

PACITA VIRAY, PETITIONER, VS. COURT OF APPEALS AND JOHNSON CHUA, RESPONDENTS.

G.R. No. 120760. February 24, 1998

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This case involves the authority of the Clerk of Court to amend *ex mero motu* a writ of execution earlier issued by the court to change the amount to be satisfied in the execution.

In Civil Case No. D-8835 of the Regional Trial Court of Dagupan City, plaintiff Pacita Viray, petitioner herein, entered into a compromise agreement with defendant spouses Hilarion and Gliceria Pinlac whereby the spouses bound themselves to pay their indebtedness to the former amounting to P160,000.00 in eighty (80) equal monthly installments of P2,000.00 each, subject to the condition that failure to pay two (2) installments would render the outstanding amount due and payable. The agreement was approved by the trial court.[1]

Meanwhile, a parcel of land owned by the Pinlac spouses and mortgaged with the Social Security System (SSS) was sold at public auction after the same was foreclosed for non-payment of amortizations. On 14 April 1989 the spouses redeemed the property and sold it a few days later to private respondent Johnson Chua.

On 4 May 1989, for failure of the Pinlac spouses to pay two (2) installments as stipulated in the compromise agreement, petitioner Pacita Viray filed with the trial court a motion for the issuance of a writ of execution. Alleging that the Pinlac spouses had paid her only P2,500.00 and then failed to pay the succeeding installments, petitioner demanded execution in the amount of P57,500.00 as unpaid balance thereunder. On 5 May 1989 the motion was granted, and on 22 May 1989 a writ of execution was issued by the Clerk of Court for the amount of P57,500.00 as prayed for. Three (3) days later the Deputy Sheriff annotated the notice of levy on the transfer certificate of title covering the parcel of land in the name still of the Pinlac spouses but which had been sold earlier to respondent Chua.

In a letter dated 9 June 1989 to the Clerk of Court, Atty. Alicia Bravo-Fabia, petitioner Viray requested that the writ of execution issued on 22 May 1989 be amended by changing the amount to be satisfied. She explained that in her motion for issuance of the writ the entire amount due her was erroneously stated as P57,500.00 when in fact the correct amount due was P157,500.00, or a difference of P100,000.00. On 13 June 1989, acting on Viray's letter, the Clerk of Court without a prior order from the court granted the request and issued an amended writ increasing the amount to be collected from P57,500.00 to P157,500.00. On the same day respondent Chua registered with the Registry of Deeds the deeds of redemption and sale executed in his favor by the Pinlac spouses. Accordingly, at 4:00 o'clock in the afternoon of the same day, a new title was issued in his name.

The new title contained Entry No. 135748/T-37005 referring to the notice of levy. The entry however did not specify the amount to be levied. Upon verification from the Sheriff's notice of levy that the amount due was P57,500.00, and after consulting a lawyer upon advice of a sister, respondent Chua tendered the amount to Clerk of Court Fabia. The tender was however rejected by the Clerk of Court who informed Chua that the amount was

insufficient as the writ and the notice of levy had already been amended to reflect the correct amount of P157,000.00.

Subsequently, a notice of sale at public auction dated 20 June 1989 based on the amended writ was published and the sale set on 24 July 1989. On the day of the auction, respondent Chua filed a complaint for injunction with prayer for a restraining order. The auction sale nevertheless proceeded with petitioner Viray as the highest bidder. A certificate of sale in her favor was correspondingly issued by the Sheriff. Because of this turn of events, Chua amended his complaint by adding to his causes of action a declaration of nullity of sale plus damages.

During the trial of the case, respondent Chua consigned the amount of P57,500.00 which was approved by the trial court. Accordingly, the amount was deposited with the Far East Bank and Trust Company (FEBTC), Dagupan City Branch.

On 11 July 1990 the trial court rendered judgment in favor of respondent Chua declaring null and void the amended writ of execution dated 13 June 1989, the notice of sale at public auction dated 20 June 1989 and the sheriff's certificate of sale dated 24 July 1989. The court also directed the Register of Deeds of Dagupan City to cancel the registration of the notice of levy and the sheriff's certificate of sale and ordered FEBTC to pay to petitioner Viray the consigned amount of P57,500.00 even as it dismissed her counterclaim.[2] It also ruled that in the absence of a court order, the Clerk of Court had no authority whatsoever to amend the writ of execution. This obtaining, respondent Chua's obligation was deemed discharged upon his consignment of P57,000.00 pursuant to the writ of execution originally issued.

On 29 March 1995 respondent Court of Appeals affirmed the trial court's ruling with the additional finding that the deed of sale between the Pinlac spouses and respondent Chua was not simulated.[3] It also held that the evidence did not show that at the time of its execution Chua knew of the case between petitioner and the Pinlac spouses nor was he aware of any lien on the property, except the mortgage in favor of the SSS, as to impute bad faith to him. On 7 June 1995 the appellate court denied petitioner's motion for reconsideration.[4]

Petitioner maintains that (1) respondent Chua had knowledge of the actual amount to be executed before he registered the deeds of redemption and sale; (2) Chua was a buyer in bad faith; and, (3) the Clerk of Court had the authority to amend a purely clerical error in the writ of execution. She postulates that respondent Chua is charged with the duty of ascertaining the actual amount to be executed since the notice of levy annotated in the TCT mentions Civil Case No. D-8835 as the source of the obligation of the Pinlac spouses. The fact that Chua did not refer to the records of the case which show that the property was being levied for P157,500.00 is an eloquent manifestation of his bad faith. This, she adds, is not enhanced any by the fact that prior to the registration of the deeds of redemption and sale she had already informed Chua that the balance of the spouses' obligation with her was P157,500.00.

The Court is unpersuaded by these ratiocinations. Respondent Chua was not mandated to dig deep into the records of Civil Case No. D-8835 to ascertain the amount subject of the notice of levy, for he had every right to rely on the amount stated in the notice itself, i.e., P57,500.00. Assuming that petitioner had informed him of the correct outstanding balance of the Pinlac spouses, this happenstance did not in any way overrule the amount stated in the notice of levy precisely because it was this amount ordered by the Clerk of Court for levy as directed by the trial court which approved petitioner's motion for execution. We have ruled many times over that a purchaser is not required to explore beyond what the record in the Registry indicates on its face, in quest of any hidden defect or inchoate right which may subsequently defeat his right thereto.[5]

Petitioner insists that respondent Chua was a buyer in bad faith and the sale was simulated because even after the purported sale he allowed the vendor spouses to continue occupying the subject property without paying any

rental while he himself lived in a rented apartment. This reasoning may otherwise be persuasive but we agree with the observation of respondent appellate court thus -

x x x The appellee (respondent Chua) did not take immediate possession of the property as he wanted the title x x x to be clean or settled first (pp. 7-9, TSN, February 9, 1990). It is uncontroverted that at the time the deed of sale was executed, the title to the property was in the possession of the Social Security System. The appellee knew that he cannot (sic) possibly register the deed of sale and acquire a new title in his name without presenting at the same time the owner's copy of the title. It was only on June 3, 1989 that he received the title of the property and on the same day registered the sale with the Register of Deeds x x x x[6]

Petitioner finally submits that when the discrepancy between the judgment and the writ of execution is merely clerical in nature which can readily be verified, the Clerk of Court may unilaterally correct such error.

Before resolving this issue, there is need to reiterate some basic principles. In *Hidalgo v. Crossfield*[7] the Court distinguished between the issuance of an execution and the awarding of an execution -

The issuing of an execution is a ministerial act, and must be carefully distinguished from the awarding of an execution, which is a judicial act. 'To award is to adjudge, to give anything by judicial sentence,' and when it is said that a party is awarded an execution upon a judgment it should be understood thereby that it is judicially declared that the party has a right to have the judgment executed x x x The right of a party to have an execution having been duly adjudged, the mere issuing of the writ when the time for its issuance as prescribed by law has arrived; that is to say, the preparation and delivery of the formal writ or order to the sheriff, or other officer charged with the execution of judgments, directing him to proceed with the execution is a mere compliance with the provisions of the award of judgment, and the essentially a purely ministerial act.

In other words, the function of ordering the execution of a judgment, being judicial, devolves upon the judge whereas the act of issuing the writ of execution, being ministerial, can be performed by another person, viz, the clerk of court. As the rule now stands the clerk of court may, under the direction of the court or judge, make out and sign all writs and processes issuing from the court.[8]

We may recall that petitioner moved for and was granted the execution amount of P57,500.00. The order of the trial court granting the motion was the foundation of the writ and bestowed vitality to it.[9] The order as worded is unambiguous. The court simply granted the motion for a writ of execution after it was found to be in order. Under the premises it is imperative that before the Clerk of Court can amend the writ itself, the order of the court granting its issuance should first be amended. For the order granted what was prayed for by petitioner in her motion, i.e., that a "writ of execution be issued for the sum of FIFTY SEVEN THOUSAND FIVE HUNDRED (P57,500.00) PESOS representing defendants' unpaid balance." No one then but the court can amend what was granted, and its Clerk of Court has no other duty but to issue the writ in accordance with the grant. It is settled principle that a writ of execution should conform strictly with the very essential particulars of the promulgated judgment[10] or, in the present case, with the order granting execution of a judgment based on a compromise agreement. In *Pacific Mills v. NLRC*[11] the court expressed in no uncertain terms that only the judge is vested with authority to amend such order. There was no such amendment of the order in the case at bar which would provide a solid basis for the alteration of the writ.

Verily, it was petitioner's fault if not negligence which generated the present controversy. Her motion prayed for a lesser amount giving rise to the logical conclusion that the Pinlac spouses had, in the meantime, paid part of the judgment amount and that the prayer of petitioner was only for the unpaid remainder. Thus if anyone is to be blamed for the resultant aberration, it is petitioner herself who compounded her woes by simply sending a letter to the Clerk of Court requesting amendment of the writ of execution rather than directing the matter to the attention of the judge by way of a motion for amendment of his order and the writ. Consequently, the amended writ for

P157,500.00 is void on two (2) grounds: first, it went beyond the order granting execution for P57,500.00; and second, the Clerk of Court was not clothed with authority to issue the amended writ. While an officer of the court, a public officer and an "officer of the law," the Clerk of Court is not a judicial officer. Neither is the position synonymous with the court. The office is essentially a ministerial one.[12] By amending the writ of execution on her own will, the Clerk of Court clearly usurped a judicial function. She should have instead asked counsel for Pacita Viray in the court below to file a motion for the issuance of an amended writ. Only then, when the motion to amend the writ is granted, can she validly amend the writ and thus avoid causing prejudice to the public she is bound to serve.

However, the Court does not wish to leave petitioner alone in her woes; in the interest of fairness and justice, we declare that with this decision petitioner is not precluded from exercising whatever rights she may have under the law and undertake the appropriate step for the enforcement of such rights or the execution of the compromise judgment rendered by the RTC - Br. 43, Dagupan City, in her favor on 8 November 1998 against the Pinlac spouses.[13]

WHEREFORE, the petition is DENIED. The Decision of respondent Court of Appeals sustaining that of the Regional Trial Court of Dagupan City declaring the amended writ of execution, the notice of sale at public auction and the sheriff's certificate of sale as void; ordering the Register of Deeds of Dagupan City to cancel the registration of the notice of levy and the sheriff's certificate of sale on the title of respondent Johnson Chua; ordering FEBTC Dagupan City Branch to release to petitioner Pacita Viray the amount of P57,500.00, including the interest thereon, deposited with the bank under Investment Savings Deposit No. 47099 and consigned to her with the approval of the court; and, dismissing the counterclaim, is AFFIRMED.

SO ORDERED.

Davide, Jr.,(Chairman), Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Decision approving the Compromise Agreement was penned by Judge Eloy R. Bello Jr., RTC-Br. 41, Dagupan City, on 8 November 1988; Exh. "3"; Envelope of Exhs. pp. 5-6.

[2] Decision penned by Judge Senecio O. Ortile, RTC-Br. 43, Dagupan City; Rollo, p. 59.

[3] Penned by Justice Arturo B. Buena, concurred in by Justices Cancio C. Garcia and Eugenio S. Labitoria; id., p. 26.

[4] Rollo, p. 32.

[5] Pulido v. Court of Appeals, G.R. No. 109244, 29 December 1995, 251 SCRA 673.

[6] Rollo, p. 23.

[7] 17 Phil. 466 (1910).

[8] Rule 136, Sec. 4, the Rules of Court and Chapter II., Sec. A, par. (2) subpar, (a), of the Manual for Clerks of Court.

[9] Abinujar v. Court of Appeals, G.R. No. 104133, 18 April 1995, 243 SCRA 531.

[10] Ex-Bataan Veterans Security Agency, Inc. v. NLRC, G.R. No. 121428, 29 November 1995, 250 SCRA 418.

[11] Francisco, Vicente J., Revised Rules of Court, 1966 Ed., p. 646; cf, Pacific Mills, Inc. v. NLRC, G.R. No. 88864, 17 January 1990, 181 SCRA 130, and Ibatan v. Melicor, G.R. No. 39125, 20 August 1990, 188 SCRA

598.

[12] Manual for Clerks of Court, p. 2.

[13] See *Vda. de Dimayuga v. Raymundo*, 76 Phil. 143 (1946); *Arambulo v. CFI of Laguna*, 53 Phil. 302 (1929); *Philippine Reconstruction Corp., Inc. v. Aparente*, No. L-26630, 30 May 1972, 45 SCRA 217.

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