

## THIRD DIVISION

[ G.R. No. 193371, December 05, 2016 ]

### 24-K PROPERTY VENTURES, INCORPORATED, PETITIONER V. YOUNG BUILDERS CORPORATION, RESPONDENT.

#### DECISION

##### PEREZ, J.:

Assailed in the present petition for review on *certiorari* is the Decision<sup>[1]</sup> dated 27 April 2010 and the Resolution<sup>[2]</sup> dated 11 August 2010 of the Court of Appeals in CA-G.R. S.P. No. 111895, effectively affirming the Orders dated 28 October 2009 and 7 December 2009 of the Construction Industry Arbitration Commission (CIAC) denying the Motion to Set Aside Execution Sale and Motion for Reconsideration filed by (petitioner) 24-K Property Ventures, Inc.

#### Factual Background

This case is an offshoot of the Request for Arbitration/Adjudication filed before the CIAC by (respondent) Young Builders Corporation against petitioner, and docketed as CIAC Case No. 32-1999.

The records show that on 7 August 1996, petitioner and respondent entered into a Construction Contract wherein respondent undertook to construct for petitioner a 20-storey office/residential building along Tomas Morato, Quezon City for the price of P165,000,000.00.<sup>[3]</sup> This building was to be known as Lansbergh Place.<sup>[4]</sup>

In 1988, petitioner was hit by the Asian Financial Crisis of 1997 and it incurred arrearages. Respondent refused to continue with the construction unless petitioner issued securities for its unpaid obligations. Petitioner then executed in respondent's favor a Deed of Real Estate Mortgage over two parcels of land covered by TCT No. N-164112 and No. N-164113. At that time, these lots were bare and without improvements.<sup>[5]</sup>

In 1999, respondent filed a complaint for collection of sum of money against petitioner before the CIAC.

Meanwhile, petitioner commenced the construction of another condominium project on the two parcels of land covered by TCT No. N- 164112 and No. N-164113, to be known as Torre Venezia.<sup>[6]</sup>

On 19 December 2005, the CIAC rendered a Final Award<sup>[7]</sup> ordering petitioner to pay respondent the sum of P91,084,206.43, with interest at the rate of 6% *per annum* from the date of the final award, and 12% *per annum* from the date the award becomes final and executory until it is fully paid.<sup>[8]</sup> This award became final and executory on 28 October 2008.<sup>[9]</sup>

In the meantime, while the case was on appeal, the CIAC, upon motion of respondent, issued a writ of execution dated 2 May 2006 for the award of P91,084,206.43, as well as for the amount of P1,208,801.81 as arbitration costs. Respondent Sheriff Villamor R. Villegas (Sheriff Villegas) of the Regional Trial Court of Makati (RTC Makati) was designated to enforce the writ.<sup>[10]</sup>

As reported by Sheriff Villegas, he exerted diligent efforts to serve the writ upon the officers of petitioner, but said officers refused to acknowledge receipt of said writ, causing him to serve the writ and the letter of request for compliance to petitioner's counsel who acknowledged receipt thereof.<sup>[11]</sup>

Sheriff Villegas also served notices of garnishment to the following banks: Banco de Oro Universal Bank, Philippine National Bank, Metropolitan Bank and Trust Company, United Coconut Planters Bank, and East West Banking Corporation. <sup>[12]</sup>

Sheriff Villegas subsequently levied on the real properties of petitioner, particularly on those covered by Condominium Certificate of Title No. N-14163, No. N-14183 and No. N-14286, etc. and Transfer Certificate Title No. N-164112 and No. N-164113.<sup>[13]</sup> The levy effected by Sheriff Villegas was on sixteen (16) condominium units of Lansbergh Place and on the two parcels of land upon which Torre Venezia, a 27-storey building with 302 condominium units, presently stands.<sup>[14]</sup>

### **Antecedent Proceedings**

Petitioner filed a Manifestation with Motion to Suspend Enforcement of Notice of Sale and Re-computation of Award but the auction sale proceeded and the subject properties were sold to respondent for P110,504,888.05. A Certificate of Sale was consequently issued in respondent's favor.

Petitioner filed a Motion to Set Aside Execution Sale, claiming that the sale was violative of various provisions of the Rules of Court and that the subject properties were sold at a grossly inadequate price. The CIAC, however, denied said motion as well as the subsequent Motion for Reconsideration.<sup>[15]</sup>

Petitioner elevated the case to the Court of Appeals (CA), contending that the CIAC gravely abused its discretion in upholding the execution sale on the basis of an erroneous application of the presumption of regular performance of official duties, laches, and making the filing of an administrative case against the erring sheriff a pre-requisite for the nullification of the execution sale. Petitioner additionally averred that although the gross inadequacy of the price of the sale does not invalidate the sale, such principle does not apply to the case at bar where the execution sale was attended with numerous violations of the Rules of Court and established jurisprudence.<sup>[16]</sup> The CA dismissed the petition. Hence, the present petition for review on *certiorari*.

### **Issues**

In the present petition, petitioner raises the following issues:<sup>[17]</sup>

As First Assignment of Error

THE COURT OF APPEALS ERRED IN AFFIRMING THE CIAC'S ORDER DENYING PETITIONER'S MOTION TO SET ASIDE EXECUTION SALE AND

ITS MOTION FOR RECONSIDERATION THEREOF, WHEN CLEARLY THE EXECUTION SALE WAS FRAUGHT WITH IRREGULARITIES AND NON-COMPLIANCE WITH THE RULES OF PROCEDURE ON EXECUTION OF MONEY JUDGMENTS.

As Second Assignment of Error

THE COURT OF APPEALS ERRED IN HOLDING THAT GROSS INADEQUACY OF THE PURCHASE PRICE IS NOT SUFFICIENT GROUND TO NULLIFY THE EXECUTION SALE THEREBY ALLOWING THE PRIVATE RESPONDENT TO ENRICH ITSELF UNJUSTLY AT THE EXPENSE OF THE PETITIONER.

As Third Assignment of Error

THE COURT OF APPEALS ERRED IN VALIDATING THE EXECUTION SALE DESPITE LACK OF FULL PAYMENT BY THE HIGHEST BIDDER (PRIVATE RESPONDENT) OF THE BID PRICE.

**The Petition-in-Intervention**

On 1 February 2013, a petition-in-intervention was filed<sup>[18]</sup> and adopted<sup>[19]</sup> by certain condominium unit buyers of Torre Venezia.

The intervenors claim that although petitioner already executed Deeds of Absolute Sale and Certificates of Ownership in their favor, petitioner failed to issue the respective Condominium Certificates of Title despite repeated demands. The intervenors later on learned that the mother titles of the lots upon which Torre Venezia is erected are in the possession of respondent by virtue of an execution sale pursuant to a final award issued by the CIAC. The intervenors assert, however, that they were not notified of the execution sale. Thus, they are now joining petitioner in assailing the validity of the execution sale for failure to comply with the pertinent rules under Act 3135.

The intervenors additionally argue that when the CIAC issued the order confirming the sale and the conditional writ of possession in respondent's favor, they were already the owners of and in possession of their respective condominium units. Hence, the issuance of a writ of possession is not purely ministerial as intervenors are third parties not privy to the contract between petitioner and respondent, and who stand to be unjustifiably deprived of their respective properties.

**Our Ruling**

We grant the petition.

It is doctrinal that "*a lawful levy of execution is a prerequisite to an execution sale, either of real estate or of personalty, to the conveyance executed in pursuant thereof, and to the title acquired thereby.*"<sup>[20]</sup> A proper levy is indispensable to a valid execution sale, and an execution sale, unless preceded by a proper levy, is void and the purchaser in said sale acquires no title to the property sold thereunder.<sup>[21]</sup>

In the case at bar, we find that the levy effected on the real properties of petitioner was improper.

*A valid demand for the immediate payment of the full amount stated in the writ of execution*

*and all lawful fees is necessary to a proper levy.*

Section 9, Rule 39 of the Revised Rules of Court provides that in the execution of money judgments, "(t)he officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees."

The first crucial step in the execution of money judgments is a valid demand on the judgment obligor, usually via a valid service of the writ of execution. In the case at bar, the Sheriff's Report/Return stated:<sup>[22]</sup>

By virtue of the Writ of Execution, dated May 2, 2006 issued by Construction Industry Arbitration Commission, the undersigned sheriff tried to serve said writ upon officer of respondent corporation, however, despite (diligent] effort exerted by herein sheriff to serve to the officer of respondent corporation[, ] [service] proved futile because they refused to acknowledge receipt thereof x x x.

Noticeably, the Sheriff's Report/Return failed to specifically indicate material information on the alleged attempted service on petitioner. It failed to state the name of the officer who allegedly refused to receive the writ and the circumstances surrounding such refusal, and even the date when said attempted service was allegedly made.

The CIAC and the CA unquestionably accepted Sheriff Villegas' ambiguous statements regarding the alleged attempted service on petitioner, relying on the presumption that the former performed his official duty regularly. The Court, however, holds that such presumption cannot be applied in the case at bar given the abstracted and vague declarations in the Sheriff's Report/Return. The ambiguity in the sheriff's statements as to the alleged attempted service on petitioner disputes the presumption that said sheriff performed his official duty in a regular manner.

Sheriff Villegas also reported that service was made on petitioner's counsel after the alleged unsuccessful service on petitioner. The next query, then, is whether such service translates to a valid demand as required by Section 9, Rule 39 of the Revised Rules of Court.

We answer in the negative.

The CIAC and the CA perfunctorily declared that there was a service of the writ of execution on petitioner and its counsel.<sup>[23]</sup> Both of them, however, failed to consider the material dates in the case at bar.

It is to be noted that the service of the writ of execution was made on petitioner's counsel on 9 May 2006<sup>[24]</sup> or on the very day when levy was made on the real properties of petitioner.<sup>[25]</sup> The lateness of the service of the writ of execution on petitioner's counsel or the prematurity of the levy precluded petitioner from having a real opportunity to effect the immediate payment of the judgment debt and the lawful fees.

In requiring a valid demand, Section 9, Rule 39 of the Revised Rules of Court contemplates a situation where the judgment obligor is first given the chance to effect immediate payment of the judgment debt and the lawful fees through cash or certified bank checks. If this is not feasible, it is only then that a levy is effected,