

TWELFTH DIVISION

[CA-G.R. SP. No. 120785, June 23, 2014]

ROBERTO* PARILLOS, PETITIONER, VS. THE HON. JUDGE AIDA MACAPAGAL OF THE REGIONAL TRIAL COURT OF PARAÑAQUE CITY, BRANCH 195 AND ANTIPUESTO TRIKE FOR LIFE FOUNDATION, RESPONDENTS.

DECISION

ELBINIAS, J.:

For disposition is a Petition for Certiorari^[1] filed under Rule 65 of the Rules of Court. The Petition assails the Order^[2] dated February 28, 2011 issued by Hon. Aida Estrella Macapagal ("respondent Judge" for brevity) of the Regional Trial Court ("respondent court" for brevity) of Parañaque City, Branch 195 in Civil Case No. 10-0326 for "SPECIFIC PERFORMANCE & DAMAGES with Prayer for Issuance of Writ of Replevin"^[3]. The Petition also questions respondent court's Order^[4] dated May 26, 2011, which denied petitioner's eventual Motion for Reconsideration^[5].

The antecedent facts are:

On July 23, 2010^[6], private respondent Antipuesto Trike for Life Foundation, Inc. ("private respondent" for brevity) filed before respondent court a Complaint^[7] for "SPECIFIC PERFORMANCE & DAMAGES with Prayer for Issuance of Writ of Replevin"^[8] against petitioner Roberto Parillos ("petitioner" for brevity).

The rest of the salient facts are those as stated in respondent court's assailed Order^[9] dated February 28, 2011, to wit:

"In its application [for the issuance of a Writ of Replevin^[10]], plaintiff (*private respondent here*) alleges that it is entitled to the repossession of three tricycle units it being the owner of the same and defendant (*petitioner here*) having failed to pay their purchase price and reasonable interests and penalties. Defendant's (*petitioner's*) possession of the tricycle units are unlawful, he (*petitioner*) having failed to pay their purchase prices and their reasonable interests and penalties. Despite repeated demands, defendant (*petitioner*) still refused to surrender them. The subject tricycle units have neither been distrained or taken for any tax assessment or fine pursuant to law, nor seized under an execution or attachment against the properties of the defendant, or otherwise placed in custodia legis, or if so seized, are exempt from seizure or execution. Plaintiff (*private respondent*) is willing and able to post a sufficient bond, in the amount double the value of the properties, to answer for whatever damages that defendant (*petitioner*)

may suffer if and when it is adjudged that plaintiff (*private respondent*) is not entitled to their repossession. The total actual value of the three (3) tricycle units are One Hundred Ninety-Five Thousand Pesos (P195,000.00).

Plaintiff (*private respondent*) presented Ana Fe Antipuesto Cabugao as its witness.

Cabugao testified that she knows plaintiff because she has been its employee since 2001 as Vice President for Operation and Corporate Secretary. She is in charge of its finances and in screening the tricycle drivers for the grant of award. She signs documents and is in charge of sending notices to tricycle drivers. **Plaintiff (*private respondent*) was created to give tricycle drivers units with no down payment and no cash out.** xxx. She knows **defendant (*petitioner*)** because he is **one of those who were given units by plaintiff (*private respondent*) as proven by contracts** xxx. **The obligation of defendant (*petitioner*) is to remit Two Hundred Fifty Pesos (P250.00) per day for three (3) years.** At first, he was able to remit but **starting December 2008 and the whole year of 2009, he was no longer able to do so.** The liability of defendant is One Hundred Eighty-Seven Thousand Three Hundred Forty Pesos (P187,340.00) for Body No. 2, Sixty-Five Thousand Nine Hundred Pesos (P65,900.00) for Body No. 11, and One Hundred Thirty-Four Thousand One Hundred Forty Pesos (P134,140.00) for Body No. 17 or a **total of Three Hundred Seventy-Seven Thousand Four Hundred Ten Pesos (P377,410.00).** The total liability reached the said amount because he still has other obligations with plaintiff (*private respondent*). She referred the matter to his lawyer who sent a demand letter dated March 25, 2010 xxx to defendant (*petitioner*) which the latter refused to sign. **After the demand letter was sent to defendant (*petitioner*), he still did not remit. Hence, this complaint.** xxx **Plaintiff (*private respondent*) wants to recover the subject tricycle units with Body Nos. 2, 11 and 17 over which the former has a right because those units are under its name as proven by the OR/CR** xxx, to wit: O.R. No. 679978622 for body no. 2, certificate of registration no. 7497401-2 for body no. 11 and certificate of registration no. 5904469-4 for body no. 17. xxx."^[11] (*Emphasis supplied*)

On February 28, 2011, respondent court issued its first assailed Order^[12] granting private respondent's application for the issuance of a Writ of Replevin, and directing private respondent to pay the necessary bond in the amount of Three Hundred Ninety Thousand Pesos (Php 390,000.00). The dispositive portion of the Order^[13] stated:

"WHEREFORE, upon the filing and approval of the required bond that will answer for whatever damages defendants may suffer by reason of the issuance of the writ, let a writ of seizure (replevin) issue against the subject vehicle in favor of the plaintiff.

SO ORDERED."^[14] (*Emphasis was made in the original*)

On April 1, 2011, respondent court issued an Order^[15] approving the Surety Bond^[16] posted by private respondent.

On April 25, 2011, respondent court issued a Writ of Replevin^[17] on three (3) tricycle units described as follows: 1.) Body No. 02 with Plate No. UY-4820; 2.) Body No. 011 with Plate No. UY-4915, and; 3.) Body No. 017 with Plate No. UY-2251^[18] ("subject tricycle units" for brevity). The Writ of Replevin^[19] directed the Branch Sheriff to take possession of the subject tricycle units which were in the possession of petitioner.

On May 6, 2011, the Branch Sheriff took possession of the tricycle units by virtue of the Writ of Replevin.^[20]

After petitioner's Motion for Reconsideration^[21] of respondent court's Order^[22] dated February 28, 2011 was denied by respondent court in its other assailed Order^[23] of May 26, 2011, petitioner filed the Petition^[24] at bench, praying as follows:

"WHEREFORE, the Petitioner respectfully prays that this Honorable Court issue [a] Resolution;

- (1) declaring as null and void, for being violative of Petitioner's constitutional rights, the Order by the public respondent dated February 28, 2011, granting the application for the issuance of the writ of replevin *ex parte*, and then setting aside the writ of replevin for being erroneous and issued with grave abuse of discretion amounting to lack or excess of jurisdiction;
- (2) commanding the public and private respondents, and all persons acting on the basis of the assailed Order, to cease from implementing the said Order, and issue a **Status Quo Ante Order** replacing this Petitioner, defendant in the case a quo, to the lawful possession of his three (3) tricycle units, pending the outcome of the civil case for collection of sum of money, subject matter of this case a quo;
- (3) The petitioner herein prays for other just and equitable remedies under the premises, including actual, moral and exemplary damages to indemnify the Petitioner from the sufferings and injuries he suffered from the erroneous issuance and execution of the assailed Writ of Replevin."^[25]
(Italics and emphasis were made in the original)

Petitioner raised the following grounds:

"THE MAIN ISSUES IN THIS PETITION ARE (1) WHETHER OR NOT THE RESPONDENT [COURT] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING AND IMPLEMENTING its Order Granting the Ex Parte Application of Private Respondent ANTRIKE, for a Writ of Replevin, in a case that is NOT mainly for Replevin but for collection of sum of money; and,

(2) Whether or not the consequent issuance of the Writ of Replevin and the manner by which the same was executed by the Branch Sheriff were violative of this Petitioner's fundamental rights to due process and against arbitrary seizure of his properties and as such, Status Quo Ante Order should rightfully issue, ex parte[.]”^[26] (Emphasis was made in the original)

Contrary to petitioner's arguments in his *first assigned ground* is that private respondent's Complaint^[27] involved the recovery of possession of the subject tricycle units from petitioner. Accordingly, pending the resolution of private respondent's Complaint^[28], respondent court had the authority to issue the Writ of Replevin^[29], the Writ being an ancillary remedy involved in private respondent's Complaint^[30].

Petitioner raised the following arguments:

“(16) Private respondent ANTRIKE's *ex parte* Application for the Issuance of a Writ of Replevin was erroneously approved by the public respondent Honorable Judge, with grave abuse of discretion amounting to lack or excess of jurisdiction, lacking in any legal basis whatsoever, for such issuance. It is settled that **a writ of replevin is an ancillary provisional remedy, allowed only in an action, mainly and chiefly for recovery of possession of personalty, under Rule 60 of the 1997 Rules of Civil Procedure.** xxx

xxx

A simple perusal of the Complaint xxx filed by private respondent ANTRIKE at the RTC of Paranaque City on June 23, 2010 would reveal that the case is one mainly 'For specific performance and damages' as captioned by plaintiff, and the allegations in the body of the complaint would reveal that particularly, plaintiff seeks a court order to compel the defendant to pay an alleged monetary obligation under a Contract-To-Sell or a *Boundary-Hulog* Agreement.

xxx For these reasons, the Honorable public respondent Judge should have been warned by the allegations itself of the Plaintiff in the Complaint, that **the principal case is not an action principally for the recovery of personal property at all, but is really one for collection of sum of money or to exact performance.**

xxx

Culled from the allegations of the Plaintiff itself, in the Complaint, it is clear and convincing that the main case **is NOT one principally for recovery of possession of personal property, but for collection of a sum of money. And in the nature of the latter actions, replevin will not lie as an ancillary provisional remedy, to disturb the defendant's peaceful possession prior to a final adjudication, after a full trial of the case.**

Even the complaint itself admits that the possession of defendant was secondary to delivery by the plaintiff, under a Contract To Sell agreement, and defendant was paying a daily-boundary *hulog* as installments, under the *Trike For Life* Program, allegedly livelihood project, of the purported non-stock non-profit Foundation called ANTRIKE wherein defendant was a member. **Whether or not defendant was in default was a matter clearly one for litigation which should have prompted public respondent against such writ.**

In effect, the issued Writ of *replevin*, ***as an ancillary and preliminary remedy, before trial and before a final judgment, then, is a levy on the property of defendant in this case, which may be construed as a levy on execution, albeit without due process of law.***^[31] (*Emphasis, italics, and underscoring were made in the original*)

Negating petitioner's arguments however, is that private respondent's Complaint^[32] was not solely for the collection of sum of money, but also for the recovery of the possession of the subject tricycle units pursuant to Rule 60 of the Rules of Court. This, considering that private respondent also alleged in its Complaint^[33] that it retained the ownership of the subject tricycle units under the Contracts to Sell or "Boundary-Hulog" Agreements^[34] which were entered into between petitioner and private respondent. Private respondent also alleged that it was entitled to recover the possession of the subject tricycle units from petitioner. According to private respondent, this was due to petitioner's failure to fully pay the purchase price of such tricycle units, as well as the interests and penalties, despite repeated demands by private respondent on petitioner, the last demand having been made on March 25, 2010.^[35]

Further showing that private respondent's Complaint^[36] sought the recovery of the possession of the subject tricycle units from petitioner was private respondent's allegation in its Complaint^[37] setting forth the requirements under Sections 1 and 2 of Rule 60 of the Rules of Court regarding the issuance of a Writ of Replevin. Private respondent's Complaint^[38] alleged the following, among others:

"4. xxx **Plaintiff has been granting/awarding motor vehicles (tricycles) to various deserving tricycle drivers** as part of its livelihood program;

5. Under the said program, **deserving tricycle drivers are awarded tricycle unit/s and/or franchise under a boundary-hulog system;**

6. **Under the Boundary-Hulog System, the parties agree that the price of the tricycle unit/s awarded shall be paid by the awardee through installments by way of daily boundary rates. Further, it is also agreed upon that the transfer of the tricycles in favor of the Defendant shall be made only upon full payment of the price of the units and franchises as well as the penalties;**

7. On various dates from 2001 to 2002, **Defendant applied for and was awarded three tricycles** xxx;