

ELEVENTH DIVISION

[CA-G.R. SP NO. 63675, May 05, 2006]

SPS. ALFREDO AND SHIRLEY YAP, PETITIONERS, VS. HON. ZEUS C. ABROGAR, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC BRANCH 150, MAKATI CITY, SHERIFF RENATO C. FLORA, IN HIS OFFICIAL CAPACITY AND INTERNATIONAL EXCHANGE BANK, RESPONDENTS.

DECISION

PERLAS-BERNABE, E., J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the Order^[1] dated August 31, 2000 rendered by the Regional Trial Court (RTC), Branch 150, Makati City, and its Order^[2] dated December 28, 2000 denying the motion for reconsideration thereof, for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The assailed Orders denied petitioners' entry of appearance and urgent manifestation anent the propriety and sufficiency of the indemnity bond^[3] posted by the private respondent International Exchange Bank in Civil Case No. 98-791.

The instant petition stemmed from the publication of a Notice of Sheriff's Sale^[4] dated May 12, 2000 over the interests of one Jimmy T. Go a.k.a. Jaime T. Gaisano in the properties covered by: a) Transfer Certificate of Title (TCT) Nos. 52987, 4621, 62637 of the Registry of Deeds of Mandaluyong; b) Condominium Certificate of Title (CCT) Nos. 11348 and 3630; c) TCT No. 36489 located in Quezon City; and d) TCT Nos. PT-66751, PT-66749, 45229 and 55469 of the Registry of Deeds of Pasig City, which were scheduled to be sold through public auction on June 15, 2000. Upon knowledge thereof, petitioners-spouses Alfredo and Shirley Yap (hereinafter petitioners) filed an Affidavit of Adverse Claim^[5] before the Office of the Sheriff seeking to enjoin the said sale on the ground that they are allegedly the owners of the properties covered by TCT Nos. PT-66749, PT-66751, 55469, 45229, 36489, 4621 and 52987, having bought the same from Jimmy Go as evidenced by the Deeds of Absolute Sale dated October 15, 1997^[6] and September 22, 1999^[7]. Petitioners likewise caused the publication of such claim in the June 8, 2000 copy of the Manila Bulletin^[8].

On July 7, 2000, Sheriff Renato C. Flora (hereinafter respondent Sheriff) issued a Notice of Filing of Indemnity Bond^[9] stating that the International Exchange Bank (hereinafter private respondent) had posted a P7,550,000.00 indemnity bond thru the Prudential Guarantee & Assurance Inc.^[10] on June 29, 2000 and informing petitioners that "(I)n the event that you will choose to sue for damages, you may do so within a period of 120 days from June 29, 2000 x x x. Otherwise, said indemnity bond shall be considered cancelled and of no effect upon the termination of the said period."

On August 18, 2000, petitioners through their counsel, Atty. Gregorio D. Cañeda, Jr., filed before the RTC an "ENTRY OF APPEARANCE And URGENT MANIFESTATION (Anent to the propriety and sufficiency of the Indemnity Bond)" contending, among others, that the "approval of the subject indemnity bond without informing the herein Spouses Alfredo and Shirley Yap of such fact is highly improper and irregular. x x x such hasty approval, in effect, deprived them of their right to question the propriety of the Indemnity Bond, the soundness of the bonding company, as well as the sufficiency of the Indemnity Bond.^[11]" and that the value thereof was "insufficient to cover the actual value of the property being levied upon"^[12].

After due hearing, the RTC issued the assailed Order dated August 31, 2000, the pertinent portions of which read:

"As regards the entries of appearance and urgent manifestations filed by Atty. Dionisio C. Landero for Jose Hidalgo and Atty. Gregorio D. Cañeda, Jr. for Sps. Yap, the court finds the grounds therein similar to those raised by third-party claimant Achilles Pacquing thru his counsel in a likewise entry of appearance and manifestation which the court denied admission in its order dated August 17, 2000 for being bereft of merit.

Section 16, Rule 39 of the Revised Rules of Court is replete with any requirement that third-party claimants must be notified first before an indemnity bond will be approved by the court.

Moreover, the soundness of the bonding company which issued the bond is determined at the Office of the Clerk of Court which issues the clearances to this effect, It is a requirement sine qua non that before the court approves a bond such clearance is first obtained thus, there is no doubt that Prudential Guarantee and Assurance, Inc. is sound.

Finally, the Court is not persuaded with the third-party claimants' allegations that the amounts of the indemnity bonds posted are insufficient. As evidenced by the deed of absolute sale executed on December 28, 1999 by and between defendant Jimmy T. Go a.k.a. Jaime T. Gaisano and third party claimant Jose B. Hidalgo, the purchase price of the two condominium units covered by Condominium Certificates of Title Nos. 11348 and 3630 of the Registry of Deeds of Manila and Quezon City, respectively, is P5,500,000.00 hence, equal to the amount posted under JCL (16) No. 00455 Bond No. HO-61348-00 of Prudential Guarantee and Assurance, Inc., which the Court considers sufficient.

The same holds true with the amount of the bond posted by plaintiff Ibank in favor of third-party claimants, spouses Alfredo and Shirley Yap. Added together, the purchase price of the seven (7) parcels of land covered by the Deed of Absolute Sale dated October 15, 1997 made and executed by defendant Jimmy T. Go and Alfredo Y. Yap as well as the Deed of Absolute Sale made and executed on September 22, 1999 by defendant Go and Shirley G. Yap, is P7,550,000.00, which is equal to the amount of bond posted by Ibank issued by Prudential Guarantee and Assurance, Inc. under JCL (16) No. 00453 Bond No. HO-61352-000.

The Entries of Appearance and Urgent Manifestions filed by third-party claimants are therefore hereby DENIED ADMISSION."

Aggrieved by the foregoing disquisition, petitioners filed a motion for reconsideration^[13] therefrom which the RTC denied in the Order dated December 28, 2000. In the meantime, a Certificate of Sale^[14] dated August 31, 2000 was issued by the respondent Sheriff in favor of the private respondent as the highest bidder in the auction sale of the subject properties held on August 22, 2000 in the aggregate sum of P64,216,700.00.

Unperturbed, petitioners filed this petition anchored on the following issues, to wit:

"I

WAS THERE GRAVE ABUSE OF DISCRETION WHEN THE RESPONDENT COURT FAILED TO NOTIFY THE PETITIONERS BEFORE THE APPROVAL OF THE INDEMNITY BOND?

II

WAS THERE GRAVE ABUSE OF DISCRETION WHEN THE RESPONDENT COURT MADE THE PURCHASE PRICE APPEARING IN THE DEED OF SALE THE BASIS FOR DETERMINING THE VALUE OF THE LAND?"^[15]

The petition is bereft of merit.

Section 16, Rule 39 of the Rules of Court provides:

"SEC. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When a writ of execution is issued in favor of the Republic of the