

SPS. ALFREDO AND SHIRLEY YAP, PETITIONERS, VS. HON. ZEUS C. ABROGAR, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC BRANCH 150, MAKATI CITY, SHERIFF RENATO C. FLORA, IN HIS OFFICIAL ...

Ponente: PERLAS-BERNABE, E., J.

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PERLAS-BERNABE, E., J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the Order[1] dated August 31, 2000 rendered by the Regional Trial Court (RTC), Branch 150, Makati City, and its Order[2] dated December 28, 2000 denying the motion for reconsideration thereof, for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The assailed Orders denied petitioners' entry of appearance and urgent manifestation anent the propriety and sufficiency of the indemnity bond[3] posted by the private respondent International Exchange Bank in Civil Case No. 98-791.

The instant petition stemmed from the publication of a Notice of Sheriff's Sale[4] dated May 12, 2000 over the interests of one Jimmy T. Go a.k.a. Jaime T. Gaisano in the properties covered by: a) Transfer Certificate of Title (TCT) Nos. 52987, 4621, 62637 of the Registry of Deeds of Mandaluyong; b) Condominium Certificate of Title (CCT) Nos. 11348 and 3630; c) TCT No. 36489 located in Quezon City; and d) TCT Nos. PT-66751, PT-66749, 45229 and 55469 of the Registry of Deeds of Pasig City, which were scheduled to be sold through public auction on June 15, 2000. Upon knowledge thereof, petitioners-spouses Alfredo and Shirley Yap (hereinafter petitioners) filed an Affidavit of Adverse Claim[5] before the Office of the Sheriff seeking to enjoin the said sale on the ground that they are allegedly the owners of the properties covered by TCT Nos. PT-66749, PT-66751, 55469, 45229, 36489, 4621 and 52987, having bought the same from Jimmy Go as evidenced by the Deeds of Absolute Sale dated October 15, 1997[6] and September 22, 1999[7]. Petitioners likewise caused the publication of such claim in the June 8, 2000 copy of the Manila Bulletin[8].

On July 7, 2000, Sheriff Renato C. Flora (hereinafter respondent Sheriff) issued a Notice of Filing of Indemnity Bond[9] stating that the International Exchange Bank (hereinafter private respondent) had posted a P7,550,000.00 indemnity bond thru the Prudential Guarantee & Assurance Inc.[10] on June 29, 2000 and informing petitioners that "(I)n the event that you will choose to sue for damages, you may do so within a period of 120 days from June 29, 2000 x x x. Otherwise, said indemnity bond shall be considered cancelled and of no effect upon the termination of the said period."

On August 18, 2000, petitioners through their counsel, Atty. Gregorio D. Cañeda, Jr., filed before the RTC an "ENTRY OF APPEARANCE And URGENT MANIFESTATION (Anent to the propriety and sufficiency of the Indemnity Bond)" contending, among others, that the "approval of the subject indemnity bond without informing the herein Spouses Alfredo and Shirley Yap of such fact is highly improper and irregular. x x x such hasty approval, in effect, deprived them of their right to question the propriety of the Indemnity Bond, the soundness of the bonding company, as well as the sufficiency of the Indemnity Bond.[11]" and that the value thereof was "insufficient to cover the actual value of the property being levied upon"[12].

After due hearing, the RTC issued the assailed Order dated August 31, 2000, the pertinent portions of which read:

“As regards the entries of appearance and urgent manifestations filed by Atty. Dionisio C. Landero for Jose Hidalgo and Atty. Gregorio D. Cañeda, Jr. for Sps. Yap, the court finds the grounds therein similar to those raised by third-party claimant Achilles Pacquing thru his counsel in a likewise entry of appearance and manifestation which the court denied admission in its order dated August 17, 2000 for being bereft of merit.

Section 16, Rule 39 of the Revised Rules of Court is replete with any requirement that third-party claimants must be notified first before an indemnity bond will be approved by the court.

Moreover, the soundness of the bonding company which issued the bond is determined at the Office of the Clerk of Court which issues the clearances to this effect, It is a requirement sine qua non that before the court approves a bond such clearance is first obtained thus, there is no doubt that Prudential Guarantee and Assurance, Inc. is sound.

Finally, the Court is not persuaded with the third-party claimants' allegations that the amounts of the indemnity bonds posted are insufficient. As evidenced by the deed of absolute sale executed on December 28, 1999 by and between defendant Jimmy T. Go a.k.a. Jaime T. Gaisano and third party claimant Jose B. Hidalgo, the purchase price of the two condominium units covered by Condominium Certificates of Title Nos. 11348 and 3630 of the Registry of Deeds of Manila and Quezon City, respectively, is P5,500,000.00 hence, equal to the amount posted under JCL (16) No. 00455 Bond No. HO-61348-00 of Prudential Guarantee and Assurance, Inc., which the Court considers sufficient.

The same holds true with the amount of the bond posted by plaintiff Ibank in favor of third-party claimants, spouses Alfredo and Shirley Yap. Added together, the purchase price of the seven (7) parcels of land covered by the Deed of Absolute Sale dated October 15, 1997 made and executed by defendant Jimmy T. Go and Alfredo Y. Yap as well as the Deed of Absolute Sale made and executed on September 22, 1999 by defendant Go and Shirley G. Yap, is P7,550,000.00, which is equal to the amount of bond posted by Ibank issued by Prudential Guarantee and Assurance, Inc. under JCL (16) No. 00453 Bond No. HO-61352-000.

The Entries of Appearance and Urgent Manifestions filed by third-party claimants are therefore hereby DENIED ADMISSION.”

Aggrieved by the foregoing disquisition, petitioners filed a motion for reconsideration[13] therefrom which the RTC denied in the Order dated December 28, 2000. In the meantime, a Certificate of Sale[14] dated August 31, 2000 was issued by the respondent Sheriff in favor of the private respondent as the highest bidder in the auction sale of the subject properties held on August 22, 2000 in the aggregate sum of P64,216,700.00.

Unperturbed, petitioners filed this petition anchored on the following issues, to wit:

“I

WAS THERE GRAVE ABUSE OF DISCRETION WHEN THE RESPONDENT COURT FAILED TO NOTIFY THE PETITIONERS BEFORE THE APPROVAL OF THE INDEMNITY BOND?

II

WAS THERE GRAVE ABUSE OF DISCRETION WHEN THE RESPONDENT COURT MADE THE PURCHASE PRICE APPEARING IN THE DEED OF SALE THE BASIS FOR DETERMINING THE VALUE OF THE LAND?”[15]

The petition is bereft of merit.

Section 16, Rule 39 of the Rules of Court provides:

“SEC. 16. Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When a writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.”

“Thus, in one case, it was ruled that when a third-party claim is filed, the sheriff is not bound to proceed with the levy of the property unless the judgment creditor or his agent posts an indemnity bond against the claim. Such bond is meant for the payment of damages the third-party claimant may suffer if the sheriff proceeds with the levy. It serves to shield the sheriff from any personal liability for such damages.”[16]

In the case at bar, it is undisputed that petitioners filed a third party claim over seven (7) of the properties levied to satisfy the private respondent's adjudged money claims in Civil Case No. 98-791 and the latter, in turn, posted a P7,750,000.00 bond as required by law. Petitioners, however, contend that the said bond was improvidently approved considering that they were not notified of the hearing therefor. Such contention deserves scant consideration.

A careful reading of the afore-quoted provision reveals that nowhere does it require that a hearing be conducted before the courts may approve the indemnity bond posted by the judgment creditor or that a notice to this effect be given the third party claimant. Instead, what is merely required is the posting of an indemnity bond “in a sum not less than the value of the property levied on.” As correctly found by the RTC:

“Section 16, Rule 39 of the Revised Rules of Court is replete with any requirement that third-party claimants must be notified first before an indemnity bond will be approved by the court.”[17]

For the same reason, petitioners' claim that the phrase “in case of disagreement as to such value, the same shall be determined by the court x x x” implies the necessity of such notice[18] cannot be given credence. Besides, petitioners' “disagreement” as to the alleged insufficiency of the bond in question was already ventilated in the hearing conducted on August 31, 2000 and through the filing of their motion for reconsideration, albeit the same was not favorably acted upon by the RTC. Hence, considering that petitioners were duly afforded the opportunity to be heard, then, there was no violation of due process in accordance with the “time-honored ruling that lack of opportunity to be heard, and not necessarily absence of prior notice, constitutes violation of due process.[19]”

Neither can the Court sustain petitioners' allegation that the RTC gravely abused its discretion in fixing the amount of the indemnity bond at P7,550,000.00 which is very much less than the aggregate value of the properties sought to be recovered compared to private respondent's bid of P48,475,000.00[20]. It has been ruled that the

“sufficiency of the bond is a matter addressed to the sound discretion of the court which must approve the bond.”[21] In this case, the Court noted that petitioners failed to set forth the purported real value of the subject properties either in their Affidavit of Adverse Claim or in their Entry of Appearance with Urgent Manifestation. Other than their bare allegations, the only evidence they submitted in support thereof prior to the intended auction sale were the deeds of sale. Hence, the court a quo cannot be faulted in relying thereon. On the other hand, the respective Tax Declarations[22] of the levied properties were only presented for the first time before the Court and as such, cannot be considered in petitioners' favor. “Evidence not formally offered before the trial court cannot be considered on appeal, for to consider them at such stage will deny the other parties their right to rebut them.”[23] “Basic considerations of due process impel this rule.”[24]

Nor will the issuance of the Certificate of Sale[25] which reflected the private respondent's winning bid for the subject properties affect the value of the indemnity bond because the same was made after the auction sale which petitioners sought to enjoin and could not have been considered by the RTC at the time of the questioned approval.

Accordingly, absent any evidence to establish that the RTC gravely abused its discretion amounting to lack or excess of jurisdiction in this case, the Court finds no cogent reason to disturb the assailed Orders on the basis of the assigned errors.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Orders dated August 31, 2000 and December 28, 2000 of the RTC, Branch 150, Makati City, are AFFIRMED.

SO ORDERED.

Salazar-Fernando and Abdulwahid, JJ., concur.

[1] Rollo, pp. 17-20.

[2] Rollo, p. 21.

[3] Rollo, pp. 40-43.

[4] Rollo, pp. 29-31.

[5] Rollo, pp. 33-34.

[6] Rollo, pp. 22-25.

[7] Rollo, pp. 26-28.

[8] Rollo, p. 32.

[9] Rollo, p. 37.

[10] Rollo, pp. 38-39.

[1] Rollo, p. 40.

[12] Rollo, p. 41.

[13] Rollo, pp. 48-55.

[14] Rollo, pp. 44-47.

[15] Rollo, p. 8.

[16] David De Guzman vs. Deputy Sheriff Paulo Gatlabayan, et al., A.M. No. P-99-1323, February 20, 2001; Nelda Apostol vs. Junie Jovencio Ipac, Sheriff IV, etc., A.M. No. P-04-1865, July 28, 2005.

[17] Rollo, p. 19.

[18] Rollo, p. 9.

[19] Florencio G. Bernardo vs. The Hon. Special Sixth Division of the Court of Appeals, et al., G.R. No. 106153, July 14, 1997.

[20] Rollo, p. 12.

[21] Thomas Yang vs. The Hon. Marcelino R. Valdez, et al., G.R. No. 73317, August 31, 1989.

[22] Rollo, pp. 66-72.

[23] Renato S. Ong vs. Court of Appeals, G.R. No. 117103, January 21, 1999.

[24] Elaine A. Del Rosario vs. Melinda F. Bonga, G.R. No. 136308, January 23, 2001.

[25] Rollo, pp. 44-47.

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