

## FIRST DIVISION

[ G.R. No. 162836, July 30, 2009 ]

**CEFERINA ARGALLON-JOCSON AND RODOLFO TUISING,  
PETITIONERS, VS. COURT OF APPEALS, HON. BONIFACIO T.  
ONG, IN HIS CAPACITY AS THE ACTING PRESIDING JUDGE OF  
THE REGIONAL TRIAL COURT OF ROXAS, ISABELA, BRANCH 23,  
MARIA CRISTINA FERTILIZER CORP., AND MARCELO STEEL  
CORP.,RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the Decision<sup>[2]</sup> dated 16 January 2004 and the Resolution dated 25 March 2004 of the Court of Appeals in CA-G.R. SP No. 79179. The Court of Appeals affirmed the Order dated 14 April 2003 of the Regional Trial Court of Roxas, Isabela, Branch 23 (trial court), in Civil Case No. Br. 23-377.

#### The Facts

On 10 August 1992, petitioner Ceferina Argallon-Jocson (Jocson) filed a complaint for Reconveyance and Damages against Marcelo Steel Corporation and Maria Cristina Fertilizer Corporation (MCFC), which were represented by Jose Marcelo as president of both companies.

On 24 February 1999, the trial court rendered a decision, the dispositive portion of which reads:

AS A CONSEQUENCE OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff [Jocson] and against the defendants [Marcelo Steel Corporation and MCFC]: (1) Ordering the defendants to pay the plaintiff the balance of P2,004,810.42, with legal interest from 1976 up to the present; (2) attorney's fees in the amount of P20,000.00; and (3) to pay the costs.<sup>[3]</sup>

Marcelo Steel Corporation and MCFC (private respondents) appealed to the Court of Appeals, which affirmed the trial court's decision. Private respondents did not appeal the Court of Appeals' decision, which became final and executory. Jocson then filed a Motion for Issuance of a Writ of Execution. On 9 December 2002, the trial court issued an order for the issuance of a writ of execution in accordance with the tenor of the decision.

On 20 December 2002, a Writ of Execution<sup>[4]</sup> (writ) was issued to the Sheriff of the Office of the Clerk of Court of Manila, commanding the Sheriff to implement the writ upon private respondents in accordance with the tenor of the decision. The writ was indorsed to Sheriffs Levy Duka, Luis Alina, Andreil Garcia, and Nathaniel Abaya, who levied upon the properties of Marcelo Steel Corporation in full satisfaction of the judgment debt. The execution sale was then scheduled on 17 February 2003. On 14 February 2003, Midas International Development Corporation (Midas Corp.) filed a third-party claim, alleging that some of the levied properties were previously mortgaged to Midas Corp. The execution sale was postponed to 21 February 2003. On 20 February 2003, Jocson posted a P36 million indemnity bond<sup>[5]</sup> so that the levied properties would not be released to claimant Midas Corp. The Sheriffs then proceeded with the execution sale on 21 February 2003 and sold the properties of Marcelo Steel Corporation for the full satisfaction of the judgment against private respondents. A certificate of sale<sup>[6]</sup> was issued to petitioner Rodolfo Tuising (Tuising), who was the highest bidder at the auction sale for P9.9 million.

On 28 February 2003, Jocson filed with the trial court a *Very Urgent Ex-Parte Motion for Issuance of a Break-Open Order and Petition for Contempt of Court*.<sup>[7]</sup> On 3 March 2003, Marcelo Steel Corporation filed an *Extremely Urgent Omnibus Motion*,<sup>[8]</sup> praying for the annulment of the execution sale and for the issuance of an order directing the Sheriffs not to deliver the properties sold to Tuising pending resolution of Marcelo Steel Corporation's motion. Marcelo Steel Corporation alleged that its obligation was merely joint with MCFC and that the total price of the properties sold on execution was unconscionably inadequate.

On 14 April 2003, the trial court issued an order, the dispositive portion of which reads:

WHEREFORE, premises considered, the execution sale of the properties of the defendant Marcelo Steel Corporation, namely: Seven (7) dilapidated warehouses, detachable metal structural steel with scattered machineries, metal scraps, metal G.I. Pipes, wires and post, held on February 21, 2003, is hereby declared null and void and the Certificate of Sale dated February 21, 2003 issued pursuant thereto is hereby set aside and cancelled.

The motion for the issuance of a break-open order is hereby denied for lack of merit and basis.<sup>[9]</sup>

Jocson moved for reconsideration of the trial court's order, claiming that the nature of the obligation to pay the balance of the purchase price was solidary. Tuising filed a *Motion for Intervention with Leave of Court with Motion for Reconsideration and Entry of Appearance*. On the other hand, Marcelo Steel Corporation filed, on 7 May 2003, a *Manifestation and Motion on Satisfaction of Judgment*, depositing with the trial court a Manager's Check in the amount of P4,260,198.11 representing full satisfaction of Marcelo Steel Corporation's obligation to Jocson. On 14 July 2003, the trial court denied Jocson's motion for reconsideration and Tuising's motion for intervention and reconsideration, and granted Marcelo Steel Corporation's prayer for entry of satisfaction of judgment on its behalf.<sup>[10]</sup>

On 18 August 2003, Jocson filed with the trial court a Notice of Appeal, which she later withdrew on 4 September 2003, and in lieu thereof, petitioners Jocson and Tuising filed a Petition for Certiorari with the Court of Appeals.<sup>[11]</sup> The Court of Appeals dismissed the petition for lack of merit. Jocson and Tuising filed a motion for reconsideration,<sup>[12]</sup> which the Court of Appeals denied on 25 March 2004. Hence, this petition.

Meanwhile, on 23 February 2004, Jocson filed with the trial court a *Motion for Issuance of Alias Writ of Execution* to implement the decision as against MCFC, stating that in view of the Court of Appeals' decision, there is a need to execute the decision as against the other defendant MCFC.<sup>[13]</sup>

### **The Trial Court's Ruling**

In its Order dated 14 April 2003, the trial court ruled that the liability of Marcelo Steel Corporation was limited to its proportional share in the entire money judgment. Considering that the dispositive portion of the Decision dated 24 February 1999 in this case did not state that the obligation of private respondents was solidary, then their obligation was merely joint. Citing the case of *PH Credit Corporation v. Court of Appeals*,<sup>[14]</sup> the trial court held that "being made to pay for an obligation in its entirety when one's liability is merely for a portion is a sufficient ground to contest an execution sale. It would be the height of inequity if we allow judgment obligors to shoulder entire monetary judgments when their legal liabilities are limited only to their proportionate shares in the entire obligation."

### **The Court of Appeals' Ruling**

The Court of Appeals held that in consonance with Section 1, Rule 65 of the Rules of Civil Procedure,<sup>[15]</sup> certiorari is not a substitute for lost appeal. Moreover, the Court of Appeals found that the assigned issues were factual issues not proper in a petition for certiorari, which is limited to the issues of jurisdiction and grave abuse of discretion.

The Court of Appeals found no grave abuse of discretion on the part of the respondent judge. On the merits of the case, the Court of Appeals held that the obligation of private respondents to Jocson was merely joint. The Court of Appeals noted that the trial court's Decision dated 24 February 1999 was silent as to the nature of the liability. Solidary obligations are not presumed in the absence of an express determination thereof in the judgment. When the judgment does not provide that the defendants are liable to pay jointly and severally a certain amount of money, none of them may be compelled to satisfy in full said judgment.

The Court of Appeals found that the Sheriffs disregarded the trial court's 24 February 1999 Decision, and deviated from the trial court's Order dated 9 December 2002 and the writ of execution dated 20 December 2002, which directed them to execute the writ in accordance with the tenor of the decision.

### **The Issues**

Petitioners contend that:

1. THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT PETITIONERS' WITHDRAWAL OF THEIR NOTICE OF APPEAL AND SUBSTITUTING IT BY PETITION FOR CERTIORARI IS PROCEDURALLY IMPERMISSIBLE.
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION WHEN HE DECLARED THE OBLIGATION OF THE DEFENDANTS IN CIVIL CASE NO. 23-377 AS JOINT AND NOT SOLIDARY.
3. THE HONORABLE COURT OF APPEALS ERRED IN [NOT] DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR A BREAK-OPEN AND DECLARING THE EXECUTION SALE CONDUCTED ON FEBRUARY 21, 2003 NULL AND VOID AND THE CERTIFICATE OF SALE AWARDED TO PETITIONER TUISING CANCELLED.
4. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN GRANTING THE PRAYER FOR SATISFACTION OF JUDGMENT DESPITE RECEIPT OF PETITIONER JOCSON OF THE PROCEEDS OF THE SALE AS EVIDENCED BY THE ACKNOWLEDGMENT RECEIPT.
5. THE HONORABLE COURT OF APPEALS ERRED IN NOT DECIDING THAT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION IN DENYING THE MOTION FOR INTERVENTION AND IN NOT CONSIDERING THE SAME AS PRO *INTERESSE SUO*.<sup>[16]</sup>

### **The Ruling of the Court**

We find the petition without merit.

At the outset, the Court notes that the petition supposedly filed by petitioners Jocson and Tusing was not signed by Jocson's counsel. It was Tusing's counsel who signed in behalf of Jocson's counsel. Tusing's counsel had no authority to sign the petition in behalf of Jocson. The records are bereft of any proof that Jocson ever authorized Tusing's counsel to be her counsel or to act in her behalf. Under Section 3, Rule 7 of the Rules of Civil Procedure,<sup>[17]</sup> every pleading must be signed by the party or counsel representing him, otherwise the pleading produces no legal effect.

Furthermore, only Tusing signed the Verification and Certification for Non-Forum Shopping. Jocson did not sign the Verification and Certification. Section 1, Rule 45 of the Rules of Civil Procedure requires the petition for review on certiorari to be verified.<sup>[18]</sup> A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading.<sup>[19]</sup> Although Tusing belatedly filed on 24