

FIRST DIVISION

[G.R. No. 158848, February 04, 2008]

**ESTEBAN YAU, PETITIONER, VS. RICARDO C. SILVERIO, SR.,
RESPONDENT.**

**[G.R. NO. 171994]ARTURO MACAPAGAL, PETITIONER, VS. HON.
IRENEO LEE GAKO, JR., IN HIS CAPACITY AS PRESIDING JUDGE
OF THE REGIONAL TRIAL COURT OF CEBU CITY, BRANCH 6,
ESTEBAN YAU AND DEPUTY SHERIFF RUBEN S. NEQUINTO,
RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before this Court are two (2) consolidated petitions, the first, docketed as **G.R. No. 158848**, is a petition for review on *certiorari*^[1] of the Decision^[2] dated September 22, 1999 and Resolution dated June 20, 2003 of the Court of Appeals in CA-G.R. SP No. 72202; and the other, **G.R. No. 171994**, is likewise a petition for review on *certiorari* assailing the Decision^[3] dated August 24, 2005 and Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. SP No. 60106.

The undisputed facts are:

On January 22, 1981, Esteban Yau bought from the Philippine Underwriters Finance Corporation (Philfinance) Promissory Note No. 3447 issued by the Philippine Shares Corporation (PSC). Yau paid the amount of P1,600,000 to Philfinance for the note. The latter promised to return to him on March 24, 1981 his investment plus earnings of P29,866.67. Philfinance then issued postdated checks to Yau drawn against the Insular Bank of Asia and America, all maturing on March 24, 1981, for P1,600,000.00, P24,177.78 and P5,688.89. But when the checks were deposited in the bank, they were dishonored for insufficiency of funds. When Yau complained to the PSC, it denied having issued the promissory note.

Thus, on March 28, 1984, Yau filed a complaint ^[4] with the Regional Trial Court (RTC), Branch 6, Cebu City, for recovery of the value of the promissory note and for damages against Philfinance and the members of its board of directors, among whom were Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr., and Miguel Angel Cano.

Except for defendant Pablo C. Carlos Jr., all the other defendants failed to file their answers seasonably. Hence, the trial court issued an Order declaring them in default and allowing Yau to present his evidence *ex parte*. Pablo Carlos, Jr., although present during the hearing, did not present evidence in his defense.

Meanwhile, after the trial court denied their motion for reconsideration, Silverio and

his co-defendants (except Pablo Carlos, Jr.), filed with the Court of Appeals a petition for *certiorari* and prohibition (docketed as CA-G.R. SP No. 04835), assailing the Order of default. The appellate court, however, in its Decision dated March 10, 1986, dismissed the petition, holding that summonses were duly served and that defendants' failure to answer the complaint justifies the trial court's Order declaring them in default. Since they did not interpose an appeal, the Decision of the appellate court became final and executory on June 17, 1986. An entry of judgment was made on July 4, 1986.

On March 27, 1991, the trial court rendered its Decision in favor of Esteban Yau. The dispositive portion reads:

WHEREFORE, judgment is rendered in favor of plaintiff and against defendants Philippine Underwriters Finance Corporation, Ricardo C. Silverio, Sr., Pablo C. Carlos, Jr., Arturo Macapagal, Florencio Biagan, Jr. and Miguel Angel Cano, ordering the latter, jointly and severally, to pay the former the following:

(a) The principal amount of One Million Six Hundred Thousand (P1,600,000) Pesos, representing the principal amount of the plaintiff's investment;

(b) The amount of Ten Million Three Hundred Ninety Seven Thousand Four Hundred Ninety Four Pesos and 03/100 (P10,397,494.03), representing the earnings which the plaintiff could have made on his investment as of December 31, 1989 and thereafter, legal interest on the principal amount of P1,600,000, until fully paid;

(c) The amount of One Hundred Thousand (P100,000) Pesos as, and for moral damages;

(d) The amount of Fifty Thousand (P50,000) Pesos as, and for exemplary or corrective damages;

(e) The amount of One Hundred Thirty Seven Thousand Two Hundred Seven Pesos and 28/100 (P137,207.28) as attorney's fees; Forty Four Thousand Eighteen Pesos and 33/100 (P44,018.33) as litigation expenses; and

(f) The costs of the suit.

The Counterclaims interposed by the defendant Pablo C. Carlos, Jr. in his Answer, are dismissed.

SO ORDERED.^[5]

Pablo Carlos, Jr. and Philfinance interposed an appeal to the Court of Appeals, docketed therein as CA-G.R. CV No. 33496. With respect to Silverio, Macapagal, Biagan, and Cano, their Notice of Appeal was dismissed for their failure to pay the docket fees. The Order of dismissal became final and executory on December 26, 1991 and an entry of judgment was made on April 21, 1992.

On July 31, 1992, the trial court, upon petitioner Yau's motion, issued an Order directing the execution of its Decision and, on September 17, 1992, issued the corresponding writ of execution.

In December 1992, the defendants' bank deposits were garnished by the sheriff. Also, the shares of Silverio in the Manila Golf and Country Club were sold at public auction for P2,000,000. As the judgment was only partially satisfied, the writ of execution was enforced against the other defendants, including Macapagal.

Silverio and Macapagal took separate courses of action. On February 2, 1993, Macapagal filed with this Court a petition for *certiorari* and prohibition, questioning the validity of the Decision of the trial court, its Order of execution and the writ of execution. The petition, however, was referred to the Court of Appeals, where it was docketed as CA-G.R. SP No. 31075 and raffled off to the Fourteenth Division. Eventually, the appellate court dismissed the petition on the ground that the same was barred, under the principle of *res judicata*, by its previous Decision in CA-G.R. SP No. 04835, upholding the validity of the trial court's Order of default.

On other hand, Silverio filed with the Court of Appeals (Special Eleventh Division) a petition for reinstatement of his appeal and annulment of the writ of execution, docketed as CA-G.R. CV No. 33496. However, the appellate court denied the petition on the ground that the Order of the RTC dismissing the Notice of Appeal had become final and executory.

Macapagal then filed with this Court a petition for review on *certiorari*, docketed as G.R. No. 110610. Silverio likewise filed with this Court a similar petition, docketed as G.R. No. 113851. These petitions were consolidated because they arose out of the same facts. In its Decision dated April 18, 1997, this Court upheld the rulings of the Court of Appeals and dismissed their petitions. Their motions for reconsideration were denied with finality by this Court in its Resolution^[6] dated October 8, 1998.

Considering that the judgment was not fully satisfied, the sheriff resumed the implementation of the writ. In 1999, he sent notices of garnishment to several banks in Manila against any existing account of Macapagal. Thereupon, Macapagal filed with the trial court a motion to quash the writ of execution on the ground that its lifetime has expired, contending that the judgment in Civil Case No. CEB- 2058 became final and executory in 1992, hence, can be enforced only within five (5) years therefrom or until 1997. After five (5) years and within ten (10) years from the entry of judgment, it may be enforced only by an independent civil action.

On January 28, 2000, the trial court issued an Order denying Macapagal's motion to quash the writ of execution. His motion for reconsideration was likewise denied in a Resolution dated May 22, 2000. The trial court held that there was an effective interruption or delay in the implementation of the writ of execution because he filed with the Court of Appeals and this Court various petitions.

Macapagal then filed with the Court of Appeals (Eighteenth Division) a petition for *certiorari*, docketed as CA-G.R. SP No. 60106. However, the appellate court, in its Decision dated August 24, 2005, dismissed the petition and denied the motion for reconsideration in its Resolution dated September 15, 2005.

Hence, Macapagal filed with this Court the present petition, docketed as **G.R. No. 171994**.

Meanwhile, on October 31, 2000, the Court of Appeals rendered a Decision in CA-G.R. CV No. 33496 (appeal of defendants Philfinance and Pablo Carlos, Jr.). The dispositive portion reads:

"IN VIEW OF ALL THE FOREGOING, the appealed decision as hereby modified in such a way that the award of lost income is deleted and the legal interest to be paid on the principal amount of P1,600,000 be computed from the filing of the complaint at twelve (12%) percent until full payment thereof. On all other respect, the judgment stands. Costs against appellants.^[7]

The aforesaid Decision became final and executory on March 21, 2001.

Sometime in 2001, the sheriff found that Silverio was a co-owner of three (3) houses located in Forbes Park and Bel-Air Village, Makati City, covered by TCT Nos. (147129)-137156, (436750)-137155 and (337033)-137154 of the Registry of Deeds, same city. Thus, on March 21, 2001, the sheriff served a Notice of Levy on a house and lot in Forbes Park. An auction sale was held on July 26, 2001 wherein Yau was declared the highest bidder, with a bid of P11,443,219.64 for the said house and lot covered by TCT No. (436750)-137155. On August 6, 2001, the sheriff issued the corresponding Certificate of Sale.

On December 7, 2001, Silverio filed with the trial court an *omnibus* motion praying that the levy on execution, the notice of auction sale and the certificate of sale be declared void. He contends that the writ of execution has become *functus officio* since more than five (5) years have elapsed from the finality of the judgment sought to be executed.

The trial court, in its Order of March 20, 2002, denied the *omnibus* motion. The trial court also denied his motion for reconsideration in an Order dated June 21, 2002.

Undaunted, Silverio filed with the Court of Appeals (Twelfth Division) a petition for *certiorari*, docketed as CA-G.R. SP No. 72202, challenging the said Orders of the trial court. On April 15, 2003, the appellate court rendered its Decision granting the petition, thus:

WHEREFORE, premises considered, the petition is GRANTED, and the assailed Orders of public respondent judge are REVERSED and SET ASIDE. The levy by respondent sheriff upon TCT No. (-147129)-137156, TCT No. (-436750)137155, and TCT No. (-337033-)137154, as well as the subsequent auction sale and transfer of the property covered by TCT No. (436750) 137155, are declared NULL and VOID. All annotations upon the titles to aforesaid properties pursuant to the levy are ordered cancelled. Costs against private respondent.

SO ORDERED.^[8]

Yau's motion for reconsideration was denied by the appellate court in its Resolution dated June 20, 2003.