

FIRST DIVISION

[G.R. No. 179884, January 25, 2012]

**DURAWOOD CONSTRUCTION AND LUMBER SUPPLY, INC.,
PETITIONER, VS. CANDICE S. BONA, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 94479 dated April 18, 2007 and its Resolution^[2] dated September 18, 2007.

On June 3, 2004, petitioner Durawood Construction and Lumber Supply, Inc. (Durawood) filed an action for sum of money plus damages with a prayer for the issuance of a writ of preliminary attachment against LBB Construction and Development Corporation (LBB Construction) and its president Leticia Barber (Barber) before the Regional Trial Court (RTC) of Antipolo. In said suit, which was docketed as Civil Case No. 04-7240, Durawood prayed for the sum of P665,385.50 as payment for construction materials delivered to LBB Construction.

On June 14, 2004, the RTC issued an Order granting Durawood's prayer for the issuance of a writ of attachment. On June 16, 2004, the corresponding writ was issued.

On June 17, 2004, Sheriff Rolando C. Leyva (Sheriff Leyva) levied on a 344-square meter parcel of land in Richdale Subdivision, Antipolo City covered by Transfer Certificate of Title (TCT) No. R-17571 in the name of LBB Construction. A Notice of Levy on Attachment was annotated in TCT No. R-17571's Memorandum of Encumbrances on the same day, June 17, 2004.

On July 13, 2004, respondent Candice S. Bona (Candice) filed a Motion seeking leave to intervene in Civil Case No. 04-7240. Attached to said Motion was Candice's Answer in Intervention, her Third Party Claim addressed to Sheriff Leyva, and a copy of TCT No. R-17571. Candice claimed therein that she is a co-owner of the property covered by TCT No. R-17571. She alleged that LBB Construction had sold the property to her and her siblings, Michael Angelo S. Bona, Diane Sheila S. Bona, Glenda May S. Bona and Johann Louie Sebastian S. Bona, through a Deed of Absolute Sale dated June 2, 2004. Candice asserted that the **sale** is the subject of **Entry No. 30549** dated **June 16, 2004** in the books of the Registry of Deeds of Antipolo City, while the **levy on attachment** is only **Entry No. 30590** dated **June 17, 2004**. What was attached to the Motion was a copy of TCT No. R-17571, and not a title in Candice and her co-owners' names.

On August 11, 2004, the RTC issued an Order granting Candice's Motion to Intervene.

LBB Construction and Barber filed their Answer in Civil Case No. 04-7240, but failed to attend the scheduled hearings, including the pre-trial. Consequently, Durawood was allowed to present its evidence *ex parte*.

On July 21, 2005, the RTC rendered its Decision^[3] in Civil Case No. 04-7240 in favor of Durawood. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing consideration, judgment is rendered in favor of the plaintiff and against the defendants, viz:

1. Ordering the defendants to pay plaintiff the sum of Six Hundred Sixty[-]Five Thousand Three Hundred Eighty[-]Five Pesos and Fifty Centavos (P665,385.50) plus two percent (2%) interest per month from May 11, 2004 up to the present;
2. Ordering the defendants to pay plaintiff twenty-five percent (25%) of the amount due to the plaintiff by way of attorney's fees; and
3. To pay the costs of suit.^[4]

The Decision became final and executory. On September 12, 2005, Durawood filed a Motion for the Issuance of a Writ of Execution. On November 15, 2005, the RTC issued a Writ of Execution. It was when this Writ was about to be enforced that Durawood discovered the cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 in the name of Candice and her siblings.

It would appear from the records that on **June 16, 2004**, the supposed Register of Deeds of Antipolo City, Atty. Randy A. Rutaquio (Atty. Rutaquio), cancelled TCT No. R-17571 and issued TCT No. R-22522 in the name of Candice and her co-owners. The parties, however, do not dispute that said cancellation of the old TCT and issuance of the new one was **antedated**, since Atty. Rutaquio was still the Register of Deeds of Malabon on said date.^[5] According to a certification of the Land Registration Authority,^[6] it was a certain Atty. Edgar D. Santos (Atty. Santos) who was the Acting Register of Deeds of Antipolo City on June 16, 2004.

Durawood filed a Motion to Reinstate Notice of Levy on Attachment in TCT No. R-22522 and Cite Atty. Randy A. Rutaquio for Contempt^[7] on the following grounds:

5. The cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 was made by Atty. Randy A. Rutaquio who, on June 2004, was not the Register of Deeds of Antipolo City. As evidence of such fact, plaintiff corporation was issued a certification by LRA Human Resource Management Officer IV Loreto I. Orense that Atty. Edgar D. Santos was the Acting Register of Deeds of Antipolo City from June 1-30, 2004.
6. While the Deed of Sale annotated in TCT No. R-17571 appears to have been made on June 16, 2004, the fact of its inscription was made after

that of the levy on attachment as it obviously appears below and next to it.

7. The records of this case reveal that in the Third Party Claim filed by Candice Bona sometime in July 2004, there was never any mention of any recording about a Deed of Absolute Sale in the Memorandum of Encumbrances in TCT No. R-17571. It is difficult to comprehend that Atty. Hernando U. Salvador, Bona's lawyer, would miss mentioning that a Deed of Absolute Sale was inscribed ahead of the notice of levy on attachment if ever such sale was made on June 16, 2004.

8. Thus, under the circumstances, plaintiff corporation cannot help speculate that [the] Deed of Sale between LBB Construction and the Bonas was made to appear to have been recorded a day before the attachment.

9. While the Notice of Levy on Attachment was inscribed in TCT No. R-17571 ahead and before of the Deed of Sale between LBB Construction Co., Inc. and the Bonas, the said notice was not carried over in TCT No. R-22522 despite the fact that there was no order coming from this Honorable Court dissolving the Writ of Preliminary Attachment dated June 16, 2004.

10. Randy Rutaquio's unauthorized acts of cancelling TCT No. R-17571 and issuing TCT No. R-22522 without inscribing the Notice of Levy on Attachment despite the absence of a court order dissolving the writ of Preliminary Attachment constitute improper conduct tending to directly or indirectly to impede, obstruct or degrade the administration of justice.^[8]

Atty. Rutaquio filed a Manifestation alleging that the sale was entered in the Primary Entry Book prior to the Levy on Attachment. The two transactions were assigned to different examiners and it just so happened that the examiner to whom the levy on attachment was assigned was able to inscribe the memorandum ahead of the sale, although the inscription of the sale was entered ahead of the levy. The levy on attachment was not inscribed on TCT No. R-22522 because allegedly the sale should have priority and preference. The cancellation of TCT No. R-17571 and the issuance of TCT No. R-22522 was already completed when he took over the position of Atty. Santos as Acting Register of Deeds and was therefore already clothed with the authority to issue and sign TCT No. R-22522.

Atty. Rutaquio also submitted a letter dated June 25, 2004 from Atty. Santos to Land Registration Authority (LRA) Administrator Benedicto B. Ulep (Administrator Ulep) consulting the latter as regards the registration of the Deed of Absolute Sale and the Notice of Levy on Attachment.^[9] In said letter received by the LRA on July 1, 2004, Atty. Santos stated that he had not acted on the Deed of Absolute Sale since the required registration fees were not paid therefor.^[10] Administrator Ulep was able to reply to said letter on October 6, 2004, when Atty. Rutaquio was already the Acting Register of Deeds. Administrator Ulep stated that since the Deed of Sale was considered registered on June 16, 2004, the same shall take precedence over the Notice of Levy on Attachment registered on June 17, 2004.^[11]

Acting on the Motion to Reinstate Notice of Levy on Attachment in TCT No. R-22522 and Cite Atty. Randy A. Rutaquio for Contempt, the RTC issued an Order^[12] dated March 2, 2006, ruling in favor of Durawood. The RTC gave great weight to the certification by LRA Human Resource Management Officer IV Loreto I. Orense that Atty. Santos was the Acting Register of Deeds from June 1-30, 2004, and held that this proves the fact that Atty. Santos was the only person authorized to sign and approve all the transactions with the Registry of Deeds of Antipolo City at the time. Moreover, according to the RTC, the alienation of LBB Construction in favor of the Bonas without leaving sufficient property to pay its obligation is considered by law in fraud of creditor under Articles 1381^[13] and 1387^[14] of the Civil Code.

The RTC did not rule on Durawood's prayer to cite Atty. Rutaquio for contempt. The dispositive portion of the March 2, 2006 Order reads:

WHEREFORE, premises considered, the instant motion to reinstate notice of levy on attachment in TCT No. R-22522 now in the name of the intervenors is hereby GRANTED its non-inscription therein having been made without order of this Court.

The Register of Deeds of Antipolo City is directed to reinstate the notice of levy on attachment in TCT No. R-22522 in the names of intervenors immediately upon receipt of this Order.^[15]

Candice filed a Motion for Reconsideration of the above Order. In the meantime, on March 13, 2006, Sheriff Leyva issued a Notice of Sheriff's Sale setting the sale of the property covered by TCT No. R-22522 at public auction on April 11, 2006 at 10:00 a.m., pursuant to the November 15, 2005 Writ of Execution. Candice filed an Urgent Ex-Parte Motion to Order the Branch Sheriff to Desist from the Sale of Intervenor's Property for Being Premature, which was granted by the RTC in an Order dated March 29, 2006.

On March 8, 2006, the new Acting Register of Deeds Jose S. Loriega, Jr. complied with the March 6, 2006 Order of the RTC by reinstating in TCT No. R-22522 the Notice of Levy on Attachment in favor of Durawood.

On April 7, 2006, the RTC issued an Order denying Candice's Motion for Reconsideration. In said Order, the RTC highlighted its observation that in TCT No. R-17571, the inscription of the levy on attachment by Atty. Santos dated June 17, 2004 was in page A (the dorsal portion) of the title, while the supposedly earlier inscription of the Deed of Sale by Atty. Rutaquio dated June 16, 2004 was found in page B (a separate page) of the title. The RTC found this fact, as well as the above-mentioned certification that Atty. Santos was the Acting Register of Deeds of Antipolo City from June 1 to 30, 2004, sufficient proof of the irregularity of the June 16, 2004 inscription of the Deed of Sale.

On April 11, 2006, Sheriff Leyva sold the subject property at public auction for P1,259,727.90 with Durawood being the lone bidder, and issued the corresponding Certificate of Sale. The sale was inscribed in TCT No. R-22522 on the same date.^[16]

Candice filed with the Court of Appeals a Petition for *Certiorari* and Prohibition assailing the March 2, 2006 and April 7, 2006 Orders of the RTC.

On April 18, 2007, the Court of Appeals rendered the assailed Decision in favor of Candice. According to the Court of Appeals, the sequence of presentation of the entries in the TCT cannot control the determination of the rights of the claimants over a disputed property. It is the registration in the Primary Entry Book (also referred to in other cases as the *day book*) that establishes the order of reception of instruments affecting registered land. As explained by Atty. Rutaquio, the entry in the day book is only the preliminary step in the registration. The inscription of the levy on attachment on TCT No. R-17571 (which was made before the inscription of the Deed of Sale on said title) retroacts to the date of entry in the Primary Entry Book, which is June 17, 2004. However, the inscription of the Deed of Sale on TCT No. R-17571, although made after the inscription of the levy on attachment, retroacts to the earlier date of entry in the Primary Entry Book, which is June 16, 2004.

As regards the issuance by Atty. Rutaquio of TCT No. R-22522 on June 16, 2004 despite the fact that he was not yet the Register of Deeds of Antipolo City at that time, the Court of Appeals held that there was substantial compliance with the National Land Titles and Deeds Registration Administration (NALTDRA; now the Land Registration Authority [LRA]) Circular No. 94 on "Certificates of title and documents left unsigned by former Register of Deeds," which provides:

It has been brought to the attention of this Registration that, in some Registries, there are certificates of title with the full transcriptions and inscriptions, including the volume and page numbers, the title number, the date and the name of the former Register of Deeds, already typewritten thereon but which, for some reasons, cannot anymore be signed by the former official. In such cases and to resolve this problem, the present Register of Deeds may, without changing or altering the transcriptions and inscriptions, affix his signature below the name of the former Register of Deeds but placing the actual date and time of signing enclosed in parenthesis below his signature.^[17]

The Court of Appeals accepted Atty. Rutaquio's manifestation that he signed TCT No. R-22522 subsequent to June 16, 2004, on a date when he was already the Acting Register of Deeds of Antipolo City. Since the entry in the Primary Entry Book was made at the time of the incumbency of Atty. Santos, the name of the latter still appears on the document. According to the Court of Appeals, Candice cannot be made to suffer for the failure of Atty. Rutaquio to affix the date when he signed the document. Furthermore, a certificate of title, once registered, cannot be impugned, altered, changed, modified, enlarged or diminished except in a direct proceeding permitted by law. Finally, an action for rescission of contracts entered into in fraud of creditors cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same.^[18]

The dispositive portion of the Decision reads: