of stock were mortgaged by petitioner Wellex as security for its loan. These shares being the subject of a contract that was accessory to the Wellex loan and being an asset of the forfeited IMA Trust Account, the said shares necessarily follow the fate of the trust account and are forfeited as well. However, the forfeiture of the said trust account, together with all its assets and receivables, does not affect the validity of the loan transaction between BDO the creditor and Wellex the debtor. The loan continues to be valid despite the forfeiture by the government of the IMA Trust Account and is considered as an asset.

Consequently, the forfeiture had the effect of subrogating the state to the rights of the trust account as creditor.¹⁰ (Underscoring supplied)

Thus, this Court reiterates that the WPI shares assume the character of a security for a valid and existing loan obligation, which is included in the IMA Account. Stated in simpler terms, one (1) of the assets in the IMA Account is a receivable secured by a chattel mortgage, more particularly the valid and existing loan obligation between BDO and petitioner, secured by the WPI shares.

Consequently, considering that the loan obligation of petitioner is valid and existing, it necessarily follows that BDO, the creditor, or its successor-in-interest, cannot be allowed to unilaterally sell the chattel securing the loan and apply the proceeds thereof as payment, full or partial, to the said loan. This would constitute a clear case of *pactum commissorium*, which is expressly prohibited by Article 2088¹¹ of the Civil Code.¹²

In line with our holding in *The Wellex Group, Inc. v. Sandiganbayan*,¹³ that “the forfeiture had the effect x x x as creditor,” the state has stepped into the shoes of the BDO. As this Court has consistently ruled, “[s]ubrogation is the substitution of one person by another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities. x x x It contemplates full substitution such that it places the party subrogated in the shoes of the creditor, and he may use all means that the

¹⁰ Id. at 61.

¹¹ Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage or dispose of them. Any stipulation to the contrary is null and void.

¹² *Nakpil v. Intermediate Appellate Court*, G.R. No. 74449, 20 August 1993, 225 SCRA 456, 467.

¹³ Supra note 4 at 61.

creditor could employ to enforce payment.”¹⁴ Given that the subrogee merely steps into the shoes of the creditor, he acquires no right greater than those of the latter.

Considering that the WPI shares serves as security to an acknowledged valid and existing loan obligation, the subrogee, in this case the State, is obliged to avail of the very same remedies available to the original creditor to collect the loan obligation, which is to first demand from the original debtor to pay the same, and if not paid despite demand, institute either foreclosure proceedings, or the appropriate action for collection before the proper forum. In either case, the debtor will be afforded the opportunity to pay the obligation, or to assert any claim or defense, which the debtor may have against the original creditor. This is the essence of constitutional right to due process. In this case, the action of public respondent in offering for sale, at public auction, the WPI shares would unavoidably trample upon a constitutionally enshrined right.

This Court is well aware that the Sandiganbayan had earlier asserted in Criminal Case No. 26558 that as regards the BDO loan, Wellex is considered a delinquent debtor. However, the pronouncement cannot be an excuse to omit the steps needed to be taken regarding the mortgaged WPI shares. It is a fact that Wellex was not impleaded as a party to the said case, ergo, the effect of the pronouncement cannot be extended to it. It is axiomatic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court.¹⁵ Thus, only those who have had their day in court are considered the real parties in interest in an action, and it is they who are bound by the judgment therein and by writs of execution issued pursuant thereto.¹⁶

Even more important, this Court notes that the subject matter of controversy brought forth by Wellex is purely civil in nature. This involves the third (3rd) party claim of Wellex against the WPI shares *vis-a-vis* the loan obligation *per se*, which should be properly lodged before and heard by the regular trial courts. To the mind of this Court, it is clear that the same does not pertain to the jurisdiction of the Sandiganbayan. Jurisdiction, which is the authority to hear and the right to act in a case, is conferred by the Constitution and by law. Although the Sandiganbayan, a constitutionally-

¹⁴ *Malayan Insurance Co., Inc. v. Alberto, et al.*, 680 Phil. 813, 829 (2012) citing *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*, 616 Phil. 873, 911 (2009).

¹⁵ *Green Acres Holdings, Inc., v. Cabral*, G.R. No. 175542. 5 June 2013, 697 SCRA 266, 283.

¹⁶ *Id.*

mandated court, is a regular court, it has, nevertheless, only a special or limited jurisdiction.¹⁷

While this Court has time and again affirmed¹⁸ that the Sandiganbayan has jurisdiction over the civil aspect of criminal cases, as conferred to it by law, the case before the trial court does not involve the civil aspect of Criminal Case No. 26558. The same has nothing to do with the ownership of the IMA Account and/or any of its financial assets, which, as stated above, has been adjudged forfeited in favor of the State. In contrast, the said case is an ordinary civil case entailing the propriety of the actions of a creditor in proceeding against the security for its loan, which necessitates the application of the provisions of the Civil Code, therefore falling under the exclusive jurisdiction of the Regional Trial Courts.¹⁹

Given that the cause of action of Wellex in Civil Case No. 09-399 partakes of a valid third (3rd) party claim sanctioned by the Rules of Court, affording Wellex the opportunity to assert its claim or defense against its creditor, presently the State, the latter should likewise avail of this avenue to affirm its own claims, as creditor, against the loan and/or mortgage securing the said loan, paving the way to the realization of any of the fruits of plunder. Thus, this Court deems it proper to remand this case to the trial court for further proceedings, where all the civil issues may properly be ventilated.

At this point, this Court commends the trial court for acting cautiously and exercising prudence in applying the principle of hierarchy of courts when it issued its Order dated 9 January 2012 and Resolution dated 15 January 2014. As a consequence of the rulings rendered in this case, that is, that the State, acting through the Sandiganbayan, may not sell the WPI shares outright without first complying with the requirements set by law, the prayer of petitioner for injunctive relief against the Sandiganbayan is now rendered moot and academic. And as previously stated, given the fact that the State has validly substituted BDO as the creditor of Wellex, the cause of action of Wellex against BDO is, likewise, rendered moot and academic.

WHEREFORE, premises considered, **JUDGMENT** is hereby rendered **GRANTING** the instant Petition and **SETTING ASIDE** the Order dated 9 January 2012 and Resolution dated 15 January 2014 of the Regional

¹⁷ *Garcia, Jr. v. Sandiganbayan*, G.R. No. 114135, 7 October 1994, 237 SCRA 552, 564.

¹⁸ *Proton Pilipinas Corp. v. Republic of the Phils.*, 545 Phil. 521 (2006).

¹⁹ Section 19, Batas Pambansa Blg. 129, as amended.

Trial Court of Makati City, Branch 132 in Civil Case No. 09-399. This case is hereby remanded to the trial court for further proceedings.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

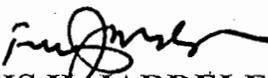
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

So dissenting opinion


BIENVENIDO L. REYES
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

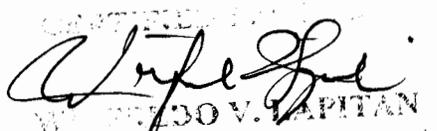

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice


W. P. V. CAPITAN
Division Clerk of Court
Third Division
JUN 01 2016