

TERLYNGRACE RIVERA, PETITIONER, VS. FLORENCIO L. VARGAS, RESPONDENT.

G.R. No. 165895. June 05, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

What is the effect of a writ of replevin that has been improperly served?

This is the sole issue to be resolved in this petition for review on certiorari seeking to set aside the Decision[1] of the Court of Appeals (CA) dated November 18, 2003 in CA-G.R. SP No. 78529, as well as its October 20, 2004 Resolution,[2] denying the petition for certiorari filed by petitioner Terlyngrace Rivera (Rivera).

The facts follow.

On February 24, 2003, respondent Florencio Vargas (Vargas) filed a complaint[3] against petitioner and several John Does before Branch 02 of the Regional Trial Court (RTC) in Tuguegarao City, Cagayan, for the recovery of a 150 T/H rock crushing plant located in Sariaya, Quezon. In his complaint and affidavit,[4] Vargas claims ownership of the said equipment, having purchased and imported the same directly from Hyun Dae Trading Co., in Seoul, South Korea, in December 1993.[5] The equipment was allegedly entrusted to petitioner's husband, Jan T. Rivera, who died sometime in late 2002, as caretaker of respondent's construction aggregates business in Batangas. According to Vargas, petitioner failed to return the said equipment after her husband's death despite his repeated demands, thus forcing him to resort to court action.[6] The complaint was accompanied by a prayer for the issuance of a writ of replevin and the necessary bond amounting to P2,400,000.00.

Summons[7] dated February 24, 2003 was served upon petitioner through her personal secretary on April 28, 2003 at her residence in Parañaque City. Interestingly, however, the writ of replevin[8] was served upon and signed by a certain Joseph Rejumo, the security guard on duty in petitioner's crushing plant in Sariaya, Quezon on April 29, 2003,[9] contrary to the sheriff's return[10] stating that the writ was served upon Rivera.

On May 8, 2003, Rivera filed her answer, manifestation, and motion for the acceptance of petitioner's redelivery bond.[11] In her answer, petitioner countered that the rock-crushing plant was ceded in favor of her husband as his share following the dissolution of the partnership formed between Jan Rivera and respondent's wife, Iluminada Vargas (Iluminada), on May 28, 1998, while the partnership's second rock-crushing plant in Cagayan was ceded in favor of Iluminada.[12] She further averred that from the time that the partnership was dissolved sometime in 2000 until Jan Rivera's death in late 2002, it was petitioner's husband who exercised ownership over the said equipment without any disturbance from respondent.[13]

On May 12, 2003, the RTC issued an Order[14] disapproving petitioner's redelivery bond application for failure to comply with the requirements under Sections 5 and 6 of Rule 60 of the Rules of Court.[15] Without directly saying so, the RTC faulted petitioner for her failure to file the application for redelivery bond within five (5) days from the date of seizure as provided in the Rules of Court. Petitioner moved for reconsideration,[16] but the same

was also denied.[17]

Aggrieved, petitioner elevated the matter to the CA through a petition for certiorari under Rule 65. This, too, was denied for lack of merit.[18] Petitioner moved for reconsideration,[19] but it was also denied.[20]

Undaunted, petitioner now comes to us via this Rule 45 petition.

Petitioner argues that the RTC committed grave abuse of discretion in denying her counterbond on the ground that it was filed out of time. She contends that the mandatory five-day period did not even begin to run in this case due to the improper service of the writ of replevin, contrary to Section 4 of Rule 60.[21]

We find the petition meritorious.

Replevin is one of the most ancient actions known to law, taking its name from the object of its process.[22] It originated in common law as a remedy against the wrongful exercise of the right of distress for rent[23] and, according to some authorities, could only be maintained in such a case.[24] But by the weight of authority, the remedy is not and never was restricted to cases of wrongful distress in the absence of any statutes relating to the subject, but is a proper remedy for any unlawful taking.[25] "Replevied," used in its technical sense, means delivered to the owner,[26] while the words "to replevy" means to recover possession by an action of replevin.[27]

Broadly understood in this jurisdiction, replevin is both a form of principal remedy and of provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and to hold it pendente lite.[28] The action is primarily possessory in nature and generally determines nothing more than the right of possession.[29]

The law presumes that every possessor is a possessor in good faith.[30] He is entitled to be respected and protected in his possession[31] as if he were the true owner thereof until a competent court rules otherwise.[32] Before a final judgment, property cannot be seized unless by virtue of some provision of law.[33] The Rules of Court, under Rule 60, authorizes such seizure in cases of replevin. However, a person seeking a remedy in an action for replevin must follow the course laid down in the statute, since the remedy is penal in nature.[34] When no attempt is made to comply with the provisions of the law relating to seizure in this kind of action, the writ or order allowing the seizure is erroneous and may be set aside on motion[35] by the adverse party. Be it noted, however, that a motion to quash the writ of replevin goes to the technical regularity of procedure, and not to the merits of the case[36] in the principal action.

The process regarding the execution of the writ of replevin in Section 4 of Rule 60 is unambiguous: the sheriff, upon receipt of the writ of replevin and prior to the taking of the property, must serve a copy thereof to the adverse party (petitioner, in this case) together with the application, the affidavit of merit, and the replevin bond.[37] The reasons are simple, i.e., to provide proper notice to the adverse party that his property is being seized in accordance with the court's order upon application by the other party, and ultimately to allow the adverse party to take the proper remedy consequent thereto.

Service of the writ upon the adverse party is mandatory in line with the constitutional guaranty on procedural due process and as safeguard against unreasonable searches and seizures.[38] If the writ was not served upon the adverse party but was instead merely handed to a person who is neither an agent of the adverse party nor a person authorized to receive court processes on his behalf, the service thereof is erroneous and is, therefore, invalid, running afoul of the statutory and constitutional requirements. The service is likewise invalid if the writ of replevin was served without the required documents. Under these circumstances, no right to seize and to detain

the property shall pass, the act of the sheriff being both unlawful and unconstitutional.

In the case at bar, petitioner avers that the writ of replevin was served upon the security guard where the rock-crushing plant to be seized was located.[39] The signature of the receiving party indicates that the writ was received on April 29, 2003 by a certain Joseph Rejumo, the guard on duty in a plant in Sariaya, Quezon, where the property to be seized was located, and witnessed by Claudio Palatino, respondent's caretaker.[40] The sheriff's return,[41] however, peremptorily states that both the writ of replevin and the summons were served upon Rivera. On May 8, 2003, or nine (9) days after the writ was served on the security guard, petitioner filed an answer to the complaint accompanied by a prayer for the approval of her redelivery bond. The RTC, however, denied the redelivery bond for having been filed beyond the five-day mandatory period prescribed in Sections 5 and 6 of Rule 60.[42] But since the writ was invalidly served, petitioner is correct in contending that there is no reckoning point from which the mandatory five-day period shall commence to run.

The trial court is reminded that not only should the writ or order of replevin comply with all the requirements as to matters of form or contents prescribed by the Rules of Court.[43] The writ must also satisfy proper service in order to be valid and effective: i.e. it should be directed to the officer who is authorized to serve it; and it should be served upon the person who not only has the possession or custody of the property involved but who is also a party or agent of a party to the action. Consequently, a trial court is deemed to have acted without or in excess of its jurisdiction with respect to the ancillary action of replevin if it seizes and detains a personality on the basis of a writ that was improperly served, such as what happened in this case.

At the outset, petitioner's proper remedy should have been to file a motion to quash the writ of replevin or a motion to vacate the order of seizure. Nevertheless, petitioner's filing of an application for a redelivery bond, while not necessary, did not thereby waive her right to question the improper service. It now becomes imperative for the trial court to restore the parties to their former positions by returning the seized property to petitioner and by discharging the replevin bond filed by respondent. The trial, with respect to the main action, shall continue. Respondent may, however, file a new application for replevin should he choose to do so.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals, as well as its Resolution, in CA-G.R. SP No. 78529 is hereby SET ASIDE. The Regional Trial Court is hereby ordered to restore the parties to their former positions, discharge respondent's replevin bond, and proceed with the trial of the main action with dispatch.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio,[*] Corona,**] and Peralta, JJ., concur.

[*] Additional member in lieu of Associate Justice Conchita Carpio Morales per Special Order No. 646 dated May 15, 2009.

[**] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 631 dated April 29, 2009.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring; rollo, pp. 32-35.

[2] Rollo, pp. 45-46.

[3] Id. at 51-65.

[4] Id. at 56-57.

[5] Id. at 55-57.

[6] Id. at 51-53.

[7] Id. at 70.

[8] Id. at 68-69.

[9] Id. at 69.

[10] Id. at 72-73.

[11] Id. at 74-94.

[12] Id. at 76-79, 85-87.

[13] Id. at 76-79.

[14] Id. at 101.

[15] Secs. 5 and 6, Rule 60 of the Rules of Court, read:

SEC. 5. Return of property. - If the adverse party objects to the sufficiency of the applicant's bond, or of the surety or sureties thereon, he cannot immediately require the return of the property, but if he does not so object, he may, at any time before the delivery of the property to the applicant, require the return thereof, by filing with the court where the action is pending a bond executed to the applicant, in double the value of the property as stated in the applicant's affidavit for the delivery thereof to the applicant, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the adverse party, and by serving a copy of such bond on the applicant.

SEC. 6. Disposition of property by sheriff. - If within five (5) days after the taking of the property by the sheriff, the adverse party does not object to the sufficiency of the bond, or of the surety or sureties thereon; or if the adverse party so objects and the court affirms its approval of the applicant's bond or approves a new bond, or if the adverse party requires the return of the property but his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the applicant. If for any reason the property is not delivered to the applicant, the sheriff must return it to the adverse party.

[16] Rollo, pp. 103-107.

[17] Id. at 108.

[18] Id. at 32-35.

[19] Id. at 36-44.

[20] Supra note 2.

[21] Sec. 4, Rule 60 of the Rules of Court, reads:

SEC. 4. Duty of the sheriff. - Upon receiving such order, the sheriff must serve a copy thereof on the adverse party, together with a copy of the application, affidavit and bond, and must forthwith take the property, if it be in the possession of the adverse party, or his agent, and retain it in his custody. If the property or any part thereof be concealed in a building or enclosure, the sheriff must demand its delivery, and if it be not delivered, he must cause the building or enclosure to be broken open and take the property into his possession. After the sheriff has taken

possession of the property as herein provided, he must keep it in a secure place and shall be responsible for its delivery to the party entitled thereto upon receiving his fees and necessary expenses for taking and keeping the same.

[22] *Stone v. Church*, 16 N.Y.S.2d 512, 515, 172 Misc. 1007, 1008 (1939).

[23] *Sinnott v. Feiock*, 59 N.E. 265, 165 N.Y. 444, 80 Am.S.R. 736, 53 L.R.A. 565 (1901); and *Kurzweil v. Story & Clark Piano Co. and Blumgarten v. Mason & Hamlin Co.*, 159 N.Y.S. 231, 95 Misc. 484 (1916).

[24] *Palmer v. King*, 41 App. DC. 419, L.R.A.1916D 278, Ann. Cas.1915C 1139 (1914).

[25] *Stone v. Church*, supra note 22.

[26] *Steuer v. Maguire*, 66 N. E. 706, 707; 182 Mass. 575, 576 (1903).

[27] *Tillson v. Court of Appeals*, G.R. No. 89870, May 28, 1991, 197 SCRA 587, 598.

[28] *BA Finance Corporation v. CA*, 327 Phil. 716, 724-725 (1996). See also *Tillson v. Court of Appeals*, id.; *Bouvier's Dictionary*, Third (Rawle's) Revision, Vol. 2; *Black's Law Dictionary*, Sixth Edition, p. 1299.

[29] *BA Finance Corporation v. CA*, supra, at 725.

[30] Art. 527 of the New Civil Code provides:

Art. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

[31] Art. 539 of the New Civil Code provides:

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of the Court.

[32] *Yu v. Honrado*, No. 50025, August 21, 1980, 99 SCRA 273, 277, citing *Chua Hai v. Kapunan, Jr., etc. and Ong Shu*, 104 Phil. 110, 118 (1958).

[33] *Heath v. Steamer "San Nicolas"*, 7 Phil. 532, 538 (1907).

[34] *Weaver Piano Co., Inc. v. Curtis*, 158 S.C. 117; 155 SE 291, 300 (1930).

[35] *Heath v. Steamer "San Nicolas"*, supra note 33, at 538.

[36] *Cummings v. Gordon*, 29 Pa. Dist. 740; 77 C.J.S. 120.

[37] Supra note 21.

[38] Secs. 1 and 2, Art. III of the Constitution provides in full:

Section 1. No person shall be deprived of life liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and witnesses he may produce, and particularly describing the place to be searched and the persons or things be seized. (*Italics supplied.*)

[39] *Rollo*, pp. 13, 69, 138.

[40] Annex "G-2," *id.* at 69.

[41] Rollo, pp. 72-73.

[42] *Id.* at 101.

[43] Vicente Francisco, *The Revised Rules of Court in the Philippines, Provisional Remedies*, Vol. IV-A, 1971, p. 394, citing 77 C.J.S. 81-82.

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