

**PABLITO T. VILLARIN AND P.R. BUILDERS DEVELOPERS & #038;
MANAGERS, INC., PETITIONERS, VS. CORONADO P. MUNASQUE,
RESPONDENT.**

G.R. No. 169444. September 17, 2008

Ponente: TINGA, J.

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TINGA, J.:

The Decision dated 31 March 2005 and Resolution dated 11 August 2005 of the Court of Appeals[1] are assailed in this petition for review under Rule 45.[2]

The facts as culled from the assailed decision and the records follow.

This case stemmed from a Complaint[3] for collection of sum of money filed on 10 July 2002 by respondent Coronado P. Munasque against petitioners Pablito T. Villarin and P.R. Builders Developers and Managers, Inc., and their co-defendant Intra Strata Assurance Corp. (Intra Strata) before the Regional Trial Court (RTC) of Makati City, Branch 58.

On 20 July 2002, before the answer could be filed, the parties entered into a compromise agreement[4] wherein petitioners acknowledged their joint and solidary obligation to respondent in the amount of P15 million, with a monthly interest of P450,000.00 from 18 October 2001 until full payment, and promised to pay the whole amount within ninety (90) days from the date of the said agreement. To guarantee payment of the obligation, all the real estate mortgages executed by petitioners in favor of Intra Strata were assigned to respondent. Consequently, Intra Strata was released from its obligation to respondent and the complaint against it dismissed.

On even date, the parties jointly filed before the RTC a motion for the approval of the compromise agreement.[5] Judge Winlove M. Dumayas (Judge Dumayas), pairing judge of the RTC, granted the motion on 2 August 2002.[6]

Petitioners managed to pay only P250,000.00 of their total obligation. Thus, on 23 October 2002, respondent filed a motion for execution.[7]

The motion was granted[8] and the writ of execution issued on 29 October 2002.[9] The following day, 30 October 2002, deputy sheriff of Makati, Antonio Q. Mendoza (Deputy Sheriff Mendoza), issued a notice of levy[10] and had the same annotated at the back of thirty-four (34) transfer certificates of title (TCTs) issued by the Register of Deeds of Tanauan City in the name of petitioners. On the same day, another notice of levy[11] was issued against all rights and interests of petitioners on a piece of land covered by a tax declaration in petitioner Villarin's name, directing that the corresponding recording and annotation be made in the books of the city assessor of Tagaytay City. On 5 November 2002, still another notice of levy[12] with the same directive to the Register of Deeds of Tanauan City, Batangas was issued against eleven (11) pieces of property covered by TCTs issued in the name of petitioners.

On 8 November 2002, Deputy Sheriff Mendoza issued "Notice of Deputy Sheriff's Sale on Execution"[13]

relative to the levied properties, caused its registration in the Office of the City Assessor of Tagaytay and the Register of Deeds of Tanauan City, and had it posted for twenty days in three public places each in the cities of Tanauan, Tagaytay and Makati. After the raffle was conducted by the clerk of court (ex officio deputy sheriff) of the RTC of Makati City, the notice of sale on execution was published in a newspaper of national circulation on 20 and 27 November 2002.[14]

On 14 November 2002, the law firm of Oben Ventura Abola entered its appearance as collaborating counsel with petitioners' counsel of record, Atty. Jufraida F. Salamero (Atty. Salamero).[15] The firm sent via registered mail to respondent's counsel and Deputy Sheriff Mendoza a letter[16] dated 13 November 2002, complaining of procedural lapses in the enforcement of the writ of execution. The firm claimed that the deputy sheriff did not comply with Section 9, Rule 39 of the 1997 Rules of Civil Procedure which, according to it, requires first a personal demand for payment of the full amount of the obligation before levy on the properties could be made; that when levy was made, petitioners were not given the option to choose what property should be levied; and that levy should have been made first on petitioners' personal properties. Petitioners then identified eight (8) parcels of land registered with the Register of Deeds of Tanauan City which they claimed should be the subject of levy since the combined value of the said properties was sufficient to cover the P15 million claim. On that basis, they requested that the appropriate correction be made in the notice of levy.

On 19 November 2002, petitioners filed a motion to recall the notice of levy and cancel the scheduled deputy sheriff's sale, alleging the same grounds raised in the letter of 13 November 2002.[17]

Respondent opposed the motion, contending that the day before the levy, petitioners' counsel, Atty. Salamero, informed respondent's counsel that petitioners did not have the money to pay even one month's interest at the time. It was also averred that Atty. Salamero also agreed to the immediate levy of the real properties of petitioners provided that the auction sale be scheduled earlier than 20 November 2002 because by then, according to her, petitioners shall have already had the funds needed to pay their obligation. Petitioners' accountant, Florita B. Santos (Santos), allegedly made similar representations to respondent. Respondent also alleged that petitioners' specification of the 8 parcels of land to be levied upon constituted a waiver and/or confirmation of their previous waiver of the need to require the sheriff to first personally demand full payment of the judgment debt or levy on their personal properties.[18]

On 13 December 2002, the RTC reset the scheduled auction sale from 16 December 2002 to 16 January 2003.[19]

On 7 January 2003, the RTC issued an Order[20] denying for lack of merit petitioners' motion to recall the levy and to cancel the scheduled sale on execution. Thus, on 16 January 2003, Deputy Sheriff Mendoza conducted an auction sale of the levied properties at the main entrance lobby of the Makati City Hall. The minutes of auction sale[21] would show that counsels for both parties, who had affixed their signatures therein, were present at the sale and that only respondent's representative participated in the bidding. As found by the Court of Appeals, the said minutes would also show that all the real properties had been sold one after another with separate price for each bid and that the individual bid prices for the forty-four (44) lots totaled P19,546,000.00. Respondent paid the deputy sheriff's fees and thereafter was issued a certificate of sale on execution.

On 30 January 2003, petitioners filed an omnibus motion to reconsider the Order dated 7 January 2003; to declare null and void and recall the Notice of Levy dated 30 October 2002, the Notice of Deputy Sheriff's Sale on Execution dated 8 November 2002, and the auction sale proceedings held on 16 January 2003; and to inhibit the presiding judge.[22] Petitioners alleged that the 7 January 2003 Order did not have any factual or legal basis, and that they had lost faith in the presiding judge whose acts were tainted with irregularity and malice.

On 20 February 2003, Judge Dumayas inhibited himself from the case without resolving petitioners' omnibus

motion. The case was re-raffled to Branch 148, presided by Judge Oscar B. Pimentel (Judge Pimentel).

On 12 June 2003, Judge Pimentel issued an Order[23] declaring null and void the deputy sheriff's sale on execution of petitioners' real properties and setting aside the 7 January 2003 Order which denied petitioners' motion to recall the notice of levy. The dispositive portion of the order reads:

WHEREFORE, premises considered, the Omnibus Motion is hereby GRANTED, hence, the Order dated 7 January 2003 is hereby set aside, and the notice of levy dated 30 October 2002, notice of Deputy Sheriff's sale on execution dated 8 November 2002 and the auction sale proceedings on 16 January 2003 are hereby declared null and void.

SO ORDERED.[24]

On 3 July 2003, respondent filed a motion for reconsideration of the Order of 12 June 2003, but this was denied in the RTC's Order[25] dated 25 August 2003.

Respondent thus appealed to the Court of Appeals which, on 31 March 2005, ruled favorably to respondent:[26]

WHEREFORE, the assailed Orders dated 12 June 2003 and [25 August 2003] of Judge Pimentel are REVERSED and SET ASIDE. The Order dated 7 January 2003 of Judge Dumayas is AFFIRMED and REINSTATED, and the validity of the auction sale conducted by Deputy Sheriff Mendoza on 16 January 2003, UPHELD.

SO ORDERED.[27]

The Court of Appeals noted that in the RTC's Order of 7 January 2003, some pertinent facts were not denied or disputed by petitioners, namely, that Atty. Salamero and Santos admitted to respondent's counsel that petitioners had no sufficient funds to pay even one month's interest, and that petitioners agreed that the levy may proceed as long as the auction sale would not be scheduled earlier than 20 November 2002. The Court of Appeals also held that all the alleged procedural defects committed by Deputy Sheriff Mendoza had been corrected when petitioners wrote the letter dated 13 November 2002,[28] as follows:

In violation of the above requirements, no demand for the immediate payment for the full amount of the obligation was made upon the [petitioners] by the [Deputy Sheriff] concerned prior to the issuance of the levy.

As a consequence, [petitioners] had been thereby effectively and unduly deprived of the opportunity to exercise his "option" or right under the Writ "to immediately choose which properties may be levied upon" in the event he fails to pay the judgment debt upon such demand.

As a further consequence, levy has been indiscriminately and arbitrarily made on properties of [petitioners] whose value is well in excess of [respondent's] claim.

We note that the aforesaid Notice of Levy was issued with precipitate haste on 30 October 2002, just a day after the issuance of the Writ of Execution on 29 October 2002, barring sufficient opportunity for a demand for payment to be made upon [petitioners] nor for any opportunity to exercise [petitioners'] right to choose which properties may be levied upon, indicative of a premeditated plan of over levying on [petitioners'] properties.

Notwithstanding the above, [petitioners] hereby exercise their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation pursuant to the Writ of Execution issued by Honorable Winlove M. Dumayas of the [RTC] of Makati, Branch 58, to wit:

Real Property Area

TCT No. T-89829 47,241 sq. meters

TCT No. T-93840 4,184 sq. meters

TCT No. T-93843 4,408 sq. meters

TCT No. T-93845 4,406 sq. meters

TCT No. T-93847 4,406 sq. meters

TCT No. T-93848 4,406 sq. meters

TCT No. T-93849 4,406 sq. meters

TCT No. T-93850 4,406 sq. meters[29]

The Court of Appeals found that the foregoing acts amounted to petitioners' exercise of their right "to immediately choose which property or part thereof may be levied upon sufficient to satisfy the judgment" and a waiver of their right to require the officer to first levy on their personal properties. The appellate court opined that it would be an exercise in futility to require the officer to first make a personal demand when the judgment debtors (petitioners) had already given the go-signal to proceed with the levy of real properties. It noted that waiver of personal demand for immediate payment is allowed by Article 6 of the New Civil Code and such waivers and automatic correction of the procedural defects thus rendered moot the challenge against the validity of the levy.[30]

The appellate court ruled further that petitioners' 44 parcels of land were sold separately as required by law and not in bulk. It found erroneous the RTC's conclusion that the sale was made in bulk since nowhere was it stated in the deputy sheriff's report that the sale of all the parcels of land was done en masse, and the minutes of the auction sale, prepared by the deputy sheriff and signed by the representatives of both parties, clearly indicate the individual description and TCT numbers of the properties sold, the individual bid price for each parcel of land, and the total bid price for all 44 parcels. The certificate of sale on execution dated 16 January 2003 also specifies the TCT number, the technical description, and selling price of each parcel of land sold. Thus, bearing in mind the legal presumption of regular performance of official duty and the fact that the parties never made any objection during the auction sale or immediately thereafter, the Court of Appeals ruled that the properties were sold separately.[31]

In the present petition, petitioners contend that Deputy Sheriff Mendoza failed to comply with the provisions of Section 9, Rule 39 of the Rules of Court in implementing the writ of execution. In levying on the 44 parcels of land, he allegedly failed to (a) first make a personal demand on petitioners for the immediate payment of the full amount stated in the writ of execution and all lawful fees and (b) give petitioners the option to immediately choose which property or part thereof sufficient to satisfy the judgment may be levied upon.[32] They argue that the admissions made by Atty. Salamero and Santos do not amount to a waiver of their right to prior demand for payment of the full amount of the judgment, noting that Deputy Sheriff Mendoza should have made the demand for payment on petitioners themselves in order to verify the admissions made by said persons.[33]

Petitioners add that the letter of 13 November 2002 also does not constitute a waiver or an automatic correction of the procedural defects in the execution of the writ since petitioners wrote the letter precisely to exercise their right to choose the properties to be levied upon. They merely sought to save whatever rights they still had, they explain.[34]

Petitioners also question the Court of Appeals' finding that the 44 parcels of land were sold separately as required by law, on the ground that it has no factual or evidentiary basis. The minutes of the auction sale on which the Court of Appeals based its finding do not even contain the individual description of the properties sold but only an enumeration of the titles covering each property, with the bid price for each parcel of land left blank but later

filled in by handwriting only, indicating that the 44 parcels were sold in bulk and not separately.[35]

Finally, petitioners allege that the Court of Appeals erred in disregarding the documents they presented which show the fair market value of the properties levied by Deputy Sheriff Mendoza. The documents supposedly show that the fair market value of the properties levied upon is P1,187,212,000.00 or far greater than the judgment debt of P15 million. Thus, they claim that an overlevy was perpetrated by failure to comply with the provisions of Section 9, Rule 39.[36]

In his comment, respondent agrees with the Court of Appeals that in assenting, through their counsel, to the auction sale scheduled after 20 November 2002, petitioners waived the requirement of demand for immediate payment, and that through their letter of 13 November 2002, they indicated their choice of the specific properties to be levied upon and this also unwittingly cured the procedural lapses in the enforcement of the writ.[37]

As to petitioners' allegations that the levied properties were sold in bulk, not individually, and that the appellate court disregarded evidence proving the market value of the properties levied upon, respondent asserts that such allegations are primarily questions of fact which are improper in such a petition as the present one; besides, official documents such as the minutes of auction sale and the certificate of sale on execution, show that the properties were sold individually. Moreover, the market value of the properties was indicated by the RTC in the Order of 7 January 2003, based on tax declarations he submitted for evaluation, respondent adds.

On 25 January 2006, petitioners filed their Reply[38] essentially reiterating the arguments in their petition.

The validity of both the levy made by Deputy Sheriff Mendoza on petitioners' 44 parcels of land and the subsequent auction sale proceedings is put in question in this case. The main issue may be couched as follows: whether the failure of the deputy sheriff to first demand of the judgment obligor payment of the judgment debt before levying the judgment obligor's real properties without allowing him to exercise his option to choose which of his properties may be levied upon, and without first levying on his personal properties, constitute a fatal procedural defect resulting in the nullity of the levy and the subsequent execution sale. The other issue is whether the Court of Appeals committed "grave abuse of discretion" in failing to consider petitioners' evidence on the fair market value of the levied properties.

The petition should be denied.

Section 9, Rule 39 of the Rules of Court provides the procedure in the enforcement of a money judgment. It reads:

SEC. 9. Execution of judgments for money, how enforced. --(a) Immediate payment on demand.--The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

x x x x

(b) Satisfaction by levy.--If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the

personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

x x x x

Based on the foregoing, the sheriff is required to first demand of the judgment obligor the immediate payment of the full amount stated in the writ of execution before a levy can be made. The sheriff shall demand such payment either in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his properties can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.[39]

Subsection (a) of Section 9, Rule 39 was taken from Section 15, Rule 39 of the 1964 Rules of Court which provided that execution of money judgments is enforced by "levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the judgment creditor, or his attorney, so much of the proceeds as will satisfy the judgment." The former rule directed the execution of a money judgment against the property of the judgment debtor.[40]

The present rule now requires the sheriff to first make a demand for payment, and it prescribes the procedure for and the manner of payment as well as the immediate turnover of the payment by the sheriff to the clerk of court. Levy as a mode of satisfying the judgment may be done only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode of payment acceptable to the judgment obligee.[41]

The issue of improper levy was raised in *Seven Brothers Shipping Corp. v. Oriental Assurance Corp.*[42] In that case, Seven Brothers was ordered to pay Oriental Assurance P8 million plus interest at the legal rate from the date of filing of the complaint until full payment. When the sheriff enforced the writ of execution by levying on the vessels of the shipping company, it moved to quash the writ and to lift the levy. The RTC granted the motion. Oriental Assurance assailed the RTC decision through a petition for certiorari which the Court of Appeals granted. Thus, the writ of execution and the levy on the vessels were reinstated. Thereafter, Seven Brothers filed with this Court a petition for review contending, among others, that the levy was improper since the sheriff had not demanded payment of the judgment debt in cash before levying on its vessels.

In denying the petition, the Court noted that the decision finding Seven Brothers liable to Oriental Assurance had already become final and executory and that entry of judgment had already issued. It also found untenable Seven Brothers' claim of improper levy, citing *Torres v. Cabling*[43] where the Court held that "a sheriff is not required to give the judgment debtor some time to raise cash [since] if time be given, the property may be placed in danger of being lost or absconded." Based on the evidence presented, Seven Brothers' existing assets were found to be insufficient to satisfy the final judgment against it, and the sheriff was thus deemed justified in recognizing that Seven Brothers was in no position to pay its obligation in cash and in immediately levying on the vessels that

would sail beyond the reach of Philippine courts and law enforcers if the levy was not made. In so ruling, the Court recognized that while it is desirable that the Rules be conscientiously observed, in meritorious cases they should be interpreted liberally to help secure and not frustrate justice.[44]

In the case at bar, it is not disputed that Deputy Sheriff Mendoza failed to first demand of petitioners the immediate payment in cash of the full amount stated in the writ of execution. However, it is also extant in the records that petitioners never disputed the admissions of their counsel, Atty. Salamero, that they had no funds to pay even a month's interest and that they agreed to the levy so long as the auction sale would not be set earlier than 20 November 2002. The admissions provide reasonable basis for the deputy sheriff to forego prior demand on petitioners for payment in cash and proceed to levy on the properties right away. Atty. Salamero, as petitioners' counsel and representative, is expected to know all the matters related to the case, including the last stage of execution and the state of financial affairs of her clients. Since petitioners had also already agreed to the levy on their real properties, it would be pointless to require the deputy sheriff to demand immediate payment in cash. For the same reason, it would be an empty exercise to expect the deputy sheriff to first levy on their personal properties.

Furthermore, while petitioners, in their 13 November 2002 letter, complained of procedural defects in the enforcement of the writ, they at the same time also actually "exercise[d] their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation." [45] It should be noted that nowhere in the letter did they offer payment of their obligation in cash. They did not even allege any willingness and ability to do so. They also did not offer personal properties that may be subject of levy. What they offered were 8 parcels of land, the value of which, so they alleged, would satisfy the obligation. With the offer, petitioners then requested that the appropriate corrections in the notice of levy be made, presumably to limit the levy to said parcels of land and to effect cancellation of the levy on the remaining parcels. The request is evidenced by petitioners' subsequent motion to recall the notice of levy, specifically seeking that the notice of levy of Deputy Sheriff Mendoza be cancelled and a new one issued effecting a levy only on the aforementioned 8 parcels of land.

By such acts, petitioners may be said to have overlooked the procedural lapses, acceded to the execution by levy, and effectively exercised their right to choose which of their properties may be levied on. That the 13 November 2002 letter is an exercise of this right is shown by this explicit averment in the motion to recall the notice of levy, thus:

5. To protect and preserve their rights under the circumstances, on 13 November 2002, [petitioners] wrote a letter x x x formally exercising their right to choose which properties may be levied upon in accordance with the terms of the Writ of Execution issued by this Honorable Court. In the said letter, [petitioners] had identified a pool of assets, consisting of real properties, from which pool of assets, levy may be made upon such properties whose combined total aggregate value would satisfactorily cover and satisfy plaintiff's principal claim of Fifteen Million Pesos x x x.[46] [Emphasis supplied]

We thus conclude that Deputy Sheriff Mendoza's failure to demand immediate payment in cash did not nullify the levy on petitioners' real properties.

We now go to the question of overlevy of the properties.

The 8 parcels of land indicated in the 13 November 2002 letter are actually among the 44 parcels of land levied upon by Deputy Sheriff Mendoza. Petitioners claim that these 8 parcels of land already had a total fair market value of P155,726,000.00, enough to satisfy their judgment debt, and that there was an overlevy when all 44 parcels of land were levied upon. Related to the claim of overlevy is the ascribed "grave abuse of discretion"[47] on the part of the Court of Appeals for its failure to consider the evidence presented by petitioners showing the

fair market value of the levied properties.

The question of whether there was indeed an overlevy of properties is one that is essentially factual in nature, as it goes into the determination of the fair market value of the properties levied upon and the consideration of the amount of real property levied. An exercise like this does not involve the application of discretion as it invites rather an evaluation of the evidentiary record which is not proper in a petition for review on certiorari. Matters of proof and evidence are beyond the power of this Court to review under a Rule 45 petition, except in the presence of some meritorious circumstances,[48] none of which is availing in this case.

The allegation of overlevy was first raised in petitioners' motion to recall the notice of levy and to cancel the scheduled auction sale of the levied properties. Under Section 3, Rule 15 of the Rules of Court, a motion should state the relief sought to be obtained and the grounds upon which it is based, and if required by the Rules or necessary to prove the facts alleged therein, must be accompanied by supporting affidavits and other papers. In the motion to recall the notice of levy, the claim of overlevy was not backed up by any supporting papers. The only papers submitted to the trial court consisted of attachments or annexes of petitioners' reply to respondent's opposition, not of the motion to recall the notice of levy itself. Even then, said papers consisted of mere photocopies of the following: two appraisal reports by a property consultant firm,[49] a Maybank memorandum dated 17 June 2002 and a safekeeping agreement which showed that the properties were used by petitioners as collateral for loan transactions.[50] Where the subject of inquiry is the contents of the photocopies submitted by petitioners, the original documents themselves should be presented.[51] The photocopies are secondary evidence which are admissible only when the original documents are unavailable, as when they had been lost or destroyed or cannot otherwise be produced in court.[52] As mere photocopies and not originals, and where it had not been demonstrated that the originals are no longer available, they are not admissible to prove the true market value of the properties.

The appraisal reports valued the properties at the total amount of P912,428,000.00. However, the appraisal reports do not clearly identify, through lot numbers and TCT numbers, the properties they cover; instead, the properties are broadly described as "land [area in square meters] located at Barangay Quiling, Talisay, Batangas." [53] Thus, the general conclusion that the properties covered by the appraisal reports include the subject properties cannot really be determined from the appraisal reports alone. In fact, in their reply to respondent's opposition, petitioners clarified that the first appraisal report dated 21 February 2001 covers a piece of property that is actually not among the properties levied upon by the deputy sheriff and sold at public auction.[54]

The first appraisal report indicates that the report was based on, among others, a photocopy of the TCT of the property, but the TCT was not appended to the report submitted to the court for evaluation. What was instead attached is the Maybank memorandum which supposedly evidenced approval of an application for a domestic letter of credit secured with a P47 million real estate mortgage over the property covered by TCT No. T-89827. Petitioners claim that the first appraisal report described and appraised the property covered by TCT No. T-89827.[55] It should nonetheless be noted that the property covered by TCT No. T-89827 is not one of the properties levied upon by the deputy sheriff or sold at the auction sale.

The valuation in the first appraisal report is confirmed by the second appraisal report dated 31 May 2002, petitioners claim, since the second report also covers properties located in the same area. However, like the other appraisal report, the identification of the particular properties covered by the second appraisal report cannot be determined. The second report stated that the valuation is premised on the assumption that the property as pinpointed to the appraisers is the one described in the titles and plans furnished them. However, no such titles or plans are attached to the report which even acknowledged that the assumptions arrived at were made in the absence of an updated relocation survey and cadastral map from the assessor's office of Talisay, Batangas.[56]

Furthermore, it was not demonstrated in either appraisal report that the assumptions on which the valuations were premised--i.e., that the barangay road fronting the properties would be developed all the way up to Tagaytay-Calamba Road leading to the Palace in the Sky, and that the Tagaytay Highlands Drive actually bounds the property as claimed by Villarin--were substantiated.

The safekeeping agreement dated 6 March 2001 provided that 16 of petitioner Villarin's properties in Barangay Quiling, Talisay, Batangas, which are among those levied upon by the deputy sheriff, would be used as security and collateral for the loan of US\$75 million obtained from an international financing corporation. The 16 properties supposedly have an appraised value of P745,615,000.00, equivalent to twenty percent (20%) of the loan value, or US\$15 million. However, aside from the declared values in the document, no other supporting document to establish the fair market value of these properties was given. It is not even certain if the loan agreement subject of the safekeeping agreement pushed through.

Moreover, the records show that the original loan of P15 million was secured by a real estate mortgage[57] over a 47,241-square meter parcel of land and improvements thereon in Barangay San Jose, Tagaytay City covered by TCT No. T-89829, as well as a guarantee payment bond[58] of P15 million issued by Intra Strata and a mortgage redemption insurance for P16 million.[59] For one thing, the real estate mortgage securing the P15 million loan does not indicate the value of the property mortgaged. And for another, it appears that the parties themselves did not deem the mortgage as sufficient security. There were additional securities provided by the guarantee payment bond and mortgage redemption insurance.

The records also show that in the compromise agreement subsequently entered into by petitioners, respondent and Intra Strata, the indebtedness of P15 million plus all interests due was secured by all the mortgages executed over petitioners' real properties in favor of Intra Strata.[60] Said real properties allegedly refer to the 8 parcels of land indicated in the 13 November 2002 letter.[61] However, nothing in the record corroborates this claim. There is no proof that the properties referred to in paragraph (c) of the compromise agreement are the same 8 parcels of land mentioned in the letter. Proof of these mortgages and other relevant documents was not even offered.

The burden is on petitioners to prove their claim of overlevy but the evidence they presented is woefully insufficient. Consequently, they failed to overcome the burden of proof.

As to petitioners' allegation that the Court of Appeals erred in not finding that the 44 parcels of land were sold in bulk and not separately or individually as required by law, the minutes of auction sale and certificate of sale on execution would show otherwise. These official documents indicate that the properties were sold individually. We agree with the Court of Appeals that the legal presumption that official duty has been regularly performed applies especially when petitioners who were duly represented during the auction sale neither objected to the sale nor claimed immediately thereafter that the properties were sold in bulk.

To stress anew, following the review yardstick in a Rule 45 petition which is reversible error, the Court of Appeals emerges faultless in disregarding petitioners' evidence. Even if the measure of review is "grave abuse of discretion" as petitioners unknowingly insist, the appellate court should be sustained still.

WHEREFORE, in view of the foregoing, the petition is DENIED. The Decision dated 31 March 2005 and Resolution dated 11 August 2005 of the Court of Appeals are AFFIRMED. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., Concur.

[1] Rollo, pp. 57-69. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe of the Sixteenth Division.

[2] Id. at 13-56.

[3] Records, pp. 1-6.

[4] Id. at 50-51.

[5] Id. at 50-52.

[6] Id. at 53-56.

[7] Id. at 57-58.

[8] Id. at 60; Order dated 28 October 2002.

[9] Id. at 62-64.

[10] Id. at 66-73.

[11] Id. at 94-95.

[12] Id. at 82-93.

[13] Id. at 104-112.

[14] Id. at 195-196.

[15] Id. at 110-117.

[16] Id. at 118- 120.

[17] Id. at 126-130.

[18] Id. at 134-137.

[19] Id. at 197.

[20] Id. at 198-199.

[21] Id. at 203-212.

[22] Id. at 232-248.

[23] Id. at 350-367.

[24] Id. at 367.

[25] Id. at 396.

[26] Rollo, pp. 57-69.

[27] Id. at 68.

[28] Rollo, p. 64.

[29] Records, pp. 119-120.

[30] Rollo, pp. 65-66.

[31] Id. at 66-67.

[32] Id. at 28.

[33] Id. at 33.

[34] Id. at 34-37.

[35] Id. at 38-39.

[36] Id. at 44-46.

[37] Id. at 269-297.

[38] Id. at 311-320.

[39] Equitable PCI Bank, Inc. v. Bellones, A.M. No. P-05-1973, 18 March 2005, 453 SCRA 598, 611-612.

[40] M.V. MORAN, COMMENTS ON THE RULES OF COURT, VOL. II (1996 ed.), p. 367.

[41] O.M. HERRERA, REMEDIAL LAW RULES 23 TO 56, VOL. II (2000 ed.), pp. 333-335.

[42] 439 Phil. 663 (2002).

[43] 341 Phil. 325 (1997).

[44] Supra, note 34 at 673-674.

[45] Records, p. 119.

[46] Id. at 127.

[47] Rollo, p. 27.

[48] As enumerated in Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al., 125 Phil. 701 (1967): (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; and (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.

[49] Records, pp. 179-180.

[50] Id. at 181-184.

[51] RULES OF COURT, Rule 130, Sec. 3

[52] RULES OF COURT, Rule 130, Sec. 5.

[53] Records, p. 180.

[54] Id. at 172.

[55] Id.

[56] Id. at 180.

[57] Id. at 28-30.

[58] Id. at 33-34.

[59] Id. at 26.

[60] Id. at 51.

[61] Id. at 120. See also note 28.

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