

SECOND DIVISION

[G.R. NO. 132887, August 11, 2005]

**THE MANILA BANKING CORPORATION, PETITIONER, VS.
EDMUNDO S. SILVERIO AND THE COURT OF APPEALS,
RESPONDENTS.**

DECISION

CHICO-NAZARIO, J.:

Before the Court is a petition for review on *certiorari* of the Decision^[1] and Resolution^[2] of the Court of Appeals reversing the dismissal by the Regional Trial Court (RTC) of Makati City of the petition of private respondent for cancellation of notice of levy on attachment and writ of attachment on two (2) parcels of land located in Parañaque City.

The facts that gave rise to the present controversy are as follows:

Purificacion Ver was the registered owner of two parcels of land located at La Huerta, Parañaque City, covered by Transfer Certificates of Title (TCTs) No. 31444 (452448) and No. 45926 (452452) of the Registry of Deeds of Parañaque City.^[3]

On 16 April 1979, Purificacion Ver sold the properties to Ricardo C. Silverio, Sr. (Ricardo, Sr.) for P1,036,475.00.^[4] The absolute deed of sale evidencing the transaction was not registered; hence, title remained with the seller, Purificacion Ver.

On 22 February 1990, herein petitioner, The Manila Banking Corporation (TMBC), filed a complaint with the RTC of Makati City for the collection of a sum of money with application for the issuance of a writ of preliminary attachment against Ricardo, Sr. and the Delta Motors Corporation docketed as Civil Case No. 90-513.^[5] On 02 July 1990, by virtue of an Order of Branch 62 of the RTC of Makati City, notice of levy on attachment of real property and writ of attachment were inscribed on TCTs No. 31444 (452448) and No. 45926 (452452).^[6] On 29 March 1993, the trial court rendered its Decision in favor of TMBC and against Ricardo, Sr. and the Delta Motors Corporation.^[7] The Decision was brought up to the Court of Appeals for review.^[8]

In the meantime, on 22 July 1993, herein private respondent, Edmundo S. Silverio (Edmundo), the nephew^[9] of judgment debtor Ricardo, Sr., requested TMBC to have the annotations on the subject properties cancelled as the properties were no longer owned by Ricardo, Sr.^[10] This letter was referred to the Bangko Sentral Ng Pilipinas, TMBC's statutory receiver.^[11] No steps were taken to have the annotations cancelled.^[12] Thus, on 17 December 1993, Edmundo filed in the RTC of Makati City a case for "Cancellation of Notice of Levy on Attachment and Writ of Attachment on Transfer Certificates of Title Nos. 452448 and 452452 of the Office of the Registrar

of Land Titles and Deeds of Parañaque, Metro Manila." In his petition, Edmundo alleged that as early as 11 September 1989, the properties, subject matter of the case, were already sold to him by Ricardo, Sr. As such, these properties could not be levied upon on 02 July 1990 to answer for the debt of Ricardo, Sr. who was no longer the owner thereof. In its Answer with Compulsory Counterclaim, TMBC alleged, among other things, that the sale in favor of Edmundo was void, therefore, the properties levied upon were still owned by Ricardo, Sr., the debtor in Civil Case No. 90-513.

On 02 May 1995, after trial on the merits, the lower court rendered its Decision dismissing Edmundo's petition. TMBC's counterclaim was likewise dismissed for lack of sufficient merit. The trial court held:

After a careful study of the facts proven in the instant case, the Court is compelled to rule that the petitioner is not entitled to a cancellation of the annotations/inscriptions of the notice of levy on attachment and writ of attachment appearing on Transfer Certificates of Title Nos. 45228 31444 and (452452) 45926 of the Registry of Deeds of Parañaque, Metro Manila. The Court is inclined to agree with the contention of oppositor that the supposed deed of sale in favor of herein petitioner is fictitious and simulated and thus void "ab initio. The all-important factor that what appears in the notarial register of the notary public, albeit in loose form, is not a deed of sale but a mere affidavit of a different person " Maria J. Segismundo --, as shown in Exhibit 10-A, is sufficient to prove that no effective, valid and legal sale of the properties in question was executed between the Silverio uncle and nephew. There being no valid sale to him, petitioner has no right at all to ask for the cancellation of the aforementioned annotations.

WHEREFORE, the instant petition is hereby dismissed, with costs against petitioner. Oppositor's counterclaim is ordered dismissed for lack of sufficient merit.^[13]

The Court of Appeals, upon reviewing the case at the instance of Edmundo, reversed and set aside the trial court's ruling. The dispositive portion of its Decision reads:

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET-ASIDE. A new one is rendered ORDERING the Register of Deeds of Parañaque City to cancel the Notice of Levy on Attachment and the Writ of Attachment made on TCT Nos. 452448 and 452452.

Costs against oppositor-appellee.^[14]

The motion for reconsideration filed by TMBC was denied for lack of merit in a Resolution dated 25 February 1998.^[15]

Hence, the present petition, TMBC imputing upon the Court of Appeals grave error in:

I.

. . . HOLDING THAT PETITIONER TMBC CANNOT QUESTION THE

VALIDITY OF THE SALE OF THE PROPERTIES COVERED BY TCT NO. 31444 (452448) AND 45926 (452452); UNDER ARTICLE 1421 OF THE CIVIL CODE, THE DEFENSE OF NULLITY OF A CONTRACT IS AVAILABLE TO THIRD PERSONS WHOSE INTERESTS ARE DIRECTLY AFFECTED.

II.

... ORDERING THE CANCELLATION OF THE NOTICE OF LEVY ON ATTACHMENT AND THE WRIT OF ATTACHMENT MADE ON TCT NO. 452448 AND 452452 SINCE AS AGAINST TWO (2) TRANSACTIONS CONCERNING THE SAME LAND, THE REGISTERED TRANSACTION PREVAILS OVER THE ALLEGED EARLIER UNREGISTERED RIGHT.

III.

... FINDING THAT PETITIONER TMBC IS GUILTY OF BAD FAITH IN FAILING TO MAKE INQUIRIES ON THE RIGHTS OF RICARDO SILVERIO, SR. OVER THE SUBJECT PROPERTIES.

Basic is the rule that only properties belonging to the debtor can be attached, and an attachment and sale of properties belonging to a third party are void.^[16] At the pith of the controversy, therefore, is the issue of ownership of the subject properties at the time of the levy thereof as the right of petitioner TMBC, as creditor, depends on whether such properties were still owned by its debtor, Ricardo, Sr., and not by Edmundo, who is concededly not a debtor of TMBC. If the properties were validly transferred to Edmundo before the levy thereof then cancellation of the annotation is in order. If, however, the sale was absolutely simulated and was entered into between uncle and nephew for the lone reason of removing the properties from the reach of TMBC, then the annotation should stay.

The issue of whether the contract is simulated or real is factual in nature, and the Court eschews factual examination in a petition for review under Rule 45 of the Rules of Court.^[17] This rule, however, is not without exceptions, one of which is when there exists a conflict between the factual findings of the trial court and of the appellate court,^[18] as in the case at bar.

The trial court, in ruling that TMBC was well within its rights to cause the levy of the properties through a writ of preliminary attachment, held that the sale between Ricardo, Sr. and his nephew, Edmundo, ostensibly effected before the levy of the subject properties, was void for being absolutely simulated. The fictitious nature of the sale between the uncle and nephew, according to the trial court, is made evident by the "all-important factor that what appears in the notarial register of the notary public, albeit in loose form, is not a deed of sale but a mere affidavit of a different person - Maria J. Segismundo -- as shown in Exhibit 10-A." The trial court thus concluded that as the sale was void, the properties were still owned by Ricardo, Sr. at the time the levy thereon was effected.

In reversing the trial court, the Court of Appeals reasoned, among other things, that the sale between Ricardo, Sr. and Edmundo was not void and that assuming it to be void, only the parties to the sale and/or their assigns can impugn or assail its validity. Moreover, assailing the validity of a sale for being in fraud of creditors is a

remedy of last resort, i.e., *accion pauliana* can be availed of only after the creditor has had exhausted all the properties of the debtor not exempt from execution.^[19] In herein case, it does not appear that TMBC sought other properties of Ricardo, Sr. other than the subject properties alleged to have been transferred in fraud of creditors. Thus, as the sale of the subject properties was not void, it rightfully transferred ownership to Edmundo who is not a debtor of TMBC. Consequently, TMBC could not legally attach the same under Section 5, Rule 57 of the Rules of Civil Procedure.

The validity of the contract of sale being the focal point in the two court's decision, we begin our analysis into the matter with two veritable presumptions: first, that there was sufficient consideration of the contract^[20] and, second, that it was the result of a fair and regular private transaction.^[21] As we held in *Suntay v. Court of Appeals*,^[22] if shown to hold, these presumptions infer *prima facie* the transaction's validity, except that it must yield to the evidence adduced.

Between the disparate positions of the trial court and the Court of Appeals, we find those of the trial court to be more in accord with the evidence on hand and the laws applicable thereto.

It will be noted that the Court of Appeals never justified its ruling that the lower court erred in finding the subject sale was void. On the other hand, the evidence is overwhelming that the sale dated 11 September 1989 between Ricardo Sr. and Edmundo was absolutely simulated and that it was non-existent prior to its initial appearance on 22 July 1993 when the latter wrote TMBC to cause the cancellation of its lien.

An absolutely simulated contract, under Article 1346 of the Civil Code, is void.^[23] It takes place when the parties do not intend to be bound at all.^[24] The characteristic of simulation is the fact that the apparent contract is not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties.^[25] Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham.^[26] Lacking, therefore, in a fictitious and simulated contract is consent which is essential to a valid and enforceable contract.^[27]

In herein case, badges of fraud and simulation permeate the whole transaction, thus, we cannot but refuse to give the sale validity and legitimacy. Consider the following circumstances:

- 1) There is no proof that the said sale took place prior to the date of the attachment. The notarized deed of sale, which would have served as the best evidence of the transaction, did not materialize until 22 July 1993, or three (3) years after TMBC caused the annotation of its lien on the titles subject matter of the alleged sale. Mr. Jerry Tanchuan, Archivist 1 of the Records Management of the Archives Office (RMAO), testified that the procedure being followed with respect to notarized documents is that the Records Section of the RTC will transmit to the RMAO copies in its possession of the original documents notarized by a notary public together with the Notarial Registry Book.^[28] In herein case, the RTC did not

transmit any book of Atty. Anacleto T. Lacanilao, Jr., the notary public who allegedly notarized the deed of sale between Ricardo, Sr. and Edmundo for the year 1989.^[29] Instead, what the RMAO was in possession of was only a loose leaf entry form for "Document No. 444, Page 90, Book No. 17, Series of 1989" which is an affidavit of one Maria J. Segismundo dated 11 September 1989.^[30] The RMAO did not have available in its file the particular deed of sale acknowledged by Atty. Lacanilao as Document No. 444, Page 90, Book No. 17, Series of 1989.^[31] In *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank*,^[32] as reiterated in two other Tala cases,^[33] the Court rejected a notarized deed that was not reported to the Clerk of Court of the RTC by the notary public who notarized it. The Court held that this fact militates against the use of the document as basis to uphold the petitioner's claim. The same is true in this case. The fact that the assailed deed of sale is not one of those submitted by Atty. Lacanilao to the Clerk of Court of the RTC of Makati City^[34] renders it virtually worthless in the absence of corroboration as to its due execution other than petitioner (now private respondent) Edmundo's self-serving statements. This being the case, Edmundo could simply have presented the witnesses to the transaction (his wife and his lawyer), Atty. Lacanilao or the seller himself, Ricardo Sr., to testify as to the execution of the contract of sale on 11 September 1989. This he did not do, thus lending more credence to the theory of TMBC that the sale was entered into only as an afterthought, hatched to prevent the transfer of the properties to TMBC after the latter had already annotated its lien thereon.

2) Edmundo, to say the least, was very evasive when questioned regarding details of the alleged sale. The deed of sale mentioned Three Million One Hundred Nine Thousand and Four Hundred Twenty-Five pesos (P3,109,425.00) as the contract price paid by hand during the execution of the contract, yet, when asked on cross-examination, Edmundo could not remember if he paid directly to Ricardo, Sr.^[35] Worse, he could not remember where Ricardo, Sr. was at the time of the sale.^[36] Thus:

Q: Now, Mr. Silverio, there is on page 2 marked as Exhibit "D-1" a signature over the typewritten name Edmundo S. Silverio, will you please tell us whose signature is that?

A. My signature.

Q. And again, there is a signature over the typewritten name Ricardo Silverio, vendor, will you please tell us whose signature is that?

A: That is the signature of the seller.

Q: And why do you say or how did you know that this is the signature of Ricardo Silverio?

A: Because the Deed of Absolute Sale was executed and signed in front of me.^[37]

. . .

Q: And Mr. Witness, at the time of the Deed of Sale on September 11, 1989, was Ricardo Silverio in the country at that time?

A: I cannot give the exact presence of him. I cannot remember now.