

# SPECIAL SIXTEENTH DIVISION

[ CA-G.R. SP No. 130293, June 02, 2014 ]

**CESAR G. CRUZ, PETITIONER, VS. HON. ROWENA NIEVES A. TAN, ACTING PRESIDING JUDGE, BRANCH 118, REGIONAL TRIAL COURT OF PASAY CITY AND PAL EMPLOYEES SAVINGS AND LOAN ASSOCIATION, INC., RESPONDENTS.**

## DECISION

**MACALINO, J:**

This is a Petition for Certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the 10 April 2013 Order<sup>[1]</sup> (“assailed Order”) of Public Respondent Hon. Rowena Nieves A. Tan (“Public Respondent”), Acting Presiding Judge of the Regional Trial Court of Pasay City, Branch 118 in Civil Case No. 99-0102 entitled “*PAL Employees Savings and Loan Association v. Cesar G. Cruz*” for allegedly having been issued by the Public Respondent with grave abuse of discretion amounting to lack or excess of jurisdiction.

### ***The Factual and Procedural Antecedents of the Case***<sup>[2]</sup>

Petitioner Cesar G. Cruz (“Petitioner”), a former pilot of Philippine Airlines (PAL), obtained a loan from Private Respondent PAL Employees Savings and Loan Association, Inc. (“Private Respondent”). As Petitioner defaulted in his loan obligation, Private Respondent, on 26 January 1999, filed a Complaint<sup>[3]</sup> for sum of money before the Regional Trial Court of Pasay City.

On 31 August 1999, Petitioner and Private Respondent reached an amicable settlement of the case which resulted in the execution of a Compromise Agreement.<sup>[4]</sup>

On 4 February 2000, on the basis of the said Compromise Agreement, a Decision<sup>[5]</sup> was rendered by the Regional Trial Court of Pasay City then presided by Judge Nelson B. Bayot.

On 12 April 2011, Private Respondent filed a Motion to Revive Judicial Compromise and Issuance of Writ of Execution<sup>[6]</sup> praying that the Complaint it previously filed be reopened and that a Writ of Execution based on judicial compromise be issued. In an Order<sup>[7]</sup> dated 9 February 2012, Public Respondent granted the above said Motion.

On 27 September 2012, a Writ of Execution<sup>[8]</sup> was issued commanding Sheriff Lawrence R. Aguila (“Sheriff Aguila”) to cause the execution of the Decision dated 4 February 2000.

On 11 January 2013, a Notice/Demand to Pay<sup>[9]</sup> was issued by Sheriff Aguila ordering Petitioner to immediately pay the amount of PhP4,987,476.10 due Private

Respondent.

On 3 March 2013, a Notice of Levy on Execution was issued. TCT No. 290057 ("subject property") in the name of Petitioner married to Jovita Cruz ("Jovita"), was attached and levied for auction sale on 11 April 2013 and 25 April 2013.

On 3 April 2013, Petitioner filed a Motion to Quash/Dissolve Notice of Levy on Execution dated March 3, 2013 (With Prayer for the Issuance of Temporary Restraining Order)<sup>[10]</sup> alleging that the property subject of the auction sale is a family home and therefore exempt from execution, forced sale or attachment.

On 8 April 2013, Petitioner filed a Manifestation<sup>[11]</sup> that at the time the subject property was constituted as a family home by operation of law as of 3 August 1988, its market value is less than PhP300,000.00, thus exempt from execution. Assuming but without admitting that the value of the subject property exceeds PhP300,000.00, still, the auction sale should not be allowed to proceed on account of Private Respondent's failure to observe the guidelines set forth in Article 160 of the Family Code, as amended, that there should be an application for an order directing the sale of the property under execution.

However, on 10 April 2013, Public Respondent denied the Motion to Quash/Dissolve Notice of Levy on Execution. The dispositive portion of the assailed Order reads:

"WHEREFORE, premises considered, the MOTION TO QUASH/DISSOLVE NOTICE OF LEVY ON EXECUTION dated March 3, 2013 (With Prayer for the Issuance of Temporary Restraining Order) filed by the defendant is hereby DENIED.

SO ORDERED."<sup>[12]</sup>

In denying the Motion to Quash/Dissolve Notice of Levy on Execution, Public Respondent said:

"The Court cannot consider the value given by the defendant as stated in Tax Declaration No. B-019 00134 since the same is still in the name of Isagani and Remedios Cruz, not in the name of defendant herein and his wife. In fact the title to the subject property, now considered as the home of the defendant, was transferred to him and his wife only in 2009 as appearing in TCT No. 290057."

On 11 April 2013, the subject property was sold in a public auction where Private Respondent was the sole bidder.

Aggrieved by the above said Order of Public Respondent, Petitioner filed the instant Petition<sup>[13]</sup> on 10 June 2013. On 4 July 2013, Private Respondent filed a Comment<sup>[14]</sup> thereto.

On 9 October 2013, a Motion for Leave to Admit Petitioner's Reply to Private Respondent PESALA's Comment dated June 28, 2013<sup>[15]</sup> was filed by Petitioner.

On 21 November 2013, Private Respondent filed its Memorandum<sup>[16]</sup> while Petitioner filed his Memorandum<sup>[17]</sup> on 4 March 2014.

In a Resolution dated 17 March 2014, this Court admitted Petitioner's Reply<sup>[18]</sup> and Memorandum although belatedly filed, in the interest of justice.

With the submission of the parties' respective Memoranda, the instant case was deemed submitted for decision.

### ***Grounds in Support of the Petition***

THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION BY ISSUING (sic) THE ORDER DATED APRIL 10, 2013 DENYING THE MOTION TO QUASH/DISSOLVE NOTICE OF LEVY ON EXECUTION DATED MARCH 3, 2013 THEREBY PROCEEDING WITH THE AUCTION SALE OF PETITIONER'S FAMILY HOME.

THE RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR IN EXCESS OF JURISDICTION WHEN SHE SET ASIDE PETITIONER'S EVIDENTIARY EVIDENCE THAT THE VALUE OF THE FAMILY HOME, SOLD AT AUCTION SALE, IS LESS THAN P300,000.00 THUS, EXEMPT FROM EXECUTION.

THE PUBLIC RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN SHE ORDERED THE SALE OF THE FAMILY HOME IN A PUBLIC AUCTION SANS APPLICATION FROM PRIVATE RESPONDENT TO SELL THE SAME IN PUBLIC AUCTION IN GROSS VIOLATION OF THE RULE (sic) 160 OF THE FAMILY CODE.

THE QUESTIONED ORDER DATED APRIL 10, 2013 IS CONTRARY TO LAW AND ESTABLISHED JURISPRUDENCE.<sup>[19]</sup>

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

Petitioner alleges that Public Respondent gravely abused her discretion when she failed to consider that the value of the subject property is less than PhP300,000.00 or only PhP274,842.40 as per the tax declarations he submitted. Public Respondent heavily relied on the mere representation by Private Respondent's counsel that the total value of the subject property is PhP573,560.00. Petitioner further alleges that Private Respondent failed to observe the guidelines set forth in Article 160 of the Family Code as it did not apply for the family home to be sold under execution. There exists no order from the trial court allowing the sale of the family home under execution rendering the Notice of Sale ineffectual and valid.

Private Respondent however avers that Petitioner failed to file a Motion for Reconsideration which is indispensable in a special civil action for certiorari. Further, according to Private Respondent, the supposed Petitioner in the instant Petition is Cesar G. Cruz and Jovita who represented him as attorney-in-fact and who signed the verification and certification of non-forum shopping has no authority in signing the same. There was even no special power of attorney attached in the instant Petition. Furthermore, there was no grave abuse of discretion on the part of Public Respondent when she denied the Motion to Quash/Dissolve Notice of Levy on Execution as the value of the family home exceeds PhP300,000.00.

It is settled that the requirement on the filing of a motion for reconsideration prior to the institution of a petition for certiorari under Rule 65 of the Rules of Court admits of several exceptions, such as when the filing of a motion appears to be

useless given the circumstances attending the action.<sup>[20]</sup> Thus, the Supreme Court has repeatedly held:

The general rule is that a motion for reconsideration is a condition sine qua non before a petition for certiorari may lie, its purpose being to grant an opportunity for the court a quo to correct any error attributed to it by re-examination of the legal and factual circumstances of the case. There are, however, recognized exceptions permitting a resort to the special civil action for certiorari without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*, it was written:

"The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court a quo had no jurisdiction; where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency of relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were ex parte or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is involved."<sup>[21]</sup>

In the instant case, we rule that the filing of a Motion for Reconsideration would be useless given that the particular act which Petitioner sought to prevent by the filing of the Motion was already carried out. It bears stressing that the family home of Petitioner, by virtue of the assailed Order, was sold in a public auction on 11 April 2013.

With respect to the alleged lack of authority of Jovita, wife of Petitioner, in signing the verification and certification of non-forum shopping, we rule that the Special Power of Attorney<sup>[22]</sup> executed by Petitioner, authorizing Jovita to represent him in all stages of the proceedings and granting her full power and authority to do and perform all and every act requisite or necessary to carry in effect the authority given, vested her sufficient authority to sign the verification and certification of non-forum shopping.

As to whether or not Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed Order denying the Motion to Quash/Dissolve Notice of Levy on Execution, we rule in the negative.

For the family home to be exempt from execution, distinction must be made as to what law applies based on when it was constituted and what requirements must be