

## **SPECIAL THIRD DIVISION**

**[ G.R. No. 217617, April 05, 2017 ]**

**CARMELITA T. BORLONGAN, PETITIONER, VS. BANCO DE ORO  
(FORMERLY EQUITABLE PCI BANK), RESPONDENT.**

**[G.R. No. 218540]**

**ELISEO C. BORLONGAN, JR., PETITIONER, VS. BDO UNIBANK,  
INC. (FORMERLY EQUITABLE PCI BANK), RESPONDENT.**

### **R E S O L U T I O N**

**VELASCO JR., J.:**

#### **Nature of the Case**

Before the Court are two consolidated petitions invariably assailing the foreclosure sale of a property without properly serving the summons upon its owners.

#### **Factual Antecedents**

Sometime in 1976, Eliseo Borlongan, Jr. (Eliseo) and his wife Carmelita, acquired a real property located at No. 111, Sampaguita St., Valle Verde II, Pasig City covered by Transfer Certificate of Title (TCT) No. 0421 (the subject property). In 2012, they went to the Registry of Deeds of Pasig City to obtain a copy of the TCT in preparation for a prospective sale of the subject property. To their surprise, the title contained an annotation that the property covered thereby was the subject of an execution sale in Civil Case (CC) No. 03-0713 pending before Branch 134 of the Regional Trial Court of Makati City (Makati RTC).

Petitioner immediately procured a copy of the records of CC No. 03-0713 and found out that respondent Banco de Oro (BDO), formerly Equitable PCI Bank, filed a complaint for sum of money against Tancho Corporation, the principal debtor of loan obligations obtained from the bank. Likewise impleaded were several persons, including Carmelita, who supposedly signed four (4) security agreements totaling P13,500,000 to guarantee the obligations of Tancho Corporation.

It appears from the records of CC No. 03-0713 that on July 2, 2003, the Makati RTC issued an Order directing the service of summons to all the defendants at the business address of Tancho Corporation provided by BDO: Fumakilla Compound, Amang Rodriguez Avenue, Brgy. Dela Paz, Pasig City (Fumakilla Compound).

Parenthetically, the records of CC No. 03-0713 show that respondent BDO already foreclosed the Fumakilla Compound as early as August 21, 2000, following Tancho Corporation's failure to pay its obligation, and BDO already consolidated its ownership of the property on November 16, 2001.

Understandably, on July 31, 2003, the process server filed an Officer's Return stating that summons remained unserved as the "defendants are no longer holding office at [Fumakilla Compound]."

On October 27, 2003, after the single attempt at personal service on Carmelita and her co-defendants, BDO moved for leave to serve the summons by publication. On October 28, 2003, the RTC granted the motion.

On August 10, 2004, BDO filed an ex-parte Motion for the Issuance of a Writ of Attachment against the defendants, including Carmelita. During the hearing on the motion, BDO submitted a copy of the title of the subject property. The Makati RTC thereafter granted BDO's motion and a Writ of Attachment was issued against the defendants in CC No. 03-0713, effectively attaching the subject property on behalf of BDO.

On December 20, 2005, BDO filed an ex-parte motion praying, among others, that the summons and the complaint be served against Carmelita at the subject property. The Makati RTC granted the motion. On February 9, 2006, the Sheriff filed a return stating that no actual personal service was made as Carmelita "is no longer residing at the given address and the said address is for 'rent,' as per information gathered from the security guard on duty."

On May 30, 2006, however, BDO filed a manifestation stating that it had complied with the October 28, 2003 Order of the Makati RTC having caused the publication of the alias summons and the complaint in People's *Taliba* on May 15, 2006.

Thereafter, upon BDO's motion, the Makati RTC declared the defendants in CC No. 03-0713, including Carmelita, in default. BDO soon after proceeded to present its evidence ex-parte.

On November 29, 2007, the Makati RTC rendered a Decision holding the defendants in CC No. 03-0713 liable to pay BDO P32,543,856.33 plus 12% interest per annum from the time of the filing of the complaint until fully paid and attorney's fees. The Makati RTC decision was published on June 9, 2008.

On August 20, 2008, the Makati RTC issued a Writ of Execution upon BDO's motion. The Order states that in the event that the judgment obligors cannot pay all or part of the obligation, the sheriff shall levy upon the properties of the defendants to satisfy the award.

On October 28, 2008, the Makati RTC's sheriff filed a Report stating that he tried to serve the Writ of Execution upon the defendants at Fumakilla Compound but he was not able to do so since the defendants were no longer holding office thereat. The Sheriff also reported that, on the same day, he went to the subject property to serve the execution but likewise failed in his attempt since Carmelita was no longer residing at the said address.

On November 11, 2008, BDO filed a Motion to Conduct Auction of the subject property. The motion was granted by the Makati RTC on May 5, 2009 so that the subject property was sold to BDO, as the highest bidder, on October 6, 2009.

Following the discovery of the sale of their property, Eliseo executed an affidavit of adverse claim and, on January 21, 2013, filed a Complaint for Annulment of Surety Agreements, Notice of Levy on Attachment, Auction Sale and Other Documents, docketed as CC No. 73761, with the Regional Trial Court of Pasig City (Pasig RTC).<sup>[1]</sup>

He alleged in his Complaint that the subject property is a family home that belongs to the conjugal partnership of gains he established with his wife. He further averred that the alleged surety agreements upon which the attachment of the property was anchored were signed by his wife without his consent and did not redound to benefit their family. Thus, he prayed that the surety agreements and all other documents and processes, including the ensuing attachment, levy and execution sale, based thereon be nullified.

BDO filed a Motion to Dismiss the Complaint, asserting that the Pasig RTC has no jurisdiction to hear Eliseo's Complaint, the case was barred by *res judicata* given the Decision and orders of the Makati RTC, and, finally, the Complaint failed to state a cause of action.

In an Order dated May 31, 2013, the Pasig RTC dismissed the case citing lack of jurisdiction. The RTC held that it could not pass upon matters already brought before the RTC Makati and, citing *Spouses Ching v. Court of Appeals*,<sup>[2]</sup> the husband of a judgment debtor is not a stranger to a case who can file a separate and independent action to determine the validity of the levy and sale of a property.

On a motion for reconsideration filed by Eliseo, the Pasig RTC reinstated the case with qualification. Relying on *Buado v. Court of Appeals*,<sup>[3]</sup> the Pasig RTC held that since majority of Eliseo's causes of action were premised on a claim that the obligation contracted by his wife has not redounded to their family, and, thus, the levy on their property was illegal, his filing of a separate action is not an encroachment on the jurisdiction of the Makati RTC, which ordered the attachment and execution in the first place.

The Pasig RTC clarified, however, that it cannot annul the surety agreements supposedly signed by Carmelita since Eliseo was not a party to those agreements and the validity and efficacy of these contracts had already been decided by the Makati RTC.

Both Eliseo and BDO referred the Pasig RTC's Decision to the Court of Appeals (CA).

In its petition, docketed as CA-G.R. SP No. 133994, BDO contended that it was an error for the Pasig RTC to apply *Buado* as it does not apply squarely to the circumstances of the case and has not superseded *Ching*. BDO maintained that by reinstating the complaint, Pasig RTC has violated the rule prohibiting non-interference by one court with the orders of a coequal court.

In its January 20, 2015 Decision,<sup>[4]</sup> the appellate court granted BDO's petition and ordered the Pasig RTC to cease from hearing CC No. 73761 commenced by Eliseo. In so ruling, the CA held that Eliseo is not a stranger who can initiate an action independent from the case where the attachment and execution sale were ordered. Thus, the CA concluded that in opting to review the validity of the levy and execution sale of the subject property pursuant to the judgment of the Makati RTC,

the Pasig RTC acted without jurisdiction.

Eliseo moved for, but was denied, reconsideration by the appellate court. Hence, he came to this Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court, docketed as **G.R. No. 218540**.

On August 19, 2015, the Court issued a Resolution denying Eliseo's petition. Eliseo begs to differ and takes exception from the said holding in his motion for reconsideration dated October 5, 2015, which is presently for Resolution by this Court.

Meanwhile, on an *ex-parte* omnibus motion filed by BDO, the Makati RTC ordered the issuance of a Writ of Possession and the issuance of a new TCT covering the subject property in favor of the respondent bank.

Arguing that the Makati RTC had not acquired jurisdiction over her person as the service of the summons and the other processes of the court was defective, Carmelita filed a Petition for Annulment of Judgment (With Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA, docketed as CA-G.R. SP No. 134664.

Before the CA can act on the Petition for Annulment, the Borlongans found posted on the subject property a Writ of Possession dated August 1, 2014 and a Notice to Vacate dated August 29, 2014.

In its Resolution dated November 12, 2014,<sup>[5]</sup> the appellate court denied Carmelita's prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI).

Aggrieved, Carmelita interposed a motion for the reconsideration of the CA's November 12, 2014 Resolution. On March 23, 2015, however, the appellate court denied her motion for reconsideration, holding that "upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute."

Thus, on April 27, 2015, Carmelita filed a Petition for Review, docketed as **G.R. No. 217617**, before this Court, ascribing to the appellate court the commission of serious reversible errors. The Court denied the petition on June 22, 2015. Hence, on September 1, 2015, Carmelita interposed a Motion for Reconsideration urging the Court to take a second hard look at the facts of the case and reconsider its stance.

Considering that both cases originated from the same facts and involved interrelated issues, on January 25, 2016, the Court resolved to consolidate G.R. No. 218540 with G.R. No. 217617.

### **Issues**

The question posed in G.R. No. 217617 is whether or not the CA erred in refusing to issue a TRO and/or WPI stopping the consolidation of BDO's ownership over the subject property. On the other hand, the issue in G.R. No. 218540 revolves around whether the Pasig RTC has jurisdiction to hear and decide a case filed by the non-debtor husband to annul the levy and execution sale of the subject property ordered

by the Makati RTC against his wife.

### **Our Ruling**

A reexamination of the antecedents and arguments in G.R. Nos. 217617 and 218540 compels the reversal of the appellate court's resolutions in both cases.

#### **G.R. No. 217617**

#### **The Issuance of a TRO/WPI is not a prejudgment of the main case**

On the propriety of CA's refusal to issue a TRO/WPI, it is worthy to note that Section 3, Rule 58 of the Rules of Court provides the grounds for the issuance of a preliminary injunction, viz:

Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

From the foregoing provision, it is clear that a writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

In ***Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company***,<sup>[6]</sup> the Court already explained that the issuance of a TRO is not conclusive of the outcome of the case as it requires but a sampling of the evidence, viz:

Indeed, a writ of preliminary injunction is generally based solely on initial and incomplete evidence adduced by the applicant (herein petitioner).

**The evidence submitted during the hearing of the incident is not conclusive, for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits.** As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in