

**C.K. SAN, DOING BUSINESS UNDER THE NAME AND STYLE
"SAN BUILDERS (BRUNEI)"; PETITIONER, VS. HON. ELIAS
B. ASUNCION, JUDGE OF BRANCH XII OF THE COURT OF FIRST
INSTANCE OF MANILA, ...**

G.R. No. L-38577. July 31, 1975

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari to annul and set aside the orders of respondent court of March 7, 1974 and April 25, 1974 issued in its Civil Case No. 91758, ordering the issuance of writ of replevin for the possession of the vessel "Wave Victor" (alias "San Orient") and later denying reconsideration thereof and passing on other reliefs unfavorably to petitioner.

On May 10, 1974, the court required, without giving due course to the petition, comment of the parties on the petition, granting at the same time, however, the motion for a restraining order. After the comments and the replies thereto, including a supplement to the petition and the comments thereon were filed, this case was set for hearing exclusively as regards the petition for preliminary injunction. On the day of the hearing, October 2, 1974, the court having received by then separate requests of Juan L. Velez and Carlos L. San for authority to purchase the vessel, the parties exchanged views on the proposition to sell the same at public auction, and so the Court issued the following resolution:

"G.R. No. L-38577 (C. K. San, etc. vs. Hon. Elias B. Asuncion, etc., et al.) — When this case was called for hearing this morning the following appeared and argued: Atty. Eleazer B. Reyes, for petitioner, and Attys. Ciriaco Lopez, Jr., Juan G. Atencia, Antonio P. Fortuno and Domingo de Lara, for respondents. After hearing the respective views of all counsels, the Court resolved to GRANT the parties a period often (10) days from today within which to file a joint manifestation agreeing to the sale at public auction at the earliest possible date of the subject vessel WAVE VICTOR or SAN ORIENT, either by open or sealed bidding, as the parties may agree, for a price of not less than One Million Nine Hundred Thousand Pesos (P1,900,000.00), the cash proceeds to be deposited with the court or in a bank to be agreed by the parties to await judgment in Civil Case No. 91578 of the Court of First Instance of Manila on the merits, and to consider the incident of the preliminary injunction in this case submitted for resolution upon the filing of such joint manifestation." (Page 438, Record.)

According to the manifestation filed by petitioner on October 12, 1974, respondent Juan G. Atencia had asked for time to determine the veracity of information he had regarding a bill of sale covering the vessel in controversy executed by respondent Ellis H.R. Davies in favor of Tai Kien Industry Co. Ltd., hence petitioner was offering no objection to the defendant of the public sale contemplated in the Court's resolution of October 2, 1974.

On October 28, 1974, respondents Marine Technical Service, Ellis H. R. Davis and Juan G. Atencia filed the following:

"MANIFESTATION AND MOTION

Respondents Marine Technical Services, Ellis H. R. Davies and Juan G. Atencia, through undersigned counsel, respectfully manifest and move that —

1. On October 26, 1974, undersigned counsel succeeded in having a telephone conversation with Ellis H. R. Davies who is presently staying at 59 Nga Tstn Wai Road, Kowloon, Hongkong, c/o Miss Lily Tang, and Ellis H. R. Davies confirmed that he had already sold to Tai Kien Industry Company, Ltd. all the rights and interests over S/T Wave Victor pertaining to him and to Marine Technical Services. Undersigned counsel also contacted Atty. Francisco P. Acosta who confirmed that the Bill of Sale, Annex 'B' to the Urgent Motion and Manifestation of Tai Kien Industry Company, Ltd., was signed before him by Ellis H. R. Davies and that he notarized said document on February 14, 1974 in Manila, Philippines:

2. Under the present situation, it appears that Tai Kien Industry Corporation, Ltd. has already acquired all the rights and interests of Marine Technical Services and Ellis H. R. Davies over S/T Wave Victor or San Orient.

WHEREFORE, it is respectfully prayed that in view of the foregoing development, herein respondents be excused from entering into an agreement with the other parties to the case, concerning the projected sale of S.T Wave Victor or San Orient." (Page 520, Record.)

In the meantime, on October 4, 1974, Tai Kien Industry Co. Ltd. filed with the court a motion to intervene which it reiterated in another motion dated November 5, 1974. The Court required comment on this motion. In its comment of November 12, 1974, petitioner contended thus:

"xxx xxx xxx

3. The purported rights, title, and interest on which Tai Kien Industry bases its motion to intervene derive from an act in bad faith of respondent Davies, calculated to deprive petitioner of its property by mockery of the judicial process in that:

a) While respondent Davies, in his Answer (Annex "EE" of the Petition), alleged no knowledge or information as to the ownership of the subject vessel, respondent Marine Technical Services, of which respondent Davies is the alleged managing partner, was subsequently allowed to intervene on the basis of its allegation of ownership over the vessel. Finding a purported "prima facie showing" of such alleged ownership, respondent Judge granted a writ of possession and authority to sell in favor of Marine Technical Services. Inconsistently, Tai Kien Industry Co. Ltd. now seeks to intervene on the basis of a Bill of Sale executed by respondent Davies in his personal capacity. This confusion of pretended title clearly confirms petitioner's claim that Marine Technical Services does not exist and that respondent Davies has clothed himself with brazen falsities, if not perjuries.

b) While the subject vessel was sold by respondent Davies at the time when respondent Marine Technical Services' petition for replevin was still being resolved in the lower court and even months before respondent Judge issued the authority to sell, the sale was kept under wraps during the proceedings. It was only after the instant certiorari seeking review of the Authority To Sell was filed that Tai Kien Industry Co. revealed the transaction. Evidently, if Tai Kien Industry Co. is allowed by the Honorable Court to intervene and 'to tow the subject vessel out of Philippine waters as prayed for, respondent Davies would have achieved precisely what this certiorari has sought to prevent.

c) Contrary to the Order of respondent Judge (Annex 'YY' of the Petition) that the proceeds of sale shall be deposited in a local bank in the name of the Clerk of Court, subject to whoever among the parties may be adjudged as entitled thereto, respondent Davies received the proceeds in full by letter of credit drawn against a bank in England and illegally departed from the Philippines with no intention of returning. Hence, through his scheme, respondent Davies had enriched himself at the expense of petitioner. Allowing Tai Kien Industry Co. to intervene would virtually amount to giving due course to respondent Davies' bad faith. In fact, instead of

depositing the US \$633,450.00 in court, Tai Kien Industry Co. Ltd. merely proposes to post a bond of Two Million Pesos (P2,000,000.00).

4. The sale in bad faith of the subject vessel by respondent Davies to Tai Kien Industry Co. Ltd. reinforces the grounds adduced by petitioner in the instant petition for certiorari" (Pages 487-488, Record.)

On their part, respondents The Bradman Co., Inc., John M. Bradley and Lydia Bradley, commented as follows:

"1. For clarification Marine Technical Services (who became a party in the lower court as intervenor) should be required to inform this Honorable Court whether in the light of the 'Manifestation and Motion' dated October 28, 1974 and 'Manifestation and Motion' dated November 8, 1971, said party now desires to withdraw from the case. If in the negative, Marine Technical Services should explain why it still wants to remain a party despite its lack of any legal interest on the 'Wave Victor' as incontrovertibly shown by its sale from Ellis H. R. Davies to Tai Kien Industry Company, Ltd., without the intervention or participation of Marine Technical Services.

"2. Insofar as Ellis H. R. Davies is concerned, the records will show that on the strength of his representations Marine Technical Services was allowed to intervene by the lower court. On the other hand, from the documents submitted by Tai Kien Industry Company. Ltd., it appears that actually the sale was made by Ellis H. R. Davies as purported owner of the 'Wave Victor'. Thus, a case of perjury or at least contempt is involved concerning the representations made by Ellis H. R. Davies. For this reason, appropriate punitive action should be taken against him.

3. More important is resolving the question as to whether or not the acquisition of all the alleged rights and interests of Ellis H. R. Davies over the 'Wave Victor' or 'San Orient' by Tai Kien Industry Company. Ltd. is legal and should be sanctioned by this Honorable Court. We respectfully contend that the transfer to Tai Kien Industry Company, Ltd. is null and void. For, under Art. 1459 of the Civil Code of the Philippines, it is provided that:

'ART. 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.'

As the vessel sold is the subject of litigation in Civil Case No. 91758. CFI, Manila, the vessel is deemed temporarily beyond the commerce of men and could not therefore, be the object of a sale without notice to all the conflicting claimants and express approval by the lower court hearing the replevin action. Then, based on the records, no less than Ellis H.R. Davies had represented under oath that the vessel belonged to Marine Technical Services and, therefore, he is estopped from claiming otherwise. Hence, Davies did not have a right to transfer ownership over the vessel; in legal contemplation there was no valid sale from Davies to Tai Kien Industry Company, Ltd. Based on this consideration alone this Honorable Court must rule that Tai Kien Industry Company, Ltd. has not validly acquired ownership of the vessel and that the transfer to it is null and void ab initio" (Pp. 493-495, Rec.)

The comment of respondents Top Service, Inc. and Severino de la Cruz averred:

'That the purported sale in favor of the Tai Kien Industry Company, Ltd., executed by Ellis H. R. Davies over the vessel 'Wave Victor' or 'San Orient' is null and void, due to the following reasons:

- (a) That the vessel is under 'Custodia Legis';

- (b) The sale was without judicial authority either from the Court of First Instance or Supreme Court;

- (c) That the vendor, Ellis H. R. Davies is not the owner and even does not claim ownership of the vessel;

- (d) That the consideration of the sale was given to Eliis H. R. Davies who is not the owner thereof (Page 499, Record.)

Considering all the foregoing developments, the Court set this case again for hearing on March 5, 1974, on which date, We resolved:

"L-38577 (C. K. San, etc., et al. vs. Hon. Elias B. Asuncion, etc., et al.). Considering the pleadings filed in this case, the Court Resolved: (a) to NOTE: (1) the comment of counsel for respondents, The Bradman Co., Inc., John M. Bradley and Lydia Bradley on the manifestation of Marine Technical Services, et al.; (2) the comment of counsel for respondents Top Service, Inc. and Severino de la Cruz on the aforesaid manifestation; and (3) the notice of change of address of counsel for petitioners to 5th Floor, RFC Building, 122 Gamboa St. Legaspi Village, Makati, Rizal with request that henceforth copies of all pleadings and court processes in this case be served on them at said address; and (b) to SET for hearing all the pending incidents in this case on Wednesday, March 5, 1975 at 10:30 in the morning" (Page 547, Record.).

On April 11, 1974, the parties, other than Marine Technical Service, Ellis H. R. Davies and Juan G. Atencia, filed the following:

"MOTION FOR JUDGMENT BASED
ON COMPROMISE

Petitioner C. K. San, and Brunei Shipping & Shipbuilding Ltd., S. A., and San Timber, Ltd., assisted by their counsel, and respondents Top Service, Inc., Severino de la Cruz, the Bradman Co., Inc., John M. Bradley and Lydia Bradley, assisted by their respective counsel, respectfully manifest that they have amicably settled their dispute under the following terms and conditions, to wit:

1. This compromise settlement shall govern the following cases, to wit:

a) G. R. No. L-28577 entitled 'C.K. San, etc. vs. Hon. Elias B. Asuncion, etc., et al.' before the Honorable Supreme Court;

b) Civil Case No. 91756 entitled: 'Brunei Shipping & Shipbuilding Ltd., S.A. vs. Ellis H. R. Davies, et al.' before the Court of First Instance of Manila;

c) Civil Case No. 91757 entitled 'San Timbers, Ltd. vs. Ellis H. R. Davies, et al.' before the Court of First Instance of Manila;

d) Civil Case No. 91758 entitled: 'C. K. San, doing business under the name and style 'San Builders (Brunei), vs. Ellis H. R. Davies, et al.' before the Court of First Instance of Manila.

2. The title, right and ownership of Severino de la Cruz and/or Top Service, Inc. to the following described vessels by virtue of the levy and execution sale in their favor pursuant to the judgment rendered by the Court of First Instance of Manila (Branch XL) in Civil Case No. 85868 are ail hereby confirmed and respected by the parties:

a)

Name of Vessel

- S/T 'San Orient' or S/T 'Wave Victor' (Scrap)

Gross Tonnaae -8,128

Net -4,597

Length Overall - 473 ft. 8 inches

Breath - 64 ft. 3 inches

Depth - 35 ft. 8 inches

Hull - All Steel

Year Built - 1946

Place Built - London

b) ONE (1) TUGBOAT Name "Man Soon', tonnage 598.61

Nombre Actual del Burque - MAN SOON

Letras de Radio2 - HO-561

Bruto - 598-61

Tonelage:

Moto: -15.09

Clase de Nave - Vapor

Material de Casco - Acero

Modelo -1940

Puerto de Matricula - Panama

c) Name of Boat - 'SAN SARAWAK'

Description of Boat - Motor Ship Single Screw

Length - 72 feet

Breadth - 20 feet

Depth - 9 feet

Gross Tonnage - 79.09

d) Name of Boat - 'SAN MALACCA'

Description of Boat - Dumb Barge

Length - 79 feet 9 inches

Breadth - 27 feet 9 inches

Depth - 9 feet 0 inches

Tonnage - 149.14

e) Name of Boat - 'SAN SELANGOR'

Description of Boat - Dumb Barge

Length - 80 feet

Breadth - 28 feet

Depth - 9 feet

Tonnage - 155.88

f) Name of Boat - 'SANKEDAH'

Description of Boat - Dumb Barge

Length - 80 feet

Breadth - 28 feet

Depth - 9 feet

Tonnage - 151.81

g) Name of Boat - 'SANPENANG'

Description of Boat - Dumb Barge

Length - 80 feet

Breadth - 29 feet

Depth - 9 feet

Tonnage (Net) -153.82

h) Name of Boat - 'SANJOHORE'

Description of Boat - Dumb Barge

Length - 80 feet

Breadth - 28 feet

Depth - 9 feet

Tonnage - 151.81

Such confirmation of title by The Bradman Co., Inc. is deemed effective only upon full payment to it by Severino

dela Cruz and Top Service, Inc. of the The Bradman Co., Inc.'s claims or demands mentioned in paragraph 5 hereof; otherwise. The Bradman Co., Inc. shall remain a co-owner of the vessels pursuant to the levy on execution in Civil Case No. 85868 (Branch XL), CFI, Manila.

"3. The expenses of securing possession and registration of the above vessels, as well as all costs, claims and liabilities arising out of, or in connection with, the ownership thereof, shall be borne solely by Severino dela Cruz and Top Service, Inc. shall hold Brunei Shipping & Shipbuilding, Ltd., San Timber, Ltd. and C. K. San free and harmless from any claim or lien that may be asserted by third parties.

4. Within a period of ninety (90) days counted from the date of approval of this compromise settlement, or upon release of their loan, which ever occurs first, Top Service, Inc. and Severino dela Cruz shall jointly and severally, pay to C. K. San, Brunei Shipping & Shipbuilding Ltd.. S. A., and San Timber, Ltd. the total amount of ONE MILLION NINE HUNDRED THOUSAND PESOS (P1,900,000.00), Philippine Currency, which amount shall be remitted to them in U.S. Dollars thru their counsel in Singapore, Mr. Francis T. Seow with address at Suites 1001-4, Straits Trading Building, 9 Battery Road, Singapore, 1. For that purpose, the amount of P1.9 million shall be delivered to the Law Firm of Angara, Abello, Concepcion, Regala & Cruz which shall, on behalf of all the parties, apply with the Central Bank for the license to buy the requisite foreign exchange.

As a security for the payment of the aforesaid P1.9 Million, a first lien is hereby created and imposed on all the vessels described in paragraph 2 hereof. However, the vessel S/T 'San Orient' or S/T 'Wave Victor' subject matter of the instant suit, shall be immediately disposed of by Severino dela Cruz and Top Service, Inc. but with the condition that Severino dela Cruz and Top Service, Inc. hereby agree that, for as long as the P1.9 Million, or any portion thereof, remains unpaid, they shall hold in trust for C. K. San, Brunei Shipping & Shipbuilding, Ltd., S.A. and San Timber Ltd., any and ail proceeds from the sale thereof, whether as a vessel, or as a scrap and that they shall promptly inform the Law Firm of Angara, Abello, Concepcion, Regala & Cruz of any disposal of such vessel and the whereabouts of the proceeds of the sale.

"5. Severino dela Cruz and Top Service, Inc. shall negotiate a settlement with the Bradman Co., Inc. for the latter's demands or claims.

6. Upon approval of this compromise settlement. Severino dela Cruz and Top Service, Inc. shall be entitled to the issuance of an order allowing them to take possession of all the vessels identified in paragraph 2 hereof, including the vessel S/T 'San Orient' or 'Wave Victor', subject matter of the instant suit, and the disposition of said vessel subject to the provisions of paragraph 4 hereof.

7. In consideration of the reciprocal rights and obligations of the parties under this compromise settlement, the parties hereby reciprocally waive, quitclaim, remiss and abandon all claims and demands, of whatever kind and nature, which they have or might have in connection with, or arising out of, the title, possession, and use of the vessels described in paragraph 2 hereof and services rendered, as well as provisions made, on account of said vessels, including but not limited to any and all causes of action asserted in the pleadings, the intention of the parties being to completely and absolutely free each other from any and all such liabilities.

8. This compromise settlement shall be submitted for approval and judgment to the Honorable Supreme Court in G. R. No. L-28577 entitled, 'C. K. San, etc. vs. Hon. Elias B. Asuncion, etc.. et al.' Any and all obligations of the parties shall, if not voluntarily complied with, be enforced by an appropriate writ of execution to be issued in Civil Case No. 91758 by the Court of First Instance of Manila.

9. Each and all of the parties hereby represent and warrant that they have full power and authority to execute and deliver this compromise agreement and that the Law Firm of Angara, Abello, Concepcion, Regala & Cruz shall

sign this compromise agreement on behalf of C. K. San, Brunei Shipping & Shipbuilding, Ltd. S.A. and San Timber Ltd. pursuant to the special power of attorney they executed, copies of which are attached hereto and made parts hereof as Annexes 'A', 4B and 'C' respectively.

WHEREFORE, the parties respectfully pray of this Honorable Court to approve the foregoing compromise settlement and remand this case to the respondent Court for the enforcement of the compromise agreement as approved by this Honorable Court." (Pages 598-604, Record.)

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered approving the above-quoted compromise settlement, and the parties are enjoined to comply with its terms. The Court orders, as prayed for by the parties thereto, the remand of this case to respondent trial court for the implementation of this decision. In view of their manifestations above-quoted, this case is deemed moot and academic in so far as respondents Marine Technical Service, Inc., Ellis H. R. Davies and Juan G. Atencia are concerned. For the reasons advanced in the oppositions above-quoted to the motion of Tai Kien Industry Co., Ltd. to intervene of October 3, 1974 and November 5, 1974 as well as its urgent motion of December 2, 1974 asking that it be allowed to intervene in the case below, said motions are denied. No costs.

Makalintal, C.J., Fernando (Chairman), Aquino, and Concepcion, Jr., JJ., concur.

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