

THIRD DIVISION

[GR. No. 166536, February 04, 2010]

**FLOR MARTINEZ, REPRESENTED BY MACARIO MARTINEZ,
AUTHORIZED REPRESENTATIVE AND ATTORNEY-IN-FACT,
PETITIONER, VS. ERNESTO G. GARCIA AND EDILBERTO M. BRUA,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Before us is a special civil action for *certiorari* under Rule 65 of the Rules of Court to annul and set aside the Decision^[1] dated August 12, 2004 and the Resolution^[2] dated November 18, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 61591, which reversed and set aside the Decision^[3] dated April 15, 1998 and Order^[4] dated August 11, 1998 of the Regional Trial Court (RTC) of Pasig, Branch 267, in Special Civil Action No. 574.

The factual antecedents are as follows:

Respondent Edilberto Brua was the registered owner of a parcel of land located in Mandaluyong, Rizal, covered by Transfer Certificate of Title (TCT) No. 346026 of the Registry of Deeds of Rizal, which is the subject matter of this case. The property was first mortgaged to the Government Service Insurance System (GSIS), and such mortgage was annotated at the back of TCT No. 346026 as Entry No. 91370, inscribed on June 5, 1974.^[5] On February 5, 1980, respondent Brua obtained a loan from his brother-in-law, respondent Ernesto Garcia, in the amount of One Hundred Fifty Thousand Pesos (P150,000.00) and, to secure the payment of said loan, respondent Brua mortgaged the subject property to respondent Garcia, as evidenced by a Deed of Real Estate Mortgage^[6] executed in respondent Garcia's favor. Since the title to the subject property was in the possession of the GSIS and respondent Garcia could not register the Deed of Real Estate Mortgage, he then executed an Affidavit of Adverse Claim^[7] and registered it with the Registry of Deeds of Rizal on June 23, 1980 as Entry No. 49853/T-346026,^[8] which remained uncanceled up to this time.

Sometime in October 1991, respondent Brua requested respondent Garcia to pay the former's loan with the GSIS, so that the title to the subject property would be released to the latter. Respondent Garcia then paid GSIS the amount of P400,000.00 and, thus, the title to the subject property was released to him.

On October 22, 1991, a Deed of Absolute Sale^[9] was executed between respondents Garcia and Brua over the subject property, where respondent Brua sold the property in the amount of P705,000.00. In the same deed, it was stated that the subject property was only a partial payment of respondent Brua's mortgage

indebtedness to respondent Garcia, which he could no longer redeem from the latter. Respondent Garcia then registered the Deed of Sale with the Registry of Deeds of Rizal on October 24 1991, and a new TCT No. 5204^[10] was issued in the names of respondent Garcia and his wife. However, the annotations at the back of the previous title were carried over to the new title, to wit: Entry No. 56837, a Notice of Levy on Attachment and/or Levy inscribed on January 8, 1981;^[11] Entry No. 2881 showing a Notice of Levy on Execution in favor of petitioner Flor Martinez, which was inscribed on July 11, 1988;^[12] Entry No. 3706, which was a Certificate of Sale in favor of petitioner inscribed on September 2, 1988;^[13] Entry No. 72854, which was a Notice of Levy on Execution in favor of Pilipinas Bank inscribed on December 8, 1981;^[14] and Entry No. 16611 inscribed on October 24, 1991, which was the cancellation of respondent Brua's mortgage with GSIS.^[15]

It appeared that the annotations found at the back of the title of the subject property in favor of petitioner, *i.e.*, Notice of Levy on Attachment and/or Levy, Notice of Levy on Execution, and Certificate of Sale, were all made in connection with petitioner's action for Collection of Sum of Money, which she filed against respondent Brua at the RTC of Makati City, Branch 60, docketed as Civil Case No. 39633. In that case, a decision was rendered in favor of petitioner, where the RTC ordered respondent Brua to pay the former the amount of P244,594.10, representing the value of the dishonored checks plus 12% interest per annum as damages and the premium paid by petitioner for the attachment bond. The decision became final and executory as respondent Brua failed to appeal the same, and a notice of levy on execution was issued. A public auction was subsequently conducted, where the subject property was awarded to petitioner as the sole bidder in the amount of P10,000.00, and a Certificate of Sale was issued in her favor.

The annotation of Pilipinas Bank's Notice of Levy on Execution annotated as Entry No. 72854 on the title of the subject property was by virtue of a civil case filed by Filipinas Manufacturers Bank, now known as Pilipinas Bank, against respondent Brua.

On February 9, 1994, respondents Garcia and Brua filed with the RTC of Pasig, Branch 267, an Action to Quiet Title, initially against petitioner due to the encumbrances/liens annotated on respondent Garcia's new title. They contended that these encumbrances/liens were registered subsequent to the annotation of respondent Garcia's adverse claim made in 1980, and prayed that these be canceled. Subsequently, the complaint was amended to include Pilipinas Bank as an additional defendant. Petitioner and Pilipinas Bank filed their respective Answers thereto. Trial thereafter ensued.

On April 15, 1998, the RTC rendered its decision dismissing respondent Garcia's action for quieting of title, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, the instant complaint is hereby dismissed for lack of merit and judgment is hereby rendered in favor of defendants Flor Martinez and Pilipinas Bank as against plaintiffs Ernesto Garcia and Edilberto Brua who are further directed to pay both defendants attorney's fees in the amount of P50,000.00 each.

Accordingly, the judicial inscriptions particularly, Entry No. 3706/T-346026, annotation of certificate of sale and Entry No. 72854/T-346026 are held to be valid, subsisting liens which do not constitute a cloud on Transfer Certificate of Title No. 5204.^[16]

In so ruling, the RTC found that the adverse claim which respondent Garcia caused to be annotated on the previous title of the subject property, *i.e.*, TCT No. 346026, on June 23, 1980 was predicated on his interest as a mortgagee of a loan of PI 50,000.00, which he extended to respondent Brua; that respondent Garcia's adverse interest was merely that of a second mortgagee, as he was not yet the purchaser of the subject property as of said date; that when the judicial liens, *i.e.*, Notice of Levy on Attachment and/or Levy and Notice of Levy on Execution, were caused to be registered by petitioner on respondent Brua's title on January 8, 1981 and July 8, 1998, respectively, by virtue of petitioner being adjudged judgment creditor by Branch 60 of RTC Makati, respondent Garcia's claim became inferior to that of petitioner. The RTC said that respondent Garcia's inaction to preserve his adverse claim as a second mortgagee, which was inscribed on June 23, 1980, and his sudden decision to redeem and purchase the subject property from the GSIS in October 1991 -- when petitioner's Notice of Levy on Attachment and/or Levy, Notice of Levy on Execution and Certificate of Sale were already inscribed at the back of respondent Brua's title -- showed bad faith on the part of respondent Garcia; that respondent Brua did not even testify or participate in the case, except when he was impleaded as a plaintiff in the case. The RTC did not give credit to respondent Garcia's claim that he and respondent Brua had no prior knowledge of the occurrence of a public auction and the consequent annotation of the certificate of sale, and found respondent: Garcia to be a buyer in bad faith of the subject property.

The RTC also ruled that the Notice of Levy on Execution, which was annotated on December 8, 1981 as Entry No. 72854 on respondent Brua's title arising from Civil Case No. 7262 entitled "*Pilipinas Bank v. Edilberto Brua*" was a valid levy on the subject property in favor of Pilipinas Bank. The levy could not be canceled, as this would impair the interest of the bank which had been decided upon by a co-equal court. The RTC found that the sale between respondents appeared to be tainted with bad faith, which constrained petitioner and Pilipinas Bank from engaging the services of lawyers; thus, the award of attorney's fees in the latter's favor.

Respondents' motion for reconsideration was denied by the RTC on August 11, 1998.

Respondents filed their appeal with the CA. However, respondent Brua failed to file his appellant's brief; thus, his appeal was considered abandoned and dismissed. Petitioner and Pilipinas Bank filed their respective appellees' briefs.

On August 12, 2004, the CA reversed and set aside the RTC decision, the dispositive portion of which reads:

WHEREFORE, the appealed Decision dated April 15, 1998 is REVERSED and SET ASIDE. Granting the instant appeal, Entry No. 72854 (Notice of Levy on Execution in favor of Pilipinas Bank), Entry No. 2881 (Notice of Levy on Execution in favor of Flor Martinez) and Entry No. 3706

(Certificate of Sale in favor of Flor Martinez) inscribed in TCT No. 346026 and carried over to TCT No. 5204, are hereby CANCELLED.^[17]

The CA said that a subsequent sale of property covered by a certificate of title cannot prevail over an adverse claim, duly sworn to and annotated on the certificate of title previous to the sale; that while one who buys a property from the registered owner need not have to look behind the title, he is nevertheless bound by the liens and encumbrances annotated thereon; and, thus, one who buys without checking the vendor's title takes all the risks and losses consequent to such failure. The CA found that in order to protect his interest, respondent Garcia executed an Affidavit of Adverse Claim on June 23, 1980, annotated it on the title of the subject property under Entry No. 49853 and it has remained uncanceled up to this time; that such adverse claim was registered prior to the inscription of the Certificate of Sale in favor of petitioner under Entry No. 3706 and Pilipinas Bank's Notice of Levy on Execution under Entry No. 72854; that the prior registration of respondent Garcia's adverse claim effectively gave petitioner and Pilipinas Bank notice of the former's right to the subject property and, thus, petitioner was deemed to have knowledge of respondent Garcia's claim and could not be considered as a buyer in good faith at the time she purchased the subject property in the public auction; that petitioner could not claim that she was a purchaser in good faith, since respondent Garcia's adverse claim was entered on June 23, 1980, eight years ahead of petitioner's Certificate of Sale on September 2, 1988; that when the Notice of Levy on Execution in favor of Pilipinas Bank was annotated on respondent Brua's title, the sheriff who caused the annotation was charged with knowledge that the property sought to be levied upon on execution was encumbered by an interest, which was the same if not better than that of the registered owner thereof; and that such notice of levy could not prevail over the existing adverse claim of respondent Garcia inscribed on the title as can be deduced from Section 12, Rule 39 of the Rules of Court.

The CA found that the RTC erred in concluding that respondent Garcia was a purchaser in bad faith, since his adverse claim was entered in respondent Brua's title in 1980, and respondent Garcia could not have foretold at the time he caused such annotation of adverse claim that petitioner would purchase the same property eight years thereafter; and that while good faith is presumed, bad faith must be established by competent proof by the party alleging the same; and, thus, in the absence of respondent Garcia's bad faith, he is deemed to be a purchaser in good faith, and his interest in the property must not be disturbed.

The CA also found that a Notice of Adverse Claim remains valid even after the lapse of 30 days, as provided for in Sec. 70 of Presidential Decree No. (PD) 1529 pursuant to our ruling in *Sajonas v. CA*; that since no petition was filed by petitioner for the cancellation of respondent Garcia's Notice of Adverse Claim, the adverse claim subsisted and his rights over the subject property must consequently be upheld.

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated November 18, 2004.

Petitioner is now before us via a petition for *certiorari* under Rule 65, i alleging grave abuse of discretion amounting to lack or excess of jurisdiction committed by the CA in issuing its assailed decision and resolution.

Petitioner contends that respondent Garcia's adverse claim is nothing but a notice that he has an interest adverse to that of respondent Brua to the extent of P150,000.00, which was the amount of the loan secured by a Deed of Real Estate Mortgage executed by respondent Brua in favor of respondent Garcia; that the adverse claim cannot be said to be superior to a final sale conducted by the sheriff by authority of the court pursuant to a judgment that has attained finality; that *Sajonas v. CA*, on which the CA anchored its decision, differs from this case, since the adverse claim made in the title by therein petitioner Sajonas was by virtue of a contract to sell; that unlike in this case, respondent Garcia caused the annotation of his adverse claim as a mortgagee of respondent Brua in the amount of P150,000.00 in 1980; and respondent Garcia's payment of the GSIS loan in 1991, upon the request of respondent Brua, was presumably for the reason that respondent Brua could no longer discharge the GSIS obligation; and to avoid the foreclosure of the property by the GSIS, respondent Brua asked Garcia to redeem it; that respondent Garcia's adverse claim in 1980 was not as a vendee of the property like in *Sajonas*, but merely as a mortgagee.

Petitioner admits' that respondent Garcia, as a mortgagee on the basis of which an adverse claim was inscribed on the title of the subject property, is protected by Sec. 12, Rule 39 of the Rules of Court; and, thus, petitioner knows that she is obliged as a vendee in the public sale to pay liens and encumbrances then existing at the time of the sale on September 2, 1988, which necessarily included the adverse claim of respondent Garcia in the amount of P150,000.00.

In his Comment, respondent Garcia claims that the petition faces outright dismissal, since the appropriate remedy of the petitioner should have been a petition for review under Rule 45 which had already lapsed; that when the CA reversed the RTC decision, such action did not constitute grave abuse of discretion since it had legal basis; that any lien or adverse claim earlier inscribed prevails over those liens or adverse claims inscribed subsequent thereto.

Respondent Brua did not file his comment. Thus, we dispensed with the filing of the same in a Resolution dated June 19, 2006.

Petitioner filed her Reply, arguing that a petition for *certiorari* may be availed of where appeal is inadequate and ineffectual.

The parties submitted their respective memoranda as required in Our Resolution dated August 30, 2006.

We dismiss the petition.

Petitioner should have filed a petition for review under Rule 45 of the Rules of Court instead of a petition for *certiorari* under Rule 65, since she is assailing the CA decision and resolution which are final judgments. Rule 45 clearly provides that decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which is just a continuation of the appellate process over the original case.^[18] And the petition for review must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of petitioner's motion for a new trial or reconsideration filed in due time after