

SECOND DIVISION

[G.R. No. 187023, November 17, 2010]

**EVANGELINE D. IMANI,* PETITIONER, VS. METROPOLITAN BANK
& TRUST COMPANY, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

On appeal is the July 3, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 93061, setting aside the November 22, 2005 Order^[2] of the Regional Trial Court (RTC) of Makati City, Branch 64, as well as its subsequent Resolution dated March 3, 2009,^[3] denying petitioner's motion for reconsideration.

On August 28, 1981, Evangeline D. Imani (petitioner) signed a *Continuing Suretyship Agreement* in favor of respondent Metropolitan Bank & Trust Company (Metrobank), with Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Cynthia C. Dazo, Doroteo Fundales, Jr., and Nicolas Ponce as her co-sureties. As sureties, they bound themselves to pay Metrobank whatever indebtedness C.P. Dazo Tannery, Inc. (CPDTI) incurs, but not exceeding Six Million Pesos (P6,000,000.00).

Later, CPDTI obtained loans of P100,000.00 and P63,825.45, respectively. The loans were evidenced by promissory notes signed by Cesar and Nieves Dazo. CPDTI defaulted in the payment of its loans. Metrobank made several demands for payment upon CPDTI, but to no avail. This prompted Metrobank to file a collection suit against CPDTI and its sureties, including herein petitioner. The case was docketed as Civil Case No. 15717.

After due proceedings, the RTC rendered a decision^[4] in favor of Metrobank. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the Court renders a judgment in favor of [Metrobank] ordering defendants, C.P. Dazo Tannery, Inc., Cesar P. Dazo, Nieves Dazo, Benedicto C. Dazo, Evangelina D. Imani, Cynthia C. Dazo, Doroteo Fundales, Jr., and Nicolas Ponce to pay [respondent] Metropolitan Bank and Trust Company:

1. Under the First Cause of Action, the sum of P175,451.48 plus the stipulated interest, penalty charges and bank charges from March 1, 1984 and until the whole amount is fully paid;
2. Under the Second Cause of Action, the sum of P92,158.85 plus the stipulated interest, penalty charges and bank charges from

February 24, 1985, and until the whole amount is fully paid;

3. The sum equivalent to ten percent (10%) of the total amount due under the First and Second Cause of Action; and
4. Ordering the defendants to pay the costs of suit and expenses of litigation.

SO ORDERED.^[5]

Therein defendants appealed to the CA. On September 29, 1997, the CA issued a Resolution dismissing the appeal.^[6] Consequently, on October 22, 1997, the CA issued an Entry of Judgment.^[7]

Metrobank then filed with the RTC a motion for execution,^[8] which was granted on December 7, 1999.^[9] A writ of execution^[10] was issued against CPDTI and its co-defendants. The sheriff levied on a property covered by Transfer Certificate of Title (TCT) No. T-27957 P(M) and registered in the name of petitioner. A public auction was conducted and the property was awarded to Metrobank, as the highest bidder.

Metrobank undertook to consolidate the title covering the subject property in its name, and filed a *Manifestation and Motion*,^[11] praying that spouses Sina and Evangline Imani be directed to surrender the owner's copy of TCT No. T-27957 P(M) for cancellation. Petitioner opposed the motion and filed her *Comment with Urgent Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale Over TCT No. T-27957 P(M)*.^[12] She argued that the subject property belongs to the conjugal partnership; as such, it cannot be held answerable for the liabilities incurred by CPDTI to Metrobank. Neither can it be subject of levy on execution or public auction. Hence, petitioner prayed for the nullification of the levy on execution and the auction sale, as well as the certificate of sale in favor of Metrobank.

On June 20, 2005, the RTC issued an Order^[13] denying Metrobank's motion, explaining that:

[Petitioner] Evangelina D. Imani incurred the obligation to [Metrobank] by the mere fact that she executed the Continuing Suretyship Agreement in favor of [Metrobank]. The loan proceeds were not intended for [petitioner] Evangelina D. Imani. It cannot therefore be presumed that the loan proceeds had redounded to the benefit of her family. It is also worth stressing that the records of this case is bereft of any showing that at the time of the signing of the Suretyship Agreement and even at the time of execution and sale at public auction of the subject property, [petitioner] Evangelina D. Imani has the authority to dispose of or encumber their conjugal partnership properties. Neither was she conferred the power of administration over the said properties. Hence, when she executed the Suretyship Agreement, she had placed the Conjugal Partnership in danger of being dissipated. The law could have not allowed this in keeping with the mandate of protecting and

safeguarding the conjugal partnership. This is also the reason why the husband or the wife cannot dispose of the conjugal partnership properties even onerously, if without the consent of the other, or gratuitously, as by way of donation.^[14]

The RTC decreed that:

WHEREFORE, in view of the foregoing, [Metrobank's] motion for issuance of an Order directing Spouses Sina Imani and Evangeline Dazo-Imani to surrender the owner's copy of TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation, is DENIED.

On the other hand, [petitioner's] Motion to Cancel and Nullify the Levy on Execution, the Auction Sale and Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is GRANTED.

The Levy on Execution and the Sale by Public Auction of the property covered by TCT No. T-27957 P(M) are nullified and the Certificate of Sale over the same property is hereby Cancelled.

SO ORDERED.^[15]

Metrobank filed a motion for reconsideration. Petitioner opposed the motion, asserting that the property belongs to the conjugal partnership.^[16] Attached to her opposition were an Affidavit^[17] executed by Crisanto Origen, the former owner of the property, attesting that spouses Sina and Evangeline Imani were the vendees of the subject property; and the photocopies of the checks^[18] allegedly issued by Sina Imani as payment for the subject property.

However, despite petitioner's opposition, the RTC issued an Order dated August 15, 2005, setting aside its June 20, 2005 Order. Thus:

WHEREFORE, premises considered, the Motion for Reconsideration is GRANTED. The Order dated June 20, 2005 is set aside. Evangelina Dazo-Imani is hereby ordered to surrender TCT No. T-27957 P(M) to the Register of Deeds of Meycauayan, Bulacan for cancellation.

The effectivity of the Levy on Execution, the Auction Sale and the Certificate of Sale with respect to the real property covered by TCT No. T-27957 P(M) is reinstated.

SO ORDERED.^[19]

But on petitioner's motion for reconsideration, the RTC issued an Order dated November 22, 2005,^[20] reinstating its June 20, 2005 Order. In so ruling, the RTC relied on the affidavit of Crisanto Origen, and declared the property levied upon as conjugal, which cannot be held answerable for petitioner's personal liability.

Metrobank assailed the November 22, 2005 Order via a petition for *certiorari* in the CA, ascribing grave abuse of discretion on the part of the RTC for annulling the levy on execution and the auction sale, and for canceling the certificate of sale.

On July 3, 2008, the CA rendered the now challenged Decision reversing the RTC, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby **GRANTED**. **ACCORDINGLY**, the Order dated November 22, 2005 of the Regional Trial Court of Makati City, Branch 64, is hereby **REVERSED** and new one is entered declaring the Levy on Execution, Sale by Public Auction of the property covered by Transfer Certificate of Title T-27957 [P](M) and the Certificate of Sale over said property as valid and legal.

SO ORDERED.^[21]

Petitioner filed a motion for reconsideration, but the CA denied it on March 3, 2009.^[22]

Hence, this recourse by petitioner, arguing that:

I

THE HONORABLE COURT OF APPEALS ERRS (sic) IN REVERSING THE FINDING OF FACT OF THE TRIAL COURT THAT THE PROPERTY IS CONJUGAL IN NATURE BASED ON MERE SPECULATIONS AND CONJECTURES.^[23]

II

THE UNSUPPORTED TEMPORARY RULING THAT THE PROPERTY IS NOT CONJUGAL AND THE SUGGESTION TO VINDICATE THE RIGHTS OF SINA IMANI AND THE CONJUGAL PARTNERSHIP IN A SEPARATE ACTION UNDER SEC. 16, RULE 39 ENCOURAGE MULTIPLICITY OF SUITS AND VIOLATE THE POLICY OF THE RULES FOR EXPEDIENT AND INEXPENSIVE DISPOSITION OF ACTIONS.

III

THE PROPERTY IN QUESTION, BEING A ROAD RIGHT OF WAY, IS NOT SUBJECT TO EXECUTION UNDER SEC. 50, 2ND PARAGRAPH, OF PD [NO.] 1529.^[24]

First, the procedural issue on the propriety of the course of action taken by petitioner in the RTC in vindication of her claim over the subject property.

Petitioner takes exception to the CA ruling that she committed a procedural gaffe in

seeking the annulment of the writ of execution, the auction sale, and the certificate of sale. The issue on the conjugal nature of the property, she insists, can be adjudicated by the executing court; thus, the RTC correctly gave due course to her motion. She asserts that it was error for the CA to propose the filing of a separate case to vindicate her claim.

We agree with petitioner.

The CA explained the *faux pas* committed by petitioner in this wise:

Under [Section 16, Rule 39], a third-party claimant or a stranger to the foreclosure suit, can opt to file a remedy known as **terceria** against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor. By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent "**separate action**," the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other. Availment of the *terceria* is not a condition sine qua non to the institution of a "separate action."

It is worthy of note that Sina Imani should have availed of the remedy of "terceria" authorized under Section 16 of Rule 39 which is the proper remedy considering that he is not a party to the case against [petitioner]. Instead, the trial court allowed [petitioner] to file an urgent motion to cancel and nullify the levy of execution the auction sale and certificate of sale over TCT No. T27957 [P](M). [Petitioner] then argue[s] that it is the ministerial duty of the levying officer to release the property the moment a third-party claim is filed.

It is true that once a third-party files an affidavit of his title or right to the possession of the property levied upon, the sheriff is bound to release the property of the third-party claimant unless the judgment creditor files a bond approved by the court. Admittedly, [petitioner's] motion was already pending in court at the time that they filed the Affidavit of Crisanto Origen, the former owner, dated July 27, 2005.

In the instant case, the one who availed of the remedy of *terceria* is the [petitioner], the party to the main case and not the third party contemplated by Section 16, Rule 39 of the Rules of Court.

Moreover, the one who made the affidavit is not the third-party referred to in said Rule but Crisanto Origen who was the former owner of the land in question.^[25]