



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**FIRST DIVISION**

**WESTMONT BANK (now  
 UNITED OVERSEAS BANK  
 PHILS.\*),**

**G.R. No. 175733**

Petitioner,

-versus-

**FUNAI PHILIPPINES  
 CORPORATION, SPOUSES  
 ANTONIO and SYLVIA  
 YUTINGCO, PANAMAX  
 CORPORATION, PEPITO ONG  
 NGO, RICHARD N. YU, AIMEE  
 R. ALBA, ANNABELLE BAESA,  
 NENITA RESANE, and MARIA  
 ORTIZ,**

Respondents.

x ----- x

**CARMELO V. CACHERO,**

**G.R. No. 180162**

Petitioner,

-versus-

Present:

**UNITED OVERSEAS BANK  
 PHILS. and/or WESTMONT  
 BANK,**

SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 PEREZ,  
 PERLAS-BERNABE, and  
 LEONEN,\*\* *JJ.*

Respondents.

Promulgated:

**JUL 08 2015**

x ----- x

**DECISION**

**PERLAS-BERNABE, J.:**

\* "United Overseas Bank Philippines, Incorporated" in some parts of the records.  
 \*\* Designated Acting Member per Special Order No. 2096 dated July 1, 2015.

*R*

Before the Court are petitions for review on *certiorari*<sup>1</sup> assailing: (a) the Decision<sup>2</sup> dated November 8, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 71933, which affirmed with modification the Decision<sup>3</sup> dated June 20, 2001 rendered by the Regional Trial Court of Manila, Branch 49 (RTC) in Civil Case No. 98-868531, and awarded five percent (5%) of the principal amount as attorney's fees; (b) the Decision<sup>4</sup> dated April 23, 2007 of the CA in CA-G.R. SP. Nos. 65785 and 66410, which nullified the Orders dated July 17, 2001<sup>5</sup> and July 23, 2001<sup>6</sup> of the RTC in the same civil case, and adjudged petitioner Sheriff Carmelo V. Cachero (Sheriff Cachero) guilty of indirect contempt with the penalty of a fine; and (c) the Resolution<sup>7</sup> dated October 24, 2007 of the CA in CA-G.R. SP. Nos. 65785 and 66410, which denied Sheriff Cachero's motion for reconsideration.

### The Facts

Sometime in April and May 1997, respondents Funai Philippines Corporation (Funai) and Spouses Antonio and Sylvia Yutingco (Sps. Yutingco) obtained loans from Westmont Bank (Westmont), now United Overseas Bank Phils., in the aggregate amount of ₱10,000,000.00, secured by several promissory notes<sup>8</sup> (PNs) with different maturity dates.<sup>9</sup> The PNs commonly provide that in case the same are referred to an attorney-at-law or a collection agency, or a suit is instituted in court for collection, Sps. Yutingco will be liable to pay twenty percent (20%) of the total amount due as attorney's fees, exclusive of costs of suit and other expenses.<sup>10</sup>

However, Funai and Sps. Yutingco (original defendants) defaulted in the payment of the said loan obligations when they fell due, and ignored Westmont's demands for payment.<sup>11</sup> Hence, the Westmont filed a complaint<sup>12</sup> for sum of money, with prayer for the issuance of a writ of

<sup>1</sup> In G.R. No. 175733, a Petition for Partial Review on *Certiorari* filed was (*rollo* [G.R. No. 175733], pp. 36-71). See also *rollo* (G.R. No. 180162), pp. 11-34.

<sup>2</sup> *Rollo* (G.R. No. 175733), pp. 7-26. Penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin (now members of the Court) concurring.

<sup>3</sup> *Id.* at 256-267. Penned by Judge Concepcion S. Alarcon-Vergara.

<sup>4</sup> *Rollo* (G.R. No. 180162), pp. 35-55. Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Jose Catral Mendoza (now a member of the Court) and Ramon M. Bato, Jr. concurring.

<sup>5</sup> *CA rollo* (CA-G.R. SP. No. 66410), p. 26. See also *rollo* (G.R. No. 180162), p. 36.

<sup>6</sup> *CA rollo* (CA-G.R. SP. No. 66410), p. 28. See also *rollo* (G.R. No. 180162), p. 36.

<sup>7</sup> *Rollo* (G.R. No. 180162), pp. 56-60.

<sup>8</sup> The amounts indicated in the PNs (see *rollo* [G.R. No. 175733], pp. 101 and 106-108;) are broken down as follows:

PN No.	Date	Principal Amount	Interest (Per Annum)	Date of Maturity
97-043	April 18, 1997	₱3,600,000.00	19%	August 20, 1997
97-051	May 7, 1997	₱2,800,000.00	18%	May 7, 1997
97-067	May 28, 1997	₱3,600,000.00	19%	August 26, 1997
		₱10,000,000.00		

<sup>9</sup> *Id.* at 365.

<sup>10</sup> *Id.* at 80 and 106-108.

<sup>11</sup> See *id.* at 8.

<sup>12</sup> Dated December 17, 1997. *Id.* at 100-103.

preliminary attachment before the RTC on January 16, 1998, docketed as Civil Case No. 98-86853.

### The RTC Proceedings

After an *ex-parte* hearing, the RTC issued a Writ of Preliminary Attachment<sup>13</sup> dated February 19, 1998 ordering the attachment of the personal and real properties of the original defendants. Furthermore, the RTC issued another Order<sup>14</sup> dated March 24, 1998, directing the attachment of properties appearing under the names of other persons, but which were under the control of the original defendants. In view of the foregoing directives, Sheriff Gerry C. Duncan (Sheriff Duncan) and Sheriff Cachero levied and seized the properties situated at: (a) No. 9 Northpark Avenue, Bellevue, Grace Village, Quezon City; and (b) 2<sup>nd</sup> Level, Phase III, Sta. Lucia East Grand Mall, Cainta, Rizal (Sta. Lucia).<sup>15</sup>

Pepito Ong Ngo (Ngo), as Acting President of Panamax Corporation (Panamax), filed an Affidavit of Third-Party Claim<sup>16</sup> over the properties seized in Sta. Lucia, claiming that Panamax is the true and lawful owner thereof.<sup>17</sup>

On April 20, 1998, Westmont filed an Amended Complaint<sup>18</sup> impleading as additional defendants, Panamax, Ngo, Aimee R. Alba, Richard N. Yu, Annabelle Baesa, and Nenita Resane<sup>19</sup> (additional defendants), and praying that they be declared as mere alter egos, conduits, dummies, or nominees of Sps. Yutingco to defraud their creditors, including Westmont.<sup>20</sup> On August 6, 1998, Westmont filed a Second Amended Complaint<sup>21</sup> adding Maria Ortiz to the roster of additional defendants.<sup>22</sup>

On August 14, 1998,<sup>23</sup> the original defendants submitted their Answer,<sup>24</sup> explaining that their “non-payment was due to circumstances beyond their control and occasioned by [Westmont’s] sudden treacherous manipulation leaving no room for [original] defendants to make

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<sup>13</sup> Id. at 109-110.

<sup>14</sup> Id. at 112.

<sup>15</sup> Id. at 9 and 39. See also Sheriff’s Return dated April 8, 1998; CA *rollo* (CA-G.R. SP. No. 65785), pp. 418-419.

<sup>16</sup> Not attached to the records of these cases.

<sup>17</sup> *Rollo* (G.R. No. 175733), p. 9.

<sup>18</sup> Dated April 18, 1998. Id. at 113-119.

<sup>19</sup> Id. at 114-115.

<sup>20</sup> Id. at 116-117.

<sup>21</sup> Dated August 5, 1998. Id. at 147-154.

<sup>22</sup> Id. at 151.

<sup>23</sup> Id. at 10.

<sup>24</sup> Dated August 13, 1998. Id. at 155.

arrangements for payment,<sup>25</sup> and interposing a counterclaim for actual and moral damages and attorney's fees for the alleged irregular levy.<sup>26</sup>

On the other hand, the additional defendants moved to dismiss<sup>27</sup> the complaints and, thereafter, filed their Answer,<sup>28</sup> alleging that: (a) the complaints stated no cause of action against them, considering the lack of legal tie or *vinculum juris* with Westmont; and (b) they were not parties-in-interest in the case absent any proof linking them to the transaction between Westmont and the original defendants.<sup>29</sup> They thereby interposed a counterclaim for actual, moral, and exemplary damages, as well as attorney's fees, and costs of suit.<sup>30</sup>

On December 11, 1998, Westmont moved for a judgment on the pleadings.<sup>31</sup> During its pendency, a public auction sale of the seized properties was conducted on March 16, 2001 that realized net proceeds in the amount of ₱1,030,000.00.<sup>32</sup>

In a Decision<sup>33</sup> dated June 20, 2001 (June 20, 2001 RTC Decision), the RTC adjudged the original defendants jointly and severally liable to Westmont for the amount of ₱10,000,000.00 less the amount of ₱1,030,000.00 realized from the public auction sale, plus nineteen percent (19%) legal interest from the filing of the complaint until fully paid.<sup>34</sup> However, it dismissed the amended and second amended complaints for failure to state a cause of action against the additional defendants and ordered the return of the items wrongfully seized, to the premises of Panamax in Sta. Lucia.<sup>35</sup>

The RTC ruled that the additional defendants had no participation or any corresponding duty whatsoever relative to the subject PNs, which were executed only by the original defendants in favor of Westmont; hence, the latter cannot maintain an action against said additional defendants. The RTC further held that Westmont's imputation that the additional defendants acted as dummies, conduits, and alter egos of the original defendants are but mere inferences of fact, and not a narration of specific acts or set of facts or ultimate facts required in a complaint to entitle the plaintiff to a remedy in

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<sup>25</sup> Id. See also id. at 10.

<sup>26</sup> Id.

<sup>27</sup> See Entry of Appearance with Motion to Dismiss dated September 10, 1998; id. at 156-162.

<sup>28</sup> With Compulsory Counterclaim (Re: Second Amended Complaint dated August 5, 1998) dated March 22, 1999. Id. at 185-193.

<sup>29</sup> See id. at 188-190.

<sup>30</sup> Id. at 190-191.

<sup>31</sup> See Motion for Judgment on the Pleadings dated December 8, 1998; id. at 182-184.

<sup>32</sup> Id. at 266.

<sup>33</sup> Id. at 256-267.

<sup>34</sup> Id. at 266-267.

<sup>35</sup> Id. at 267.

law. Thus, it concluded that the complaint **failed to state a cause of action** against the additional defendants.<sup>36</sup>

Westmont's partial motion for reconsideration<sup>37</sup> from the June 20, 2001 RTC Decision, dismissing the complaints against the additional defendants, was denied in an Order<sup>38</sup> dated July 19, 2001. Hence, it filed a notice of partial appeal,<sup>39</sup> docketed as CA-G.R. CV No. 71933.<sup>40</sup>

On the other hand, the additional defendants filed on July 6, 2001 a Motion for Execution Pending Appeal,<sup>41</sup> praying for the return of the seized items which were in danger of becoming obsolescent and useless, and whose value had considerably gone down in the market.<sup>42</sup> The said motion was granted in an Order<sup>43</sup> dated July 17, 2001 (July 17, 2001 Execution Order). Accordingly, the RTC issued a writ of execution<sup>44</sup> of even date, directing Sheriff Duncan and Sheriff Cachero to cause the immediate return of the wrongfully seized items to the additional defendants.<sup>45</sup> However, Westmont refused to release the seized items, hence, the RTC issued an Order<sup>46</sup> dated July 23, 2001 (July 23, 2001 Execution Order), enjoining Westmont to comply with the order of execution, otherwise, a break-open order shall be issued.<sup>47</sup>

Aggrieved, Westmont filed a petition for *certiorari*<sup>48</sup> with very urgent motion/prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction before the CA, docketed as CA-G.R. SP. No. 65785, seeking to prevent the RTC and the additional defendants from implementing the July 17 and 23, 2001 Execution Orders (Execution Orders).<sup>49</sup>

Due to Westmont's continued refusal to release the seized items, the RTC issued a Break-Open Order<sup>50</sup> dated July 25, 2001 to enforce the writ. However, the following day, or on July 26, 2001, the CA issued a TRO<sup>51</sup> enjoining Sheriffs Duncan and Cachero from enforcing the writ of

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<sup>36</sup> See *id.* at 261-262.

<sup>37</sup> Dated July 12, 2001. *Id.* at 268-291.

<sup>38</sup> CA *rollo* (CA-G.R. SP. No. 66410), p. 66.

<sup>39</sup> *Rollo* (G.R. No. 175733), pp. 306-307.

<sup>40</sup> See Brief for Plaintiff-Appellant filed in CA-G.R. CV No. 71933; *id.* at 310.

<sup>41</sup> Dated July 4, 2001. CA *rollo* (CA-G.R. SP. No. 66410), pp. 70-72.

<sup>42</sup> See *id.* at 71. See also *rollo* (G.R. No. 180162), p. 38.

<sup>43</sup> CA *rollo* (CA-G.R. SP No. 66410), p. 26.

<sup>44</sup> *Id.* at 84-85.

<sup>45</sup> See *id.* at 85.

<sup>46</sup> *Id.* at 28.

<sup>47</sup> *Id.*

<sup>48</sup> CA *rollo* (CA-G.R. SP. No. 65785), pp. 5-19.

<sup>49</sup> See *id.* at 16. See also *rollo* (G.R. No. 180162), pp. 39 and 179.

<sup>50</sup> CA *rollo* (CA-G.R. SP. No. 66410), pp. 90-91.

<sup>51</sup> See Resolution dated July 26, 2001; *id.* at 93-94. Penned by Associate Justice Andres B. Reyes, Jr. with B.A. Adefuin-Dela Cruz and Josefina Guevara-Salonga concurring.

execution.<sup>52</sup> The CA process server, Alfredo Obrence, Jr. (Obrence), duly served a copy of the TRO to the RTC Clerk of Court at around 2:30 p.m.<sup>53</sup> and informed Sheriff Cachero thereof over the phone. Notwithstanding, the latter proceeded with the implementation of the writ of execution.<sup>54</sup>

At around 3:00 p.m., Westmont's representative who was able to secure a facsimile copy of the TRO showed the same to Sheriff Cachero who merely ignored it. Meanwhile, various audio, video, and electrical appliances were taken out from the warehouse and loaded into a truck.<sup>55</sup> At around 4:15 p.m., Obrence arrived at the site and served on Sheriff Cachero a duplicate original copy of the TRO.<sup>56</sup> Nonetheless, the items on the truck were not unloaded and the truck was allowed to leave the premises.<sup>57</sup> Consequently, a case for indirect contempt was filed by Westmont against Sheriffs Cachero and Duncan, and Ngo, docketed as CA-G.R. SP. No. 66410, which was consolidated with the petition for *certiorari* in CA-G.R. SP. No. 65785.<sup>58</sup>

### The Ruling in CA-G.R. CV No. 71933

In a Decision<sup>59</sup> dated November 8, 2006, the CA affirmed the June 20, 2001 RTC Decision, with the modification awarding five percent (5%) of the principal amount as attorney's fees.<sup>60</sup>

The CA ruled that Westmont has **no cause of action** against the additional defendants as they had no participation whatsoever in the execution of the subject PNs.<sup>61</sup> It further struck down the writ of attachment issued in the case, considering that the same was implemented against the additional defendants prior to the acquisition of jurisdiction over their persons.<sup>62</sup> Finally, it declared Westmont entitled to the award of attorney's fees on the basis of the express stipulation in the PNs, but in the reduced amount of five percent (5%), which it found reasonable under the premises.<sup>63</sup>

Dissatisfied, Westmont filed a petition for partial review on *certiorari*<sup>64</sup> before the Court, docketed as G.R. No. 175733.

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<sup>52</sup> See *rollo* (G.R. No. 180162), p. 39.

<sup>53</sup> *Id.* at 40.

<sup>54</sup> See statements from the April 23, 2007 CA Decision; *id.* at 41, 51-54, and 57-58. See also *id.* at 102.

<sup>55</sup> See *id.* at 102.

<sup>56</sup> *Id.* See also *id.* at 51.

<sup>57</sup> See *id.* at 41 and 103.

<sup>58</sup> *Id.* at 42.

<sup>59</sup> *Rollo* (G.R. No. 175733), pp. 7-26.

<sup>60</sup> *Id.* at 26.

<sup>61</sup> *Id.* at 16.

<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.* at 25.

<sup>64</sup> *Id.* at 36-71.

### **The Ruling in CA-G.R. SP. Nos. 65785 and 66410**

In a Decision<sup>65</sup> dated April 23, 2007, the CA: (a) nullified the Execution Orders, granting the additional defendants' Motion for Execution Pending Appeal, and enjoining Westmont to comply with the Execution Orders; and (b) adjudged Sheriff Cachero guilty of indirect contempt and ordered him to pay a fine of ₱30,000.00.<sup>66</sup>

The CA found no good reasons stated in a special order to justify the RTC's grant of discretionary execution pending appeal in favor of the additional defendants.<sup>67</sup> On the petition for indirect contempt, the CA found that Sheriff Cachero had prior knowledge of the TRO, even before he broke the padlock of the warehouse,<sup>68</sup> warranting the inference that he had the intention to defy the same.<sup>69</sup> Moreover, despite actual receipt of the TRO, he failed to rectify his acts.<sup>70</sup> On the other hand, the CA found no evidence to hold Sheriff Duncan and Ngo liable, absent any showing that they knew of the TRO.<sup>71</sup>

Sheriff Cachero filed a motion for reconsideration,<sup>72</sup> which was, however, denied in a Resolution<sup>73</sup> dated October 24, 2007, hence the instant petition for review on *certiorari*<sup>74</sup> before the Court, docketed as G.R. No. 180162.

In a Resolution<sup>75</sup> dated August 15, 2012, the Court, resolved to consolidate G.R. Nos. 175733 and 180162.

In the meantime, records show that the accounts involved in the instant cases were assigned by Westmont to the Philippine Deposit Insurance Corporation.<sup>76</sup>

### **The Issues Before the Court**

The essential issues for the Court's resolution are as follows:

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<sup>65</sup> *Rollo* (G.R. No. 180162), pp. 35-55.

<sup>66</sup> *Id.* at 55.

<sup>67</sup> *See id.* at 46.

<sup>68</sup> *Id.* at 51-52.

<sup>69</sup> *Id.* at 49.

<sup>70</sup> *Id.* at 53.

<sup>71</sup> *See id.* at 49 and 54.

<sup>72</sup> Dated May 9, 2007. CA *rollo* (CA-G.R. SP. No. 65785), pp. 598-614.

<sup>73</sup> *Rollo* (G.R. No. 180162), pp. 56-60.

<sup>74</sup> *Id.* at 11-34.

<sup>75</sup> *Id.* at 181.

<sup>76</sup> *Rollo* (G.R. No. 175733), pp.789-790.

**In G.R. No. 175733:**

Westmont argues that the CA gravely erred in: (a) not applying the alter ego doctrine;<sup>77</sup> (b) not considering additional defendants as necessary parties to the case;<sup>78</sup> (c) not awarding exemplary damages in its favor;<sup>79</sup> and (d) disregarding the express stipulation of the PNs regarding attorney's fees.<sup>80</sup>

**In G.R. No. 180162:**

Sheriff Cachero asserts that the CA committed gross abuse of discretion when it adjudged him guilty of indirect contempt in implementing the writ of execution and the Break-Open Order despite the want of proper, timely, and adequate notice of the TRO.<sup>81</sup>

**The Court's Ruling**

The petitions lack merit.

**Re: G.R. No. 175733**

At the outset, it must be stressed that Civil Case No. 98-86853 was submitted for judgment on the pleadings, on Westmont's motion.<sup>82</sup> Hence, other than the hearing on the motion to discharge the attached items,<sup>83</sup> no full-blown trial was conducted on the case.

In the case at bar, both the RTC and the CA were one in dismissing Westmont's Amended and Second Amended Complaints as to the additional defendants, but differed on the grounds therefor – *i.e.*, the RTC held that said complaints failed to state a cause of action, while the CA ruled that there was no cause of action, as to the additional defendants.

“Failure to state a cause of action and lack of cause of action are distinct grounds to dismiss a particular action. The former refers to the insufficiency of the allegations in the pleading, while the latter to the insufficiency of the factual basis for the action. Dismissal for failure to state a cause of action may be raised at the earliest stages of the proceedings

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<sup>77</sup> Id. at 49.

<sup>78</sup> Id. at 67.

<sup>79</sup> Id. at 69.

<sup>80</sup> Id. at 69-70.

<sup>81</sup> *Rollo* (G.R. No. 180162), pp. 19-20.

<sup>82</sup> See *rollo* (G.R. No. 175733), p. 260.

<sup>83</sup> Id. at 93.



through a motion to dismiss under Rule 16 of the Rules of Court, while dismissal for lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions or evidence presented by the plaintiff.”<sup>84</sup>

Considering that, in this case, no stipulations, admissions, or evidence have yet been presented, it is perceptibly impossible to assess the insufficiency of the factual basis on which Sheriff Cachero asserts his cause of action. Hence, the ground of lack of cause of action could not have been the basis for the dismissal of this action.

Nonetheless, the Amended and Second Amended Complaints are still dismissible on the ground of failure to state a cause of action, as correctly held by the RTC.

“A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.”<sup>85</sup>

Judicious examinations of Westmont’s Amended and Second Amended Complaints readily show their failure to sufficiently state a cause of action as the allegations therein do not proffer ultimate facts which would warrant an action against the additional defendants for the collection of the amount due on the subject PNs. In imputing liability to the additional defendants, Westmont merely alleged in its Second Amended Complaint:

“Panamax, Ngo, Alba, Yu, Baesa and Resane are impleaded herein for being mere alter egos, conduits, dummies or nominees of defendants spouses Antonio and Sylvia Yutingco to defraud creditors, including herein plaintiff [Westmont].

x x x x

Maria Ortiz is impleaded herein for being mere alter ego, conduit, dummy or nominee of defendants spouses Antonio and Sylvia Yutingco to

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<sup>84</sup> See *Zuñiga-Santos v. Santos-Gran*, G.R. No. 197380, October 8, 2014. See also *Macaslang v. Zamora*, G.R. No. 156375, May 30, 2011, 649 SCRA 92, 106-107.

<sup>85</sup> See *id.*; underscoring supplied.

defraud creditors, including herein plaintiff [Westmont].” (Underscoring supplied)<sup>86</sup>

The aforesaid allegations partake of the nature of mere conclusions of law, unsupported by a particular averment of circumstances that will show why or how such inferences or conclusions were arrived at as to bring the controversy within the trial court’s jurisdiction.<sup>87</sup> There is no explanation or narration of facts that would disclose why the additional defendants are mere alter egos, conduits, dummies or nominees of the original defendants to defraud creditors, contrary to the requirement of Section 5,<sup>88</sup> Rule 8 of the Rules of Court that the circumstances constituting fraud must be stated with particularity, thus, rendering the allegation of fraud simply an unfounded conclusion of law. It must be pointed out that, in the absence of specific averments, the complaint presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer<sup>89</sup> and must, perforce, be dismissed for failure to state a cause of action,<sup>90</sup> as what the RTC did.

It bears to stress that “while the facts alleged in the complaint are hypothetically admitted by the defendant, who moves to dismiss the complaint on the ground of failure to state a cause of action, it must, nevertheless, be remembered that the **hypothetical admission extends only to the relevant and material facts well pleaded in the complaint, as well as inferences fairly deductible therefrom.**”<sup>91</sup> Verily, the filing of the motion to dismiss assailing the sufficiency of the complaint “does not admit the truth of mere epithets of fraud; nor allegations of legal conclusions; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor mere conclusions of law; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insult the opposing party; nor to legally impossible facts; nor to facts which appear unfounded by a record incorporated in the pleading, or by a document referred to; nor to general averments contradicted by more specific averments.”<sup>92</sup>

Anent the award of attorney’s fees, it is relevant to note that the stipulations on attorney’s fees contained in the PNs constitute what is known

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<sup>86</sup> *Rollo* (G.R. No. 175733), pp. 148-149.

<sup>87</sup> See *Cañete v. Genuino Ice Company, Inc.*, 566 Phil. 204, 217(2008).

<sup>88</sup> SEC. 5. *Fraud, mistake, condition of the mind.* – In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally. (Underscoring supplied)

<sup>89</sup> *Cañete v. Genuino Ice Company, Inc.*, supra note 87, at 220.

<sup>90</sup> See *Zuñiga-Santos v. Santos-Gran*, supra note 84.

<sup>91</sup> *Id.*; emphasis supplied.

<sup>92</sup> *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 339-340, citing *Tan v. CA*, 356 Phil. 555, 563 (1998).

as a penal clause. The award of attorney's fees by the CA, therefore, is not in the nature of an indemnity but rather a penalty in the form of liquidated damages in accordance with the contract between Westmont and the original defendants. "Such a stipulation has been upheld by [the] Court as binding between the parties so long as it does not contravene the law, morals, public order or public policy."<sup>93</sup> Nevertheless, the courts possess the power to reduce the amount of attorney's fees whether intended as an indemnity or a penalty, if the same is iniquitous or unconscionable.<sup>94</sup> Thus, in *Trade & Investment Dev't. Corp. of the Phils. v. Roblett Industrial Construction Corp.*,<sup>95</sup> the Court equitably reduced the amount of attorney's fees to be paid since interests (and penalties) had ballooned to thrice as much as the principal debt. In the present case, interest alone runs to more than thrice the principal amount of the loan obligation.<sup>96</sup> In real terms, therefore, attorney's fees at the stipulated rate of 20% of the total amount due of over ₱42,000,000.00,<sup>97</sup> or about ₱8,400,000.00, is manifestly exorbitant. Hence, the Court concurs with the CA that the amount of attorney's fees should be equitably reduced to five percent (5%) of the principal debt, which the Court finds reasonable under the premises.

Finally, anent Westmont's claim for exemplary damages, the Court does not find any factual and legal<sup>98</sup> bases for the award. A perusal of the original, amended and second amended complaints failed to disclose specific averments that will show the wanton, fraudulent, reckless, oppressive or malevolent acts<sup>99</sup> committed by the original defendants with respect to the loan obligation sought to be enforced.

### **Re: G.R. No. 180162**

It is well-settled that a sheriff performs a sensitive role in the dispensation of justice. He is duty-bound to know the basic rules in the implementation of a writ of execution and be vigilant in the exercise of that authority. While sheriffs have the ministerial duty to implement writs of execution promptly, they are bound to discharge their duties with prudence,

<sup>93</sup> *Trade & Investment Dev't. Corp. of the Phils. v. Roblett Industrial Construction Corp.*, 511 Phil. 127, 160 (2005).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Interest due is computed as follows:

Principal	₱10,000,000.00
Interest rate	x 19%
Time (rounded-off)	<u>x 17 years</u>
<i>Interest due</i>	₱32,300,000.00

<sup>97</sup> Total amount due is computed as follows:

Principal	₱10,000,000.00
Interest due	<u>+32,300,000.00</u>
<i>Total amount due</i>	₱42,300,000.00

<sup>98</sup> Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, **in addition to** moral, temperate, liquidated or compensatory damages. (Emphasis supplied)

<sup>99</sup> See Article 2232 of the Civil Code.

caution, and attention which careful men usually exercise in the management of their affairs. Sheriffs, as officers of the court upon whom the execution of a judgment depends, must be circumspect and proper in their behavior.<sup>100</sup> Anything less is unacceptable because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice.<sup>101</sup>

In the present case, Sheriff Cachero failed to exercise circumspection in the enforcement of the writ of execution, given the information that a TRO had already been issued by the CA enjoining him from implementing the same. This clearly evinces an intention to defy the TRO. As aptly observed by the CA:

Sheriff Cachero, being an officer of the court, should have exercised prudence by verifying whether there was really a TRO issued so as to avoid committing an act that would result in the thwarting of this Court's order. Assuming that [his] testimony that the loading of the items was completed at 4:00 p.m., and that the process server was fifteen minutes late in serving the TRO, the phone call and the presentation of the fax copy of the TRO sufficiently notified him of the Court's order which enjoined them (the Sheriffs) from carrying out the writ of execution. The fact of [his] prior actual knowledge was never refuted by him. It was also undisputed that he already knew of the existence of the TRO even before he broke the padlock of the warehouse.<sup>102</sup>

In this relation, the Court does not find credence in Sheriff Cachero's insistence that while he may have "gotten wind" of the TRO through a cellular phone call, he was not bound thereby unless an official copy of the TRO was duly served upon him.<sup>103</sup>

Settled is the rule that where a party has *actual notice*, no matter how acquired, of an injunction clearly informing him from what he must abstain, he is "***legally bound from that time to desist from what he is restrained and inhibited from doing***, and will be punished for a violation thereof, even though it may not have served, or may have been served on him defectively."<sup>104</sup>

In view of the foregoing, the Court finds that Sheriff Cachero's open defiance of the TRO constitutes contumacious behavior falling under

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<sup>100</sup> *Corpuz v. Pascua*, A.M. No. P-11-2972, September 28, 2011, 658 SCRA 239, 247-248; underscoring supplied.

<sup>101</sup> *Sarmiento v. Mendiola*, A.M. No. P-07-2383, December 15, 2010, 638 SCRA 345, 352, citing *Escobar vda. de Lopez v. Atty. Luna*, 517 Phil. 467, 477 (2006).

<sup>102</sup> *Rollo* (G.R. No. 180162), pp. 51-52.


<sup>103</sup> *Id.* at 27.

<sup>104</sup> See *Spouses Lee v. CA*, 528 Phil. 1050, 1065-1066 (2006); emphasis supplied.

Section 3 (b),<sup>105</sup> Rule 71 of the Rules of Court, which is punishable by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six (6) months or both.

**WHEREFORE**, the petitions are **DENIED**. The Court hereby **AFFIRMS**: (a) the Decision dated November 8, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 71933, dismissing the Amended and Second Amended Complaints against the additional defendants, namely, Panamax Corporation, Pepito Ong Ngo, Aimee R. Alba, Richard N. Yu, Annabelle Baesa, Nenita Resane and Maria Ortiz in Civil Case No. 98-86853 before the Regional Trial Court of Manila, Branch 49 (RTC), and directing the original defendants, namely, Funai Phils. Corp. and Spouses Antonio and Sylvia Yutingco to pay attorney's fees in the amount of five percent (5%) of the principal amount; (b) the Decision dated April 23, 2007 and the Resolution dated October 24, 2007 of the CA in CA-G.R. SP. Nos. 65785 and 66410, which nullified the Execution Orders dated July 17, 2001 and July 23, 2001 of the RTC in Civil Case No. 98-86853, and adjudged Sheriff Carmelo V. Cachero guilty of indirect contempt with the penalty of fine in the amount of ₱30,000.00.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice  
 Chairperson

<sup>105</sup> SEC. 3. *Indirect contempt to be punished after charge and hearing.* – After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

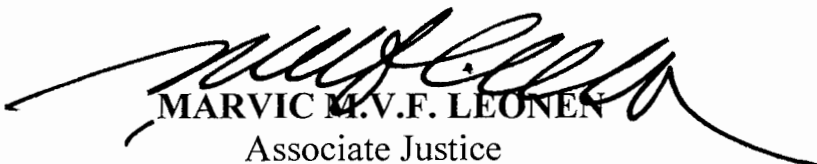
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(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

x x x x

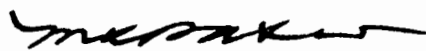
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice