

## FIRST DIVISION

[ G.R. No. 129382, January 23, 2002 ]

**VICTOR SIASAT AND JESUS ONG, PETITIONERS, VS. COURT OF APPEALS, HON. FELICIDAD Y. NAVARRO-QUIAMBAO, IN HER CAPACITY AS PRESIDING JUDGE, MTC, BR. 65, MAKATI CITY, JOEL FERAREN, IN HIS CAPACITY AS DEPUTY SHERIFF OF THE AFORESAID COURT, AND GENIE DEVELOPMENT CORPORATION, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

Appeal *via* certiorari from the decision of the Court of Appeals<sup>[1]</sup> affirming *in toto* the summary judgment<sup>[2]</sup> of the Regional Trial Court, Makati, that denied the petition for relief from judgment filed by petitioners who were ordered ejected from the premises in question in a decision of the Metropolitan Trial Court, Makati.<sup>[3]</sup>

#### The Facts

The facts, as found by the Court of Appeals, are as follows:

"On 29 November 1991, private respondent Genie Development Corporation (GDC, for brevity) instituted in the Metropolitan Trial Court (MTC) of Makati a case for ejectment against petitioners Victor Siasat and Jesus Ong. This case was docketed as Civil Case No. 42351 and assigned to Branch 65.

"Summons were duly issued and served together with the complaint and annexes upon petitioners Victor Siasat and Jesus Ong on 18 December 1991.

"On 2 January 1992, the reglementary period expired without the petitioners filing an answer. Thus, they were declared in default.

"On 30 January 1992, 28 days after the expiration of the period to answer, Atty. Jeremias Vitan, counsel for petitioners, filed a "Motion to Lift Order of Default." The motion was denied. On 23 March 1992, a decision was rendered by the MTC against petitioners.

"Atty. Jeremias Vitan received the said decision on 31 March 1992. No appeal was filed within the reglementary period resulting in the issuance of a writ of execution.

"Thereafter, Deputy Sheriff Joel Feraren served the writ of execution on the petitioners and the ejectment aspect of the decision was satisfied as evidenced by a Certificate of Turn Over dated 28 April 1992.

"Relative to the monetary aspect of the decision, Sheriff Feraren levied upon several sewing machines and other personal properties and scheduled the auction sale thereof on 5 May 1992.

"The scheduled sale did not materialize due to an order of Executive Judge Job Madayag dated 4 May 1992 in connection with the Petition for Relief from Judgment (of the MTC decision) with preliminary injunction and restraining order filed by petitioners with the Makati Regional Trial Court (RTC for brevity) docketed as Civil Case No. 92-1198.

"In the petition for relief from judgment, petitioners Victor Siasat and Jesus Ong blamed Atty. Jeremias Vitan, their former counsel, for the alleged negligence and bad faith in causing them to be in default and in failing to appeal.

"During the hearing on the petition for injunction, petitioners merely marked in evidence the writ of execution and Notice of Levy and Sale. Private respondent GDC filed its Answer with Opposition to Application for Injunction. It subpoenaed Atty. Jeremias Vitan who testified that the default judgment and the lapse of the period to appeal was due to the own making of the petitioners and not due to his negligence.

"On 19 May 1992, petitioners filed a Motion for the Release of Levied Properties, which was opposed by GDC.

"On 25 May 1992, the RTC issued the writ of preliminary injunction, enjoining Sheriff Feraren from proceeding with the auction sale of the personal properties of Victor Siasat.

"However, on the same day, the RTC issued an order requiring Sheriff Feraren to immediately release to petitioners the levied properties. By virtue of the said order, the sheriff and petitioners forced open the premises of the private respondent and carried into effect the release of the levied properties to petitioners.

"Private respondent GDC filed a petition for certiorari before this Court, docketed as CA-G. R. NSP No. 27999, seeking to annul the orders rendered by the RTC Judge, to wit: (a) granting the issuance of preliminary prohibitory injunction in favor of the petitioners; and, (2) granting petitioners' motion to release the levied properties.

"On 22 December 1992, the 6<sup>th</sup> Division of this Court, through Justice Quirino Abad Santos, Jr., rendered a decision declaring that the "action of the respondent judge in issuing the two (2) assailed orders were in grave abuse of discretion amounting to lack of jurisdiction" and the orders were set aside (CA Decision, pp. 221-231, Record).

"A motion for reconsideration was denied in a resolution dated 6 July