

THIRD DIVISION

[G.R. No. 180325, February 20, 2013]

O. VENTANILLA ENTERPRISES CORPORATION, PETITIONER, VS. VELASCO, JR., (CHAIRPERSON) PERALTA, ABAD, MENDOZA, AND ADELINA S. TAN REYNANTE G. PRESIDING JUDGE,* AND SHERIFF VELASQUEZ, RESPONDENTS.

DECISION

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution^[1] of the Court of Appeals (CA), dated May 24, 2007, refusing to recall its entry of judgment, and its Resolution^[2] dated October 19, 2007, denying petitioner's Motion for Reconsideration, be reversed and set aside.

The records of the case bear out the following antecedent facts.

Petitioner leased out two of its properties in Cabanatuan City to Alfredo S. Tan and herein private respondent Adelina S. Tan (*the Tans*). Due to the failure of the Tans to comply with the terms of the lease, petitioner filed a complaint against the Tans for cancellation and termination of contract of lease with the Regional Trial Court of Cabanatuan City (RTC). On December 10, 1996, the RTC rendered a Decision,^[3] the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Oscar Ventanilla Enterprises Corporation and against the defendants Alfredo S. Tan, Sr. and Adelina S. Tan, ordering the latter to:

- (1) surrender possession and complete control of the premises, Avelune and Capital Theaters, as well as the properties enumerated in the addendum to the lease contract dated 22 June 1992, to the plaintiff;
- (2) pay the plaintiff the sum of P4,297,004.84 plus interest thereon that may become due at the rate stipulated in the lease contract entered into by the parties on June 22, 1992;
- (3) pay the plaintiff the sum of P250,000.00 as exemplary damages to serve as deterrent for others who in the future may follow the bad example set by the herein defendants;
- (4) pay the plaintiff by way of liquidated damages as agreed

upon in paragraph 23 of the lease contract the sum equivalent to 50% of the unpaid rentals;

(5) declaring the deposit initially made as forfeited in favor of the plaintiff; [and]

(6) pay the sum equivalent to 15% of the unpaid rentals by way of Attorney's fees, and to pay the costs of the suit.

SO ORDERED.^[4]

Both Alfredo S. Tan and private respondent Adelina S. Tan appealed from said Decision. However, herein petitioner filed a motion for execution pending appeal and the same was granted by the trial court. Several properties and bank accounts of private respondent and Alfredo S. Tan were levied upon. The Tans decided to pay the amounts as ordered in the RTC Decision, and on September 24, 1997, the trial court issued Orders^[5] lifting and cancelling the Notice of Levy on private respondent Adelina Tan's properties and also on several bank accounts in the name of the Tans. Both orders stated that after the court allowed the writ of execution pending appeal, defendant tendered payment in the amount of P9,073,694.76 in favor of herein petitioner, who through Mr. Moises C. Ventanilla, acknowledged receipt of said amount as complete and full satisfaction of the adjudged obligations of the Tans to petitioner in this case.^[6]

The appeal filed by Alfredo S. Tan was dismissed by the CA, but the appeal filed by herein private respondent Adelina S. Tan (docketed as CA- G.R. CV No. 58817), proceeded in due course. On October 21, 2002, the CA promulgated its Decision,^[7] the dispositive portion of which is reproduced hereunder:

WHEREFORE, the appeal is **PARTIALLY GRANTED**. For lack of legal and factual justification, the awards of exemplary damages and attorney's fees shall be **DELETED**. Likewise, the award of liquidated damages under paragraph 23 of the lease contract is further **REDUCED** to 25% of the unpaid rentals. All the other aspects of the decision are **AFFIRMED**.

SO ORDERED.^[8]

None of the parties filed any motion for reconsideration or appeal from the CA Decision, thus, the same became final and executory on November 21, 2002, per the Entry of Judgment^[9] issued by the CA.

Private respondent Adelina Tan then filed with the trial court a Motion for Execution^[10] dated March 27, 2003, praying that the excess of the amounts she previously paid as exemplary damages, attorney's fees and liquidated damages be refunded to her, in accordance with the judgment of the CA. To counter such move, on June 19, 2003, petitioner filed with the CA in CA-G.R. CV No. 58817, an Omnibus Motion (with entry of appearance), praying that the entry of judgment be recalled,

lifted and set aside; that the CA Decision dated October 21, 2002 in CA-G.R. CV No. 58817 be recalled, reconsidered, and/or vacated and, thereafter, the appeal of Adelina Tan be dismissed or the appeal be reopened to allow petitioner to file an appeal brief. Petitioner argued that its counsel, Atty. Liberato Bauto died on March 29, 2001, hence, any notice sent to him must be deemed ineffective; that the parties have arrived at a settlement of the case, as shown by the fact that private respondent already paid P9,073,694.76 as complete and full satisfaction of the adjudged obligations of the defendants to petitioner, and thus, the appeal should have been deemed mooted.

Meanwhile, the RTC granted the motion for execution, and in an Order^[11] dated January 23, 2004, ordered as follows:

Thus, based on the amount computed by defendant Adelina Tan in her motion for execution and following the reduction of the award to the plaintiffs made by the Court of Appeals in its decision, the defendants are entitled to the following amounts:

Php 250,000.00	- amount of the deleted exemplary damages
Php 644,550.606	- amount of the deleted attorney's fees
Php 1,074,251.01	- amount of the reduced liquidated damages
	(25% of the unpaid rentals)
<u>Php1,968,801.616</u>	- total amount to be refunded

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby **GRANTED** and the Order dated December 2, 2003 is hereby **RECONSIDERED** and **SET ASIDE**.

Let an Alias Writ of Execution issue stating the amount to be refunded to defendants which is Php1,968,801.616, the same to be enforced against the herein plaintiff.

SO ORDERED.^[12]

On March 8, 2004, petitioner filed with the RTC a Very Urgent Motion (for recall and reconsideration of order and quashal of alias writ of execution, levy, and notice of sheriff's sale, etc.),^[13] but this motion was denied in an Order^[14] dated March 10, 2004. Petitioner then filed a petition for *certiorari* with the CA (docketed as CA-G.R. SP No. 82608) to assail the trial court's denial of the Very Urgent Motion, but as admitted by petitioner in the present petition,^[15] said action for *certiorari* was denied due course and dismissed by the CA on March 12, 2004.

As to petitioner's Omnibus Motion (with entry of appearance) filed with the CA in CA-G.R. CV No. 58817, the appellate court issued a Resolution^[16] dated March 19, 2004, merely noting petitioner's motion because its Decision dated October 21,