

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**ALEMAR'S SIBAL & SONS, INC.,
*Petitioner,***

-versus-

**G.R. No. 75414
June 4, 1990**

**HONORABLE JESUS M. ELBINIAS, in
his capacity as the Presiding Judge of
Regional Trial Court, National Capital
Region, Branch CXXI (141), Makati, and
G.A. YUPANGCO & CO., INC.,
*Respondents.***

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DECISION

FERNAN, C.J.:

Assailed in this Petition for Certiorari with prayer for preliminary mandatory injunction is the order dated May 15, 1986 issued by respondent Regional Trial Court, Branch 141 (Makati) denying petitioner's motion to discharge the writ of execution despite an earlier order suspending proceedings in said court.

On December 11, 1984, private respondent G.A. Yupangco and Co. Inc. (G.A. Yupangco) filed an action with respondent trial court for collection of a sum of money with prayer for damages and

preliminary attachment against Alemar's Bookstore, a business entity owned and managed by petitioner Alemar's Sibal & Sons, Inc. (Alemar's).^[1]

On August 30, 1985, respondent court rendered its decision, to wit: "Wherefore, finding plaintiff's claim to be substantiated, the Court hereby renders judgment by default, ordering defendant, Alemar's Book Store, to pay G.A. Yupangco & Co., Inc., the following:

- 1) P39,502.57 representing defendant's unpaid obligation, plus 2% per month interest beginning December 11, 1984, until fully paid;
- 2) the stipulated 25% of the recoverable amount as attorney's fees; and
- 3) cost of suit."^[2]

Subsequently, on September 23, 1985, Ledesma, Saludo and Associates, as intervenor-movant, filed an omnibus motion informing the respondent trial court that the petitioner Alemar's has been placed under rehabilitation receivership by the Securities and Exchange Commission and that movant has been appointed as its receiver. It prayed that it be allowed to intervene, that the decision of August 30, 1985 be set aside and that further proceedings in this case be suspended.^[3] Attached to its motion is the order of the Securities and Exchange Commission dated August 1, 1984 which states in part:

"Therefore, pursuant to Presidential Decree No. 902-A, as amended, the Securities and Exchange Commission hereby appoints as Rehabilitation Receiver, Ledesma, Saludo & Associates in order to meet the imminent danger of dissipation, loss, wastage or destruction of the assets and other properties and deterioration of vital financial ratios of said corporation and to ensure the orderly payment of claims against the said corporation.

"All actions for claims against the corporation pending before any court, tribunal, board or body are suspended accordingly.

“No disbursements or expenditures of funds shall be made other than, what is usual in the ordinary course of the business operations of the corporation. All withdrawals against the accounts of the corporation shall be signed or authorized by any partner designated by the Rehabilitation Receiver. Resolutions of the Board of Directors of Alemar’s Sibal & Sons, Inc. pertaining to check signatories shall be made subject to the foregoing conditions.”^[4]

In its opposition, G.A. Yupangco maintained that it received notice of the receivership only on January 10, 1985 or after one month after the collection suit. It further averred that the motion to intervene by the receiver was not seasonably made.

Accordingly, on October 29, 1985, respondent court issued an order, the dispositive portion of which reads:

“Wherefore, on the ground raised by plaintiff that movant now is barred from its present action, the court hereby denies the motion for intervention, and the motion to set the aforesaid judgment by default; however, movant’s motion to suspend the proceedings in this Court is granted as plaintiff may present said judgment by default to the receiver as the basis for the settlement of its claim defendant.”^[5]

In a motion dated January 7, 1986, G.A. Yupangco urged the issuance of a writ of execution to implement the August 30, 1985 default judgment which had become final and executory, there being no motion for reconsideration or appeal. The corresponding writ was issued on January 15, 1986.^[6]

Petitioner Alemar’s moved for the discharge of the writ on the ground that its issuance was improper since the proceedings in Civil Case No. 9252 have been suspended pursuant to the October 29, 1985 order. Respondent court, however, held the resolution of the motion in abeyance.

On January 31, 1986, the branch manager of the Bank of the Philippine Islands, after having previously stopped payment of the cashier’s check issued to satisfy the August 30, 1985 money judgment,

allowed the encashment of said check in the amount of P62,240. And in compliance with a subsequent order of the respondent court, BPI also compensated G.A. Yupangco for the delay in payment in an amount equivalent to the interest of P62,240.00 from January 17, 1986 to January 31, 1986 or a total of 14 days.^[7]

Contending that the payment of P62,240.00 to G.A. Yupangco through the BPI has defeated the purpose for which petitioner has been placed under receivership, petitioner filed a supplement to its motion to discharge the writ of execution praying that the aforesaid payment be returned to petitioner or to its account with the BPI.

On May 15, 1986, respondent court issued the questioned order denying petitioner's motions to discharge the writ of execution. It reasoned:

“To discharge the writ would only cause undue delay in plaintiffs effort at satisfying its claim under the judgment by default that had become final and executory. The fact that defendant is under receivership presupposes that it has been declared insolvent, and the receiver is supposed to have brought into its custody all available assets in defendant's name. The continuing effectivity of the writ of execution will not prejudice defendant unless some assets of defendant have been improperly left out beyond reach of the receiver and or creditors. On the other hand, to discharge the writ will leave plaintiff with no recourse to enforce the judgment in its favor.”^[8]

Hence this petition which raises the issue of whether or not respondent court can validly proceed with the execution of a final decision for the payment of a sum of money despite the fact that the judgment debtor has been placed under receivership.

It is the general rule that once a decision becomes final and executory, its enforcement becomes the ministerial duty of the court. Equally settled is that the rule admits of certain exceptions, one of which is where it becomes imperative in the higher interest of justice to direct the deferment of execution. In the instant case, the stay of execution

is warranted by the fact that petitioner Alemar's has been placed under "rehabilitation receivership".

What are the legal consequences of such a receivership? For one thing, the SEC has expressly decreed that "all actions for claims against the corporation pending before any court are suspended accordingly". Respondent court apparently demurred to the SEC action when it granted petitioner's motion to suspend its own proceedings. It even went as far as to suggest to the creditor to present the "judgment by default to the receiver as the basis for settlement of its claim against defendant". So when respondent court ordered the execution of its August 30, 1985 judgment, it assumed a rather myopic view of its own suspension order. Verily, the proceedings sought to be suspended by the order of October 29, 1985 necessarily includes the issuance of the writ of execution.

The cases of Central Bank vs. Morfe,^[9] and Lipana vs. Development Bank of Rizal,^[10] are most enlightening on why an execution in this particular instance could be legally held in abeyance despite a final judgment. In both cases, there was an attempt by a creditor to enforce payment against a bank (which was either declared insolvent or placed under receivership) by obtaining a favorable judgment in the regular court and insisting upon its execution on the ground that the courts cannot validly obstruct the enforcement of judgments that have become final and executory.

The rationale behind the Court's imprimatur of the stay of execution in the aforementioned cases is squarely applicable to the instant petition even if Alemar's is obviously not a banking institution.

It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors.

During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to

the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.

As between creditors, the key phrase is “equality is equity.”^[1] When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.

When respondent court ruled in favor of G.A. Yupangco in the collection case, it only determined the exact extent of petitioner’s indebtedness and in no way gave G.A. Yupangco a priority over the other creditors. However, it clearly exceeded its jurisdiction when it allowed G.A. Yupangco to encash the check of P62,240.00 pursuant to the writ of execution. In so doing, respondent court gave G.A. Yupangco an undue preference by reducing the assets of the petitioner corporation for its sole benefit to the grave damage and prejudice of the other creditors, and thus frustrating the very purpose for which petitioner has been placed under receivership.

WHEREFORE, the writ is granted. The questioned order of respondent court dated May 15, 1986 denying petitioner’s motion to discharge the writ of execution in Civil Case No. 9252 is hereby reversed and set aside. All proceedings in connection with the aforesaid case are declared suspended. Private respondent G.A. Yupangco is ordered to return to petitioner Alemar’s the amount it had actually received through the Bank of the Philippine Islands. This decision is immediately executory. No costs.

SO ORDERED.

**Gutierrez, Jr. and Bidin, JJ., concur.
Feliciano and Cortes, JJ., are on leave.**

[1] Civil Case No. 9252.

- [2] Annex E, Rollo, p. 23.
- [3] Annex F, Rollo, pp. 24-27.
- [4] Annex H, Rollo, pp. 36-37.
- [5] Annex I, Rollo, p. 39.
- [6] Annex L, Rollo, pp. 5, 43.
- [7] Annex O, Rollo, p. 43.
- [8] Rollo, p. 17.
- [9] G.R. No. L-34827, March 12, 1975, 63 SCRA 114.
- [10] G.R. No. 73884, September 24, 1987, 154 SCRA 257.
- [11] Central Bank vs. Morfe, *supra*, citing Ramisch vs. Fulton, 41 Ohio App. 443, 180 N.E. 735.

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