# SPS. ELIZABETH S. TAGLE & ERNESTO R. TAGLE, PETITIONERS, VS. HON. COURT OF APPEALS, RTC, QUEZON CITY, BRANCH 97, SPS. FEDERICO AND ROSAMYRNA CARANDANG AND SHERIFF CAROL BULACAN,...

*G.R. NO. 162738. July 08, 2009*

Ponente: LEONARDO-DE CASTRO, J.

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**LEONARDO-DE CASTRO, J.:**

Before the Court is a petition for certiorari assailing the August 4, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75707, upholding the Orders issued by the Regional Trial Court (RTC) of Quezon City, Branch 97, dated October 25, 2001[2] and December 16, 2002[3] which respectively denied petitioners' Motion to Set Aside /Annul Public Auctions dated July 18, 2002 and Motion for Reconsideration dated November 27, 2002.

The present controversy stemmed from the execution of a favorable judgment in the civil case for rescission of contract filed by respondent spouses Federico and Rosamyrna Carandang (the Carandangs) against petitioner spouses Ernesto and Elizabeth Tagle (the Tagles). As culled from the records, the factual and procedural antecedents of this case follow:

Sometime in 1984, the Carandangs mortgaged several properties with the Philippine Banking Corporation (PBC). Among those mortgaged and subject of the present controversy is a house and lot located in White Plains, Quezon City. Unable to pay their mortgage obligation, the Carandangs ceded or assigned the subject property, among others, to PBC by way of a Dacion En Pago with Right to Repurchase.[4] Under the said agreement, the Carandangs were given the right or option to repurchase the property within two (2) years from the date of the agreement but this period was later extended by the bank until February 16, 1990.

On January 26, 1989, the parties herein executed a Contract to Sell[5] involving the White Plains property for P 4.5 million and thereupon the Tagles issued a check for P1 million in favor of the Carandangs. The Carandangs, in turn, delivered said amount to PBC as partial payment of the redemption/repurchase price and surrendered possession of the property to the Tagles.

Since the property was still to be redeemed from PBC, the parties executed another contract on March 31, 1989, this time, the Carandangs, by virtue of a Deed of Assignment,[6] sold the right to repurchase the subject property to the Tagles. The Deed of Assignment superseded the Contract to Sell. Hence, pursuant to the Deed of Assignment, the Tagles would be able to acquire title to the property upon payment of the redemption price as they would step into the shoes of the Carandangs.

The Carandangs submitted the Deed of Assignment to PBC for acceptance and approval and in a letter[7] dated April 4, 1989, PBC conveyed its acceptance and approval of the same.

However, the sale and conveyance of the title to the property were protracted by several factors one of which was the fact that the title of the subject property needed to be reconstituted because it was among those gutted by the

fire which razed the Office of the Register of Deeds in Quezon City.

Upon reconstitution of the title in June 1991, a meeting was held among PBC and the parties to discuss the payment scheme. At this point, the Tagles insisted that the dacion be registered and a Deed of Sale executed between them and PBC. They said they would pay PBC directly but asked for a more liberal term of payment because they did not have sufficient funds to pay the bank the full amount.

On March 20, 1992, PBC and the Tagles executed a Deed of Absolute Sale,[8] whereby the former sold the White Plains property to the latter for the price of P2,934,884.96. This deed made no mention of the parties' prior Deed of Assignment because the Tagles refused to sign unless any reference thereto was removed.

Having dealt with PBC directly, the Tagles refused to honor their obligation to the Carandangs under the Deed of Assignment. Hence, on September 26, 1991, the Carandangs filed a complaint for rescission of contract against the Tagles in the RTC of Quezon City which was docketed as Civil Case No. Q91-10092. The complaint sought payment of the balance of their obligation to the Carandangs under the Deed of Assignment.

After trial, the RTC decided in favor of petitioners and ordered respondents to reimburse the down payment given to them.

However, on appeal, the CA reversed the decision of the RTC and declared that the Tagles were bound by the parties' Deed of Assignment.[9] The CA decision in CA G.R. CV No. 46256 was disposed as follows:

> WHEREFORE, the judgment herein appealed from is hereby REVERSED, and in lieu thereof, judgment is hereby rendered ordering the defendant-appellees [Tagles] to pay to the plaintiffs-appellants [Carandangs] the sum of FOUR HUNDRED FORTY FIVE THOUSAND ONE HUNDRED FIFTEEN AND 04/100 PESOS (P445,115.04), with interest thereon at the legal rate from the date of the filing of the complaint until fully paid. (Words in brackets ours)
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> SO ORDERED.

The Tagles' subsequent motion for reconsideration having been denied by the CA, they elevated the case to this Court through a petition for review on certiorari. In a Resolution dated October 29, 1998,[10] the Court denied said petition for being insufficient in form and substance. This resolution became final and executory on December 9, 1998 and entry of judgment was made in due course.[11]

Upon motion of the Carandangs, the RTC ordered the issuance of a writ of execution. Thereafter, the branch clerk of court ordered the sheriff to implement the final and executory decision in CA G.R. CV No. 46256. In the process, certain personal properties of the Tagles consisting of various paintings and artworks of petitioner Ernesto R. Tagle were sold at public auction on August 9, 2000 for the amount of P62,000.00 which resulted in the issuance of a certificate of sale to the Carandangs as the only bidder. It was followed by another auction sale on September 27, 2000 of Tagle's properties, again consisting of various paintings and artworks which were sold for the amount of P189,500.00.

On August 3, 2001, the Tagles filed an urgent motion and opposition to execution, praying for the return of the artworks levied upon and in lieu thereof, to accept payment of P400,000.00 as satisfaction of the CA decision in CA G.R. CV No. 46256, but this motion was denied by the RTC in a resolution dated December 7, 2001.

On June 3, 2002, the Carandangs filed a motion to fix balance of the Tagles's judgment debt by submitting certain guidelines in computing the judgment debt.

Meanwhile, on June 5, 2002, the sheriff issued a notice of sale on execution of a parcel of land covered by TCT No. 59497 in the name of the Tagles.


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On July 18, 2002, the Tagles filed a comment/opposition to the motion to fix balance of their judgment debt with motion to set aside/annul public auctions.

On October 25, 2002, the RTC fixed the Tagles' judgment debt at P558,461.00, but denied their motion to set aside/annul auction sale.

A motion for an order directing the sale of the property under execution was filed and granted in an order dated January 17, 2003.

Displeased, the Tagles filed a petition for certiorari with the CA arguing that the RTC gravely abused its discretion when it upheld the regularity and validity of the August 9, 2000 and September 27, 2000 public auctions despite (a) the alleged lack of written notice to them in violation of Section 15, Rule 39 of the 1997 Rules of Civil Procedure (the "Rules") and (b) the shockingly inadequate proceeds thereof.

In the decision dated August 4, 2003, the CA dismissed the petition declaring, in essence, that the Tagles were duly notified of the questioned auction sales and the purported inadequacy of the sale price in such auction sales is immaterial to the validity of the sale.

Hence, the Tagles appeal to this Court via the present petition. Unfortunately, we cannot uphold their claims therein.

First, petitioners assert that they never received written notices of the August 9, 2000 and September 27, 2000 public auctions as required by the Rules. However, their denial is belied by the record.

With respect to the August 9, 2000 public auction, petitioners argue that the written notice of sale served on their private secretary is invalid. According to petitioners, the notice served on their secretary was in violation of Section 15, Rule 39 of the Rules which purportedly requires that the notice of sale be given to the judgment debtor and no other person.

We do not agree. Section 15, Rule 39 states:

> SEC. 15. Notice of sale of property on execution. Before the sale of property on execution, notice thereof must be given as follows:
>
> (a) In case of perishable property, by posting written notice of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;
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> (b) In case of other personal property, by posting a similar notice in the three (3) public places above-mentioned for not less than five (5) days;
>
> (c) In case of real property, by posting for twenty (20) days in the three (3) public places above-mentioned a similar notice particularly describing the property and stating where the property is to be sold, and if the assessed value of the property exceeds fifty thousand (P50,000.00) pesos, by publishing a copy of the notice once a week for two (2) consecutive weeks in one newspaper selected by raffle, whether in English, Filipino, or any major regional language published, edited and circulated or, in the absence thereof, having general circulation in the province or city;
>
> (d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.
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> xxx xxx xxx (emphasis ours)


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Section 15(d) of Rule 39, cited by petitioners must be read in relation to Section 6, Rule 13, which in turn provides:

> Sec. 6. Personal service. Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein. (emphasis ours)

Verily, following Section 6, Rule 13, the written notice of sale to the judgment obligor need not be personally served on the judgment obligor himself. It may be served on his counsel, or by leaving the notice in his office with his clerk or a person having charge thereof. If there is no one found at the judgment obligor's or his counsel's office or if such office is not known/inexistent, it may be served at the residence of the judgment obligor or his counsel and may be received by any person of sufficient age and discretion residing therein. Thus, petitioners' theory (that only written notice of sale served on petitioners' themselves would be valid) is utterly bereft of merit.

Other circumstances on record further support the finding that petitioners were duly notified of the August 9, 2000 auction sale. It can be gleaned from the Sheriff's Report[12] dated August 11, 2000 that a notice of sale was first issued on March 20, 2000. This was a notice for the public auction of various personal properties initially set on March 28, 2000 but the sale on said date was postponed upon the request of the parties (including petitioners) for time to come up with an amicable settlement. When no amicable settlement was reached, the sheriff issued on July 31, 2000 another notice of sale which was set for August 9, 2000. The report further states that on the auction sale eventually conducted on August 9, 2000, the Tagles' son, Eric Tagle, was present. The Sheriff's Report is prima facie evidence of the facts stated therein. Indeed, the fact that petitioners were represented during the auction sale by their son confirmed that they had actual notice of the said auction sale.

We need not emphasize that the sheriff enjoys the presumption of regularity in the performance of the functions of his office.[13] This presumption prevails in the absence of substantial evidence to the contrary and cannot be overcome by bare and self-serving allegations. There was no showing that there was any irregularity in the report submitted by the sheriff, neither was there evidence that the sheriff was remiss in his duty to issue the said notices.

As for the September 27, 2000 auction, the written notice thereof was served and signed by petitioner Ernesto Tagle himself.[14] In the light of these circumstances, the Tagles could not credibly feign ignorance of the contested auction sales.

Second, petitioners contend that the proceeds of the auction sale were grossly inadequate.

In civil cases, he who alleges a fact has the burden of proving it. Having made such allegation that the proceeds of the sale were grossly inadequate, the burden of proof was upon them. Mere allegation is not evidence and is not equivalent to proof. While this Court is not unaware of petitioner Ernesto Tagle's reputation as a known artist and painter, mere claim of his renown in artistic circles is not proof of the purported high value of his artwork and pieces that were auctioned or of the inadequacy of the price when such works were sold during the questioned auction sales. We note that the Tagles presented several receipts to show the prices at which some of petitioner Ernesto Tagle's artworks had allegedly been sold. However, there was no evidence that the artworks auctioned on execution were of the same kind or worth as those sold to the buyers indicated in the said receipts. Ergo, there were no bases for comparison for the value of the works mentioned in the said receipts and the value of those sold at the execution sales questioned herein. What was incumbent upon petitioners was to produce independent, competent and credible valuations or appraisals of the artwork sold during the assailed public auctions in order to substantiate their claim that the prices at which said paintings and artwork were sold were indeed grossly

inadequate.

Accordingly, the Court finds no grave abuse of discretion was committed by the CA in upholding the regularity and validity of the challenged August 9, 2000 and September 27, 2000 public auction sales.

WHEREFORE, petition is hereby DISMISSED.

Costs against petitioners.

**SO ORDERED.**

Puno, C.J., (Chairperson), Carpio, Corona, and Brion,[*]JJ., concur.

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[*] Additional member in lieu of Justice Lucas P. Bersamin as per raffle dated June 29, 2009.

[1] Penned by Associate Justice Eugenio S. Labitoria (ret.) with Associate Justices Andres B. Reyes and Regalado E. Maambong (ret.), concurring; rollo, pp. 168-174.

[2] Id. at 142-143.

[3] Id. at 148.

[4] CA rollo, pp. 25-28.

[5] Id. at 46-48.

[6] Id. at 53-55.

[7] Id. at 36.

[8] Id. at 152-153.

[9] Rollo, pp. 99-112.

[10] Id. at 113.

[11] Id. at 114.

[12] CA rollo, p. 117.

[13] Rules of Court, Rule 131, Section 3(m).

[14] CA rollo, p. 170.


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