Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ORIX METRO LEASING AND FINANCE CORPORATION,
Petitioner,

- versus -

CARDLINE INC., MARY C. CALUBAD, SONY N. CALUBAD, and NG BENG SHENG,
Respondents.

G.R. No. 201417

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

13 JAN 2016

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari* challenging the **January 6, 2012** decision[1] and **April 16, 2012** resolution[2] of the Court of Appeals (*CA*) in CA-GR SP No. 118226. The CA annulled the Regional Trial Court's (*RTC*) order to execute the judgment against the respondents. The CA ruled that Cardline Inc. (*Cardline)* had fully satisfied its outstanding obligation by returning the leased properties to Orix Metro Leasing and Finance Corporation (*Orix*).

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1 *Rollo*, pp. 102-110; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Socorro B. Inting.

2 *Rollo*, pp. 112-114.

THE ANTECEDENTS

Cardline leased four machines (*machines*) from Orix as evidenced by three similarly-worded lease agreements. Cardline's principal stockholders and officers – Mary C. Calubad, Sony N. Calubad, and Ng Beng Sheng (*individual respondents)* – signed the suretyship agreements in their personal capacities to guarantee Cardline's obligations under each lease agreement.

Cardline defaulted in paying the rent: the unpaid obligations amounted to ₱9,369,657.00 as of July 12, 2007. Orix formally demanded payment from Cardline but the latter refused to pay.

Orix filed a **complaint** for replevin, sum of money, and damages with an application for a writ of seizure against Cardline and the individual respondents (collectively, *the respondents*) before the RTC. The case was docketed as Civil Case No. 07-855.

The RTC issued a writ of seizure allowing Orix to recover the machines from Cardline.

Thereafter, the RTC declared the respondents in default for failing to file an answer, and allowed Orix to present evidence *ex parte.* The respondents filed a motion to set aside the order of default, but the RTC denied their motion. On May 6, 2008, the RTC rendered judgment in Orix's favor and ordered the respondents to pay Orix, as follows:

> 1. **The sum of ₱9,369,657.00** or **whatever may be the balance of defendants' outstanding obligation still owing the plaintiff *after the recovery or sale* of the [machines]** as and by way of actual damages (Section 9, Rule 60), in either case, with interest and penalty charges as stipulated, from 12 July 2007 until fully paid;
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> 2. As stipulated in the Continuing Surety, thirty (30%) percent of the total amount due as Attorney's fees;
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> 3. As stipulated in the Continuing Surety, twenty-five (25%) percent of the total amount due as liquidated damages; and
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> 4. Expenses incurred in securing the leased properties through manual delivery. (emphasis supplied)

On appeal, the respondents argued that the RTC erred in declaring them in default. The CA,[3] and subsequently this Court,[4] denied the respondents' appeal. Our denial in G.R. No. 189877 became final and executory.

Ng Beng Sheng filed a petition for annulment of judgment.[5] He argued that the RTC had no jurisdiction over his person since the summons

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3 This was docketed as CA-G.R. CV No. 91626.
4 This was docketed as G.R. No. 189877, *rollo*, pp. 134-136.
5 This was docketed as CA-G.R. SP No. 115904.

was not properly served on him. The CA denied the petition on the grounds of forum shopping and *res judicata*. The CA explained that this issue had been addressed by the RTC in the order denying the motion to set aside the order of default, and by the CA and the Supreme Court on appeal.

In the main case, Orix filed a motion for the issuance of a writ of execution which the RTC granted in its **December 1, 2010 order**. Thereafter, the RTC clerk of court issued a writ of execution commanding the sheriff to enforce the May 8, 2009 judgment. The respondents filed a motion for a *status quo ante* order but the RTC denied the motion.

Thereafter, the respondents filed a **petition for prohibition**[6] under Rule 65 of the Rules of Court before the CA.[7] They assailed the issuance of the December 1, 2010 order, arguing that their rental obligations were offset by the market value of the returned machines and by the guaranty deposit.

THE CA RULING

The CA granted the petition, annulled the RTC's order dated December 1, 2010, and prohibited the sheriff from executing the judgment dated May 6, 2008.

The CA based its decision on Sections 19.2(d)[8] in relation with Section 19.3[9] of the lease agreements. The CA ruled that the respondents' debt amounting to ₱9,369,657.00 had been satisfied when Orix recovered the machines valued at ₱14,481,500.00 and received the security deposit amounting to ₱1,635,638.89. Considering that the judgment had been satisfied in full, the RTC's issuance of a writ of execution was no longer necessary.

The CA denied Orix's motion for reconsideration; hence, this petition.

THE PARTIES' ARGUMENTS

In its petition, Orix argues that: (1) the market value of the returned machines and the guaranty deposit do not offset the outstanding obligations; (2) the individual respondents are solidarily liable to Orix and are not entitled to the benefit of excussion; and (3) the respondents and their counsel engaged in willful and deliberate forum shopping.

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6 With an application for temporary restraining order and/or preliminary injunction

7 This was docketed as CA-G.R. SP No. 118226.

8 19.2(d): "Subject to the provisions of Section 19.3, after repossessing the PROPERTY, the LESSOR may re-lease or sell the PROPERTY to any third party, in such manner and upon such terms and conditions as the LESSOR may solely deem proper.", *rollo*, p. 195.

9 19.3: "The proceeds derived from the sale or re-leasing of the property, shall, as and when received by the LESSOR, be applied first to the expenses incurred by the LESSOR in connection with the repossession, sale, or re-leasing of the PROPERTY, a reasonable compensation for undertaking such sale or re-lease, all legal costs and fees, OTHER AMOUNTS, and the balance, if any, to the rental due from the LESSEE. In case the proceeds from such sale or re-lease are not sufficient to cover all amounts payable by the LESSEE to the LESSOR, the LESSEE shall be liable to the LESSOR for the deficiency.", *rollo*, p. 195.

After the petition was filed, Atty. Efren C. Lizardo withdrew his appearance and Atty. David A. Domingo entered his appearance as the respondents' counsel.

In their comment, the respondents argue that: (1) the RTC's judgment should be interpreted as follows: if Orix recovers the properties, their market values should be deducted from the respondents' outstanding obligations; (2) the individual respondents merely acted as guarantors, not as sureties; and (3) the respondents committed no forum shopping because no cases were pending before the courts when they filed the petition for prohibition.

OUR RULING

We find the petition **partly meritorious**.

We note at the outset that the RTC's May 6, 2008 judgment has attained finality and can no longer be altered. Once a judgment becomes final and executory, all that remains is the execution of the decision. Thus, the RTC issued the December 1, 2010 order of execution. An order of execution is not appealable;[10] otherwise, a case would never end.[11]

As a rule, parties are not allowed to object to the execution of a final judgment.[12] One exception is when the terms of the judgment are not clear enough and there remains room for its interpretation.[13] If the exception applies, the respondents may seek the stay of execution or the quashal of the writ of execution.[14] Although an order of execution is not appealable, an aggrieved party may challenge the order of execution *via* an appropriate special civil action under Rule 65 of the Rules of Court.[15] The special civil action of prohibition is an available remedy against a tribunal exercising judicial, quasi-judicial or ministerial powers if it acted without or in excess of its jurisdiction and there is no other plain, speedy, and adequate remedy in the ordinary course of law.[16]

In the present case, the respondents effectively argued that the terms of the RTC's May 6, 2008 judgment are not clear enough such that the parties' agreement must be examined to arrive at the proper interpretation. The respondents, however, did not give the RTC an opportunity to clarify its judgment. The respondents filed a special civil action for prohibition before

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10 Section 1(f), Rule 41 of the Rules of Court.

11 *Philippine Amusement and Gaming Corporation v. Aumentado, Jr.,* G.R. No. 173634, July 22, 2010, 625 SCRA 241.

12 *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015.

13 *Id.* and *Reburiano v. Court of Appeals*, G.R. No. 102965, January 21, 1999, 301 SCRA 342. Other exceptions are: (i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making the execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has [never] been submitted to the jurisdiction of the court; or (v) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.

14 *Abrigo v. Flores*, G.R. No. 160786, June 17, 2013 698 SCRA 559.

15 RULES OF COURT, Rule 41, Section 1(f).

16 RULES OF COURT, Rule 65, Section 2.

the CA without first filing a motion to stay or quash the writ of execution before the RTC. Hence, the petition for prohibition obviously lacked the requirement that no "other plain, speedy, and adequate remedy" is available. Thus, the petition should have been dismissed.

However, the CA gave due course to the petition. In granting the petition, the CA ruled that the judgment had been satisfied; thus, there was no more judgment to execute. To stress, the CA erred in granting the petition despite the availability of a "plain, speedy, and adequate remedy."

Orix comes before us for a review of the CA's decision. The issues for resolution are: (1) whether the CA correctly prohibited the RTC from enforcing the writ of execution; (2) whether the individual respondents can invoke the benefit of excussion; and (3) whether the respondents committed forum shopping.

I. Propriety of the CA's decision

The core issue presented in this case is **whether the CA correctly prohibited the RTC from enforcing the writ of execution.** To resolve this issue, we must determine whether the CA correctly interpreted this portion of the RTC's May 6, 2008 judgment:

> The sum of ₱9,369,657.00 or **whatever may be the balance of defendants' outstanding obligation still owing the plaintiff after the recovery or sale of the [machines]** as and by way of actual damages xxx. (emphasis supplied)

The CA cited Sections 19.2(d) and 19.3 of the lease agreements in interpreting the above-quoted judgment. The CA ruled that the balance of Cardline's debt was ₱9,369,657.00, less the machines' market value and the guaranty deposit. After applying this formula, the CA concluded that Cardline no longer owed Orix any indebtedness so that no judgment needed to be executed.

We disagree with the CA's conclusion.

A review of these agreements shows that the CA erroneously relied on Sections 19.2(d) and 19.3 of the lease agreements. The CA also erred in deducting the guaranty deposit from the outstanding debt, contrary to the provisions of the lease agreements.

We review the lease agreements on two points: ***first,*** on whether the market values of the returned machines were intended to reduce Cardline's debt; and ***second***, on whether the parties intended to deduct the guaranty deposit from the unpaid obligation.

On the **first point,** the machines' market values were not intended to reduce, much less offset, Cardline's debt.

The lease agreements' default provisions are instructive. Section 19[17] of the agreements provides that if Cardline fails to pay rent, Orix may cancel the agreements and may avail of the following remedies under Section 19.2:

> a) LESSOR may require LESSEE to **surrender possession** of the property x x x;
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> x x x
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> d) Subject to the provisions of Section 19.3, after repossessing the property, the LESSOR ***may*** **re-lease or sell the PROPERTY** to any third person, in such manner and upon such terms as the LESSOR may solely deem proper;
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> e) **Recovery of all accrued and unpaid rental**, including rentals **up to the time the PROPERTY is actually returned** to the LESSOR xxx;" (emphasis supplied)

Should Orix choose to re-lease or sell the machines after repossessing them pursuant to Section 19.2(d), Section 19.3 shall apply, to wit:

> 19.3 The **proceeds** derived from the sale or re-leasing of the PROPERTY, shall x xx be applied first to the expenses incurred by the LESSOR in connection with the repossession, sale, or re-leasing of the PROPERTY, a reasonable compensation for undertaking such sale or re-lease, all legal costs and fees, OTHER AMOUNTS, and the balance, if any, to the RENTAL due from the LESSEE. x x x. (emphasis supplied)

Applying these provisions, when Cardline defaulted in paying rent, Orix was authorized to: (a) re-possess the machines; and (b) recover all unpaid rent. Considering that Orix neither re-leased nor sold the machines, Sections 19.2(d) and 19.3 are not applicable. Thus, the CA erred in applying these provisions to the present case.

Even assuming that these provisions apply, Section 19.3 states that the net "proceeds" derived from the sale, not the machines' market values, shall be applied to the unpaid rent. **Therefore, these contractual provisions do not support the CA's stance that the machines' market values must be reduced from Cardline's unpaid rent.**

As Orix correctly argued, the CA's decision leads to an absurd situation where Cardline pays for its liabilities to Orix using Orix's own properties. The Court cannot affirm this unreasonable and inequitable interpretation.

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[17] Section 19 Default:
19.1 "The LESSEE shall be deemed in default upon the occurrence of any of the following events: (a) **failure to pay any rentals** and/or OTHER AMOUNTS provided in Section[s] 3.3 and 3.5 when the same becomes due and payable; x x x."
19.2 "Upon default by the LESSEE, the LESSOR shall have the option to cancel this contract without further notice, in which case the following remedies accrue immediately to the LESSOR, **in addition to** *any other remedies* available to it hereunder and under the law: x x x."

On the second point, Sections 6.1 and 19.2(b) of the lease agreements discuss the use of the guaranty deposit, to wit:

> 6.1 The LESSEE shall pay to the LESSOR simultaneously with the execution of this Agreement, an amount by way of deposit (the "GUARANTY DEPOSIT") as specified in the Lease Schedule, which deposit shall be held as security for the faithful and timely performance by the LESSEE of its obligations hereunder, as well as its compliance with all the provisions of this Agreement, or of any extension or renewals thereof. **Should the PROPERTY be returned to the LESSOR for any reason whatsoever including LESSEE's default under Section 19 hereof before the expiration of this Agreement,** then the GUARANTY DEPOSIT shall be **forfeited automatically** in favor of the LESSOR **as additional penalty over and above** those stipulated in Section 3.5 [on interest and penalty], **without prejudice to** the right of the LESSOR to **recover any unpaid RENTAL** as well as the OTHER AMOUNTS for which the LESSEE may be liable under this agreement. (emphasis supplied)
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> 19.2(b) The LESSOR may retain all amounts including any advance rental paid to it hereunder as compensation for rent, use and depreciation of the PROPERTY. Furthermore, the LESSOR ***may*** apply the GUARANTY DEPOSIT towards the payment of liquidated damages.[18]

These provisions are relevant to determine the parties' intent with respect to the guaranty deposit. These provisions show that the parties did not intend to deduct the guaranty deposit from Cardline's unpaid rent. On the contrary, the guaranty deposit was intended to be *automatically forfeited* to serve as penalty for Cardline's default. In any case, Orix retained the right to recover the unpaid rent but it had the option to consider the guaranty deposit as liquidated damages. Notably, Orix did not exercise this option. Thus, the CA erred when it deducted the guaranty deposit from Cardline's unpaid rent.

After examining the RTC's judgment under the lease agreements' lenses, we rule that the return or recovery of the machines does not reduce Cardline's outstanding obligation unless the returned machines are sold. No sale transpired pursuant to the lease agreements. Moreover, the guaranty deposit was not meant to reduce Cardline's unpaid obligation. Thus, Cardline's actual damages remain at ₱9,369,657.00.

In sum, we rule that the CA erroneously interpreted the RTC's May 6, 2008 judgment. Consequently, the CA erred in preventing the RTC from enforcing the writ of execution.

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[18] *Rollo*, pp. 193 and 195.

II. The Benefit of Excussion

The second issue before us is **whether the individual respondents are entitled to the benefit of excussion**. We note that this issue had already been raised before the CA in G.R. 189877. The CA, as affirmed by the Court, ruled that the issue cannot be raised for the first time on appeal.

For clarity, we briefly discuss this issue and rule in favor of Orix.

The terms of a contract govern the parties' rights and obligations. When a party undertakes to be **"jointly and severally"** liable, it means that the obligation is solidary.[19] Furthermore, even assuming that a party is liable only as a guarantor, he can be held immediately liable without the benefit of excussion if the guarantor agreed that his liability is direct and immediate.[20] In effect, the guarantor waived the benefit of excussion pursuant to Article 2059(1) of the Civil Code.

In the present case, the records show that the individual respondents bound themselves solidarily with Cardline. Section 31.1[21] of the lease agreements states that the persons who sign separate instruments to secure Cardline's obligations to Orix shall be **jointly and severally** liable with Cardline.

Even assuming *arguendo* that the individual respondents signed the continuing surety agreements merely as guarantors, they still cannot invoke the benefit of excussion. The surety agreements provide that the individual respondents' liability is "**solidary, direct, and immediate** and not contingent upon"[22] Orix's remedies against Cardline. The continuing suretyship agreements also provide that the individual respondents "individually and collectively **waive**(s) in advance the benefit of excussion xxx under Articles 2058 and 2065 of the Civil Code."[23]

Without any doubt, the individual respondents can no longer avail of the benefit of excussion.

III. Forum-Shopping

We now turn to whether the respondents committed forum shopping when they filed the petition for prohibition before the CA.

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19 *International Finance Corporation v. Imperial Textile Mills, Inc.*, G.R. No. 160324, November 15, 2005, 475 SCRA 149-150.

20 *Tupaz v. Court of Appeals,* G.R. No. 145578, November 18, 2005, 475 SCRA 398-399.

21 31.1 "If there is more than one LESSEE or if surety or **sureties** should **sign** this Lease Agreement or **other instrument for the purpose of securing the obligations** of the LESSEE to the LESSOR, it is understood that the **liability** of each and all of such lessees [or] the sureties shall be **joint and several** with that of the principal LESSEE.", *rollo*, p. 197.

22 *Rollo*, p. 229.

23 *Ibid.*

Orix asserts that the respondents committed forum shopping by instituting several actions essentially seeking to nullify the RTC's decision.

First, the respondents appealed before the CA to reverse the RTC's judgment which held them liable for the unpaid rent. The CA, and subsequently this Court *via a* **petition for review on *certiorari***,[24] affirmed the RTC's judgment. The decision became final and executory.

Second, Ng Beng Sheng filed a **petition for annulment of judgment**,[25] dated September 4, 2010, which the CA dismissed on the grounds of forum shopping and *res judicata*.

Third, the respondents filed the **petition for prohibition,**[26] dated February 21, 2011, to prevent the execution of the RTC's judgment.

We disagree with Orix's assertions.

Section 5 Rule 7 of the Rules prohibits forum shopping. The rule against forum shopping seeks to address the great evil of two competent tribunals rendering two separate and contradictory decisions.[27] Forum shopping exists when a party initiates two or more actions, other than appeal or *certiorari,* grounded on the same cause to obtain a more favorable decision from any tribunal.[28]

The elements of forum shopping are: (i) identity of parties, or at least such parties representing the same interest; (ii) identity of rights asserted and relief prayed for, the latter founded on the same facts; (iii) any judgment rendered in one action will amount to *res judicata* in the other action.[29]

In *Reyes v. Alsons*,[30] the petitioner filed a petition for annulment of judgment raising the issue of the RTC's lack of jurisdiction to enforce the lower court's judgment. This Court held that this jurisdictional issue has been resolved in the previous cases filed by the petitioner. Thus, the petition for annulment of judgment was barred by *res judicata* and the policy against forum shopping.[31]

In the present case, the CA correctly denied Ng Beng Sheng's petition for annulment of judgment. As in *Reyes,* the CA correctly reasoned out that the issue on jurisdiction had been resolved with finality in the review on *certiorari*. Thus, the issue could no longer be re-litigated.

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24 This was docketed as G.R. No. 189877.

25 This was docketed as CA-G.R. SP No. 115904.

26 This was docketed as CA-G.R. SP No. 118226.

27 *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 267; citing *Guevara v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 615.

28 *Government Service Insurance System (GSIS) v. Group Management Corporation*, G.R. No. 167000 and 169971, June 8, 2011, 651 SCRA 281, 283; *Chavez v. Court of Appeals*, G.R. No. 174356, January 20, 2010, 610 SCRA 399.

29 *Chavez v. Court of Appeals*, *Id.* at 400.

30 G.R. No. 153936, March 2, 2007, 517 SCRA 244.

31 *Id.*

After the denial of the petition for annulment of judgment, Ng Beng Shen joined the other respondents in filing a petition for prohibition. We are now called upon to ascertain whether the recourse to the petition for prohibition amounted to forum shopping.

We rule in the negative.

The two cases filed collectively by the respondents are similar only in that they involve the same parties. The cases, however, involve different causes of actions. The petition for review on *certiorari* was filed to review the merits of the RTC's judgment. On the other hand, the petition for prohibition respects the finality of the RTC's judgment on the merits but interprets the dispositive portion in a way that would render the execution unnecessary. Thus, the elements of forum shopping are **not present** in the two cases.

Moreover, the resort to a remedy under Rule 65 is expressly allowed by the Rules of Court. Section 1, Rule 41 of the Rules of Court provides that an aggrieved party may file the appropriate civil action under Rule 65 to challenge an order of execution. Accordingly, the respondents filed their petition for prohibition under Rule 65 of the Rules of Court.

With respect to Ng Beng Sheng's petition for annulment of judgment, the CA has already ruled that the filing of the petition constituted forum shopping, specifically due to the jurisdictional issue raised. The petition for prohibition, however, involves a different cause of action. Thus, there is no forum shopping.

To recap, *first,* the CA erred in preventing the execution of the RTC's judgment. Nothing in the lease agreements' provisions supports the CA's ruling that the market value of the returned machines and the guaranty deposit shall be deducted from Cardline's unpaid rent. *Second,* the individual respondents are solidarily liable for Cardline's obligations and are not entitled to the benefit of excussion. *Finally,* the respondents did not commit forum shopping by filing the petition for prohibition.

With these matters clarified, Orix should no longer be denied the fruits of its victory. The RTC is hereby ordered to execute its long–final judgment.

WHEREFORE, we hereby **GRANT** the petition. The January 6, 2012 decision and April 16, 2012 resolution of the Court of Appeals in CA-GR SP No. 118226 are hereby **REVERSED** and **SET ASIDE**. Costs against the respondents.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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