

THIRD DIVISION

[G.R. No. 169444, September 17, 2008]

PABLITO T. VILLARIN AND P.R. BUILDERS DEVELOPERS & MANAGERS, INC., PETITIONERS, VS. CORONADO P. MUNASQUE, RESPONDENT.

D E C I S I O N

TINGA, J.:

The Decision dated 31 March 2005 and Resolution dated 11 August 2005 of the Court of Appeals^[1] are assailed in this petition for review under Rule 45.^[2]

The facts as culled from the assailed decision and the records follow.

This case stemmed from a Complaint^[3] for collection of sum of money filed on 10 July 2002 by respondent Coronado P. Munasque against petitioners Pablito T. Villarin and P.R. Builders Developers and Managers, Inc., and their co-defendant Intra Strata Assurance Corp. (Intra Strata) before the Regional Trial Court (RTC) of Makati City, Branch 58.

On 20 July 2002, before the answer could be filed, the parties entered into a compromise agreement^[4] wherein petitioners acknowledged their joint and solidary obligation to respondent in the amount of P15 million, with a monthly interest of P450,000.00 from 18 October 2001 until full payment, and promised to pay the whole amount within ninety (90) days from the date of the said agreement. To guarantee payment of the obligation, all the real estate mortgages executed by petitioners in favor of Intra Strata were assigned to respondent. Consequently, Intra Strata was released from its obligation to respondent and the complaint against it dismissed.

On even date, the parties jointly filed before the RTC a motion for the approval of the compromise agreement.^[5] Judge Winlove M. Dumayas (Judge Dumayas), pairing judge of the RTC, granted the motion on 2 August 2002.^[6]

Petitioners managed to pay only P250,000.00 of their total obligation. Thus, on 23 October 2002, respondent filed a motion for execution.^[7]

The motion was granted^[8] and the writ of execution issued on 29 October 2002.^[9] The following day, 30 October 2002, deputy sheriff of Makati, Antonio Q. Mendoza (Deputy Sheriff Mendoza), issued a notice of levy^[10] and had the same annotated at the back of thirty-four (34) transfer certificates of title (TCTs) issued by the Register of Deeds of Tanauan City in the name of petitioners. On the same day, another notice of levy^[11] was issued against all rights and interests of petitioners on a piece of land covered by a tax declaration in petitioner Villarin's name, directing

that the corresponding recording and annotation be made in the books of the city assessor of Tagaytay City. On 5 November 2002, still another notice of levy^[12] with the same directive to the Register of Deeds of Tanauan City, Batangas was issued against eleven (11) pieces of property covered by TCTs issued in the name of petitioners.

On 8 November 2002, Deputy Sheriff Mendoza issued "Notice of Deputy Sheriff's Sale on Execution"^[13] relative to the levied properties, caused its registration in the Office of the City Assessor of Tagaytay and the Register of Deeds of Tanauan City, and had it posted for twenty days in three public places each in the cities of Tanauan, Tagaytay and Makati. After the raffle was conducted by the clerk of court (*ex officio* deputy sheriff) of the RTC of Makati City, the notice of sale on execution was published in a newspaper of national circulation on 20 and 27 November 2002.^[14]

On 14 November 2002, the law firm of Oben Ventura Abola entered its appearance as collaborating counsel with petitioners' counsel of record, Atty. Jufraida F. Salamero (Atty. Salamero).^[15] The firm sent via registered mail to respondent's counsel and Deputy Sheriff Mendoza a letter^[16] dated 13 November 2002, complaining of procedural lapses in the enforcement of the writ of execution. The firm claimed that the deputy sheriff did not comply with Section 9, Rule 39 of the 1997 Rules of Civil Procedure which, according to it, requires first a personal demand for payment of the full amount of the obligation before levy on the properties could be made; that when levy was made, petitioners were not given the option to choose what property should be levied; and that levy should have been made first on petitioners' personal properties. Petitioners then identified eight (8) parcels of land registered with the Register of Deeds of Tanauan City which they claimed should be the subject of levy since the combined value of the said properties was sufficient to cover the P15 million claim. On that basis, they requested that the appropriate correction be made in the notice of levy.

On 19 November 2002, petitioners filed a motion to recall the notice of levy and cancel the scheduled deputy sheriff's sale, alleging the same grounds raised in the letter of 13 November 2002.^[17]

Respondent opposed the motion, contending that the day before the levy, petitioners' counsel, Atty. Salamero, informed respondent's counsel that petitioners did not have the money to pay even one month's interest at the time. It was also averred that Atty. Salamero also agreed to the immediate levy of the real properties of petitioners provided that the auction sale be scheduled earlier than 20 November 2002 because by then, according to her, petitioners shall have already had the funds needed to pay their obligation. Petitioners' accountant, Florita B. Santos (Santos), allegedly made similar representations to respondent. Respondent also alleged that petitioners' specification of the 8 parcels of land to be levied upon constituted a waiver and/or confirmation of their previous waiver of the need to require the sheriff to first personally demand full payment of the judgment debt or levy on their personal properties.^[18]

On 13 December 2002, the RTC reset the scheduled auction sale from 16 December 2002 to 16 January 2003.^[19]

On 7 January 2003, the RTC issued an Order^[20] denying for lack of merit petitioners' motion to recall the levy and to cancel the scheduled sale on execution. Thus, on 16 January 2003, Deputy Sheriff Mendoza conducted an auction sale of the levied properties at the main entrance lobby of the Makati City Hall. The minutes of auction sale^[21] would show that counsels for both parties, who had affixed their signatures therein, were present at the sale and that only respondent's representative participated in the bidding. As found by the Court of Appeals, the said minutes would also show that all the real properties had been sold one after another with separate price for each bid and that the individual bid prices for the forty-four (44) lots totaled P19,546,000.00. Respondent paid the deputy sheriff's fees and thereafter was issued a certificate of sale on execution.

On 30 January 2003, petitioners filed an omnibus motion to reconsider the Order dated 7 January 2003; to declare null and void and recall the Notice of Levy dated 30 October 2002, the Notice of Deputy Sheriff's Sale on Execution dated 8 November 2002, and the auction sale proceedings held on 16 January 2003; and to inhibit the presiding judge.^[22] Petitioners alleged that the 7 January 2003 Order did not have any factual or legal basis, and that they had lost faith in the presiding judge whose acts were tainted with irregularity and malice.

On 20 February 2003, Judge Dumayas inhibited himself from the case without resolving petitioners' omnibus motion. The case was re-raffled to Branch 148, presided by Judge Oscar B. Pimentel (Judge Pimentel).

On 12 June 2003, Judge Pimentel issued an Order^[23] declaring null and void the deputy sheriff's sale on execution of petitioners' real properties and setting aside the 7 January 2003 Order which denied petitioners' motion to recall the notice of levy. The dispositive portion of the order reads:

WHEREFORE, premises considered, the Omnibus Motion is hereby GRANTED, hence, the Order dated 7 January 2003 is hereby set aside, and the notice of levy dated 30 October 2002, notice of Deputy Sheriff's sale on execution dated 8 November 2002 and the auction sale proceedings on 16 January 2003 are hereby declared null and void.

SO ORDERED.^[24]

On 3 July 2003, respondent filed a motion for reconsideration of the Order of 12 June 2003, but this was denied in the RTC's Order^[25] dated 25 August 2003.

Respondent thus appealed to the Court of Appeals which, on 31 March 2005, ruled favorably to respondent:^[26]

WHEREFORE, the assailed Orders dated 12 June 2003 and [25 August 2003] of Judge Pimentel are REVERSED and SET ASIDE. The Order dated 7 January 2003 of Judge Dumayas is AFFIRMED and REINSTATED, and the validity of the auction sale conducted by Deputy Sheriff Mendoza on 16 January 2003, UPHELD.

SO ORDERED.^[27]

The Court of Appeals noted that in the RTC's Order of 7 January 2003, some pertinent facts were not denied or disputed by petitioners, namely, that Atty. Salamero and Santos admitted to respondent's counsel that petitioners had no sufficient funds to pay even one month's interest, and that petitioners agreed that the levy may proceed as long as the auction sale would not be scheduled earlier than 20 November 2002. The Court of Appeals also held that all the alleged procedural defects committed by Deputy Sheriff Mendoza had been corrected when petitioners wrote the letter dated 13 November 2002,^[28] as follows:

In violation of the above requirements, no demand for the immediate payment for the full amount of the obligation was made upon the [petitioners] by the [Deputy Sheriff] concerned prior to the issuance of the levy.

As a consequence, [petitioners] had been thereby effectively and unduly deprived of the opportunity to exercise his "option" or right under the Writ "to immediately choose which properties may be levied upon" in the event he fails to pay the judgment debt upon such demand.

As a further consequence, levy has been indiscriminately and arbitrarily made on properties of [petitioners] whose value is well in excess of [respondent's] claim.

We note that the aforesaid Notice of Levy was issued with precipitate haste on 30 October 2002, just a day after the issuance of the Writ of Execution on 29 October 2002, barring sufficient opportunity for a demand for payment to be made upon [petitioners] nor for any opportunity to exercise [petitioners'] right to choose which properties may be levied upon, indicative of a premeditated plan of over levying on [petitioners'] properties.

Notwithstanding the above, [petitioners] hereby exercise their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation pursuant to the Writ of Execution issued by Honorable Winlove M. Dumayas of the [RTC] of Makati, Branch 58, to wit:

| Real Property | Area |
|--------------------------|----------------------|
| TCT No. T-89829 | 47,241 sq. meters |
| TCT No. T-93840 | 4,184 sq. meters |
| TCT No. T-93843 | 4,408 sq. meters |
| TCT No. T-93845 | 4,406 sq. meters |
| TCT No. T-93847 | 4,406 sq. meters |
| TCT No. T-93848 | 4,406 sq. meters |
| TCT No. T-93849 | 4,406 sq. meters |

TCT No. T- 4,406 sq.
93850 meters^[29]

The Court of Appeals found that the foregoing acts amounted to petitioners' exercise of their right "to immediately choose which property or part thereof may be levied upon sufficient to satisfy the judgment" and a waiver of their right to require the officer to first levy on their personal properties. The appellate court opined that it would be an exercise in futility to require the officer to first make a personal demand when the judgment debtors (petitioners) had already given the go-signal to proceed with the levy of real properties. It noted that waiver of personal demand for immediate payment is allowed by Article 6 of the New Civil Code and such waivers and automatic correction of the procedural defects thus rendered moot the challenge against the validity of the levy.^[30]

The appellate court ruled further that petitioners' 44 parcels of land were sold separately as required by law and not in bulk. It found erroneous the RTC's conclusion that the sale was made in bulk since nowhere was it stated in the deputy sheriff's report that the sale of all the parcels of land was done *en masse*, and the minutes of the auction sale, prepared by the deputy sheriff and signed by the representatives of both parties, clearly indicate the individual description and TCT numbers of the properties sold, the individual bid price for each parcel of land, and the total bid price for all 44 parcels. The certificate of sale on execution dated 16 January 2003 also specifies the TCT number, the technical description, and selling price of each parcel of land sold. Thus, bearing in mind the legal presumption of regular performance of official duty and the fact that the parties never made any objection during the auction sale or immediately thereafter, the Court of Appeals ruled that the properties were sold separately.^[31]

In the present petition, petitioners contend that Deputy Sheriff Mendoza failed to comply with the provisions of Section 9, Rule 39 of the Rules of Court in implementing the writ of execution. In levying on the 44 parcels of land, he allegedly failed to (a) first make a personal demand on petitioners for the immediate payment of the full amount stated in the writ of execution and all lawful fees and (b) give petitioners the option to immediately choose which property or part thereof sufficient to satisfy the judgment may be levied upon.^[32] They argue that the admissions made by Atty. Salamero and Santos do not amount to a waiver of their right to prior demand for payment of the full amount of the judgment, noting that Deputy Sheriff Mendoza should have made the demand for payment on petitioners themselves in order to verify the admissions made by said persons.^[33]

Petitioners add that the letter of 13 November 2002 also does not constitute a waiver or an automatic correction of the procedural defects in the execution of the writ since petitioners wrote the letter precisely to exercise their right to choose the properties to be levied upon. They merely sought to save whatever rights they still had, they explain.^[34]

Petitioners also question the Court of Appeals' finding that the 44 parcels of land were sold separately as required by law, on the ground that it has no factual or evidentiary basis. The minutes of the auction sale on which the Court of Appeals based its finding do not even contain the individual description of the properties sold but only an enumeration of the titles covering each property, with the bid price for