

## FIRST DIVISION

[ G.R. No. 120760, February 24, 1998 ]

**PACITA VIRAY, PETITIONER, VS. COURT OF APPEALS AND  
JOHNSON CHUA, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

This case involves the authority of the Clerk of Court to amend *ex mero motu* a writ of execution earlier issued by the court to change the amount to be satisfied in the execution.

In Civil Case No. D-8835 of the Regional Trial Court of Dagupan City, plaintiff Pacita Viray, petitioner herein, entered into a compromise agreement with defendant spouses Hilarion and Gliceria Pinlac whereby the spouses bound themselves to pay their indebtedness to the former amounting to ₱160,000.00 in eighty (80) equal monthly installments of ₱2,000.00 each, subject to the condition that failure to pay two (2) installments would render the outstanding amount due and payable. The agreement was approved by the trial court.<sup>[1]</sup>

Meanwhile, a parcel of land owned by the Pinlac spouses and mortgaged with the Social Security System (SSS) was sold at public auction after the same was foreclosed for non-payment of amortizations. On 14 April 1989 the spouses redeemed the property and sold it a few days later to private respondent Johnson Chua.

On 4 May 1989, for failure of the Pinlac spouses to pay two (2) installments as stipulated in the compromise agreement, petitioner Pacita Viray filed with the trial court a motion for the issuance of a writ of execution. Alleging that the Pinlac spouses had paid her only ₱2,500.00 and then failed to pay the succeeding installments, petitioner demanded execution in the amount of ₱57,500.00 as unpaid balance thereunder. On 5 May 1989 the motion was granted, and on 22 May 1989 a writ of execution was issued by the Clerk of Court for the amount of ₱57,500.00 as prayed for. Three (3) days later the Deputy Sheriff annotated the notice of levy on the transfer certificate of title covering the parcel of land in the name still of the Pinlac spouses but which had been sold earlier to respondent Chua.

In a letter dated 9 June 1989 to the Clerk of Court, Atty. Alicia Bravo-Fabia, petitioner Viray requested that the writ of execution issued on 22 May 1989 be amended by changing the amount to be satisfied. She explained that in her motion for issuance of the writ the entire amount due her was erroneously stated as ₱57,500.00 when in fact the correct amount due was ₱157,500.00, or a difference of ₱100,000.00. On 13 June 1989, acting on Viray's letter, the Clerk of Court without a prior order from the court granted the request and issued an amended writ increasing the amount to be collected from ₱57,500.00 to ₱157,500.00. On the same day respondent Chua registered with the Registry of Deeds the deeds of redemption and sale executed in his favor by the

Pinlac spouses. Accordingly, at 4:00 o'clock in the afternoon of the same day, a new title was issued in his name.

The new title contained Entry No. 135748/T-37005 referring to the notice of levy. The entry however did not specify the amount to be levied. Upon verification from the Sheriff's notice of levy that the amount due was ₱57,500.00, and after consulting a lawyer upon advice of a sister, respondent Chua tendered the amount to Clerk of Court Fabia. The tender was however rejected by the Clerk of Court who informed Chua that the amount was insufficient as the writ and the notice of levy had already been amended to reflect the correct amount of ₱157,000.00.

Subsequently, a notice of sale at public auction dated 20 June 1989 based on the amended writ was published and the sale set on 24 July 1989. On the day of the auction, respondent Chua filed a complaint for injunction with prayer for a restraining order. The auction sale nevertheless proceeded with petitioner Viray as the highest bidder. A certificate of sale in her favor was correspondingly issued by the Sheriff. Because of this turn of events, Chua amended his complaint by adding to his causes of action a declaration of nullity of sale plus damages.

During the trial of the case, respondent Chua consigned the amount of ₱57,500.00 which was approved by the trial court. Accordingly, the amount was deposited with the Far East Bank and Trust Company (FEBTC), Dagupan City Branch.

On 11 July 1990 the trial court rendered judgment in favor of respondent Chua declaring null and void the amended writ of execution dated 13 June 1989, the notice of sale at public auction dated 20 June 1989 and the sheriff's certificate of sale dated 24 July 1989. The court also directed the Register of Deeds of Dagupan City to cancel the registration of the notice of levy and the sheriff's certificate of sale and ordered FEBTC to pay to petitioner Viray the consigned amount of ₱57,500.00 even as it dismissed her counterclaim.<sup>[2]</sup> It also ruled that in the absence of a court order, the Clerk of Court had no authority whatsoever to amend the writ of execution. This obtaining, respondent Chua's obligation was deemed discharged upon his consignment of ₱57,000.00 pursuant to the writ of execution originally issued.

On 29 March 1995 respondent Court of Appeals affirmed the trial court's ruling with the additional finding that the deed of sale between the Pinlac spouses and respondent Chua was not simulated.<sup>[3]</sup> It also held that the evidence did not show that at the time of its execution Chua knew of the case between petitioner and the Pinlac spouses nor was he aware of any lien on the property, except the mortgage in favor of the SSS, as to impute bad faith to him. On 7 June 1995 the appellate court denied petitioner's motion for reconsideration.<sup>[4]</sup>

Petitioner maintains that (1) respondent Chua had knowledge of the actual amount to be executed before he registered the deeds of redemption and sale; (2) Chua was a buyer in bad faith; and, (3) the Clerk of Court had the authority to amend a purely clerical error in the writ of execution. She postulates that respondent Chua is charged with the duty of ascertaining the actual amount to be executed since the notice of levy annotated in the TCT mentions Civil Case No. D-8835 as the source of the obligation of the Pinlac spouses. The fact that Chua did not refer to the records of the case which show that the property was being levied for ₱157,500.00 is an eloquent manifestation of his bad faith. This, she adds, is not enhanced any by the fact that prior to the registration of the deeds of redemption and sale she had already informed Chua that the balance of the spouses' obligation with her was ₱157,500.00.