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SECOND DIVISION

[G.R. No. 172508. January 12, 2011]

HEIRS OF SANTIAGO C. DIVINAGRACIA, *petitioner, vs.* **HON. J. CEDRICK O. RUIZ, Presiding Judge, Branch 39, Regional Trial Court, Iloilo City; GERRY D. SUMACULUB, as Clerk of Court of the Regional Trial Court; BOMBO RADYO HOLDINGS, INC., and ROGELIO M. FLORETE, SR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; PROCEDURAL LAWS DO NOT FALL UNDER THE GENERAL RULE AGAINST RETROACTIVE OPERATION OF STATUTES. —** Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court's award of exemplary damages and attorney's fees in favor of private respondents is not immediately executory.

2. **CIVIL LAW; DAMAGES; THE EXECUTION OF ANY AWARD FOR MORAL AND EXEMPLARY DAMAGES IS DEPENDENT ON THE OUTCOME OF THE MAIN CASE; SUSTAINED. —** The determination of the propriety of the grant of damages must be determined in the main case and not in herein petition which assails the propriety of the grant of the writ of execution by the RTC as held by this Court in *Radio Communications of the Philippines, Inc. v. Lantin,* to wit: **x x x The execution of any award for moral and exemplary damages is dependent on the outcome of the main case.** Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral

Supreme Court E-Library

and exemplary damages, as well as the exact amounts, remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignment of errors on appeal.** It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar, Regalado Aujero & Divinagracia Law Offices, and *Monte Clar Sibi & Trinidad Law Offices* for petitioners.

Gregorio Rubias for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the October 5, 2005 Decision[2] and April 21, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86435. Said CA Decision dismissed the petition for *certiorari* seeking the nullification of the September 8, 2004 Resolution and September 15, 2004 Writ of Execution, respectively issued by the Presiding Judge and Clerk of Court of Branch 39 of the Regional Trial Court (RTC) of Iloilo City in Corporate Case No. 00-26557.

The facts of the case are as follows:

On February 25, 1999, Santiago Divinagracia (Divinagracia), in his capacity as a stockholder, filed a derivative suit on behalf

[1] *Rollo,* pp. 3-45.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas, concurring; *id.* at 46-53.

[3] *Id.* at 55-56.

Supreme Court E-Library

of People's Broadcasting Service Incorporated (PBS) assailing a management contract entered into by PBS and Bombo Radyo Holdings Incorporated (Bombo Radyo) and Rogelio Florete, Sr. (Florete). Said suit was docketed as SEC Case No. IEO-99-00084. In response to the derivative suit, Bombo Radyo and Florete filed a counterclaim against Divinagracia claiming that the suit filed by him was unfounded and intended only to harass and molest them.

Pursuant to Section 5.2[4] of Republic Act No. 8799, the derivative suit was transferred to Branch 39 of the RTC of Iloilo City sitting as a special commercial court. The derivative suit was then re-docketed as Corporate Case No. 00-26557 and governed by the Interim Rules of Procedure Governing Intra-Corporate Controversies. During the pendency of the case, however, Divinagracia died and was, thus, substituted by his heirs.

On July 28, 2004, the RTC rendered a Decision[5] dismissing the derivative suit filed by Divinagracia and granting the counterclaims of Bombo Radyo and Florete, to wit:

> WHEREFORE, in view of the foregoing disquisitions, the instant petition ought to be, as it is hereby DISMISSED for lack of merit.
>
> The Counterclaim of respondents Bombo Radyo Holdings, Inc. (BRHI) and Rogelio Florete Sr. is given due course and granted and the Heirs of Santiago Divinagracia, namely:

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[4] The Securities Regulation Code.

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/ rehabilitation cases filed as of 30 June 2000 until finally disposed.

[5] Penned by Presiding Judge J. Cedrick O. Ruiz; *rollo*, pp. 57-76.

Supreme Court E-Library

NAME	RESIDENCE
1. Ma. Elena R. Divinagracia	23 Delgado St., Iloilo City
2. Elsa R. Divinagracia	1st Street, Paradise Village Banilad, Cebu City
3. Ruth Marie R. Divinagracia	Unit 4-C, Torre de Salcedo St., Legaspi Village, Makati City
4. Liane Grace R. Divinagracia	23 Delgado St., Iloilo City
5. Ricardo R. Divinagracia	16 Fajardo St., Jaro, Iloilo City
6. Ma. Fe Emily R. Divinagracia	23 Delgado St., Iloilo City

are hereby ordered, jointly and severally, to pay each of the respondents Bombo Radyo Holdings, Inc. and Rogelio Florete Sr. the following, to wit:

1. The sum of Five Hundred Thousand Pesos (₱500,000.00) as moral damages;
2. The sum of Two Hundred Thousand Pesos as and for exemplary damages;
3. The sum of One Hundred Thousand Pesos as and for attorney's fees; and
4. The costs of suit.

SO ORDERED.[6]

On August 11, 2004, the Heirs of Divinagracia filed a Notice of Appeal[7] with the RTC.

On August 12, 2004, Bombo Radyo and Florete filed with the RTC a Motion for Immediate Execution.[8] The same was granted by the RTC in a Resolution[9] dated September 8, 2004. Accordingly, on September 15, 2005, the RTC Clerk of Court issued a Writ of Execution.[10]

Aggrieved by the issuance of the Writ of Execution, the Heirs of Divinagracia filed a petition for *certiorari*[11] with the CA.

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[6] *Rollo*, pp. 75-76.

[7] *Id.* at 77.

[8] *Id.* at 79-80.

[9] *Id.* at 81-87.

[10] *Id.* at 88-90.

[11] CA *rollo*, pp. 2-13.

Supreme Court E-Library

They argued that the issuance of the writ of execution by the RTC was improper, considering that they had already appealed the decision to the CA. Also, the Heirs of Divinagracia contended that the RTC erred in granting the writ of execution for a counterclaim consisting of moral damages, exemplary damages and attorneys fees despite the fact that said damages under the counterclaim consisted of an ordinary action and was not an intra-corporate controversy.[12]

On October 5, 2005, the CA issued a Decision dismissing the petition for *certiorari*, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed resolution issued by the respondent judge on September 8, 2004 in Corporate Case No. 00-26557.
>
> SO ORDERED.[13]

The CA ruled that Section 4 of Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies was very explicit in providing that "all decisions rendered in intra-corporate controversies shall be immediately executory." Thus, the CA held that the RTC did not err when it granted Bombo Radyo and Florete's motion for immediate execution on the grant of moral damages, exemplary damages and attorney's fees. Furthermore, the CA also ruled that since the Heirs of Divinagracia had already filed a notice of appeal, such act barred them from availing of the remedy of *certiorari*.

The Heirs of Divinagracia filed a Motion for Reconsideration,[14] which was, however, denied by the CA in a Resolution[15] dated April 21, 2006.

Hence, herein petition, with the Heirs of Divinagracia raising the following issues for this Court's consideration, to wit:

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[12] *Id.* at 7.

[13] *Rollo*, p. 52.

[14] *Id.* at 208-229.

[15] *Id.* at 55-56.

Supreme Court E-Library

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE TRIAL COURT'S ORDER ALLOWING IMMEDIATE EXECUTION SINCE SAID ORDER CLASHES WITH THE SUPPLETORY APPLICATION OF THE RULES OF COURT PROVIDED FOR IN SECTION 2, RULE 1 OF THE INTERIM RULES, AND DISREGARDS RELEVANT JURISPRUDENCE REGARDING THE EXECUTION OF COUNTERCLAIMS UNDER THE RULES OF COURT.

II.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO RULE THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISREGARDED PERTINENT AND WELL-ENTRENCHED JURISPRUDENCE STATING THAT A SEPARATE PETITION FOR *CERTIORARI* MAY PROSPER WHERE THE APPEAL DOES NOT APPEAR TO BE A PLAIN, SPEEDY AND ADEQUATE REMEDY UNDER LAW.

III.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT THE PRESENT PETITION FOR *CERTIORARI* WAS PROPER AND JUSTIFIED BECAUSE IT WAS MEANT TO PREVENT: (A) IRREPARABLE DAMAGE AND INJURY TO PETITIONER HEIRS FROM THE TRIAL COURT JUDGE'S CAPRICIOUS, ARBITRARY, AND WHIMSICAL EXERCISE OF HIS JUDGMENT; (B) THE DANGER OF CLEAR FAILURE OF JUSTICE; AND (C) BECAUSE THEIR APPEAL IS INADEQUATE TO RELIEVE THEM FROM THE INJURIOUS EFFECTS OF THE TRIAL COURT'S JUDGMENT.

IV.

THE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO RULE THAT IT WAS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR THE TRIAL COURT TO INSIST UPON THE EXECUTION OF A MANIFESTLY UNJUST AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

V.

THE HONORABLE COURT OF APPEALS FAILED TO

Supreme Court E-Library

APPRECIATE THAT THE TRIAL COURT, IN ALLOWING THE IMMEDIATE EXECUTION OF THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AGAINST THE PROPERTIES OF THE PETITIONER HEIRS, BLATANTLY DISREGARDED THE PROVISIONS OF THE CIVIL CODE ON SUCCESSION AND RULE 88 OF THE RULES OF COURT ON PAYMENT OF DEBTS OF THE ESTATE.[16]

The petition is meritorious.

At the crux of the controversy is the determination of whether or not moral damages, exemplary damages, and attorney's fees, awarded as a result of a counterclaim in an intra-corporate case, are immediately executory despite the pendency of the appeal in the main case.

The issue is not novel as the same has been resolved in another petition filed before this Court by the Heirs of Divinagracia in G.R No. 172023.

G.R. No. 172023

The controversy therein originated from Corporate Case No. 02-27050, which involved a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares filed by Divinagracia who claimed he was a stockholder of CBS Development Corporation, Inc. (CBSDC). Said action was also filed before the same RTC of the present petition.

In G.R. No. 172023, Divinagracia, as a stockholder of CBSDC, opposed a proposal to authorize Florete, in his capacity as President of CBSDC, to mortgage all, or substantially all, of CBSDC's real properties to secure a loan obtained by Newsounds Broadcasting Network, Inc., Consolidated Broadcasting System, and People's Broadcasting Services, Inc. However, majority of the stockholders approved the grant of authority to Florete and the Board. As a result, Divinagracia, as a dissenting stockholder wrote a letter exercising his appraisal right under Section 81 of the Corporation Code. CBSDC's Board of Directors approved Divinagracia's exercise of his appraisal right.

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[16] *Id.* at 12-13.

Supreme Court E-Library

Thereafter, Divinagracia surrendered his stock certificates. The Board, however, deferred action on Divinagracia's request, an act to which Divinagracia protested to. Later, the corporate secretary informed Divinagracia that his shares were declared delinquent and that they were to be sold in public auction.

Consequently, on February 6, 2002, Divinagracia filed before the RTC of Iloilo a Petition for *Mandamus* and Nullification of Delinquency Call and Issuance of Unsubscribed Shares.

On February 12, 2002, the public auction pushed through and the shares of Divinagracia were sold to Diamel Incorporated (Diamel) as the highest bidder.

CBSDC and Diamel filed their answer to Divinagracia's petition at the same time interposing their compulsory counterclaim. Divinagracia, however, died and was substituted by his heirs.

The RTC ruled in favor of CBSDC and Diamel, and granted their compulsory counterclaim. Consequently, the Heirs of Divinagracia were ordered by the RTC to pay exemplary damages and attorney's fees to CBSDC and Diamel. The Heirs of Divinagracia filed a Notice of Appeal.

Thereafter, CBSDC and Diamel filed a Motion for Immediate Execution which was granted by the RTC. This prompted the Heirs of Divinagracia to file a petition for *certiorari* before the CA, which was docketed as CA-G.R. CEB SP No. 00040. In said petition, the Heirs of Divinagracia questioned the immediate execution of the grant of exemplary damages and attorney's fees, despite their having already filed a Notice of Appeal.

In a Decision dated October 6, 2005, the CA dismissed the petition filed by the Heirs of Divinagracia holding that Section 4, Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies provides that "all decisions rendered in intra-corporate controversies shall immediately be executory." The Heirs of Divinagracia then appealed to this Court where the case was docketed as G.R. No. 172023.

Supreme Court E-Library

On July 7, 2010, this Court's Second Division rendered a Decision[17] ruling in favor of the Heirs of Divinagracia, the pertinent portions of which are hereby reproduced to wit:

> From the filing of the intra-corporate dispute on 6 February 2002 until the promulgation of the challenged Court of Appeals' decision and resolution on 6 December 2005 and 22 February 2006, respectively, the governing rule, specifically Section 4, Rule 1 of the Interim Rules, provided that:
>
> > All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.
>
> On 19 September 2006, while the present case remained pending before this Court, the Court *en banc* issued a Resolution in A.M. No. 01-2-04-SC titled **"Re: Amendment of Section 4, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies by Clarifying that Decisions Issued Pursuant to Said Rule are Immediately Executory Except the Awards for Moral Damages, Exemplary Damages and Attorney's Fees, if any."** The Court resolved to amend specifically Section 4, Rule 1 of the Interim Rules, to wit:
>
> > Acting on the Resolution dated September 5, 2006 of the Committee on the Revision of Rules of Court, the Court Resolved to AMEND Section 4, Rule 1 of The Interim Rules of Procedure Governing Intra-Corporate Controversies as follows:
> >
> > x x x
> >
> > SEC. 4. Executory nature of decisions and orders.— All decisions and orders issued under these Rules shall immediately be executory EXCEPT THE AWARDS FOR MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES, IF ANY. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

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[17] Penned by Senior Associate Justice Antonio T. Carpio, with Associate Justices Roberto A. Abad, Martin S. Villarama, Jr., Jose Portugal Perez and Jose Catral Mendoza, concurring.

Supreme Court E-Library

The amended provision expressly exempts awards for moral damages, exemplary damages, and attorney's fees from the rule that decisions and orders in cases covered by the *Interim Rules* are immediately executory. As can be gleaned from the title of A.M. No. 01-2-04-SC, the amendment of Section 4, Rule 1 of the Interim Rules was crafted precisely to clarify the previous rule that decisions on intra-corporate disputes are immediately executory, by specifically providing for an exception. Thus, the prevailing rule now categorically provides that awards for moral damages, exemplary damages, and attorney's fees in intra-corporate controversies are ***not*** immediately executory.

Indisputably, the amendment of Section 4, Rule 1 of the Interim Rules is procedural in character. Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. Procedural laws do not fall under the general rule against retroactive operation of statutes. Further, the retroactive application of procedural laws does not violate any personal rights because no vested right has yet attached or arisen from them. Clearly, the amended Section 4, Rule 1 of the Interim Rules must be applied retroactively to the present case. Therefore, the trial court's award of exemplary damages and attorney's fees in favor of private respondents is not immediately executory.[18]

Based on the foregoing disquisitions, the conclusion is certain in that the award of moral damages, exemplary damages and attorney's fees, awarded as an incident to an intra-corporate case, are exempt from the rule on immediate execution.

This Court is not unmindful of the fact that the Heirs of Divinagracia also argued in herein petition that the grant of moral damages, exemplary damages and attorney's fees was without basis. This Court is, however, not inclined to grant such relief in view of the fact that records show that the Heirs of Divinagracia had already filed a Notice of Appeal to Civil Case No. 26557 which questioned the dismissal of the derivative suit filed by Divinagracia. The determination of the propriety of the grant of damages must, therefore, be determined in the main case and not in herein petition which assails the propriety

[18] Emphasis in the original.

Supreme Court E-Library

of the grant of the writ of execution by the RTC as held by this Court in *Radio Communications of the Philippines, Inc. v. Lantin*,[19] to wit:

x x x **The execution of any award for moral and exemplary damages is dependent on the outcome of the main case.** Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages, as well as the exact amounts, remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. **The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignment of errors on appeal**. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.[20]

WHEREFORE, premises considered, the petition is *GRANTED*. The October 5, 2005 Decision and April 21, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 86435 are hereby *REVERSED* and *SET ASIDE*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[19] Nos. 59311 & 59320, January 31, 1985, 134 SCRA 395.

[20] *Id.* at 400-401. (Emphasis supplied).