

## THIRD DIVISION

[ G.R. No. 173566, July 04, 2008 ]

**SOLAR RESOURCES, INC., PETITIONER, VS. INLAND TRAILWAYS, INC., RESPONDENT.**

### DECISION

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioner Solar Resources Inc., seeking the reversal and the setting aside of the Decision,<sup>[1]</sup> dated 27 April 2006, and the Resolution,<sup>[2]</sup> dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 90176. The appellate court, in its assailed Decision and Resolution, reversed the Order<sup>[3]</sup> dated 21 February 2005 of the Regional Trial Court (RTC) of Parañaque, Branch 274 in Civil Case No. 98-0406, striking down the Orders dated 22 October 1997 and 23 October 1997 issued by the Metropolitan Trial Court (MTC) of Parañaque, Branch 77, in Docket No. 8778 which lifted the entry of levy on Transfer Certificates of Title (TCTs) No. 128152 and No. 128153.

The present controversy stems from an action for ejectment filed by petitioner against respondent Inland Trailways, Inc., before the MTC, docketed as Civil Case No. 8778.<sup>[4]</sup> Petitioner alleged in its complaint that on 17 August 1991, it entered into a lease agreement with respondent, whereby it agreed to lease to respondent two parcels of land covered by TCTs No. 39817 and No. 39818 located at Multinational Village, Parañaque, Metro Manila [leased properties],<sup>[5]</sup> for a monthly rental starting at P51,104.20, which shall be due every fifth day of the month, and shall subsequently be increased every year.<sup>[6]</sup>

Respondent failed to pay its rent from August 1993 until January 1994 amounting to P347,405.00. Despite repeated demands from petitioner, respondent still failed or refused to comply with its obligation. This prompted petitioner to exercise its option provided under the lease agreement to rescind the contract in the event that the other party violated the provisions. Thus, petitioner demanded that respondent vacate the leased properties. Respondent refused to surrender possession of the leased properties notwithstanding several demands from petitioner.<sup>[7]</sup>

Respondent countered that it was petitioner who first breached the agreement, forcing respondent to withhold its rental payment. Under the lease agreement, petitioner is under obligation to (1) secure from the Air Transportation Office (ATO) the Heights Clearance Permit, (2) land-fill the leased properties, and (3) deliver to respondent the TCTs, location plans and the technical descriptions of the leased lots. The contract was already in force for several months and respondent was already religiously paying its rent, but petitioner never complied with its obligations resulting in the failure of the respondent to derive economic benefit from the leased

properties.<sup>[8]</sup>

On 26 May 1994, the MTC rendered a Decision<sup>[9]</sup> favoring the petitioner and ordering the respondent to vacate the leased lots and pay petitioner the sum of P1,095,000.40 as unpaid rentals, penalty and liquidated damages pursuant to the stipulations embodied in their lease agreement.

Respondent appealed the adverse MTC Decision to the RTC where its appeal was docketed as Civil Case 94-0089.<sup>[10]</sup>

During the pendency of respondent's appeal before the RTC, petitioner moved for the execution of the 26 May 1994 MTC Decision, which was granted by the MTC in its Order<sup>[11]</sup> dated 28 June 1994. Accordingly, a Writ of Execution<sup>[12]</sup> was issued by the MTC on 30 June 1994 directing the Sheriff to satisfy the Judgment dated 26 May 1994.

Since the monetary award was not fully satisfied, petitioner filed with the MTC a Motion for Alias Writ of Execution<sup>[13]</sup> stating that the amount of the personal properties levied pursuant to the 30 June 1994 Writ of Execution and sold at the public auction did not fully cover the monetary judgment of the MTC. While the total amount of obligation as of June 1996 amounted to P2,318,402.05, the levied tourist buses of respondent were sold at the public auction for only P801,000.00, thereby leaving a balance of P1,517,402.05.

Acting on the petitioner's Motion, the MTC, on 10 July 1996, issued an Alias Writ of Execution directing the Sheriff to further levy the properties belonging to the respondent and sell the same at a public auction in the manner provided by law.<sup>[14]</sup>

In compliance with the 10 July 1996 Alias Writ of Execution, the Sheriff levied two parcels of land registered in respondent's name and covered by TCTs No. 128152 and 128153 registered with the Registry of Deeds of Pasay City [levied real properties].

Respondent, exercising the option granted to a judgment debtor to choose which property or part thereof may be levied upon to satisfy the judgment,<sup>[15]</sup> filed an *Ex Parte* Motion to Lift Levy/Attachment on Real Properties.<sup>[16]</sup> Respondent sought for the substitution of its levied real properties with its following personal properties:

Make	Model	Motor No.	Serial No.
Isuzu	1994	10 PAI-815971	CRA650-2602098
Isuzu	1994	10 PBI-320673	CSA580-2602730

After the MTC ascertained that the personal properties offered by respondent as substitute for the levied real properties were more than sufficient to satisfy the judgment, an Order<sup>[17]</sup> was issued on 22 October 1997 [First MTC Order] directing the replacement of the levied real properties upon surrender of the substituted personal properties the custody of the Sheriff together with their corresponding Certificates of Registration and Official Receipts, subject to the condition that the

previously levied real properties shall not be sold by respondent until the judgment against it has been satisfied.

Upon respondent's surrender of its personal properties as substitutes for the levied real properties, the MTC, on 23 October 2007, issued another Order [Second MTC Order]<sup>[18]</sup> directing the Registry of Deeds of Pasay City to cancel and/or Lift the Entry of Levy made by the Sheriff on TCTs No. 128152 and No. 128153. The MTC declared the Second MTC Order final and executory in an Order dated 28 October 1997 [Third MTC Order].<sup>[19]</sup>

On the ground that the Motion to Lift Levy/Attachment on Real Properties<sup>[20]</sup> is a contentious motion and respondent failed to comply with the three-day notice rule as required by Section 4, Rule 15 of the Revised Rules of Court,<sup>[21]</sup> petitioner moved for the nullification of the First, Second and Third MTC Orders.

On 10 August 1998, the MTC issued an Order<sup>[22]</sup> [Fourth MTC Order] denying petitioner's motion for nullification of its three earlier orders, thus, upholding the lifting of the levy on respondent's real properties given that they were substituted with personal properties. According to the MTC, its previous orders were sanctioned by procedural laws.

Arguing that the MTC gravely abused its discretion in issuing its Orders dated 22 October 1997, 23 October 1997, 28 October 1997 and 10 August 1998, petitioner filed a Petition for *Certiorari*<sup>[23]</sup> before the RTC, docketed as Civil Case No. 98-0406.

In its Order<sup>[24]</sup> issued on 14 June 2000, the RTC affirmed the allowance by the MTC of the substitution of respondent's levied real properties with personal properties. The RTC reasoned that even granting that the offered personal properties were not sufficient to satisfy the judgment against respondent, petitioner can always file a Motion for the Issuance of Alias Writ of Execution so the court can order the levy of additional properties belonging to respondent. The RTC, however, did nullify the Third MTC Order, for orders shall only become final and executory after the lapse of time prescribed by law and not by mere declaration of the court.

Dissatisfied, the petitioner filed a Partial Motion for Reconsideration<sup>[25]</sup> with the RTC.

Finding merit in petitioner's motion, the RTC reconsidered its earlier order. In an Order dated 21 February 2005, the RTC decreed that respondent's *Ex Parte* Motion to Lift Levy/Attachment on Real Properties, which precipitated the assailed MTC Orders, was a mere scrap of paper for failure to comply with the three-day notice rule.<sup>[26]</sup> Resultantly, the MTC Orders issued pursuant to respondent's defective motion were null and void. The dispositive portion of the 21 February 2005 RTC Order reads:

WHEREFORE, the foregoing duly considered, the motion for partial reconsideration being well taken, the same is granted.

Accordingly, therefore, the Orders dated October 22, 1997 and October

23, 1997 both issued by the court *a quo*, are hereby ordered set aside for being null and void and without force and effect.<sup>[27]</sup>

Aggrieved, respondent raised the matter before the Court of Appeals *via* Petition for *Certiorari*<sup>[28]</sup> under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 90716. In its Petition, respondent argued that the RTC gravely abused its discretion in nullifying the MTC Orders directing the lifting of levy on respondent's real properties. Respondent asserted that its filing of the Motion to Lift Levy/Attachment was in the exercise of its legal option under Section 9(b) of Rule 39 of the Revised Rules of Court without need for complying with the three-day notice rule.

On 27 April 2006, the Court of Appeals rendered a Decision<sup>[29]</sup> granting respondent's petition and reversing the RTC Order dated 21 February 2005. The appellate court recognized respondent's prerogative to choose which property or part thereof it wanted to be levied as sanctioned by the Revised Rules of Court. Consequently, respondent's failure to comply with the three-day notice rule in moving for the substitution of its levied real properties with personal properties was not a serious transgression of petitioner's right to due process.

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution<sup>[30]</sup> dated 13 July 2006.

Hence, this instant Petition for Review on *Certiorari*<sup>[31]</sup> filed by petitioner. For the resolution of this Court, then, is the sole issue of whether the Motion to Lift Levy/Attachment is a contentious motion that needs to comply with the three-day notice rule.

Petitioner maintains that the *Ex Parte* Motion to Lift Levy/Attachment was a mere scrap of paper that could not be acted upon by the MTC without compliance with the required notice and hearing. Petitioner, thus, assails the First, Second and Fourth Orders of the MTC.

Harping on the disquisition of the Court of Appeals, respondent argues that its *Ex Parte* Motion to Lift Levy/Attachment filed before the MTC was only an exercise of its prerogative, as a judgment obligor, to choose which property or part thereof may be levied, and to convey such preference to the court, even in the absence of the judgment obligee's participation.

There is no dispute that the petitioner did not receive a copy of the assailed motion since it was filed and granted *ex parte* by the MTC. Respondent's bone of contention is that there is no more need to comply with the required notice and hearing since its motion was non-litigious, the allowance or disallowance of which would not prejudice petitioner's right.

There is merit in the present Petition.

Respondent's filing of its *ex parte* motion for the lifting of the levy on its real properties violated the general rule that every motion shall be set for hearing since a motion to lift levy is not one of those which the court can act upon without possibly prejudicing the rights of the other party. The motion to lift levy or

attachment is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of Rule 15 of the Revised Rules of Court:

SEC. 4. *Hearing of motion.* - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. *Notice of hearing.* - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. *Proof of service necessary.* - No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied. This procedure can be found in Rule 39 of the Revised Rules of Court on execution of judgment. The said Rule provides that in the event that the judgment obligor cannot pay the monetary judgment in cash, the court, through the sheriff, may levy or attach properties belonging to the judgment obligor to secure the judgment.

Thus, when the sheriff levied TCTs No. 128152 and No. 128153 in satisfaction of the 26 May 1994 MTC Decision, petitioner already acquired right over such levied real properties as the prevailing party in Civil Case No. 8778. To discharge such properties, therefore, without hearing or even at the least, notice to petitioner, constitutes a serious violation of petitioner's right to due process and should be struck down by this Court.

Petitioner's right to these levied properties is founded on its right, as a prevailing party, to enjoy the finality of the decision by execution and satisfaction of the judgment. It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," *ratio legis est anima*,<sup>[32]</sup> this Court has zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory. A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.<sup>[33]</sup>

Respondent argues that it was merely exercising its legal right to choose which among its properties it wanted to be levied, in accordance with Section 9(b), Rule 39 of the Revised Rules of Court, which provides:

Section 9(b) *Satisfaction by levy.* - If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise