

## SECOND DIVISION

[ G.R. No. 172316, December 08, 2010 ]

**SPOUSES JOSE CHUA AND MARGARITA CHUA, PETITIONERS, VS. THE HONORABLE PEDRO GUTIERREZ, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 119, REGIONAL TRIAL COURT, PASAY CITY, PEDRO A. ABADILLA, IN HIS CAPACITY AS SHERIFF IV OF BRANCH 119, REGIONAL TRIAL COURT, PASAY CITY, AND TAN TEK SING, A.K.A. PETER TAN, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before this Court is a petition for review on *certiorari*,<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 7, 2006 Decision<sup>[2]</sup> and April 17, 2006 Resolution<sup>[3]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 81382.

The facts of the case are as follows:

The dispute involves Townhouse Unit 320, located at Roxas Sea Front Garden, Roxas Boulevard, Pasay City, which was previously covered by Transfer Certificate of Title (TCT) No. 127330 in the name of Benito Chua (Benito). Petitioners, spouses Jose and Margarita Chua, claim that Benito sold the property to them on **July 20, 1994** for P2,800,000.00. Said sale, however, was only registered on **January 5, 1995**.

Meanwhile, on November 11, 1994, respondent Tan Tek Sing filed with the Regional Trial Court (RTC) of Pasay City, a suit for collection, docketed as Civil Case No. 94-1160, against Benito, among others, with a prayer for the issuance of a writ of attachment. On November 15, 1994, a writ of preliminary attachment was issued by the trial court prompting the Sheriff to levy on Townhouse Unit 320. On **November 18, 1994**, entry number 94-3278/T-127330, a notice of levy on attachment, was inscribed in TCT No. 127330 by the Register of Deeds of Pasay City. At the time of said inscription, TCT No. 127330 was still in the name of Benito.

On December 5, 1994, petitioners filed with the RTC of Pasay City a Motion to Exclude and Remove Writ of Attachment from Townhouse Unit 320 on the ground that the subject property was already owned by them by virtue of an unregistered Deed of Absolute Sale<sup>[4]</sup> executed in their favor by Benito on July 20, 1994.

On January 5, 1995, petitioners registered the Deed of Absolute Sale with the Register of Deeds of Pasay City. As a result, TCT No. 127330 was cancelled and TCT No. 134590 was issued in petitioners' name. The notice of levy on attachment, however, was carried over in the new title.

On April 26, 1995, the RTC rendered a Decision<sup>[5]</sup> finding Benito liable to

respondent. It, however, excluded Townhouse Unit 320 from attachment. The pertinent portions of the Decision read:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendants BENITO NG CHUA, HENRY A. CHENG and MASTER FOOTWEAR SALES, INC., ordering the said defendants to pay the plaintiff the sum of P2.6 million, with legal interest thereon from September 3, 1994 until the amount shall have been fully paid; x x x.

x x x x

As prayed for by movants PHILAM, Jose Chua and Chua Tiu Ning Ning, the Unit 320 of the Townhouse within Roxas Seaport Garden Compound, Aurora III Road, Roxas Boulevard, Pasay City, is hereby **excluded** from the attachment enforced by the Sheriff of this Court on November 18, 1994.

SO ORDERED.<sup>[6]</sup>

Respondent partially appealed the RTC Decision to the CA in so far as it excluded Townhouse Unit 320 from attachment. The appeal was docketed as CA-G.R. CV No. 49959. On February 18, 1999, the CA rendered a Decision,<sup>[7]</sup> granting respondent's appeal, the dispositive portion of which reads:

IN LIGHT OF ALL THE FOREGOING, the herein assailed decision is hereby AFFIRMED, but MODIFIED in that:

1. The subject Townhouse Unit 320 covered by TCT No. 134590, which is located within the Roxas Seafront Garden Compound, Aurora III Road, Roxas Boulevard corner Russel Avenue, Pasay City, **is hereby made subject to the writ of attachment** enforced by the Sheriff of the court *a quo* on November 18, 1994; x x x.

x x x x

SO ORDERED.<sup>[8]</sup>

Aggrieved, petitioners filed a motion for reconsideration, but the same was denied by the CA in a Resolution<sup>[9]</sup> dated March 1, 2001.

Petitioners then appealed the CA Decision to this Court, where it was docketed as G.R. No. 147339. On June 20, 2001, this Court issued a Resolution dismissing the same for failure to (a) submit a certification against forum shopping duly executed by petitioners themselves, and (2) properly verify the petition.

After the denial of petitioners' appeal by this Court, respondent then moved for execution against Townhouse Unit 320. The RTC granted respondent's motion. Notwithstanding, the finality of the CA Decision in CA-G.R. CV No. 49959,

petitioners, however, moved to quash the writ of execution and notice of levy on the grounds that they are not the judgment debtors and the property levied upon was already sold to them prior to the institution of the suit.

On August 5, 2003, the RTC issued an Order<sup>[10]</sup> denying petitioners' motion, the dispositive portion of which reads:

WHEREFORE, the movant's motion to quash writ of execution and notice of levy and motion to issue temporary restraining order and/or injunction is hereby denied for lack of merit.<sup>[11]</sup>

Aggrieved, petitioners filed a Motion for Reconsideration,<sup>[12]</sup> which was, however, denied by the RTC in its Order<sup>[13]</sup> dated December 3, 2003.

Adamant in excluding Townhouse Unit 320 from execution, petitioners then filed a petition for *certiorari*<sup>[14]</sup> with the CA assailing the August 5, 2003 and December 3, 2003 Orders of the RTC. On February 7,

2006, the CA issued a Decision denying petitioners' petition, the dispositive portion of which reads:

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.<sup>[15]</sup>

The CA ruled that a prior registration of a lien creates a preference and that whatever right over the property petitioners acquired became subordinate and subject to the duly recorded and annotated attachment and levy.

Petitioners filed a motion for reconsideration, which was, however denied by the CA in a Resolution dated April 17, 2006.

Hence, herein petition, with petitioners raising a lone issue for this Court's resolution, to wit:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THAT THE POWER OF THE COURT IN [THE] EXECUTION OF JUDGMENT EXTENDS ONLY TO PROPERTIES UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR.<sup>[16]</sup>

The petition is not meritorious.

The main issue in this case is whether or not a registered writ of attachment is a superior *lien* over that of an unregistered deed of sale. The same is not novel.

Petitioners argue that at the time the property was levied, the same was already in

their names. Petitioners thus posit that, since they are not the judgment debtors, their property should not be the subject of execution.

Petitioners' arguments deserve scant consideration.

Since the subject property is covered by a Torrens Title, the law applicable is Section 51<sup>[17]</sup> of Presidential Decree (PD) No. 1529. Said provision provides:

SEC. 51. *Conveyance and other dealings by registered owner.* - An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration.

**The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned**, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or the city where the land lies.<sup>[18]</sup>

The preference given to a duly registered levy on attachment or execution over a prior unregistered sale is well settled in our jurisdiction. This is because registration is the operative act that binds or affects the land insofar as third persons are concerned.<sup>[19]</sup> It is upon registration that there is notice to the whole world.<sup>[20]</sup>

Petitioners cannot escape the fact that when they registered the Deed of Absolute Sale on January 5, 1995, a writ of attachment was already inscribed on TCT No. 127330 as early as November 18, 1994. Accordingly, when TCT No. 127330 was cancelled and TCT No. 134590 was issued in petitioners' name, the notice of levy on attachment was carried over in the new title. It bears stressing that at the time of the inscription of the writ of attachment, Townhouse Unit 320 was still in the name of Benito.

In *Valdevieso v. Damalerio*,<sup>[21]</sup> this Court explained that an attachment is a proceeding *in rem* and that the right of ownership of an individual over a sale registered after such attachment is limited and subject to the prior registered lien, to wit:

The preference created by the levy on attachment is not diminished even by the subsequent registration of the prior sale. This is so because an attachment is a proceeding *in rem*. It is against the particular property, enforceable against the whole world. The attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien