

SECOND DIVISION

[G.R. No. 123893, November 22, 2001]

**LUISITO PADILLA AND PHOENIX-OMEGA DEVELOPMENT AND
MANAGEMENT CORPORATION, PETITIONERS, VS. THE
HONORABLE COURT OF APPEALS AND SUSANA REALTY, INC.,
RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review seeks the reversal of the Court of Appeals decision^[1] in CA-G.R. SP No. 36685, refusing to set aside (1) the order dated November 29, 1994 of the Regional Trial Court of Pasay City, Branch 113, which authorized the issuance of an alias writ of execution in connection with Civil Case No. 7302 filed before said court; and (2) the order dated February 10, 1995, which denied petitioners' motion for reconsideration of the order of November 29, 1994, regarding the annulment of the alias writ of execution and cancellation of the notice of levy and sale dated December 16, 1994, issued pursuant to the implementation of said alias writ.

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

"On June 27, 1983, Susana Realty, Inc. (SRI), by a deed of absolute sale, sold to the Light Rail Transit Authority (LRTA) several parcels of land located in Taft Avenue Extension, San Rafael District, Pasay City. Under paragraph 7 of the deed of sale, SRI reserved to itself the right of first refusal to develop and/or improve the property sold should the LRTA decide to lease and/or assign to any person the right to develop and/or improve the property.

On November 28, 1986, the LRTA and Phoenix Omega Development and Management Corporation (Phoenix Omega) entered into a Commercial Stall Concession Contract authorizing the latter to construct and develop commercial stalls on a 90 sq. m. portion of the property bought from SRI. SRI opposed the agreement as having violated the deed of sale it entered with LRTA. A tripartite agreement was later concluded by the parties, however, whereby SRI agreed to honor the terms of the concession contract and to lease to Phoenix Omega its (SRI's) property (remaining property) adjacent to the 90 sq. m. portion subject of the concession contract.

A contract was thus entered into on July 28, 1988 between Phoenix Omega and SRI with LRTA whereby Phoenix Omega undertook to construct commercial stalls on the 90-sq. m. property in accordance with plans and specifications prepared by the latter, the construction to begin, however, only upon SRI's approval of such plans and specifications. Also

on July 28, 1988, Phoenix Omega, by a deed of assignment, assigned its right and interests over the remaining property unto its sister company, PKA Development and Management Corporation (PKA). Signatories to the deed of assignment were Eduardo Gatchalian in his capacity as President of Phoenix Omega, and Luisito B. Padilla (Padilla), one of the petitioners herein, in his capacity as President and General Manager of PKA. The development of the remaining property having been assigned to PKA, it entered into a contract of lease with SRI likewise on July 28, 1988.

In the meantime, SRI sold part of its remaining property to a third party. An amended contract of lease was thus forged in January 1989 among SRI, PKA and Phoenix Omega, whereby the parties agreed to substitute the already sold portion of SRI's remaining property with 2 parcels of land also belonging to SRI. In this amended contract of lease, PKA was again represented by Padilla in his capacity as its President and General Manager. And Phoenix Omega, which was not a party to the July 28, 1988 lease contract sought to be amended but which was a party, to the amended contract, was also represented by Padilla as Chairman of the Board of Directors of Phoenix Omega.

PKA's building permit was later revoked due to certain violations of the National Building Code (BP 344).

On August 24, 1989, PKA was allowed by the (Department) of Public Works and Highway(s) to resume construction on the leased premises subject to PKA's correction of the defects in the construction to conform to BP 344.

As SRI's approval of PKA's amended plans in the construction was required, PKA transmitted the same to SRI which withheld approval thereof pending PKA's correction of the defects in the construction.

Repeated requests for approval of its amended plans not having been heeded by SRI, PKA filed at the court a quo the action at bar for rescission of contract of lease against SRI, alleging that SRI's refusal to approve the plans without any justifiable reason deprived it of the use of the commercial stalls, thereby incurring losses.

SRI, upon the other hand, claimed that it was PKA which violated the terms of their contract, alleging that PKA failed to complete within six months the construction of the commercial stalls during which period it was not paying any rentals and that PKA undertook the construction without first having its plans approved."^[2] (Underscoring in the original.)

On January 7, 1991, the RTC rendered its decision, as follows:

"WHEREFORE, judgment is hereby rendered:

1. Declaring the rescission and termination of the Contract of Lease, as amended, and the passing in ownership of all the improvements now existing on the premises, and ordering plaintiff to surrender possession of the leased premises to the defendant.

2. Ordering plaintiff to pay to the defendant the following sums of money:

(a) P1,750,000.00 as of April 30, 1990, plus monthly rental of P200,000 per month starting in May, 1990, until plaintiff shall turn over possession of the premises to the defendant, with interest at 1% per month until fully paid;

(b) Moral damages in the amount of P100,000.00;

(c) Exemplary damages in the amount of P100,000.00; and

(d) Attorney's fees in the amount of P150,000.00; and

(e) The cost of suit."^[3]

PKA appealed the RTC decision to the Court of Appeals. On October 2, 1992, the CA affirmed the RTC decision, decreeing as follows:

"WHEREFORE, with MODIFICATIONS that the award of P100,000.00 for moral damages and P100,000.00 for exemplary damages is DELETED from the judgment appealed from, the rest thereof not inconsistent herewith is AFFIRMED. No costs."^[4]

PKA's motion for reconsideration was denied by the CA in a resolution dated March 15, 1993. PKA then filed before this Court a petition for review on certiorari, which we denied in a resolution dated September 27, 1993. We likewise denied PKA's motion for reconsideration in a resolution dated January 17, 1994.

A writ of execution was issued in due course by the RTC, which reads as follows:

"NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid decision, ordering the plaintiff and all persons claiming under it to surrender possession of the premises to the defendant, and that of the goods and chattels of the plaintiff you cause to be made the sum of P1,750,000.00 plus monthly rental of P200,000.00 starting in May, 1990 until plaintiff shall turn over possession of the premises to defendant with interest of 1% per month until fully paid, and the further sum of P150,000.00 as attorney's fees, and the cost of suit, together with your lawful fees for service of this execution all in Philippine currency, and that you tender the same to defendant Susana Realty, Inc. aside from your own fees on this execution and to likewise return this writ to this Court within sixty (60) days from receipt hereof with your proceedings endorsed thereon.

But if sufficient personal property of the plaintiff cannot be found whereof to satisfy the amount of said judgment, you are hereby directed to levy the real property of the said plaintiff and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment."^[5]

Possession of the subject properties was subsequently restored to SRI, but the monetary award was left unsatisfied. Thus, on November 14, 1994, SRI filed a motion for issuance of an alias writ against herein petitioners, based on the trial court's observation that PKA and Phoenix-Omega are one and the same entity. This was granted by the RTC in an order^[6] dated November 29, 1994, which reads:

"WHEREFORE, as prayed for by the defendant-judgment creditor Susana Realty, Inc., let an alias writ of execution issue against the properties, both real and personal, of PKA Development and Management Corporation, of Phoenix-Omega Development Corporation, and of Luisito B. Padilla, for the enforcement of the decision dated January 7, 1991, promulgated by this Court, the same be implemented by deputy sheriff Edilberto A. Santiago." (Underscoring by petitioners.)

The RTC issued an alias writ on the same day pursuant to the above order:

"NOW THEREFORE, you are hereby commanded to cause the execution of the aforesaid decision and that of the goods and chattels of the plaintiff, PKA Development and Management Corporation, Phoenix-Omega, caused to be made the sum of P1,750,000.00 plus monthly rentals of P200,000.00 starting in May, 1990 with interest of 1% per month, until fully paid, and the further sum of P150,000.00 as attorney's fees; P100,000.00 moral damages and the cost of suit, together with your lawful fees for service of this execution all in Philippine currency, and that you tender the same to the defendant SUSANA REALTY, INC., aside from your own fees on this execution and to likewise return this writ to this Court within 60 days from receipt hereof with your proceeding indorsed thereon.

But if sufficient personal properties of the plaintiff cannot be found whereof to satisfy the amount of said judgment, you are directed to levy the real property of the plaintiff, PKA Development and Management Corporation, Phoenix-Omega Development and Management Corporation and Luisito B. Padilla and to sell the same or so much thereof in the manner provided for by law for the satisfaction of the said judgment."^[7]

Alleging that the writ of execution cannot be enforced against them, herein petitioners filed with the RTC on December 15, 1994, an omnibus motion for the reconsideration of the order of November 29, 1994, and for annulment of the alias writ of the same date and cancellation of the notice of levy and sale dated December 16, 1994. Petitioners assailed these orders as confiscatory, since they were never parties to the case filed by PKA against SRI, and they were unable to present evidence on their behalf. The motion was denied on February 10, 1995.

Subsequently, on March 8, 1995, petitioners filed with the Court of Appeals a petition for *certiorari* and prohibition under Rule 65 of the Rules of Court. This petition was also denied; so was petitioners' motion for reconsideration of said denial.

The Court of Appeals agreed with the RTC's finding that there is evidence on record to support the RTC's conclusion that PKA and Phoenix-Omega are one and the same, or that the former is a mere conduit of the latter. It pointed out that petitioner Padilla is both president and general manager of PKA and at the same time