

THIRD DIVISION

[G.R. No. 119577, August 28, 1996]

**FIRST INTEGRATED BONDING & INSURANCE CO., INC.,
PETITIONER, VS. COURT OF APPEALS AND PILIPINAS BANK,
RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner First Integrated Bonding & Insurance Co., Inc. (hereinafter *FIBICI*) seeks the reversal of the decision^[1] of 15 July 1994 and the resolution^[2] of 17 March 1995 of the Court of Appeals in CA-G.R. CV No. 21271. The former affirmed the decision^[3] of 28 November 1986 and the order^[4] of 30 June 1987 of the Regional Trial Court (RTC) of Makati, Branch 137, in Civil Case No. 7957, while the latter denied the motion for the reconsideration of the former.

The Court of Appeals adopted *in toto* the following summary of the factual and procedural backdrop of this case made by the trial court:

This is a suit by plaintiff [Pilipinas Bank] against defendants Olympia International, Inc. (hereafter OII), Encarnacion Tittel, Juergen Tittel and First Integrated Bonding & Insurance Company, Inc. (hereafter FIBICI) to: 1) enjoin the consolidation of ownership of three condominium units in the name of defendants; 2) enjoin defendants from taking possession of, or disposing said condominium units; 3) declare null and void the newly issued owner's duplicate of the certificates of title covering said condominium units; 4) nullify the sheriff's sale of said condominium units in favor of defendant FIBICI; 5) reinstate plaintiff as senior encumbrancer relative to said condominium units by correcting the original notice of levy on execution and making it one on attachment; 6) nullify the cancellation, by the sheriff, of the original notice of levy on execution. The complaint, as amended, likewise prays for attorney's fees, costs, and x x x a writ of preliminary injunction relative to items 1) and 2) above.

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From the evidence presented, the following facts appear to be uncontroverted:

1. Defendant OII is the registered owner of three (3) condominium units, designated as "SF-B4", "SF-C2" and "SF-B2" of the First Midland Offices Condominium Project, covered by CCT Nos. S-1513, S-1514 and S-1515, respectively, of the Registry of Deeds of Makati, Metro Manila (Exhs. C, D

and E)

2. On 11 December 1980, a Notice of Levy on Attachment was inscribed as Entry No. 38384 on said CCTs pursuant to an Order of Attachment issued on 10 December 1980 by the then Court of First Instance of Rizal, Branch XIX, in Civil Case No. 39519, entitled "Olympia Business Machines Co. (Phils) [OBM], Inc. plaintiff versus Olympia International Inc., defendant"; (Cf. Exhs. C-1 [see p. 196-B, record], D-1 and E-1.)

3. On 29 October 1981, a Notice of Levy on Execution was inscribed as Entry No. 49260 (Exhs. C-2 [see p. 196-B, record] and D-2 and E-2) on said CCTs pursuant to a Writ of Execution issued on 28 October 1981 in said Civil Case No. 39519;

4. On 4 November 1981, the enforcement of the above Writ of Execution was stayed, by way of an Order in said Civil Case No. 39519 which reads as follows:

"Defendants filed on 28 October 1981 a verified petition for relief from judgment on the ground of mistake and excusable negligence praying that said petition be given due course and (that) plaintiff be required to answer the same. On 4 November 1981, defendants filed an urgent omnibus motion praying among others, that the instant petition be resolved, (and) that a restraining order issue to stop execution of the judgment in this case and that the writ of attachment be lifted upon its filing of a sufficient counterbond.

"Wherefore, in order to maintain the status quo in the instant proceeding so that the petition for relief may not become moot and academic, Deputy Sheriff Voltaire Cruz is ordered to desist from enforcing or executing further the writ of execution issued by the Court on 28 October 1981. Upon defendants' filing a counterbond in the sum of P2,200,000.00 as security for plaintiff's claim, let an order issue lifting the writ of attachment earlier issued against defendants' properties." (p. 109, Vol. I, Expediente of Civil Case No. 39519)

5. On 25 November 1981, the Court issued an Order (Exh. G) in Civil Case No. 39519, as follows:

"Acting upon defendants 'Urgent Motion for the Approval of Counter-Bond' which was not opposed by plaintiff, and finding said counterbond posted by First Integrated Bonding & Insurance Co., Inc. under JCL (3) Bond No. 00049 to in order, the same is hereby approved. Deputy Sheriff Voltaire Cruz is ordered to immediately lift all levies made by him on defendants' personal as well as real properties by virtue of the writ of attachment previously issued hereof and to likewise return to said defendants any and all properties he may have in his possession. . . ." (p. 197, Vol. I, Expediente of Civil Case No. 39519; italics supplied)

Interestingly and relevantly, the counterbond abovementioned was posted by herein defendant FIBICI; such posting resulted in the lifting of the levies on the properties which defendant FIBICI later on bid for at the sheriff's auction sale on 28 December 1983 (item 16, below).

6. On 1 December 1981, Entry No. 50428 (Exhs. C-3 [see back of page 196-B, Record], D-3 and E-3) was inscribed on the subject CCTs, whereby Entry No. 49260 (item 3, above; Exhs. C-2, D-2 and E-2) was cancelled, with a mention of the abovequoted order of 25 November 1981, as follows:

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It is to be noted that the order of 25 November 1981 (item 4, above) was inscribed two times: on 1 December 1981, on 13 December 1983 (item 15, below).

7. On 3 March 1982, the plaintiff Pilipinas Bank instituted an action with the then Court of First Instance of Rizal, Branch VI, against OII, and/or Tomas Mapa, for the recovery of P6,174,045.00, with a prayer for the issuance of a writ of preliminary attachment, docketed therein as Civil Case No. 45005; (Annex B of Amended Complaint, pp. 98-105, Record.)

8. On 12 March 1982, a Writ of Attachment was issued by the then Court of First Instance of Rizal, Branch VI, in said Civil Case No. 45005 (Annex C of Amended Complaint, pp. 108-109, id.).

9. On 18 March 1982, a Notice of Levy on Execution was inscribed as Entry No. 53789 on said CCTs (Exhs. C-4, D-4 and E-4) pursuant to the "NOTICE OF LEVY ON EXECUTION/ATTACHMENT" executed by Deputy Sheriff Elias T. Marfil, under Civil Case No. 45005 (Annex D of Amended Complaint, pp. 110-111, id.).

It is to be noted that, while the Court (see item 8, above) issued a writ of attachment, what the sheriff prepared and filed was a "notice of levy on execution/attachment," which the Register of Deeds proceeded to annotate [a]s a "NOTICE OF LEVY EXECUTION," which is a clear error. Subsequently, on 12 December 1983, in an apparent effort to correct the mistake, the sheriff filed a "notice of cancellation of levy on execution" (see items 12 and 13, below) thus canceling entry No. 53789, and at the same time filed a "notice of levy on attachment" by virtue of the writ of preliminary attachment (item 8, above) in Civil Case No. 45005 (now 1215);

10. On 23 March 1982, the then Court of First Instance of Rizal, Branch XXI, upon petition of OII, issued an Order (Exh. J, pp. 156-157, id.) in LRC Case No. 2858, directing the issuance of new owner's duplicate copies of CCT Nos. S-1513, S-1514 and S-1515 in lieu of the allegedly lost ones which were declared cancelled and null and void;

11. On 2 September 1983 the above Order (Exh. J) was inscribed on the subject CCTs as Entry No. 9234 and new owner's duplicate copies thereof

were issued to OII (Exhs. C-5 [p. 196-C, Record], D-5 and E-5);

12. On 3 October 1983, a Notice of Levy (on execution) was inscribed as Entry No. 1492 (Exhs. 1-E, 2-E and 3-E) on the subject CCTs pursuant to the Second Alias Writ of Execution issued on 28 September 1983 in Civil Case No. 39519, (p. 572, Expediente of Civil Case No. 39519);

13. On 12 December 1983, a Notice of Cancellation of Levy on Execution (Entry No. 53789, see item 9, above) was inscribed on said CCTs as Entry No. 5322 (Exhs. C-6 [p. 196-C, Record], D-6 and E-6) pursuant to the request of Deputy Sheriff Elias Marfil, the same Sheriff who executed and registered the Notice of Levy on Execution/Attachment (Annex D of Amended Complaint); this is the cancellation which plaintiff seeks to nullify (par. 3, Prayer, p. 85, record).

14. On the same day, 12 December 1983, Deputy Sheriff Marfil filed another "NOTICE OF LEVY ON ATTACHMENT" with the Registry of Deeds pursuant to the order of attachment issued on 12 March 1982 in Civil Case No. 45005, and said Notice was inscribed as Entry No. 5323 on said CCTs (Exhs. C-7 [p. 196-C, Record], D-7 and E-7);

15. On 13 December 1983, Deputy Sheriff Marfil filed anew the Order of 25 November 1981 (Exh. G, see item 5, above) issued in Civil Case No. 39519, which was inscribed on the subject CCTs as Entry No. 5344 (Exhs. C-8, D-8 and E-8);

16. On 28 December 1983, Deputy Sheriff Voltaire Cruz conducted an execution sale of the subject condominium units by virtue of the Second Alias Writ of Execution issued in Civil Case No. 39519, and said units were sold to defendant FIBICI as the highest bidder, for the amount of P1.8 million (Exhs. 6 and 7, pp. 242, 246, Record)

17. On the same date, 28 December 1983, Deputy Sheriff Voltaire Cruz executed a Certificate of Sale (Exh. 7) in favor of defendant FIBICI, although the latter did not tender the full and complete bid price of P1.8 million in cash to him as the bid price was paid in [4] installments, as follows:

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and said Certificate of Sale was inscribed as Entry No. 6317 (Exhs. C-9, D-9 and E-9) on the subject CCTs on 6 January 1984; [5]

The trial court held for Pilipinas Bank. In the main, it rejected FIBICI's defense that it purchased the condominium units at the sheriff's auction sale in good faith, i.e., without knowledge of any defect in the levies made thereon. The trial court reasoned: First, Entry No. 5344, by its terms, cancelled both Entry No. 38384 and Entry No. 49260. As such, FIBICI was obliged to inquire which levies in Civil Case No. 39519 were discharged. Second, while the English of the typist who inscribed Entry No. 50428 was poor, at least it could be deciphered, or a would-be innocent purchaser forewarned, that the levy on attachment was cancelled by the 25 November 1981 Order. Third, as FIBICI itself had posted the counter-bond

mentioned in the 4 November 1981 and 25 November 1981 Orders, it had constructive knowledge that Entry No. 38384 and Entry No. 49260 were going to be cancelled.

The trial court then proceeded to hold that Pilipinas Bank had a preferential right to the condominium units as Entry No. 5322 was void for the following reasons: (1) Sheriff Marfil could not, *motu proprio*, cancel the "levy on execution" as he was not so empowered by § 183, Article XI of the Revised Administrative Code; and (2) under Act No. 496, as amended by P.D. No. 1529, there were only two ways by which liens and encumbrances could be cancelled, viz., either by an instrument of release or court order, both of which were absent in Civil Case No. 45005. It likewise voided the second owner's duplicate copies of the Condominium Certificate of Titles (CCTs) issued in LRC Case No. 2858, as the previous copies were in fact never lost, but had merely been entrusted to Pilipinas Bank as security for Olympia International, Inc.'s (OII) obligations thereto totalling over P9 million.

Nevertheless, the trial court upheld the validity of the auction sale as the real basis therefor, Entry No. 1492, was subsisting; the sheriff who conducted the sale and whose acts were sought to be annulled was not joined as a party defendant; and the irregularities complained of by Pilipinas Bank were of *de minimis* importance.

In light of the above, the trial court disposed of the case as follows:

WHEREFORE, judgment is rendered:

1. Declaring plaintiff Pilipinas Bank as having preferential rights to the condominium units covered by CCT Nos. S-1513, S-1514 and S-1515 of the Registry of Deeds of Makati, in relation to the rights of defendant [FIBICI];
2. Setting aside the Order dated 23 March 1982 issued by the Court of First Instance of Rizal, Branch XXI, in Land Registration Case No. 2858; and declaring null and void the owner's second duplicates of CCT Nos. S-1513, S-1514 and S-1515 issued as a result of said Order;
3. Declaring that Entry No. 50428 and Entry No. 5344 validly cancelled Entry No. 38384 and Entry No. 49260, with regards [sic] to CCT Nos. S-1513, S-1514 and S-1515;
4. Declaring null and void Entry No. 5322 on said CCT Nos. S-1513, S-1514 and S-1515;
5. Ordering that Entry No. 6317 on subject CCTs be amended to read as follows: "pursuant to the Second (2) alias writ of execution dated 28 September 1983 issued under Civil Case No. 39519" instead of "pursuant to an order of execution and the attachment inscribed hereon as PE No. 38384 and 49260 . . .";
6. Lifting the writ of preliminary injunction issued on 6 June 1985; however, any consolidation, taking of possession or disposition by defendant [FIBICO] of the condominium units in question will be subject to the preferential rights of plaintiff Pilipinas Bank;