

## FIRST DIVISION

[ G.R. No. 156539, September 05, 2007 ]

**DOMINGO A. DIZON, PETITIONER, VS. ELPIDIO R. DIZON,  
RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

Before us is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> dated October 18, 2002 and Resolution<sup>[2]</sup> dated January 7, 2003 rendered by the Court of Appeals in CA-G.R. SP No. 45492, entitled "*Elpidio R. Dizon, petitioner, v. The Honorable Presiding Judge, Regional Trial Court, Manila, Branch 41, Deputy Sheriff Cesar Q. Cabildo and Domingo A. Dizon, respondents.*"

Domingo A. Dizon, petitioner, purchased from his nephew, Elpidio R. Dizon (herein respondent), a house and lot located on Limay St., Tondo, Manila. However, respondent failed to deliver the house and lot to petitioner. It appears that the co-owner of the lot, respondent's brother Ricardo, did not give said respondent a written authority to sell his ½ share. Consequently, petitioner filed with the Regional Trial Court (RTC), Branch 41, Manila a complaint for specific performance and sum of money with damages against respondent, docketed as Civil Case No. 90-51838.

On March 20, 1992, the trial court rendered a Decision rescinding the contract of sale between the parties, thus:

PREMISES CONSIDERED, judgment is hereby rendered:

1) declaring the contract of sale entered into by and between plaintiff and defendant over that undivided portion of Lot 27-B-3 in the name of Ricardo Dizon and the building constructed thereon rescinded;

2) ordering defendant to pay plaintiff as follows:

a) a sum of P207,000.00 with interest thereon at the legal rate from January 29, 1990 until the same is fully paid;

b) the sum of P350,000.00 with interest thereon at the rate of 3% a month from January 29, 1990 until the same is fully paid; and

c) the sum of P50,000.00 as and by way of attorney's fees and expenses of litigation.<sup>[3]</sup>

On January 13, 1997, the trial court issued a writ of execution implemented by sheriff Cesar Cabildo. He scheduled the auction sale of respondent's properties for

the satisfaction of the above judgment on April 3, 1997 at 10:00 a.m.

Petitioner's attorney-in-fact as well as respondent and his counsel participated in the sale. Petitioner emerged as the highest bidder, having offered P180,000.00 for the two (2) parcels of land owned by respondent which were attached by the sheriff.

The proceedings at the auction sale were duly recorded in the Minutes of Sheriff's Sale<sup>[4]</sup> signed by the parties and their counsels.

In the afternoon of the same date, the sheriff went to the house of respondent and showed him the "Supplemental Minutes on Sheriff's Sale" specifying that petitioner's counsel arrived at 10:45 a.m. (after the auction sale at 10:25 a.m.) and offered a new bid of P1,690,074.41 covering the same properties in lieu of the earlier bid of P180,000.00.

Respondent refused to sign the supplemental sale contending that it will be difficult for him to redeem the property. Besides, the auction sale had already been perfected and, therefore, the subsequent sale is "a new or second sale." Consequently, he filed a motion to quash the "Supplemental Minutes on Sheriff's Sale" alleging *inter alia* that the supplemental sale is void because it was prepared at 10:25 a.m. after the auction sale at 10:00 a.m.

In an Order dated May 5, 1997, the trial court denied respondent's motion to quash "it appearing that the subject supplemental sale redounds to the benefit of movant-defendant as it obviates the execution and/or garnishment of any other property, income, or deposits of movant-defendant."<sup>[5]</sup>

Respondent filed a motion for reconsideration, but it was also denied by the trial court in its Order dated August 12, 1997. He then filed a petition for certiorari and prohibition with the Court of Appeals alleging that the RTC judge committed grave abuse of discretion in upholding the validity of the "Supplemental Minutes on Sheriff's Sale."

In its assailed Decision dated October 18, 2002, the appellate court granted the petition and set aside the questioned Orders of the RTC dated May 5, 1997 and August 12, 1997, thus:

The record shows that the auction sale begun on time, that is 10:00 AM of April 3, 1997, wherein **both parties as well as their respective counsels** appeared and participated in the bid as reflected in the Minutes of Sheriff's Sale. As certified by the respondent sheriff himself, the said sale was finished at exactly 10:25 o'clock in the morning of said date. The amended bid therefore of private respondent's counsel made at 10:45 AM of even date could not be considered as valid as the same was made after the perfection of the auction sale.

x x x

Consequently, the respondent judge is considered to have gravely abused his discretion in upholding the validity of the Supplemental Minutes on Sheriff's Sale.<sup>[6]</sup>