

ARMANDO DE GUZMAN, PETITIONER, VS. SPOUSES MARIANO AND SUSAN ONG, ROGELIO AGOOT, AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 117213. March 04, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari of the decision rendered by the Court of Appeals in CA-G.R. CV No. 34474, affirming the decision of Branch 57 of the Makati Regional Trial Court in Civil Case No. 89-5173.

The facts of the case are as follows:

On November 19, 1986, private respondent Rogelio Agoot bought two truckloads of sand from Victory Hardware Gravel and Sand (hereinafter Victory Hardware). He was attended to by private respondent Susan Tan Ong. He was issued a receipt which listed one Chua Po as the hardware's proprietor.

Agoot asked that the sand be delivered on the same day. This was not done, however, and Agoot and Tan Ong agreed that delivery would be made on November 21, 1986 instead. However, the sand was delivered on November 20, 1986, a Sunday. No one received the sand and it was left resting against a concrete wall. The wall collapsed against the weight of the sand, causing the death of a woman and injuries to a child.

Agoot was sued by the heirs of the woman and relatives of the child in two separate civil cases filed in Imus, Cavite.[1] He filed third-party complaints against Chua Po in both cases. In one case, the process server's return indicated that the third-party complaint and summons were served upon Chua Po but he refused to sign the return. In the other case, it appeared that the documents were served upon his wife who also refused to sign the return. Chua Po did not file answers in both cases.

Judgment was rendered against Agoot in Civil Case No. 230-87.[2] He was ordered to pay a total of P118,000.00 while Chua Po, as third-party defendant, was ordered to reimburse Agoot.

A writ of execution was issued and petitioner Armando De Guzman was appointed as special sheriff and tasked to execute the writ.

On September 9, 1989, Agoot and De Guzman went to Chua Po's residence and saw a truck with Victory Hardware's name printed thereon. De Guzman levied upon the property after verifying from its driver that it belonged to Chua Po and Tan Ong.

Two days later, Tan Ong furnished De Guzman with an Affidavit of Third Party Claim dated September 9, 1989, demanding return of the vehicle to her as its lawful owner. De Guzman immediately notified Agoot of the claim.[3] Agoot thereafter filed an indemnity bond in the amount of P250,000.00.[4] De Guzman then proceeded with the sale of the truck at a public auction held on September 18, 1989.

Agoot later discovered that Chua Po had died in 1981 and the spouses Mario and Susan Tan Ong already owned

Victory Hardware.

The Ongs filed a complaint against Agoot and De Guzman for Recovery of Possession with Damages on September 22, 1989. They alleged that the truck was taken unlawfully by Agoot and De Guzman since it was registered not in the name of Chua Po but of Susan Tan Ong. Tan Ong submitted in evidence a deed of sale showing that her husband sold the truck to her on October 1987.[5]

Agoot and De Guzman moved for the dismissal of the complaint. They alleged that Chua Po and Tan Ong are one and the same person. Otherwise, Tan Ong represented herself as Chua Po when Agoot bought the sand from Victory Hardware as she personally accepted Agoot's order. Agoot further stated that he merely enforced his right pursuant to the decision of the Imus trial court. For his part, De Guzman asserted that the Ongs did not even attend the public sale of the truck.

The trial court decided in favor of the Ongs. It ruled that since execution can issue only against a party to the suit, the Ongs' property could not be subject to execution in the suit filed by Agoot against Chua Po as they were not parties to that suit. According to the trial court, Agoot should have impleaded the Ongs in the Imus cases.

The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the latter jointly and severally to pay plaintiff:

- The sum of P250,000.00 representing the current purchase/sale value of the motor vehicle;
- The sum of P60,000.00 representing the accumulated unrealized profits as of the date of the filing of this Complaint;
- The sum of P25,000.00 by way of attorney's fees;
- Costs of suit.

The defendants' counterclaim is hereby dismissed there being no evidence in support thereof adduced in the trial.

SO ORDERED."[6]

Agoot and De Guzman's Motion for Reconsideration was denied. Both Agoot and De Guzman appealed to the Court of Appeals which, however, affirmed in toto the decision of the trial court. Moreover, the Court of Appeals pointed out that the judgment in Civil Case No. 230-87 is void as regards Chua Po since the latter was already dead even before the case was commenced. The Court of Appeals later on denied the separate Motions for Reconsideration filed by Agoot and De Guzman.

Agoot and De Guzman filed separated petitions for review before this Court. Agoot's petition, docketed as G.R. No. 117127, was denied for failure to attach a certified true copy of the resolution of the Court of Appeals denying his motion for reconsideration and, at any rate, for failure to show any reversible error on the part of the Court of Appeals.[7]

Before us now is the petition for review filed by De Guzman, in which he raises the following assignment of errors:

I

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ERROR IN NOT APPLYING THE DOCTRINE OF ESTOPPEL TO THE INSTANT CASE.

II

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN HOLDING PETITIONER DE GUZMAN LIABLE NOTWITHSTANDING THE UNDISPUTED FACT THAT PETITIONER DE GUZMAN ACTED IN GOOD FAITH, WITH DUE CARE AND IN STRICT COMPLIANCE WITH THE RULES OF COURT IN IMPLEMENTING THE WRIT OF EXECUTION.

III

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN IGNORING THE FACT THAT PETITIONER DE GUZMAN WAS JUST CONSTRAINED TO PROCEED WITH THE AUCTION SALE OF THE ISUZU ELF PICK-UP NOT ONLY BECAUSE OF THE FILING OF AN INDEMNITY BOND BY RESPONDENT AGOOT, BUT ALSO BECAUSE OF A LETTER SENT BY THE LATTER STATING THAT NO VALID GROUNDS EXISTED TO STOP THE AUCTION SALE AND THREATENING PETITIONER DE GUZMAN WITH CONTEMPT AND ADMINISTRATIVE PROCEEDINGS IN THE EVENT THE PROPERTY IS RELEASED AND THE AUCTION SALE IS NOT HELD.

IV

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE FACT THAT PETITIONER DE GUZMAN WAS DEPRIVED OF FULL OPPORTUNITY TO DEFEND HIMSELF DUE TO THE EXISTENCE OF A CONFLICT OF INTEREST BETWEEN HIM AND HIS COUNSEL, RESPONDENT AGOOT[8]

The issues for our consideration in this petition are (1) whether or not the writ of execution in Civil Case No. 230-87 was properly implemented, and, if not, (2) whether or not petitioner is liable therefor.

The rule is that execution may only be effected against the property of the judgment debtor, who must necessarily be a party to the case.[9] A sheriff who levies upon property other than that of the judgment debtor acts beyond the limits of his authority.[10]

In this case, the property levied upon by De Guzman appears not to be owned by the judgment debtor Chua Po, who had died several years earlier. The property is claimed by one who was a stranger to Civil Case No. 230-87, Tan Ong, whose claim is supported by a deed of sale showing that the truck had been sold to her. There is, thus, wrongful execution in this regard. It must be noted, however, that the seizure of the property was done by De Guzman in good faith, having done it after verifying from the truck driver who the vehicle's owner was. There was no patent irregularity in his act. It should be emphasized that De Guzman was mandated to comply with the court order and it is sufficient that the writ he sought to execute was regular on its face and issued by competent authority.[11]

The Court of Appeals, in its assailed decision, asserts that:

"Notwithstanding the claim of defendant-appellant De Guzman that he "had taken the necessary due precaution prescribed by law in that after appellee Susan Ong filed her third-party claim in Civil Case No. 230-87, appellant De Guzman notified the third-party plaintiff and required him to file an indemnity bond in compliance with the procedure laid down by Sec. 17, Rule 39 of the Rules of Court", We still uphold the lower court's decision making him jointly and severally liable with his co-defendant-appellant Agoot. Section 17, Rule 39 of the Rules of Court expressly states that: "xxx But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action. xxx"[12]

Indeed, Section 17, Rule 39 of the Rules of Court in force at that time spoke of the right of the third-party claimant to vindicate his claim to the property levied upon by the proper action. This only means that the third-party claimant may institute another action, e.g. a reivindicatory action against the judgment creditor or the purchaser of the property at public auction, apart from the action for damages which he may file against the sheriff. However, whether or not the party sued -- in this case, the sheriff -- will be adjudged liable is another matter. Section 17 does not provide for the sheriff's automatic liability in case of execution effected against property of a third party, as the Court of Appeals seems to suggest. As petitioner points out:

"The mere fact that a third-party claimant has invoked the right to vindicate his claim to the property by any proper action does not make the officer who undertook the execution of the property automatically liable for damages. In fact, it should be noted that as a general rule, the officer is ordinarily not liable for damages unless certain conditions are met." [13]

Where the property levied upon is claimed by a third-party, as in the present case, the rules then in force provided:

"SEC. 17. Proceedings where property claimed by third person. -- If property levied on be claimed by any other person than the judgment debtor 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 creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. xxx

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

x x x x x x x x

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.[14] It serves to shield the sheriff from any personal liability for such damages.

If, as in this case, the third-party claim is disregarded by the sheriff because of the posting of an indemnity bond, the remedy of the third-party claimant is to file an independent reivindicatory action against the judgment creditor or the purchaser of the property at public auction.[15]

In this case, De Guzman, upon receiving Tan Ong's Affidavit of Third-Party Claim and pursuant to the Rules of Court, immediately notified Agoot of the claim and required him to forthwith post an indemnity bond if he wanted the levy and sale of the property to proceed.[16] Agoot filed the necessary bond[17] and De Guzman subsequently proceeded with the levy.

De Guzman's acts were done in accordance with the procedure prescribed by the Rules of Court. An indemnity bond having been filed by the judgment creditor Agoot, De Guzman should now be exempt from any personal liability for any damage that may have been suffered by Tan Ong. It must be emphasized that the amount of whatever damage is proved to have been suffered by the owner of the property is to be charged against the indemnity bond posted by the judgment creditor. The indemnity bond is precisely meant to shield the sheriff from any personal liability.

WHEREFORE, the decision of the Court of Appeals insofar as the liability of petitioner Armando De Guzman is concerned, is hereby REVERSED and SET ASIDE.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Puno, Mendoza, and Buena, JJ., concur.

[1] Civil Case No. 229-87 and Civil Case No. 230-87.

[2] By Branch 21 of the Regional Trial Court, Imus, Cavite.

[3] Rollo, p. 120.

[4] Id., p. 122.

[5] Id., p. 84.

[6] Id., p. 214.

[7][Id., p. 352.]

[8] Id., pp. 15-16.

[9] Matuguina Integrated Wood Products, Inc. v. Court of Appeals, 263 SCRA 490 (1996).

[10] Bayer Philippines, Inc. v. Agana, 64 SCRA 725 (1975).

[11] Philippine Bank of Communications v. Cesar Torio, et al., A.M. No. P-98-1260, January 14, 1998.

[12] Id., p. 70.

[13] Rollo, pp.25-26.

[14] II M. Moran, Comments on the Rules of Court 303 (1979).

[15] I F. Regalado, Remedial Law Compendium 286 (1988).

[16] Rollo, p. 107.

[17] Id., p. 108.

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