Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BANK OF THE PHILIPPINE ISLANDS,	**G.R. No. 190144**
Petitioner,	Present:
-versus-	VELASCO, JR., *Chairperson*, PERALTA, BERSAMIN,* ABAD, and PERLAS-BERNABE, *JJ.*
CARLITO LEE,	
Respondent.	
	Promulgated: 01 August 2012

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DECISION

PERLAS-BERNABE, *J.*:

In this Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, petitioner Bank of the Philippine Islands (BPI) seeks to reverse and set aside the February 11, 2009 Decision[2] and October 29, 2009 Resolution[3] of the Court of Appeals (CA) in CA-G.R. No. 87911 which annulled the March 1, 2004[3] and September 16, 2004[4] Orders of the Regional Trial Court (RTC) of Makati City, Branch 61 and instead, entered

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* Designated member in lieu of Justice Jose C. Mendoza, per Special Order No. 1282 dated August 1, 2012.

1 *Rollo*, pp. 26-41.

2 Id. at 8-17.

3 Id. at 81.

4 Id. at 83.

a new one directing the RTC to issue a writ of execution and/or enforce garnishment against the bank deposit of Trendline Resources & Commodities Exponent, Inc. (Trendline) and Leonarda Buelva (Buelva) with the defunct Citytrust Banking Corporation (Citytrust), now merged with BPI.

The Facts

On April 26, 1988, respondent Carlito Lee (Lee) filed a complaint for sum of money with damages and application for the issuance of a writ of attachment against Trendline and Buelva (collectively called "defendants") before the RTC, docketed as Civil Case No. 88-702, seeking to recover his total investment in the amount of ₱5.8 million. Lee alleged that he was enticed to invest his money with Trendline upon Buelva's misrepresentation that she was its duly licensed investment consultant or commodity saleswoman. His investments, however, were lost without any explanation from the defendants.

On May 4, 1988, the RTC issued a writ of preliminary attachment whereby the Check-O-Matic Savings Accounts of Trendline with Citytrust Banking Corporation, Ayala Branch, in the total amount of ₱700,962.10 were garnished. Subsequently, the RTC rendered a decision on August 8, 1989 finding defendants jointly and severally liable to Lee for the full amount of his investment plus legal interest, attorney's fees and costs of suit. The defendants appealed the RTC decision to the CA, docketed as CA-G.R. CV No. 23166.

Meanwhile, on April 13, 1994, Citytrust filed before the RTC an Urgent Motion and Manifestation[5] seeking a ruling on defendants' request to release the amount of ₱591,748.99 out of the garnished amount for the purpose of paying Trendline's tax obligations. Having been denied for lack of jurisdiction, Trendline filed a similar motion[6] with the CA which the latter denied for failure to prove that defendants had no other assets to answer for its tax obligations.

On October 4, 1996, Citytrust and BPI merged, with the latter as the surviving corporation. The Articles of Merger provide, among others, that "all liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations."[7]

On December 22, 1998, the CA denied the appeal in CA-G.R. CV No. 23166 and affirmed *in toto* the decision of the RTC, which had become final and executory on January 24, 1999.

Hence, Lee filed a Motion for Execution[8] before the RTC on July 29, 1999, which was granted. Upon issuance of the corresponding writ, he sought the release of the garnished deposits of Trendline. When the writ was implemented, however, BPI Manager Samuel Mendoza, Jr. denied having possession, control and custody of any deposits or properties belonging to

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5 Id. at 149-151.
6 Id. at 152-156.
7 Court of Appeals Decision dated February 11, 2009, Id. at 14.
8 Id. at 161-162.

defendants, prompting Lee to seek the production of their records of accounts with BPI. However, on the manifestation of BPI that it cannot locate the defendants' bank records with Citytrust, the RTC denied the motion on September 6, 2002.

On December 16, 2002, Lee filed a Motion for Execution and/or Enforcement of Garnishment[9] before the RTC seeking to enforce against BPI the garnishment of Trendline's deposit in the amount of ₱700,962.10 and other deposits it may have had with Citytrust. The RTC denied the motion for dearth of evidence showing that BPI took over the subject accounts from Citytrust and the fact that BPI was not a party to the case. Lee's motion for reconsideration was likewise denied.[10]

Lee elevated the matter to the CA on a petition for certiorari. In its February 11, 2009 Decision, the CA annulled the questioned orders, finding grave abuse of discretion on the part of the RTC in denying Lee's motion to enforce the garnishment against Trendline's attached bank deposits with Citytrust, which have been transferred to BPI by virtue of their merger. It found BPI liable to deliver to the RTC the garnished bank deposit of Trendline in the amount of ₱700,962.10, which Citytrust withheld pursuant to the RTC's previously-issued writ of attachment.

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[9] Id. at 69-77.
[10] Id. at 83.

The CA refused to give credence to BPI's defense that it can no longer locate Trendline's bank records with the defunct Citytrust, as its existence was supported by evidence and by the latter's admission. Neither did it consider BPI a stranger to the case, holding it to have become a party-in-interest upon the approval by the Securities and Exchange Commission (SEC) of the parties' Articles of Merger. BPI's Motion for Reconsideration[11] was denied in the CA's October 29, 2009 Resolution.

The Issues

In this petition, BPI ascribes the following errors to the CA:

A.

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING CA-G.R. SP No. 87911, THE PETITION FOR CERTIORARI UNDER RULE 65 OF THE REVISED RULES OF COURT, FILED BY RESPONDENT CARLITO LEE BEING [AN] IMPROPER REMEDY.

B.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI BECAME PARTY-IN-INTEREST IN THE CASE FILED BY RESPONDENT CARLITO LEE UPON THE APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF ITS MERGER WITH CITYTRUST BANKING CORPORATION.

C.

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE MOTION FOR EXECUTION AND/OR ENFORCEMENT OF GARNISHMENT IS NOT THE APPROPRIATE REMEDY IN THE EVENT THERE IS A THIRD PARTY INVOLVED DURING THE EXECUTION PROCESS OF A FINAL AND EXECUTORY JUDGMENT.

[11] Id. at 103-110.

D.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER BPI SHOULD BE HELD ACCOUNTABLE FOR THE AMOUNT OF PHP700,962.10.[12]

The Ruling of the Court

Section 1, Rule 41 of the Revised Rules of Court provides:

> SECTION 1. *Subject of appeal.* - x x x
>
> No appeal may be taken from:
>
> x x x
>
> (b) *An interlocutory order;*
>
> x x x
>
> In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.[13]

A punctilious examination of the records will reveal that Lee had previously sought the execution of the final and executory decision of the RTC dated August 8, 1989 which was granted and had resulted in the issuance of the corresponding writ of execution. However, having garnished the deposits of Trendline with Citytrust in the amount of ₱700,962.10 by virtue of a writ of preliminary attachment, Lee filed anew a Motion for Execution and/or Enforcement of Garnishment before the RTC on December 16, 2002. While the RTC denied the motion in its March 1,

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[12] Id. at 32-33.

[13] As amended by A.M. No. 07-7-12-SC, December 1, 2007.

2004 Order, the denial was clearly with respect only to the *enforcement of the garnishment,* to wit:

> Acting on the Motion for Execution and/or Enforcement of Garnishment filed by plaintiff Carlito Lee, and there being no evidence shown that the accounts subject of the motion were taken over by the Bank of the Philippine Islands from Citytrust Bank and considering further that Bank of Philippine Islands is not a party to this case, the instant Motion is DENIED for lack of merit.
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> SO ORDERED.[14]

Consequently, the foregoing Order merely involved the implementation of a writ of execution, hence, *interlocutory* in nature. An interlocutory order is one that does not finally dispose of the case, and does not end the court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done.[15]

Conformably with the provisions of Section 1, Rule 41 of the Revised Rules of Court above-quoted, the remedy from such interlocutory order is *certiorari* under Rule 65. Thus, contrary to the contention of BPI, the CA did not err in assuming jurisdiction over the petition for certiorari.

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[14] Supra note 3.

[15] *Investments, Inc. v. Court of Appeals,* No. L-60036, January 27, 1987, 147 SCRA 334, 340.

BPI likewise insists that the CA erred in considering it a party to the case by virtue of its merger with Citytrust, the garnishee of defendants' deposits.

The Court is not convinced.

Section 5, Rule 65 of the Revised Rules of Court requires that persons interested in sustaining the proceedings in court must be impleaded as private respondents. Upon the merger of Citytrust and BPI, with the latter as the surviving corporation, and with all the liabilities and obligations of Citytrust transferred to BPI as if it had incurred the same, BPI undoubtedly became a party interested in sustaining the proceedings, as it stands to be prejudiced by the outcome of the case.

It is a settled rule that upon service of the writ of garnishment, the garnishee becomes a "virtual party" or "forced intervenor" to the case and the trial court thereby acquires jurisdiction to bind the garnishee to comply with its orders and processes. In *Perla Compania de Seguros, Inc. v. Ramolete*,[16] the Court ruled:

> In order that the trial court may validly acquire jurisdiction to bind the person of the garnishee, it is not necessary that summons be served upon him. The garnishee need not be impleaded as a party to the case. All that is necessary for the trial court lawfully to bind the person of

[16] G.R. No. 60887, November 13, 1991, 203 SCRA 487.

> the garnishee or any person who has in his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment.
>
> The Rules of Court themselves do not require that the garnishee be served with summons or impleaded in the case in order to make him liable.
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> xxxx
>
> Through the service of the writ of garnishment, the garnishee becomes a "virtual party" to, or a "forced intervenor" in, the case and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court with a view to the complete satisfaction of the judgment of the court.[17]

Citytrust, therefore, upon service of the notice of garnishment and its acknowledgment that it was in possession of defendants' deposit accounts in its letter-reply dated June 28, 1988, became a "virtual party" to or a "forced intervenor" in the civil case. As such, it became bound by the orders and processes issued by the trial court despite not having been properly impleaded therein. Consequently, by virtue of its merger with BPI on October 4, 1996, BPI, as the surviving corporation, effectively became the garnishee, thus the "virtual party" to the civil case.

Corollarily, it should be emphasized that a merger of two corporations produces, among others, the following effects:

> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

[17] Id. at 491-492.

> 2. The separate existence of the constituent corporation shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
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> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.[18] (Underscoring supplied)

In sum, although Citytrust was dissolved, no winding up of its affairs or liquidation of its assets, privileges, powers and liabilities took place. As the surviving corporation, BPI simply continued the combined businesses of the two banks and absorbed all the rights, privileges, assets, liabilities and obligations of Citytrust, including the latter's obligation over the garnished deposits of the defendants.

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[18] Corporation Code, Sec. 80.

Adopting another tack, BPI claims that Lee should have instead availed himself of the remedy provided under Section 43, Rule 39 of the Revised Rules of Court because he is a third party to the case who denies possession of the property.

The argument is specious.

Section 43, Rule 39 of the Revised Rules of Court states:

> SECTION 43. *Proceedings when indebtedness denied or another person claims the property*. – If it appears that a person or corporation, alleged to have property of the judgment obligor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court may authorize, by an order made to that effect, the judgment oblige to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt within one hundred twenty (120) days from notice of the order, and may punish disobedience of such order as for contempt. Such order may be modified or vacated at any time by the court which issued it, or by the court in which the action is brought, upon such terms as may be just. (Underscoring supplied).

The institution of a separate action against a garnishee contemplates a situation where the garnishee (third person) "claims an interest in the property adverse to him (judgment debtor) or denies the debt."[19] Neither of these situations exists in this case. The garnishee does not claim any interest in the deposit accounts of the defendants, nor does it deny the existence of the deposit accounts. In fact, Citytrust admitted in its letter dated June 28, 1988 that it is in possession of the deposit accounts.

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[19] *PNB Management and Development Corporation v. R&R Metal Casting and Fabricating, Inc.*, G.R. No. 132245, January 2, 2002, 373 SCRA 1, 10.

Considering the foregoing disquisitions, BPI's liability for the garnished deposits of defendants has been clearly established.

Garnishment has been defined as a specie of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. [20] A writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in *custodia legis*, obtaining *pendente lite* a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy.[21]

By virtue of the writ of garnishment, the deposits of the defendants with Citytrust were placed in *custodia legis* of the court. From that time onwards, their deposits were under the sole control of the RTC and Citytrust holds them subject to its orders until such time that the attachment or garnishment is discharged, or the judgment in favor of Lee is satisfied or the credit or deposit is delivered to the proper officer of the court.[22] Thus, Citytrust, and thereafter BPI, which automatically assumed the former's liabilities and obligations upon the approval of their Articles of Merger, is obliged to keep the deposit intact and to deliver the same to the proper officer upon order of the court.

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[20] *National Power Corporation v. Philippine Commercial and Industrial Bank*, G.R. No. 171176, September 4, 2009, 598 SCRA 326, 336.
[21] *Santos v. Aquino, Jr.*, G.R. Nos. 86181-82, January 13, 1992, 205 SCRA 127, 133-134.
[22] Rules of Court, Rule 57, Sec. 8.

However, the RTC is not permitted to dissolve or discharge a preliminary attachment or garnishment except on grounds specifically provided[23] in the Revised Rules of Court, namely,[24] (a) the debtor has posted a counter-bond or has made the requisite cash deposit;[25] (b) the attachment was improperly or irregularly issued[26] as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess;[27] (d) the property attachment is exempt from preliminary attachment;[28] or (e) the judgment is rendered against the attaching creditor.[29]

Evidently, the loss of bank records of a garnished deposit is not a ground for the dissolution of garnishment. Consequently, the obligation to satisfy the writ stands.

Moreover, BPI cannot avoid the obligation attached to the writ of garnishment by claiming that the fund was not transferred to it, in light of the Articles of Merger which provides that "[a]ll liabilities and obligations of Citytrust shall be transferred to and become the liabilities and obligations of BPI in the same manner as if the BPI had itself incurred such liabilities or obligations, and in order that the rights and interest of creditors of Citytrust or liens upon the property of Citytrust shall not be impaired by merger."[30]

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[23] *Santos v. Aquino, Jr.*, supra note 18, at 135.
[24] Florenz Regalado, I Remedial Law Compendium 695-696 (2005).
[25] Rules of Court, Rule 57, Sec. 12.
[26] Rules of Court, Rule 57, Sec. 13.
[27] Rules of Court, Rule 57, Sec. 13.
[28] Rules of Court, Rule 57, Secs. 2, 5.
[29] Rules of Court, Rule 57, Sec. 19.
[30] Court of Appeals Decision dated February 11, 2009, *rollo*, pp. 14-15.

Indubitably, BPI is liable to deliver the fund subject of the writ of garnishment.

With regard to the amount of the garnished fund, the Court concurs with the finding of the CA that the total amount of garnished deposit of Trendline as of January 27, 1994 is ₱700,962.10,[31] extant in its motion for partial lifting of the writ of preliminary attachment[32] and which amount, as correctly observed by the CA, remains undisputed[33] throughout the proceedings relative to this case.

WHEREFORE, the instant petition is **DENIED** and the assailed February 11, 2009 Decision and October 29, 2009 Resolution of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

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[31] Id. at 152.
[32] Id. at 152-156.
[33] Id. at 21.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ROBERTO A. ABAD
Associate Justice

A T T E S T A T I O N

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.

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

CERTIFICATION

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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)