



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

DEVELOPMENT BANK  
OF THE PHILIPPINES,

G.R. No. 195450

Petitioner,

Present:

- versus -

PERALTA, J., *Acting Chairperson*,  
MENDOZA,  
REYES,\*  
LEONEN, and  
JARDELEZA, JJ.,

HON. EMMANUEL C. CARPIO,  
in his capacity as Presiding Judge,  
Regional Trial Court, Branch 16,  
Davao City, COUNTRY BANKERS  
INSURANCE CORPORATION,  
DABAY ABAD, HATAB ABAD,  
OMAR ABAS, HANAPI ABDULLAH,  
ROJEA AB ABDULLAH,  
ABDULLAH ABEDIN, ALEX  
ABEDIN, et al., represented by  
their Attorney-in-Fact,  
MR. MANUEL L. TE,

Promulgated:

Respondents.

01 FEB 2017

x ----- x

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the July 9, 2008 Decision<sup>1</sup> and the January 21, 2011 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 85719, which dismissed the petition for *certiorari* and *mandamus* praying for the annulment of the May

\* Designated additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated January 9, 2017.

<sup>1</sup> Penned by Associate Justice Edgardo T. Lloren with Associate Justice Edgardo A. Camello and Associate Justice Jane Aurora C. Lantion, concurring; *rollo*, pp. 18-25.

<sup>2</sup> *Id.* at 27-28.

17, 2004 and July 9, 2004 Orders<sup>3</sup> of the Regional Trial Court, Branch 16, Davao City (RTC), in Civil Case No. 28,721-01.

*The Antecedents*

On August 21, 2001, Dabay Abad, Hatab Abad, Omar Abas, Hanapi Abdullah, Rojea Ab Abdullah, Abdullah Abedin, Alex Abedin, *et al.* (*Abad, et al.*), represented by their attorney-in-fact, Manuel L. Te, filed a complaint for delivery of certificates of title, damages, and attorney's fees against petitioner Development Bank of the Philippines (DBP) and Guarantee Fund for Small and Medium Enterprise (GFSME) before the RTC.<sup>4</sup>

In their Complaint,<sup>5</sup> Abad, *et al.* prayed, among others, for the issuance of a writ of seizure, pending hearing of the case, for delivery of their certificates of title they claimed to be unlawfully detained by DBP and GFSME. They alleged that their certificates of title were submitted to DBP for safekeeping pursuant to the loan agreement they entered into with DBP. The same certificates of title were turned over by DBP to GFSME because of its call on GFSME's guarantee on their loan, which became due and demandable, and pursuant to the guarantee agreement between DBP and GFSME.

As prayed for, the RTC issued the Writ of Seizure<sup>6</sup> on August 24, 2001. The writ was accompanied by Plaintiff's Bond for Manual Delivery of Personal Property<sup>7</sup> issued by Country Bankers Insurance Corporation (CBIC).

On September 5, 2001, DBP filed its Omnibus Motion to Dismiss Complaint and to Quash Writ of Seizure<sup>8</sup> on the ground of improper venue, among others. Abad, *et al.* filed their Opposition<sup>9</sup> and later, their Supplemental Opposition,<sup>10</sup> to which they attached the Delivery Receipt<sup>11</sup> showing that the court sheriff took possession of 228 certificates of title from GFSME.

In its Order,<sup>12</sup> dated September 25, 2001, the RTC granted DBP's omnibus motion and dismissed the case for improper venue.

---

<sup>3</sup> Penned by Presiding Judge Emmanuel C. Carpio; *id.* at 49-51.

<sup>4</sup> *Id.* at 19.

<sup>5</sup> *Id.* at 53-59.

<sup>6</sup> *Id.* at 60-61.

<sup>7</sup> *Id.* at 62.

<sup>8</sup> *Id.* at 68-72.

<sup>9</sup> *Id.* at 179-183.

<sup>10</sup> *Id.* at 185-187.

<sup>11</sup> *Id.* at 188-190.

<sup>12</sup> *Id.* at 196-197.

On December 20, 2001, DBP and GFSME filed their Joint Motion to Order Plaintiffs to Return Titles to Defendants DBP and GFSME.<sup>13</sup> After Abad, *et al.* filed their opposition, the RTC issued the Order,<sup>14</sup> dated January 27, 2003, directing Abad, *et al.* to return the 228 certificates of title.

Abad, *et al.* filed a petition for *certiorari* and prohibition with the Court praying, among others, for the nullification and reversal of the January 27, 2003 Order of the RTC. The Court, however, in its June 9, 2003 Resolution,<sup>15</sup> dismissed the petition.

On September 18, 2003, DBP filed its Motion for Writ of Execution<sup>16</sup> of the January 27, 2003 Order before the RTC. On December 16, 2003, the RTC issued the corresponding Writ of Execution.<sup>17</sup> The Sheriff's Return of Service,<sup>18</sup> however, indicated that Abad, *et al.* failed to deliver the certificates of title.

#### *The Subject Motion against the Bond*

Due to the non-delivery of the certificates of title by Abad, *et al.*, DBP filed its *Motion/Application to Call on Plaintiff's Surety Bond*,<sup>19</sup> dated February 3, 2004, praying for the release of the bond issued by CBIC to answer for the damages it sustained as a result of the failure to return the 228 certificates of title.

#### *The RTC Ruling*

In its Order, dated May 17, 2004, the RTC denied the subject motion explaining that the resolution of the motion was no longer part of its residual power. It pointed out that although there was indeed an order to return the 228 certificates of title to DBP, it was not made as a result of a trial of the case, but as a consequence of the order of dismissal based on improper venue.

DBP moved for reconsideration. Nevertheless, in its July 9, 2004 Order, the RTC denied the motion.

Aggrieved, DBP filed a petition for *certiorari* and *mandamus* before the CA.

---

<sup>13</sup> Id. at 207-211.

<sup>14</sup> Id. at 79.

<sup>15</sup> Id. at 80-81.

<sup>16</sup> Id. at 85-86.

<sup>17</sup> Id. at 90.

<sup>18</sup> Id. at 91.

<sup>19</sup> Id. at 218-222.

*The CA Ruling*

In its July 9, 2008 Decision, the CA dismissed the petition for *certiorari* and *mandamus*. It noted that DBP did not move for reconsideration of the September 25, 2001 Order of dismissal. It considered the RTC decision as final and executory. It added that Section 20, Rule 57 of the Rules of Court provided that the claim for damages against the bond must be filed before trial or before appeal was perfected or before the judgment became executory.<sup>20</sup>

DBP moved for reconsideration, but its motion was denied by the CA in its January 21, 2011 Resolution.

Hence, this petition.

**ISSUE****THE COURT OF APPEALS ERRED IN ITS BLIND ADHERENCE TO AND STRICT APPLICATION OF SECTION 20, RULE 57 OF THE 1997 RULES OF CIVIL PROCEDURE.<sup>21</sup>**

Petitioner DBP argues that it could not have anticipated that Abad, *et al.* (*respondents*) would not abide by the writ of execution; hence, prior to such failure of execution, it would be premature to claim for damages against the bond because DBP had not yet suffered any consequential damages with the implementation of the writ of seizure; and that Section 20, Rule 57 of the Rules of Court was not applicable as the damages resulting from the improper issuance of the writ of seizure occurred only after the unjustified refusal of respondents to return the titles despite the order from the RTC.

In its Comment,<sup>22</sup> dated August 11, 2011, respondent CBIC averred that Section 20, Rule 57 of the Rules of Court specified that an application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory; that the motion to call on plaintiff's surety bond was filed more than two (2) years after the September 25, 2001 Order of the RTC, dismissing the case, became final and executory; that, under Section 10, Rule 60 of the Rules of Court, the surety's liability under the replevin bond should be included in the final judgment; that, there being no judgment as to who, between the plaintiffs and the defendants, was entitled to the possession of the certificates of title, the RTC properly denied the motion to call on plaintiff's surety bond; that, any claim for damages against the bond

---

<sup>20</sup> Id. at 24-25.

<sup>21</sup> Id. at 9.

<sup>22</sup> Id. at 264-281.

was only proper with respect to any loss that DBP might have suffered by being compelled to surrender the possession of the certificates of title pending trial of the action; that, in this case, the motion to call on plaintiff's surety bond was filed after the trial was already terminated with the issuance of the order of dismissal; and that, instead of moving to claim for damages, DBP sought to quash the writ of seizure, even though it might already have some basis to claim for damages at that time as could be gleaned from the wordings of their motion to dismiss the complaint, based on, among others, improper venue and inapplicability of replevin as proper remedy.

Respondents, on the other hand, failed to file their comment despite several opportunities granted to them. Thus, their right to file a comment on the petition for review was deemed waived.

In its Consolidated Reply,<sup>23</sup> dated August 15, 2016, DPB asserted that Section 20, Rule 57 of the Rules of Court did not cover a situation where there was an instantaneous dismissal of the case due to improper venue; that the damages resulting from the improper issuance of the writ of seizure occurred only after the unjustified refusal of respondents to return the titles despite order from the RTC; and, that DBP could not resort to the surety prior to recovering the titles from respondents at any time during the trial or before the judgment became final and executory.

### **The Court's Ruling**

The petition lacks merit.

*The trial court did not reach  
the residual jurisdiction stage*

Residual jurisdiction refers to the authority of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; to approve compromises; to permit appeals by indigent litigants; to order execution pending appeal in accordance with Section 2, Rule 39; and to allow the withdrawal of the appeal, provided these are done prior to the transmittal of the original record or the record on appeal, even if the appeal has already been perfected or despite the approval of the record on appeal<sup>24</sup> or in case of a petition for review under Rule 42, before the CA gives due course to the petition.<sup>25</sup>

The "residual jurisdiction" of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the

---

<sup>23</sup> Id. at 431-440.

<sup>24</sup> Section 9, Rule 41 of the Rules of Court.

<sup>25</sup> Section 8, Rule 42 of the Rules of Court.

perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal.<sup>26</sup>

From the foregoing, it is clear that before the trial court can be said to have residual jurisdiction over a case, a trial on the merits must have been conducted; the court rendered judgment; and the aggrieved party appealed therefrom.

In this case, there was no trial on the merits as the case was dismissed due to improper venue and respondents could not have appealed the order of dismissal as the same was a dismissal, *without prejudice*. Section 1(h), Rule 41 of the Rules of Civil Procedure states that no appeal may be taken from an order dismissing an action without prejudice. Indeed, there is no residual jurisdiction to speak of where no appeal has even been filed.<sup>27</sup>

In *Strongworld Construction Corporation, et al. v. Hon. Perello, et al.*,<sup>28</sup> the Court elucidated on the difference between a dismissal with prejudice and one without prejudice:

We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.

X X X

Section 1, Rule 16 of the 1997 Revised Rules of Civil Procedure enumerates the grounds for which a motion to dismiss may be filed, *viz.*:

Section 1. Grounds. Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

- (a) That the court has no jurisdiction over the person of the defending party;
- (b) That the court has no jurisdiction over the subject matter of the claim;
- (c) That venue is improperly laid;

<sup>26</sup> *Angeles v. Court of Appeals*, G.R. No. 178733, September 15, 2014, 735 SCRA 82, 93.

<sup>27</sup> *Fernandez v. Court of Appeals*, 497 Phil. 748, 759 (2005).

<sup>28</sup> 528 Phil. 1080 (2006).

- (d) That the plaintiff has no legal capacity to sue;
- (e) That there is another action pending between the same parties for the same cause;
- (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
- (g) That the pleading asserting the claim states no cause of action;
- (h) That the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned, or otherwise extinguished;
- (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
- (j) That a condition precedent for filing the claim has not been complied with.

Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

*SEC. 5. Effect of dismissal.* Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of section 1 hereof shall bar the refile of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiffs pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refile of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refile of the same action or claim. Ergo, dismissals based on the rest of the grounds enumerated are without prejudice because they do not preclude the refile of the same action.

X X X

As has been earlier quoted, Section 1(h), Rule 41 of the 1997 Revised Rules of Civil Procedure mandates that no appeal may be taken from an order dismissing an action without prejudice. The same section provides that in such an instant where the final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.<sup>29</sup>

---

<sup>29</sup> Id. at 1093-1097.

Here, the RTC dismissed the replevin case on the ground of improper venue. Such dismissal is one *without prejudice* and does not bar the refiling of the same action; hence, it is not appealable. Clearly, the RTC did not reach, and could not have reached, the residual jurisdiction stage as the case was dismissed due to improper venue, and such order of dismissal could not be the subject of an appeal. Without the perfection of an appeal, let alone the unavailability of the remedy of appeal, the RTC did not acquire residual jurisdiction. Hence, it is erroneous to conclude that the RTC may rule on DBP's application for damages pursuant to its residual powers.

*Equity cannot supersede the  
Rules of Court*

DBP admits that it filed the application for damages after the order of dismissal had become final and executory. In seeking relief from this Court, however, it invokes equity and argues that a strict application of Section 20, Rule 57 of the Rules of Court would prejudice its right to recover damages arising from the improper attachment of the certificates of title.

DBP, however, must be reminded that equity, "which has been aptly described as a 'justice outside legality,' is applied only in the absence of, and never against, statutory law or, as in this case, judicial rules of procedure.<sup>30</sup> The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity."<sup>31</sup> As the Court has stated in *Lim Tupas v. CA*,<sup>32</sup> "[e]motional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed - is '*aequetas nunquam contravenit legis.*'"<sup>33</sup>

Accordingly, the CA did not commit any reversible error when it applied the rules of procedure in resolving the issue at hand.

*The application for damages  
was belatedly filed*

Section 10, Rule 60 of the Rules of Court provides that in replevin cases, as in receivership and injunction cases, the damages to be awarded to either party upon any bond filed by the other shall be claimed, ascertained, and granted in accordance with Section 20 of Rule 57 which reads:

<sup>30</sup> *Philippine Carpet Manufacturing Corporation v. Tagyamon*, 723 Phil. 562, 572 (2013).

<sup>31</sup> *Id.* at 572.

<sup>32</sup> *Lim Tupas v. Court of Appeals*, 271 Phil. 628, 632-633 (1991).

<sup>33</sup> *Id.* at 633.

**SEC. 20. Claim for damages on account of illegal attachment.** — If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. **Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment.** The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he **must claim damages sustained during the pendency of the appeal** by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court. [Emphases supplied]

In other words, to recover damages on a replevin bond (or on a bond for preliminary attachment, injunction or receivership), it is necessary (1) that the defendant-claimant has secured a favorable judgment in the main action, meaning that the plaintiff has no cause of action and was not, therefore, entitled to the provisional remedy of replevin; (2) that the application for damages, showing claimant's right thereto and the amount thereof, be filed in the same action before trial or before appeal is perfected or before the judgment becomes executory; (3) that due notice be given to the other party and his surety or sureties, notice to the principal not being sufficient; and (4) that there should be a proper hearing and the award for damages should be included in the final judgment.<sup>34</sup>

Likewise, to avoid multiplicity of suits, all incidents arising from the same controversy must be settled in the same court having jurisdiction of the main action. Thus, the application for damages must be filed in the court which took cognizance of the case, with due notice to the other parties.<sup>35</sup>

In this case, DBP filed the application for damages long after the order of dismissal had become final and executory. It explained that this belated filing was due to its recourse to other remedies, such as the enforcement of the writ of execution. The Court, however, finds this reason to be wanting in persuasiveness. To begin with, the filing of an application for damages does not preclude resort to other remedies. Nowhere in the Rules of Court is it stated that an application for damages bars the filing of a

---

<sup>34</sup> *Malayan Insurance Co., Inc. v. Salas*, 179 Phil. 201, 206 (1979).

<sup>35</sup> *Stronghold Insurance Co. Inc. v. Court of Appeals*, 258-A Phil. 690, 699 (1989).

motion for a writ of seizure, a writ of execution or any other applicable remedy. DBP, from the beginning, had already perceived the attachment to be improper; hence, it could have easily filed an application before the judgment became executory.

In *Jao v. Royal Financing Corporation*,<sup>36</sup> the Court precluded the defendant therein from claiming damages against the surety bond because it failed to file the application for damages before the termination of the case, thus:

xxx The dismissal of the case filed by the plaintiffs-appellees on July 11, 1959, had become **final and executory** before the defendant-appellee corporation filed its motion for judgment on the bond on September 7, 1959. In the order of the trial court, dismissing the complaint, there appears no pronouncement whatsoever against the surety bond. The appellee-corporation **failed to file its proper application for damages prior to the termination of the case against it.** It is barred to do so now. The prevailing party, if such would be the proper term for the appellee-corporation, having failed to file its application for damages against the bond prior to the entry of final judgment, the bondsman-appellant is relieved of further liability thereunder. [Emphases supplied]<sup>37</sup>

Thus, the RTC has indeed no residual jurisdiction on DBP's claim for damages.

### *Remedies*

The Court is not unmindful of the plight of DBP. Its chosen remedy, however, cannot be countenanced as it disregards the Rules of Court and the settled jurisprudence on the matter. Nevertheless, this is not to say that DBP has no other available remedies in order to recover respondents' indebtedness.

*First*, DBP could enforce its guarantee agreement with GFSME. A contract of guaranty gives rise to a subsidiary obligation on the part of the guarantor.<sup>38</sup> A guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. Moreover, he contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor.<sup>39</sup>

---

<sup>36</sup> 114 Phil. 1152 (1969).

<sup>37</sup> *Id.* at 1157.

<sup>38</sup> *Spouses Ong v. Philippine Commercial International Bank*, 489 Phil. 673, 677 (2005).

<sup>39</sup> *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation*, 726 Phil. 555, 566 (2014).

*Further*, it may file an action for damages based on Article 19 of the New Civil Code against respondents for unlawfully taking the certificates of title, which served as security for their loan. In *Globe Mackay Cable and Radio Corporation v. Court of Appeals*,<sup>40</sup> the Court held:

This article, known to contain what is commonly referred to as the **principle of abuse of rights**, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.<sup>41</sup> [Emphasis supplied]

*Finally*, nothing precludes DBP from instituting an action for collection of sum of money against respondents. Besides, if the parcels of land covered by the certificates of title, which DBP sought to recover from respondents, were mortgaged to the former, then DBP, as mortgage-creditor, has the option of either filing a personal action for collection of sum of money or instituting a real action to foreclose on the mortgage security. The two remedies are alternative and each remedy is complete by itself. If the mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the debt, and *vice versa*.<sup>42</sup>

**WHEREFORE**, the petition is **DENIED**. The July 9, 2008 Decision and the January 21, 2011 Resolution of the Court of Appeals, in CA-G.R. SP No. 85719, are **AFFIRMED** *in toto*.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

---

<sup>40</sup> 257 Phil. 783 (1989).

<sup>41</sup> *Id.* at 788-789.

<sup>42</sup> *BPI Family Savings Bank, Inc. v. Vda. De Coscolluela*, 526 Phil. 419, 439 (2006).

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson

  
**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 had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been 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