

## THIRD DIVISION

[ G.R. No. 176533, February 11, 2008 ]

**JEROME SOLCO, Petitioner, vs. CLAUDINA V. PROVIDO and  
MARIA TERESA P. VILLARUEL, Respondents.**

### DECISION

**YNARES-SATIAGO, J.:**

This petition for review on *certiorari* assails the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CEB SP No. 01561, dated July 26, 2006, which reversed the November 23, 2005, January 19, 2006 and February 17, 2006 Orders of the Regional Trial Court (RTC) of Bacolod City, Branch 47, for having been issued with grave abuse of discretion, as well as the Resolution,<sup>[2]</sup> dated January 23, 2007, denying the motion for reconsideration.

On April 13, 1989, Josefa Peña vda. de Villaruel, Claudina V. Provido, Antonio P. Villaruel, Carmen P. Villaruel, Maria Teresa P. Villaruel, Rosario P. Villaruel, Jesusa P. Villaruel, Alfredo P. Villaruel, Jr., and Josefina Villaruel-Laudico,<sup>[3]</sup> through their attorney-in-fact respondent Maria Teresa P. Villaruel, executed a Contract to Sell and Memorandum of Agreement with petitioner Jerome Solco over Lot No. 1454-C located at Mandalagan, Bacolod City and covered by TCT No. T-84855 for P3M. The agreement provided for the payment of P1.6M upon the signing of the contract, and the balance of P1.4M upon the dismantling of the structures thereon and the clearing of the premises of its occupants within six (6) months from the execution of the contract.<sup>[4]</sup> Thereafter, Solco entered the premises and commenced the construction of the improvements.

However, on September 19, 1989, the Villaruels filed a complaint for rescission of contract with damages and application for a writ of preliminary injunction with the RTC of Bacolod City, Branch 47, which was docketed as Civil Case No. 5626.<sup>[5]</sup> They alleged that Solco violated the terms of their agreement when he entered the premises without notice and started delivering rocks, sand and hollow blocks which destroyed the gate and barbed wire fence that secured the premises, and uprooted the *ipil-ipil* tree. The construction materials allegedly blocked their access to Lacson Street, rendering impossible the dismantling of the structure and removal of the materials therein within the period set by the contract. They also alleged that Solco hired men of questionable repute to work in the premises, threatening their life, security and property.<sup>[6]</sup>

In his Answer, Solco alleged that the Villaruels had not substantially complied with their obligations under the contract as the house and the billboard were not dismantled and the occupants had not vacated the premises yet. He claimed that the contract allowed him to take full possession of, and to commence construction on, the premises upon the execution thereof and the payment of P1.6M.<sup>[7]</sup>

On March 29, 1996, the trial court rendered a decision in favor of Solco, thus:

WHEREFORE, conformably with all the foregoing, judgment is hereby rendered in favor of defendant and against plaintiffs, as follows:

1. Dismissing plaintiffs' complaint for lack of merit;
2. Ordering plaintiffs to remove or dismantle the house and the billboard standing on Lot No. 1454-C, subject of this case, within thirty (30) days from finality of this decision; otherwise, the removal or dismantling shall be done by defendant thru the sheriff at the expense of plaintiffs;
3. Ordering plaintiffs and all persons in privity to them and/or their agents to vacate the premises within the same period afore-stated;
4. Ordering plaintiffs to immediately restore possession of the subject property to defendant and allow him and his agents to resume introducing any improvement or construction thereon;
5. Condemning plaintiffs to jointly and severally pay actual damages to defendant at the rate of P5,000.00 per month from the date of the filing of the complaint on September 19, 1989 up to and until defendant shall have been restored to actual and peaceful possession of lot No. 1454-C;
6. Sentencing plaintiffs to solidarily pay defendant: moral damages of P100,000.00 and attorney's fees of P70,000.00;
7. Ordering defendant to pay plaintiffs the balance of the purchase price of P1,4000,000.00 of the subject lot, deducting therefrom, however, all the amounts of damages above-awarded to defendant upon the expiration of the thirty-day period provided in No. 2 hereof;
8. Ordering plaintiffs to immediately execute, upon such payment, the deed of absolute sale or conveyance of the subject property in favor of the defendant pursuant to Paragraph 6, Page 2 of the Memorandum of Agreement;
9. Sentencing plaintiffs to pay the costs; and
10. Ordering the herein award of damages in favor of defendant as a first lien on the judgment for the non-payment of the necessary filing or docketing fees of defendant's counterclaim.

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

The Villaruels appealed to the Court of Appeals which affirmed with modifications the decision of the trial court, thus:

WHEREFORE, the Appealed Decision dated March 29, 1996, is hereby AFFIRMED with modification as follows:

1. Plaintiffs-appellants are directed solidarily to pay defendant-appellee actual damages of P62,214.00; and
2. The award of moral damages and attorney's fees is reduced to P30,000.00 and P20,000.00, respectively.

SO ORDERED.<sup>[9]</sup>

Upon the denial of their motion for reconsideration, the Villaruels filed a petition for review on *certiorari* before this Court docketed as G.R. No. 152781. However, it was denied in a Resolution dated July 1, 2002. Villaruels' motion for reconsideration was denied with finality on December 2, 2002.<sup>[10]</sup> Judgment was entered and became final and executory on June 12, 2003.<sup>[11]</sup>

Solco then filed a motion for execution before the trial court which was granted on April 18, 2005.<sup>[12]</sup> A writ of execution was issued on May 6, 2005.<sup>[13]</sup>

On May 18, 2005, Sheriff Jose Gerardo Y. Garbanzos served the writ on Solco's counsel who informed him that the balance of the purchase price will be paid only if all the adverse occupants have vacated the property. Upon ocular inspection of the property on May 24 and 27, 2005, all adverse occupants had vacated the premises, but the billboard of Trongco Advertising was still there.<sup>[14]</sup>

In a letter dated May 31, 2005, the Sheriff again demanded from Solco payment of the balance of the purchase price less all damages awarded, but to no avail.<sup>[15]</sup>

On June 16, 2005, the Villaruels sent a letter to Solco informing him of their decision to cancel and terminate the sale transaction, and the forfeiture of the P1.6M to answer for the damages caused to them.<sup>[16]</sup>

However, on August 8, 2005, Villaruels' counsel wrote a letter to the clerk of court stating that Solco failed to pay the balance of the purchase price, and prayed for the full implementation of the writ of execution by garnishing cash deposits of Solco.<sup>[17]</sup>

On August 16, 2005, Solco filed a manifestation with motion asking the court to accept the Metropolitan Bank and Trust Company (MBTC) cashier's check dated August 22, 2005 in the amount of P1,287,786.00 as full compliance of his obligation under the contract.<sup>[18]</sup> In its Order dated November 23, 2005, the RTC accepted the payment as full compliance of Solco's obligation and ordered the Villaruels to execute the deed of absolute sale over the property, and appointed the clerk of court to execute the said deed in their behalf should they fail to comply with the order.<sup>[19]</sup>

Meanwhile or on August 25, 2005, the Villaruels filed a complaint for Cancellation of Contract, Quieting of Title and Damages docketed as Civil Case No. 05-12614 and raffled to Branch 49, RTC of Bacolod City.<sup>[20]</sup>

On January 5, 2006, the Villaruels also filed a motion to quash the writ of execution and to set aside the November 23, 2005 Order claiming that the writ of execution was void because it varied the terms of the judgment and that the RTC had no jurisdiction to alter or modify a final judgment.<sup>[21]</sup> The RTC denied the said motion to quash in its Order dated January 19, 2006.<sup>[22]</sup> A motion for reconsideration was filed but it was denied on February 17, 2006.<sup>[23]</sup>

Thus, the Villaruels filed a petition for certiorari before the Court of Appeals assailing the Orders of the RTC dated November 23, 2005, January 19, 2006 and February 17, 2006, for having been issued with grave abuse of discretion. The Court of Appeals granted the petition, thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The assailed Orders dated November 23, 2005, January 19, 2006 and February 17, 2006 are hereby ANNULLED and SET ASIDE.

SO ORDERED.<sup>[24]</sup>

Solco filed a motion for reconsideration but was denied hence, the instant petition raising the following errors:

1. THE HONORABLE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI IN CA-G.R. CEB SP NO. 01561 IN CONNECTION WITH THE MONEY JUDGMENT IN CIVIL CASE NO. 5626.
2. THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION FOR CERTIORARI IN CA-G.R. CEB SP NO. 01561 ON THE GROUND OF FORUM SHOPPING AND/OR FALSE CERTIFICATION.<sup>[25]</sup>

Solco argues that the payment with the clerk of court of MBTC cashier's check dated August 22, 2005 in the amount of P1,287,786.00 as full payment of the balance of the contract price was in accordance with Section 9, Rule 39 of the Rules of Court which provides that if the judgment obligee is not present to receive the payment, the judgment obligor shall deliver the said payment to the sheriff, who shall turn over all the amounts coming to his possession to the clerk of court. The clerk of court encashed the check for the Villaruels, but they refused to accept the payment. Moreover, assuming the RTC erred in accepting the payment as full compliance under the contract, it pertains only to an error of judgment and not of jurisdiction correctible by *certiorari*.<sup>[26]</sup>

The issue for resolution is whether the Court of Appeals erred in reversing the Order of the RTC dated November 23, 2005 accepting the MBTC check as full payment of the contract price; the Order dated January 19, 2006 denying the motion to quash the writ of execution; and the Order dated February 17, 2006 denying the motion for reconsideration, on the ground that they were issued in grave abuse of discretion.

The petition is impressed with merit.

Execution is the final stage of litigation, the end of the suit. It cannot be frustrated except for serious reasons demanded by justice and equity. In this jurisdiction, the rule is that when a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment,<sup>[27]</sup> upon motion within five years from the date of its entry, or after the lapse of such time and before it is barred by the statute of limitations, by an independent action.<sup>[28]</sup> Either party can move for the execution of the decision so long as the decision or any part of it is in favor of the moving party. The rule on execution of final judgments does not make the filing of the motion for execution exclusive to the prevailing party.<sup>[29]</sup>

In the instant case, the Villaruels moved to quash the writ of execution because it allegedly varied the terms of the judgment. They claimed that the writ directed the sheriff to execute the decision only as against them, contrary to the dispositive portion of the decision which likewise ordered Solco to pay the balance of the purchase price. This contention is untenable. Although the portion of the decision ordering Solco to pay the balance of the contract price was not categorically expressed in the dispositive portion of the writ of execution, the same was explicitly reiterated in the body of the writ. Villaruels' remedy was not to move for the quashal of the writ of execution but to move for its modification to include the portion of the decision which ordered Solco to pay the balance of the contract price.

Besides, records show that despite the apparent insufficiency in the dispositive portion of the writ, the sheriff did not fail to demand payment from Solco. The sheriff filed several partial returns of service of the writ of execution, the pertinent portions of which are as follows:

a. Sheriff's Partial Return of Service dated May 25, 2005

I. On May 18, 2005 the undersigned made a verbal demand with Atty. William Mirano – counsel for the defendant-Jerome Solco for the payment of ONE MILLION FOUR HUNDRED THOUSAND PESOS representing the balance of the purchase price of the subject lot, deducting therefrom, however, all the amounts of damages. Atty. Mirano told the undersigned that they will pay only if all the adverse occupants have vacated the property. Up to this date they have not paid the amount demanded from them; and with regards (sic) to the adverse occupants as per my ocular inspection yesterday May 24, 2005 only one structure is left with the assurance from the owner that before the end of this week it will be removed.<sup>[30]</sup>

b. Sheriff's Partial Return of Service dated May 31, 2005

I. On May 27, 2005 the undersigned made an ocular inspection on the property subject of execution and he found out that all the adverse occupants have already vacated the premises, except for the steel structure which use (sic) to be occupied by the billboard of Tronco Advertising. As per our conversation with Atty. William Mirano – legal counsel of the defendant-Jerome Solco; the advertising firm had already made negotiations with Mr. Solco and the continued presence of