

BA FINANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS AND WILSON SIY, RESPONDENTS.

G.R. No. 107345. January 27, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals[1] in CA-G.R. CV No. 28714 dated 23 June 1992 affirming the order of the trial court dated 22 January 1986 in Civil Case No. 144269, BA Finance Corporation v. Yanky Hardware Co., Inc., for replevin with damages or, in the alternative, for payment of P559,565.00 plus interest.

On 15 June 1976, Yanky Hardware Company, Inc. (YANKY, for brevity), applied for and was granted by BA Finance Corporation a credit accommodation in the form of a discounting line under which YANKY could from time to time discount with and assign its trade receivables to petitioner. To secure the payment of all its loans, YANKY executed a chattel mortgage over its stock-in-trade or merchandise inventory in favor of petitioner. To guarantee those loans, Antonio Ngui Yek Siem, President and General Manager of YANKY, executed a continuing suretyship agreement in favor of petitioner.

On various occasions, YANKY drew on that credit accommodation and executed in favor of petitioner separate deeds of assignment.

In time, petitioner demanded from YANKY the payment of its accumulated obligations which, as of 20 October 1981, had allegedly reached the amount of P559,565.00, or the delivery of the mortgaged chattels for purposes of extrajudicial foreclosure.

On 21 October 1981, petitioner filed with the then Court of First Instance a complaint against YANKY and Antonio Ngui Yek Siem for replevin with damages or, in the alternative, payment of the amount of P559,565.00 plus interest. Petitioner contended that it had the right to take possession of the chattels described in the chattel mortgage or to be paid the total amount of the loans plus interest since YANKY had breached the conditions of the chattel mortgage by failing to pay the amounts secured thereby.

On 26 October 1981, the trial court ordered the seizure of all the merchandise and other personal properties described in the chattel mortgage. The sheriff accordingly seized chattels found in the premises of YANKY and later transferred them to petitioner's warehouse. He then issued a sheriff's receipt dated 26 October 1981 containing a list of the properties seized and a sheriff's return dated 4 November 1981. But on 5 November 1981, the sheriff filed another report which, according to him, superseded the earlier list, stating therein that this list was arrived at after he and some of petitioner's employees had conducted a reinventory of the replevied chattels in petitioner's warehouse.

YANKY and Antonio Ngui Yek Siem filed an answer claiming that since not all of their obligations were due, petitioner had as yet no cause of action against them.

Meanwhile, YANKY came into deep financial difficulties. Rizal Commercial Banking Corporation (RCBC), China Banking Corporation (China Bank) and International Corporate Bank (Interbank) intervened in the replevin case as creditors of YANKY. During the pre-trial conference on 27 February 1984, RCBC moved for the sale at public auction of the replevied chattels in order to prevent further depreciation of their value. Petitioner and the rest of the intervenors agreed with the motion. On the same day, the trial court accordingly issued an order granting the motion for the sale of the mortgaged properties at public auction and directing that the proceeds of the sale be deposited in a government bank.

In compliance with the aforesaid order, the sheriff issued a Notice of Sheriff's Sale dated 3 April 1984 announcing the public auction sale on 24 April 1984 of the chattels included in the list of mortgaged properties mentioned in the notice.

In the auction sale, Lito Ramos was declared the highest bidder. Unfortunately, he failed to remit the amount of his bid. As a consequence of his failure, another auction sale had to be conducted and rescheduled on various dates. Eventually, a public auction sale was held on 31 May 1984 at petitioner's warehouse, as evidenced by a Notice of Sheriff's Sale dated 21 May 1984 of "Assorted Hardware for Cash." The highest bidder was respondent Wilson Siy with a bid price of P60,000.00. After Wilson Siy tendered the amount of his bid, a Certificate of Sale was issued.

Petitioner then filed an Urgent Motion to Cancel Auction Sale stating that it was not given an opportunity to participate in the sale and was deprived of its right to bid considering that the winning bid of P60,000.00 was insufficient compared to the proposed bid of plaintiff which was willing to go up to P150,000.00; that since the other bidders criticized its representative for not bringing cash for the public bidding, it was forced to put together P150,000.00 in bills, and since the counting of the bills took some time, its representative arrived late for the bidding.

On 1 June 1984, the sheriff submitted a Sheriff's Report which detailed the factual antecedents of the auction sale. The trial court then cancelled the auction sale.

On 6 June 1984, private respondent Siy, as the highest bidder in the 31 May 1984 auction sale, filed his motion for reconsideration on the following grounds: (a) Petitioner was afforded full opportunity to participate in the 31 May 1984 public auction sale; (b) The sale of the properties in the public auction was consummated, thereby vesting legal title to the movant as highest bidder who should not be deprived of such properties without due process of law; and, (c) The bid price of movant, contrary to the allegation of petitioner, was not shockingly low and hence was not a ground to nullify the public auction sale.

In an order dated 20 June 1984, the trial court granted the motion for reconsideration and modified its 1 June 1984 order holding that respondent Siy agreed to put up a surety bond subject to approval by the court to justify the release to him of the properties purchased at auction.

Respondent Siy submitted a surety bond of P140,000.00 after which, on 28 June 1984, the sheriff was directed to deliver to Siy the chattels thus sold.

Conformably with the above order, the sheriff delivered assorted hardware materials to Siy and submitted a Sheriff's Report on the properties actually delivered. However, the sheriff subsequently informed the court that what he delivered to Siy were substantially less than those listed in the Notice of Sheriff's Sale dated 3 April 1984.

On 24 July 1984, private respondent filed his motion to compel delivery of certain chattels sold in the auction sale but not delivered by petitioner to him. In an order dated 27 July 1984, the trial court directed petitioner to produce and/or account for the undelivered properties.

On 2 August 1984, petitioner manifested that the alleged undelivered chattels were those listed in the inventory attached to the Sheriff's Report dated 5 November 1981, which list was not furnished petitioner prior to the auction sale.

The trial court then appointed a commissioner to look into the matter. The first commissioner rendered a report stating that petitioner should produce or account for certain undelivered personal properties. Petitioner and the intervenor banks opposed this report and the court disapproved it. A second commissioner designated by the trial court similarly reported that not all of the properties mortgaged and sold at the public auction had been delivered to Siy as highest bidder. This second report was approved by the trial court in an order dated 11 June 1985.

Petitioner moved to reconsider the foregoing order, but without success. On 24 September 1985, the trial court issued an order requiring petitioner to deliver the alleged missing chattels or their value.

This time, Siy filed a motion for reconsideration contending that because petitioner was depository of the chattels, it should be made liable to him for damages for having failed to deliver the chattels listed in the 27 October 1981 inventory.

On 22 January 1986, the trial court issued an order amending and/or modifying the order of 24 September 1985, and directed petitioner to deliver to Siy the properties appearing in the inventory attached to the Sheriff's Report of 5 November 1981 minus the properties already delivered on 28 June 1984, and if this be not possible, to pay the equivalent amount thereof. To determine the monetary value of these properties, the trial court appointed a committee chaired by Atty. Francisco Sanchez III, its Legal Researcher, and one representative each from the petitioner and the highest bidder, as members, to canvass the current price of the subject properties and to make a report thereon.

Twenty-three days after its receipt of the aforementioned order, petitioner filed its notice of appeal and a record on appeal which the trial court disapproved due to late filing. After denial of its motion for reconsideration, petitioner went to the Court of Appeals on a Petition for Mandamus and Certiorari. But the appellate court dismissed the petition because the notice of appeal was filed late. Hence, petitioner filed a petition for review on certiorari with this Court.

On 16 October 1989, in *BA Finance Corporation v. Court of Appeals*,^[2] we directed the trial court to approve the notice of appeal and record on appeal filed by petitioner because the same was actually filed within the reglementary period of thirty (30) days, the case being regarded as one falling within the term "other cases wherein multiple appeals are allowed," where the period to appeal is not fifteen (15) days but thirty (30) days, in accordance with Sec. 19, B.P. 129.

On 23 June 1992, the Court of Appeals rendered its decision on the appeal from the order in Civil Case No. 144269 which directed petitioner to deliver to respondent Siy certain properties appearing in the inventory attached to the Sheriff's Report of 5 November 1981. The appellate court considered the first and second errors assigned by petitioner as moot and academic. In these assigned errors, petitioner questioned the 20 June 1984 order of the trial which, in effect, permitted the intervention of respondent Siy by entertaining his motion for reconsideration and allowing him to put up a surety bond to justify the release of the properties to him. The Court of Appeals held that petitioner could no longer appeal the 20 June 1984 order because it was already way beyond the reglementary period to appeal.

In the third assigned error of petitioner, it argued that what should have been delivered to respondent Siy was the list of merchandise inventory appearing in the Sheriff's Receipt of 26 October 1981 and not the list in the inventory report attached to the Sheriff's Report of 5 November 1981. In the order of the trial court of 22 January

1986, the Court of Appeals found that the Sheriff's Receipt of 26 October 1981, which petitioner insists to be the correct list, had been superseded by the reinventoried list attached to the Sheriff's Report of 5 November 1981. On 28 September 1992, petitioner's motion for reconsideration of the decision was denied.

Hence, this petition imputing error to the Court of Appeals in not allowing petitioner's appeal from the order of the trial court of 20 June 1984 which permitted the intervention of respondent Siy and ordered the release of the properties purchased by the latter at the auction sale, and in affirming the order of the trial court of 22 January 1986 directing petitioner to deliver to respondent Siy as highest bidder the properties appearing in the inventory attached to the Sheriff's Report of 5 November 1981.

There is no merit in the petition. In its first assigned error, petitioner submits that the order of 20 June 1984 was merely interlocutory hence unappealable, and that in appealing the final order of 22 January 1986, it should be allowed to question the order of 20 June 1984 because its reversal will necessarily render null and void the final order of 22 January 1986. Petitioner also argues that the trial court erred in allowing the intervention of respondent Siy as the legal requisites for intervention were not complied with, and in not setting aside the auction sale of 31 May 1984 which involved many irregularities, to wit: (a) The price of P60,000.00 realized in the bidding was grossly inadequate; (b) There was undue haste in the conduct of the sale; and, (c) The deputy sheriff conducted the sale in the absence of petitioner or its duly authorized representative.

In *BA Finance Corporation v. Court of Appeals*, supra, which involved the same parties, this Court noted that the principal case filed with the trial court by petitioner against YANKY was for replevin or, in the alternative, for collection of the amount of the loans, plus interest owed by YANKY. This Court likewise noted that the disputed order of 22 January 1986, subject of the present appeal, only directed petitioner to turn over to respondent Siy properties which had remained undelivered to the latter as highest bidder, a matter which was merely an incident of the principal case. However, this Court recognized therein that the order of the trial court was already final so far as it concerned the dispute between petitioner and respondent Siy because it was to resolve the right of the latter to receive the disputed properties and petitioner's obligation to deliver those properties to Siy. This is based on the settled rule that only a final order or judgment on the merits may be the subject of an appeal. A final order is defined as one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined; on the other hand, an order is interlocutory if it does not dispose of a case completely, but leaves something more to be done upon its merits.[3]

Hence, the argument of petitioner that it can still question the order of 20 June 1984 while appealing the final order of 22 January 1986 is untenable. It may be true that the 20 June 1984 order allowed the intervention of respondent Siy and reversed the court's previous order setting aside the auction sale by allowing him to put up a surety bond to justify the release of the properties to him. However, upon submission by Siy of a surety bond with the court, the latter issued a final order dated 28 June 1984, which was issued earlier than the final order of 22 January 1986. The order of 28 June 1984 directed the delivery of the auctioned properties to respondent Siy.

Although the order of 20 June 1984 may be considered interlocutory as it required something more to be done by respondent Siy, i.e., the filing of the bond, the subsequent order of 28 June 1984 can be considered a final one which determined and settled the issue on the validity of the auction sale and the right of respondent Siy as highest bidder to acquire the properties he purchased. Petitioner should have appealed the 28 June 1984 order if it wanted to question the validity of the intervention of respondent Siy as well as of the auction sale. But it did not do so. Moreover, records show that after the issuance of the order of 28 June 1984 directing the delivery of the properties to Siy, the remaining proceedings in the trial court pertained only to the execution and implementation by the sheriff of the order of 28 June 1984. Hence, when the deputy sheriff informed the court that what were delivered to Siy were less than those listed in the Notice of Sheriff's Sale, respondent Siy filed on 24 July 1984 a

motion to compel delivery. The trial court even appointed a commissioner to investigate the matter and found that not all the properties sold in the auction sale were actually delivered to the awardee.

It may be worth to note that petitioner impliedly admitted the regularity of the auction sale of 31 May 1984 when it manifested before the court on 2 August 1984 that the chattels allegedly undelivered to Siy were those appearing in the list attached to the Sheriff's Report of 5 November 1981, which list was allegedly not furnished petitioner, without raising any issue as to the validity of the auction sale and the right of Siy as highest bidder.

Petitioner cannot belatedly question the validity of the auction sale. It is estopped from claiming that the bidding was not validly and regularly conducted after it had led the court and respondent Siy, as well as other parties to the case, to believe that the remaining unresolved issue after 28 June 1984 was the identification of the properties to be delivered to Siy. Estoppel arises, as in this case, when one by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[4]

In its third assigned error, petitioner contends that it had no knowledge of the reinventory attached to the Sheriff's Report of 5 November 1981 as it was not furnished copy thereof; that what was sold to Siy in the auction sale of 31 May 1984 were pieces of "assorted hardware" as indicated in the notice of sale of 21 May 1984 and which were on display inside the warehouse of petitioner, and not those listed in the inventory attached to the Sheriff's Report of 5 November 1981.

The issue raised here by petitioner involves a question of fact which is not reviewable by this Court in this petition. The jurisdiction of this Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive. It is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed, unless there is a showing that the findings complained of are totally devoid of support in the record or that they are so glaringly erroneous as to constitute serious abuse of discretion.[5]

In affirming the order directing the delivery of the properties sold to respondent Siy as appearing in the new inventory of 5 November 1981, the Court of Appeals made the following factual findings in support of its decision: (a) The Sheriff's Report of 5 November 1981 which contains the reinventory of the merchandise seized in the premises of YANKY expressly states that the earlier list of 26 October 1981 had been superseded by this new list; (b) On 4 November 1981, the sheriff notified the petitioner of a reinventory, which was actually conducted in petitioner's own warehouse; the petitioner's representatives were the ones who inventoried and prepared the list of items actually taken from YANKY; and, the original copy of the inventory list duly signed and verified by petitioner's representatives is in the possession of the latter; (c) Petitioner did not question the Sheriff's Report of 5 November 1981 for a period of almost three (3) years; and, (d) On 27 February 1984, the trial court ordered the sale of the properties mentioned in the "list of properties mortgaged" appended to the chattel mortgage.

These properties also appear in the inventory attached to the Sheriff's Report of 5 November 1981. In compliance with the order of 27 February 1984, the sheriff issued a notice of sheriff's sale dated 3 April 1984 announcing the public auction sale on 24 April 1984 of the chattels enumerated in the "list of properties mortgaged." This notice includes an enumeration of all the merchandise seized by the sheriff as shown in the Sheriff's Report of 5 November 1981. On the basis of the foregoing, there is no doubt that the conclusions of the Court of Appeals are fully supported by the evidence on record.

WHEREFORE, the petition is DENIED and the assailed decision of the Court of Appeals dated 23 June 1992 is

AFFIRMED.

SO ORDERED.

Cruz, (Chairman) and Davide, Jr., JJ., concur.

Quiason, J., no part being a former casual of partitioner.

[1] Penned by Associate Justice Luis L. Victor and concurred in by Associate Justices Jinal D. Rasul and Pacita Cañizares-Nye.

[2] G.R. No. 84294, 16 October 1989, 178 SCRA 589.

[3] Marcelo v. de Guzman, No. L-29077, 29 June 1982, 114 SCRA 657.

[4] Panay Electric Co., Inc. v. Court of Appeals, G.R. No. 81939, 29 June 1989, 174 SCRA 500.

[5] Andres v. Manufacturers Hanover & Trust Corporation, G.R. 82670, 15 September 1989, 177 SCRA 618.

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