

**FIRST INTEGRATED BONDING & INSURANCE CO., INC.,
PETITIONER, VS. COURT OF APPEALS AND PILIPINAS BANK,
RESPONDENTS.**

G.R. No. 119577. August 28, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner First Integrated Bonding & Insurance Co., Inc. (hereinafter FIBICI) seeks the reversal of the decision[1] of 15 July 1994 and the resolution[2] of 17 March 1995 of the Court of Appeals in CA-G.R. CV No. 21271. The former affirmed the decision[3] of 28 November 1986 and the order[4] of 30 June 1987 of the Regional Trial Court (RTC) of Makati, Branch 137, in Civil Case No. 7957, while the latter denied the motion for the reconsideration of the former.

The Court of Appeals adopted in toto the following summary of the factual and procedural backdrop of this case made by the trial court:

This is a suit by plaintiff [Pilipinas Bank] against defendants Olympia International, Inc. (hereafter OII), Encarnacion Tittel, Juergen Tittel and First Integrated Bonding & Insurance Company, Inc. (hereafter FIBICI) to: 1) enjoin the consolidation of ownership of three condominium units in the name of defendants; 2) enjoin defendants from taking possession of, or disposing said condominium units; 3) declare null and void the newly issued owner's duplicate of the certificates of title covering said condominium units; 4) nullify the sheriff's sale of said condominium units in favor of defendant FIBICI; 5) reinstate plaintiff as senior encumbrancer relative to said condominium units by correcting the original notice of levy on execution and making it one on attachment; 6) nullify the cancellation, by the sheriff, of the original notice of levy on execution. The complaint, as amended, likewise prays for attorney's fees, costs, and x x x a writ of preliminary injunction relative to items 1) and 2) above.

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From the evidence presented, the following facts appear to be uncontroverted:

1. Defendant OII is the registered owner of three (3) condominium units, designated as "SF-B4", "SF-C2" and "SF-B2" of the First Midland Offices Condominium Project, covered by CCT Nos. S-1513, S-1514 and S-1515, respectively, of the Registry of Deeds of Makati, Metro Manila (Exhs. C, D and E)
2. On 11 December 1980, a Notice of Levy on Attachment was inscribed as Entry No. 38384 on said CCTs pursuant to an Order of Attachment issued on 10 December 1980 by the then Court of First Instance of Rizal, Branch XIX, in Civil Case No. 39519, entitled "Olympia Business Machines Co. (Phils) [OBM], Inc. plaintiff versus Olympia International Inc., defendant"; (Cf. Exhs. C-1 [see p. 196-B, record], D-1 and E-1.)
3. On 29 October 1981, a Notice of Levy on Execution was inscribed as Entry No. 49260 (Exhs. C-2 [see p. 196-B, record] and D-2 and E-2) on said CCTs pursuant to a Writ of Execution issued on 28 October 1981 in said Civil Case No. 39519;

4. On 4 November 1981, the enforcement of the above Writ of Execution was stayed, by way of an Order in said Civil Case No. 39519 which reads as follows:

"Defendants filed on 28 October 1981 a verified petition for relief from judgment on the ground of mistake and excusable negligence praying that said petition be given due course and (that) plaintiff be required to answer the same. On 4 November 1981, defendants filed an urgent omnibus motion praying among others, that the instant petition be resolved, (and) that a restraining order issue to stop execution of the judgment in this case and that the writ of attachment be lifted upon its filing of a sufficient counterbond.

"Wherefore, in order to maintain the status quo in the instant proceeding so that the petition for relief may not become moot and academic, Deputy Sheriff Voltaire Cruz is ordered to desist from enforcing or executing further the writ of execution issued by the Court on 28 October 1981. Upon defendants' filing a counterbond in the sum of P2,200,000.00 as security for plaintiff's claim, let an order issue lifting the writ of attachment earlier issued against defendants' properties." (p. 109, Vol. I, Expediente of Civil Case No. 39519)

5. On 25 November 1981, the Court issued an Order (Exh. G) in Civil Case No. 39519, as follows:

"Acting upon defendants 'Urgent Motion for the Approval of Counter-Bond' which was not opposed by plaintiff, and finding said counterbond posted by First Integrated Bonding & Insurance Co., Inc. under JCL (3) Bond No. 00049 to in order, the same is hereby approved. Deputy Sheriff Voltaire Cruz is ordered to immediately lift all levies made by him on defendants' personal as well as real properties by virtue of the writ of attachment previously issued hereof and to likewise return to said defendants any and all properties he may have in his possession. . . ." (p. 197, Vol. I, Expediente of Civil Case No. 39519; italics supplied)

Interestingly and relevantly, the counterbond abovementioned was posted by herein defendant FIBICI; such posting resulted in the lifting of the levies on the properties which defendant FIBICI later on bid for at the sheriff's auction sale on 28 December 1983 (item 16, below).

6. On 1 December 1981, Entry No. 50428 (Exhs. C-3 [see back of page 196-B, Record], D-3 and E-3) was inscribed on the subject CCTs, whereby Entry No. 49260 (item 3, above; Exhs. C-2, D-2 and E-2) was cancelled, with a mention of the abovequoted order of 25 November 1981, as follows:

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It is to be noted that the order of 25 November 1981 (item 4, above) was inscribed two times: on 1 December 1981, on 13 December 1983 (item 15, below).

7. On 3 March 1982, the plaintiff Pilipinas Bank instituted an action with the then Court of First Instance of Rizal, Branch VI, against OII, and/or Tomas Mapa, for the recovery of P6,174,045.00, with a prayer for the issuance of a writ of preliminary attachment, docketed therein as Civil Case No. 45005; (Annex B of Amended Complaint, pp. 98-105, Record.)

8. On 12 March 1982, a Writ of Attachment was issued by the then Court of First Instance of Rizal, Branch VI, in said Civil Case No. 45005 (Annex C of Amended Complaint, pp. 108-109, id.).

9. On 18 March 1982, a Notice of Levy on Execution was inscribed as Entry No. 53789 on said CCTs (Exhs. C-4, D-4 and E-4) pursuant to the "NOTICE OF LEVY ON EXECUTION/ATTACHMENT" executed by Deputy Sheriff Elias T. Marfil, under Civil Case No. 45005 (Annex D of Amended Complaint, pp. 110-111, id.).

It is to be noted that, while the Court (see item 8, above) issued a writ of attachment, what the sheriff prepared and filed was a "notice of levy on execution/attachment," which the Register of Deeds proceeded to annotate [a]s a "NOTICE OF LEVY EXECUTION," which is a clear error. Subsequently, on 12 December 1983, in an apparent effort to correct the mistake, the sheriff filed a "notice of cancellation of levy on execution" (see items 12 and 13, below) thus canceling entry No. 53789, and at the same time filed a "notice of levy on attachment" by virtue of

the writ of preliminary attachment (item 8, above) in Civil Case No. 45005 (now 1215);

10. On 23 March 1982, the then Court of First Instance of Rizal, Branch XXI, upon petition of OII, issued an Order (Exh. J, pp. 156-157, id.) in LRC Case No. 2858, directing the issuance of new owner's duplicate copies of CCT Nos. S-1513, S-1514 and S-1515 in lieu of the allegedly lost ones which were declared cancelled and null and void;

11. On 2 September 1983 the above Order (Exh. J) was inscribed on the subject CCTs as Entry No. 9234 and new owner's duplicate copies thereof were issued to OII (Exhs. C-5 [p. 196-C, Record], D-5 and E-5);

12. On 3 October 1983, a Notice of Levy (on execution) was inscribed as Entry No. 1492 (Exhs. 1-E, 2-E and 3-E) on the subject CCTs pursuant to the Second Alias Writ of Execution issued on 28 September 1983 in Civil Case No. 39519, (p. 572, Expediente of Civil Case No. 39519);

13. On 12 December 1983, a Notice of Cancellation of Levy on Execution (Entry No. 53789, see item 9, above) was inscribed on said CCTs as Entry No. 5322 (Exhs. C-6 [p. 196-C, Record], D-6 and E-6) pursuant to the request of Deputy Sheriff Elias Marfil, the same Sheriff who executed and registered the Notice of Levy on Execution/Attachment (Annex D of Amended Complaint); this is the cancellation which plaintiff seeks to nullify (par. 3, Prayer, p. 85, record).

14. On the same day, 12 December 1983, Deputy Sheriff Marfil filed another "NOTICE OF LEVY ON ATTACHMENT" with the Registry of Deeds pursuant to the order of attachment issued on 12 March 1982 in Civil Case No. 45005, and said Notice was inscribed as Entry No. 5323 on said CCTs (Exhs. C-7 [p. 196-C, Record], D-7 and E-7);

15. On 13 December 1983, Deputy Sheriff Marfil filed anew the Order of 25 November 1981 (Exh. G, see item 5, above) issued in Civil Case No. 39519, which was inscribed on the subject CCTs as Entry No. 5344 (Exhs. C-8, D-8 and E-8);

16. On 28 December 1983, Deputy Sheriff Voltaire Cruz conducted an execution sale of the subject condominium units by virtue of the Second Alias Writ of Execution issued in Civil Case No. 39519, and said units were sold to defendant FIBICI as the highest bidder, for the amount of P1.8 million (Exhs. 6 and 7, pp. 242, 246, Record)

17. On the same date, 28 December 1983, Deputy Sheriff Voltaire Cruz executed a Certificate of Sale (Exh. 7) in favor of defendant FIBICI, although the latter did not tender the full and complete bid price of P1.8 million in cash to him as the bid price was paid in [4] installments, as follows:

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and said Certificate of Sale was inscribed as Entry No. 6317 (Exhs. C-9, D-9 and E-9) on the subject CCTs on 6 January 1984;[5]

The trial court held for Pilipinas Bank. In the main, it rejected FIBICI's defense that it purchased the condominium units at the sheriff's auction sale in good faith, i.e., without knowledge of any defect in the levies made thereon. The trial court reasoned: First, Entry No. 5344, by its terms, cancelled both Entry No. 38384 and Entry No. 49260. As such, FIBICI was obliged to inquire which levies in Civil Case No. 39519 were discharged. Second, while the English of the typist who inscribed Entry No. 50428 was poor, at least it could be deciphered, or a would-be innocent purchaser forewarned, that the levy on attachment was cancelled by the 25 November 1981 Order. Third, as FIBICI itself had posted the counter-bond mentioned in the 4 November 1981 and 25 November 1981 Orders, it had constructive knowledge that Entry No. 38384 and Entry No. 49260 were going to be cancelled.

The trial court then proceeded to hold that Pilipinas Bank had a preferential right to the condominium units as Entry No. 5322 was void for the following reasons: (1) Sheriff Marfil could not, *motu proprio*, cancel the "levy on execution" as he was not so empowered by § 183, Article XI of the Revised Administrative Code; and (2) under Act No. 496, as amended by P.D. No. 1529, there were only two ways by which liens and encumbrances could be cancelled, viz., either by an instrument of release or court order, both of which were absent in Civil Case No. 45005. It likewise voided the second owner's duplicate copies of the Condominium Certificate of Titles (CCTs) issued in LRC Case No. 2858, as the previous copies were in fact never lost, but had merely been entrusted to Pilipinas Bank as security for Olympia International, Inc.'s (OII) obligations thereto totalling over P9 million.

Nevertheless, the trial court upheld the validity of the auction sale as the real basis therefor, Entry No. 1492, was subsisting; the sheriff who conducted the sale and whose acts were sought to be annulled was not joined as a party defendant; and the irregularities complained of by Pilipinas Bank were of *de minimis* importance.

In light of the above, the trial court disposed of the case as follows:

WHEREFORE, judgment is rendered:

1. Declaring plaintiff Pilipinas Bank as having preferential rights to the condominium units covered by CCT Nos. S-1513, S-1514 and S-1515 of the Registry of Deeds of Makati, in relation to the rights of defendant [FIBICI];
2. Setting aside the Order dated 23 March 1982 issued by the Court of First Instance of Rizal, Branch XXI, in Land Registration Case No. 2858; and declaring null and void the owner's second duplicates of CCT Nos. S-1513, S-1514 and S-1515 issued as a result of said Order;
3. Declaring that Entry No. 50428 and Entry No. 5344 validly cancelled Entry No. 38384 and Entry No. 49260, with regards [sic] to CCT Nos. S-1513, S-1514 and S-1515;
4. Declaring null and void Entry No. 5322 on said CCT Nos. S-1513, S-1514 and S-1515;
5. Ordering that Entry No. 6317 on subject CCTs be amended to read as follows: "pursuant to the Second (2) alias writ of execution dated 28 September 1983 issued under Civil Case No. 39519" instead of "pursuant to an order of execution and the attachment inscribed hereon as PE No. 38384 and 49260 . . .";
6. Lifting the writ of preliminary injunction issued on 6 June 1985; however, any consolidation, taking of possession or disposition by defendant [FIBICO] of the condominium units in question will be subject to the preferential rights of plaintiff Pilipinas Bank;
7. Ordering defendants [OII], spouses Encarnacion Tittel and Juergen Tittel to pay plaintiff . . . the sum of P50,000.00 as and for attorney's fees and expenses of litigation, and the sum of P50,000.00 as exemplary damages;
8. Ordering all defendants to pay costs of suit.

SO ORDERED.[6]

On 30 June 1987, the trial court denied FIBICI's motion for reconsideration and granted Pilipinas Bank's motion for reconsideration as regards attorney's fees and exemplary damages. As to the latter, the trial court found that:

FIBICI knew all the way [of] the circumstances surrounding the status of the subject condominium units including its defects and despite being fully aware of it, still it proceeded to bid for them as the sole bidder even if it did not have enough cash at that time of the sale. There was therefore an element of bad faith that attended defendant FIBICI's actuations. This being the case, FIBICI must be assessed exemplary damages to serve as a deterrent[t] to others x x x Likewise, because of such defendant's actuations, plaintiff was forced and

compelled to come to Court and incur expenses in order to protect its interests for which it must be entitled to [a] reasonable amount of attorney's fees.

WHEREFORE x x x the Court hereby modifies its decision of 28 November 1986 by ordering defendant FIBICI to pay plaintiff the amount of P30,000 as exemplary damages, plus P20,000 as and for attorney's fees.[7]

FIBICI appealed to the Court of Appeals (CS-G.R. CV No. 21271) and argued before it that, first, the trial court erred in holding that the cancellation of the attachment lien carried with it the lifting of the execution lien. Entry No. 50438 (or No. 50428) was the annotation of the 25 November 1981 court order in Civil Case No. 39519 and merely referred to the lifting of "all levies made x x x by virtue of the writ of attachment previously issued." As the sole attachment writ issued prior to the cancellation notice appeared as Entry No. 38384, such should have been the only entry affected by the 25 November 1981 court order. The Register of Deeds, however, in annotating the 25 November 1981 order, erroneously referred to Entry No. 49260, making it appear that it had been cancelled as well, thereby overstepping his ministerial duty to faithfully record the contents of the 25 November 1981 order. Since the trial court noted that the cancellation notice was poorly written, thus, a prospective purchaser was under the obligation to inquire into the contents of the 25 November 1981 order, and Pilipinas Bank should have been put on notice that only the prior attachment lien had been cancelled by Entry No. 50438. In sum, Pilipinas Bank was also charged with constructive notice of FIBICI's subsisting execution lien under Entry No. 49260, as neither the 4 November 1981 nor the 25 November 1981 order directed the sheriff to lift the execution levy.

Second, the counter-attachment bond filed by FIBICI lifted only the attachment levy and could not have lifted the execution levy under Entry No. 49260. The trial court's contrary conclusion confuses the nature and purpose of an attachment levy as distinguished from an execution levy. Further, the 28 October 1981 judgment in Civil Case No. 39519 was a final judgment, thus the execution levy under Entry No. 49260 by virtue thereof was a matter of right. Consequently, it could not have been dissolved except upon full satisfaction of the judgment award. The trial court's finding that the judgment in Civil Case No. 39519 became final only on 17 June 1982 when the order dismissing the petition for relief became final, ignored the essence of a petition for relief which is resorted to in order to set aside a final judgment.[8] Moreover, the petition for relief did not authorize the court in Civil Case No. 39519 to deprive the judgment creditor therein of its previously acquired liens, pursuant to § 5, Rule 38 of the Rules of Court, which makes no distinction between attachment and execution liens.

Third, FIBICI asserted that Entry No. 5344 was void and could not cancel the execution lien and was a superfluity for being a mere duplication of Entry No. 50438 and was, therefore, without force and effect. The alleged references to Entry No. 38384 and Entry No. 49260 in Entry No. 5344 were bracketed and intercalated in handwriting; worse, these intercalations were not made by the Register of Deeds.[9] Hence, the trial court completely glossed over the evidence which revealed the irregular annotation thereof.

Fourth, prescind from the above, the trial court erred in amending Entry No. 6317 (annotation of the Sheriff's Certificate of Sale to FIBICI). Since Entry No. 49260 was valid and subsisting at the time of the execution sale, the said sale merely retroacted to the date Entry No. 49260 was inscribed on the CCTs, in light of *Defensor vs. Brillo*. [10]

Fifth, the trial court mistakenly assumed that Entry No. 53789 established a lien in favor of Pilipinas Bank. FIBICI asserted that Entry No. 53789 was void for failure to faithfully reflect the terms of the court order on which it was based. And even conceding that Pilipinas Bank had obtained an attachment writ in its favor, the sheriff failed to make a proper levy thereof on the condominium units. Consequently, no attachment lien was ever created in favor of Pilipinas Bank. The registration of the levy resulting in Entry No. 53789 was fatally defective as it pretended to give notice of a levy on execution, when in fact no such writ existed nor was filed with the

Register of Deeds, as required by § 69 of P.D. No. 1529. The failure to comply with this requirement rendered the levy null and void.[11]

Sixth, the trial court erred in declaring Entry No. 5322 null and void on the ground that the sheriff could not, on his own, lift the execution levy under Entry No. 53789, in accordance with the Revised Administrative Code; and that the Sheriff did not present an instrument of release as required by Act No. 496, as amended by P.D. No. 1529. However, Entry No. 53789 was void, thus there was nothing to cancel and no instrument of release was required. In causing the annotation of Entry No. 5322, the sheriff merely confirmed the nullity of Entry No. 53789, which was necessary to pave the way for the correct annotation of the writ of attachment in Civil Case No. 1215 under Entry No. 5323. Significantly, the requirement of an instrument of release should have been equally applied to FIBICI's liens, i.e., since no instrument of release regarding FIBICI's execution lien under Entry No. 49260 was ever presented, the cancellation thereof by the trial court should have been declared void. Thus, FIBICI observed that in dealing with the cancellation of Pilipinas Bank's lien, the trial court required a strict application of registration rules; with regard to the cancellations of FIBICI's liens, however, the trial court was infinitely more liberal -- even to the extent of sanctioning a pencil-written cancellation made by someone other than the Register of Deeds.

Finally, FIBICI questioned the trial court's order for FIBICI to pay attorney's fees, costs, and exemplary damages, allegedly predicated on the fact that it bought the condominium units at the auction sale in bad faith. However, FIBICI's counter-attachment bond was merely targetted at lifting the prior attachment levy under Entry No. 38384 and did not have the effect of lifting the execution levy under Entry 49260. Consequently, FIBICI had every right to conclude that the latter levy subsisted, especially since the judgment in Civil Case No. 39519 had become final and executory. FIBICI therefore had no reason to believe that the execution lien would be extinguished by its bond. Further, the trial court made inconsistent findings. Assuming that the execution lien under Entry No. 49260 was lifted by the counter-attachment bond, still, the sale was held on the basis of a valid writ of execution, to wit, Entry No. 1492. Surely, the terms of FIBICI's attachment bond could not be extended so as to include the lifting of Entry No. 1492, which was annotated almost two years after FIBICI had posted the aforesaid bond.

FIBICI thus prayed for a reversal of the appealed decision insofar as it declared Pilipinas Bank as possessing preferential rights vis-a-vis FIBICI, with respect to the condominium units; and the appealed order of 30 June 1987 insofar as it ordered FIBICI to pay attorney's fees, costs, and exemplary damages.[12]

The Court of Appeals affirmed the challenged decision. It held that there was no question that Entry No. 50428 and Entry No. 5344 cancelled Entry No. 38384 and Entry No. 49260; the trial court did not err in its clarificatory interpretation of Entry No. 6317 for it was a matter of record that Entry No. 6317 was issued pursuant to the second alias writ of execution dated 28 September 1983 issued in Civil Case No. 39519; neither did the lower court err in ruling that Entry No. 5322 was null and void as Sheriff Marfil was not empowered by the Revised Administrative Code to annotate or lift the order of attachment by himself. The Court of Appeals further held that FIBICI was not an innocent purchaser for value for it had more than its share of knowledge of the actual facts regarding the status of the condominium units in question prior to its purchase of the same.[13] Finally, the Court of Appeals found no valid reason to differ with the lower court's ratiocination as to why FIBICI was liable for attorney's fees and exemplary damages.[14]

Its motion for reconsideration having been denied on 17 March 1995,[15] FIBICI filed this petition for review, assigning the following errors to the Court of Appeals:

I.

The Honorable Court of Appeals gravely erred when it affirmed the trial court's ruling that it was private

respondent Pilipinas Bank, and not FIBICO, that has superior and preferential rights over the subject condominium units.

II.

The Honorable Court of Appeals erred in affirming the trial court's ruling that Entry No. 50428 on Exhibits "C", "D" and "E", had the effect of cancelling FIBICO's liens over the subject condominium units under [sic].

III.

The Honorable Court of Appeals committed manifest error in affirming the ruling that Entry No. 5322 is null and void.

IV.

The Honorable Court of Appeals had no basis, and therefore gravely erred, in affirming the trial court's order for FIBICO to pay attorney's fees, costs of suit and exemplary damages.

While FIBICI invokes substantially the same issues and arguments raised before the Court of Appeals, it hastens to add that its participation in the execution sale could not be suspect as it did not fall under those prohibited from participating in an execution sale, pursuant to § 21, Rule 39 of the Rules of Court.

In its Comment, Pilipinas Bank contended that the annotation of "execution" instead of "attachment" in Entry No. 53789 was not a fatal defect as § 108 of P.D. No. 1529 allowed corrections of omissions or errors made in entering a certificate or any memorandum; the said entry, though erroneous, was sufficient notice to all that an adverse claim existed in favor of Pilipinas Bank. Moreover, the terms of Entry No. 50428 and Entry No. 5344 were clear in expressly cancelling Entry No. 49260 and FIBICI's assertion that only the notice of attachment was lifted runs counter to the commitment of the court to stop the execution sale -- the lifting of only the attachment would not have served any purpose. Finally, to stress that FIBICI was charged with knowledge of the liens and therefore a purchaser in bad faith, Pilipinas Bank called our attention to the fact that despite its knowledge of the cancellation of Entry No. 49260, FIBICI never lifted a finger to question or assail its validity.

In its Reply, FIBICI refuted Pilipinas Bank's contention that Entry No. 53789 was sufficient to give notice to all that an adverse claim existed over the condominium units by stating that the said Entry made no mention of any attachment lien whatsoever and proceeded to assail the alleged intention of the trial court to halt the execution sale by laying stress on the express terms of the 25 November 1981 Order, to wit: "[said Order and counter-attachment bond] limit [their] operation to levies made by virtue of the writ of attachment and no other." [16]

We resolved to give due course to the petition and required both parties to submit their respective memoranda, which they subsequently complied with.

For a logical discussion of the issues raised, we first resolve the second and third issues.

I

The annotation of Entry No. 50428 on the CCTs on 1 December 1981 was done pursuant to the 25 November 1981 order in Civil Case No. 39519. However, as shown by the trial court's summary of facts, said order merely approved the counterbond FIBICI posted to lift the order of attachment in the said case, the notice of levy on attachment being inscribed as Entry No. 38384 on 11 December 1980. Unfortunately, Entry No. 50428 also cancelled Entry No. 49260, which was annotated on 29 October 1981, and which referred to the Notice of Levy on Execution pursuant to a writ of execution issued on 28 October 1981 in Civil Case No. 39519. This cancellation of Entry No. 49260 by Entry No. 50428 is obviously without basis in fact and is thus void ab initio.

II

Entry No. 50428 could not legally and validly cancel Entry No. 49260 as the former corresponded to the 25

November 1981 order in Civil Case No. 39519 which, to repeat, approved the counterbond put up by FIBICI on behalf of defendant therein to lift the writ of preliminary attachment issued in said case. The 25 November 1981 order, by its terms, did not include the lifting of the writ of execution of 28 October 1981 which was annotated on the CCTs by way of a Notice of Levy on Execution inscribed as Entry No. 49260. The inscription of Entry No. 5344 on 13 December 1983 referring to the 25 November 1981 order must have been caused by Deputy Sheriff Marfil to rectify the erroneous cancellation of Entry No. 49260 by Entry No. 50428.

III

We now address the issue concerning superiority or preference of rights over the condominium units.

FIBICI's lien on the condominium units is that of a purchaser at the execution sale conducted on 28 December 1993 pursuant to the Second Alias Writ of Execution issued in Civil Case No. 39519. The Notice of Levy on Execution based on this Second Alias Writ of Execution was issued on 28 September 1983 in Civil Case No. 39519 and annotated on 3 October 1983 as Entry No. 1492. As such, FIBICI claims that its lien retroacted to 29 October 1981 when the first Notice of Levy on Execution issued pursuant to the Writ of Execution of 28 October 1981 in Civil Case No. 39519 was inscribed as Entry No. 49260. Entry No. 49260 was, however, erroneously cancelled by Entry No. 50428. Nevertheless, the Second Alias Writ of Execution issued on 28 September 1983 was inscribed on 3 October 1983 as Entry No. 1492. This entry was the basis for the auction sale where FIBICI was the highest bidder.

On the other hand, Pilipinas Bank casts its claim of preference on the basis of the writ of attachment it obtained in Civil Case No. 45005. Unfortunately, that writ of attachment was not validly annotated on the CCTs due to the mistake or negligence of either the deputy sheriff or the annotating officer. What was annotated on 18 March 1982 was a Notice of Levy on Execution (Entry No. 53789), and it was only on 12 December 1983 that this mistake was sought to be corrected, first by Entry No. 5322 -- the Notice of Cancellation of the Levy on Execution -- which cancelled the erroneous Notice of Levy on Execution (Entry No. 53789), and second, the Notice of Levy on Attachment (Entry No. 5323).

While there may have been an irregularity in the cancellation of Entry No. 53789 (the erroneous entry of the so-called Notice of Levy on Execution made on 18 March 1982) as the basis thereof was the unilateral request of Deputy Sheriff Marfil, the cancellation was of de minimis importance for the erroneous "notice of levy on execution" did not vest upon Pilipinas Bank any prior lien as a judgment creditor. What it obtained was, to repeat, only a writ of attachment and the correct entry would have been a Notice of Levy on Attachment, which was eventually made on 12 December 1983 as Entry No. 5323.

The superiority or preference of the right of either of the parties depends to a large extent on the superiority of the legal foundation thereof.

If we concur with FIBICI's theory that its right retroacted to 29 October 1981, the date of inscription of the first entry of the writ of execution in Civil Case No. 39519, i.e., Entry No. 49260, it has, beyond doubt, the preference because this entry was made two months and twenty-nine days before Pilipinas Bank's writ of attachment was registered, even if erroneously done by way of a Notice of Levy on Execution. Under this theory, FIBICI's bad faith due to its knowledge of the subsequent inscribed liens is of no moment.

The auction sale, although directly made under the Second Alias Writ of Execution, was, in contemplation of law, a sequel to the original writ of execution in Civil Case No. 39519 of 28 October 1981 and inscribed as Entry No. 49260 on the following day. The enforcement of the said original writ of execution was suspended by the order of 4 November 1981 in view of the petition for relief from judgment filed therein. But that petition was subsequently resolved against the defendant and the adverse order became final on 17 June 1982. Since a levy had

in fact been made pursuant to the original writ of execution, the auction sale of the levied property could still be validly conducted after the finality of the order denying the petition for relief from judgment, provided such sale be held within ten (10) years from the entry of judgment. It is settled that a valid execution issued and levy made during the lifetime of the writ of execution may be enforced by a sale thereafter, i.e., a sale made even beyond the lifetime of the writ of execution,[17] provided such sale is made within ten (10) years from the entry of judgment.[18] This rule "rests upon the principle that the levy is the essential act by which the property is set apart for the satisfaction of the judgment and taken into custody of the law.[19]

Clearly then, the alias writ of execution and second alias writ of execution were unnecessary to effect a valid auction sale. Accordingly, even if the sale was conducted seemingly by virtue of the second alias writ of execution, it was, in reality, merely a continuation of the first writ of execution which was never lawfully and validly set aside nor nullified. Entry No. 49260 bound the CCTs and the condominium units covered by them until it could be lawfully cancelled, which never took place in this case. To repeat, its cancellation by Entry No. 50428 at the instance of the sheriff was void for want of factual and legal basis.

Since the auction sale was a necessary consequence of the first levy on execution (Entry No. 49260), although made to appear as directly made under the levy on execution based on the second alias writ of execution it was then effected merely to carry out the original writ of execution. Accordingly, FIBICI, as the buyer, should enjoy the same legal priority that the original levy possessed. In short, the priority enjoyed by the first levy on execution extended with full force and effect to the buyer at the auction sale conducted by virtue of such levy. The doctrine that a levy on execution duly registered takes preference over a prior unregistered sale, and that even if the prior unregistered sale is subsequently registered before the sale on execution but after the levy was duly made, the validity of the execution sale should be maintained because it retroacted to the date of the levy,[20] applies by analogy as regards encumbrances made after the registration of the levy on execution. The reason therefor is that if the rule were otherwise, the preference enjoyed by the levy on execution in a case would be meaningless and illusory.

It logically follows that FIBICI has a far better and superior right over the condominium units than Pilipinas Bank.

IV

We agree then with FIBICI that the award of exemplary damages and attorney's fees in favor of Pilipinas Bank against FIBICI, entered after a motion for reconsideration, has no legal and factual basis.

WHEREFORE, the instant petition is GRANTED. The challenged decision of the Court of Appeals in CA-G.R. CV No. 21271 and that of the Regional Trial Court of Makati, Branch 137, in Civil Case No. 7957 are modified in accordance with the foregoing discussions. As so modified, petitioner First Integrated Bonding & Insurance Co., Inc., is hereby declared to have a superior and preferential right as a buyer at the auction sale over the condominium units in question and the cancellation of Entry No. 49260 is declared void and inoperative; and the award of exemplary damages and attorney's fees against First Integrated Bonding & Insurance Co., Inc., is deleted.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Rollo, 43-58. Per Tayao-Jaguros, J., with Elbinias and Salas, JJ., concurring.

[2] Id., 60.

[3] Id., 81-91. Per Judge Santiago Ranada, Jr.

[4] Id., 92-93.

[5] Rollo, 81-85.

[6] Rollo, 90-91.

[7] Id., 92.

[8] Citing Service Specialists, Inc. vs. Sheriff of Manila, 145 SCRA 139 [1986].

[9] Quoting TSN, 7 February 1985, 5-10.

[10] 98 Phil. 427 [1956].

[11] Citing Llenares vs. Valdeavellan, 46 Phil. 358 [1924], and Delta Motors vs. Court of Appeals, 168 SCRA 206 [1988].

[12] Rollo, 94 et. seq.

[13] Citing Gonzales vs. Intermediate Appellate Court, 157 SCRA 587 [1988].

[14] Rollo, 53-58.

[15] Id., 60.

[16] Rollo, 129-137.

[17] Alagar vs. Pio de Roda, 29 Phil. 129 [1914]; Vitanzo vs. Republic, 26 SCRA 296 [1968].

[18] Ansaldo vs. Fidelity and Surety Co. of the Philippines, 88 Phil. 547 [1951]; Quiambao vs. Manila Motor Co. Inc., 113 Phil. 431 [1961]; Jalandoni vs. PNB, 108 SCRA 102 [1981]; Philippine National Bank vs. International Corporate Bank, 199 SCRA 508 [1991].

[19] Government of the Philippines vs. Echaus, 71 Phil. 318 [1941].

[20] See Vargas vs. Tancioco, 67 Phil. 308 [1939]; Philippine Executive Commission vs. Abadilla, 74 Phil. 68 [1942]; Defensor vs. Brillo, supra note 10; Capistrano vs. Philippine National Bank, 101 Phil. 1117 [1957].

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