

SOLAR RESOURCES, INC., PETITIONER, VS. INLAND TRAILWAYS, INC., RESPONDENT.*G.R. No. 173566. July 04, 2008*

Ponente: CHICO-NAZARIO, J.

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Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, filed by petitioner Solar Resources Inc., seeking the reversal and the setting aside of the Decision,[1] dated 27 April 2006, and the Resolution,[2] dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 90176. The appellate court, in its assailed Decision and Resolution, reversed the Order[3] dated 21 February 2005 of the Regional Trial Court (RTC) of Parañaque, Branch 274 in Civil Case No. 98-0406, striking down the Orders dated 22 October 1997 and 23 October 1997 issued by the Metropolitan Trial Court (MTC) of Parañaque, Branch 77, in Docket No. 8778 which lifted the entry of levy on Transfer Certificates of Title (TCTs) No. 128152 and No. 128153.

The present controversy stems from an action for ejectment filed by petitioner against respondent Inland Trailways, Inc., before the MTC, docketed as Civil Case No. 8778.[4] Petitioner alleged in its complaint that on 17 August 1991, it entered into a lease agreement with respondent, whereby it agreed to lease to respondent two parcels of land covered by TCTs No. 39817 and No. 39818 located at Multinational Village, Parañaque, Metro Manila [leased properties],[5] for a monthly rental starting at P51,104.20, which shall be due every fifth day of the month, and shall subsequently be increased every year.[6]

Respondent failed to pay its rent from August 1993 until January 1994 amounting to P347,405.00. Despite repeated demands from petitioner, respondent still failed or refused to comply with its obligation. This prompted petitioner to exercise its option provided under the lease agreement to rescind the contract in the event that the other party violated the provisions. Thus, petitioner demanded that respondent vacate the leased properties. Respondent refused to surrender possession of the leased properties notwithstanding several demands from petitioner.[7]

Respondent countered that it was petitioner who first breached the agreement, forcing respondent to withhold its rental payment. Under the lease agreement, petitioner is under obligation to (1) secure from the Air Transportation Office (ATO) the Heights Clearance Permit, (2) land-fill the leased properties, and (3) deliver to respondent the TCTs, location plans and the technical descriptions of the leased lots. The contract was already in force for several months and respondent was already religiously paying its rent, but petitioner never complied with its obligations resulting in the failure of the respondent to derive economic benefit from the leased properties.[8]

On 26 May 1994, the MTC rendered a Decision[9] favoring the petitioner and ordering the respondent to vacate the leased lots and pay petitioner the sum of P1,095,000.40 as unpaid rentals, penalty and liquidated damages pursuant to the stipulations embodied in their lease agreement.

Respondent appealed the adverse MTC Decision to the RTC where its appeal was docketed as Civil Case 94-0089.[10]

During the pendency of respondent's appeal before the RTC, petitioner moved for the execution of the 26 May 1994 MTC Decision, which was granted by the MTC in its Order[11] dated 28 June 1994. Accordingly, a Writ of Execution[12] was issued by the MTC on 30 June 1994 directing the Sheriff to satisfy the Judgment dated 26 May 1994.

Since the monetary award was not fully satisfied, petitioner filed with the MTC a Motion for Alias Writ of Execution[13] stating that the amount of the personal properties levied pursuant to the 30 June 1994 Writ of Execution and sold at the public auction did not fully cover the monetary judgment of the MTC. While the total amount of obligation as of June 1996 amounted to P2,318,402.05, the levied tourist buses of respondent were sold at the public auction for only P801,000.00, thereby leaving a balance of P1,517,402.05.

Acting on the petitioner's Motion, the MTC, on 10 July 1996, issued an Alias Writ of Execution directing the Sheriff to further levy the properties belonging to the respondent and sell the same at a public auction in the manner provided by law.[14]

In compliance with the 10 July 1996 Alias Writ of Execution, the Sheriff levied two parcels of land registered in respondent's name and covered by TCTs No. 128152 and 128153 registered with the Registry of Deeds of Pasay City [levied real properties].

Respondent, exercising the option granted to a judgment debtor to choose which property or part thereof may be levied upon to satisfy the judgment,[15] filed an Ex Parte Motion to Lift Levy/Attachment on Real Properties.[16] Respondent sought for the substitution of its levied real properties with its following personal properties:

Make Model Motor No. Serial No.

Isuzu 1994 10 PAI-815971 CRA650-2602098

Isuzu 1994 10 PBI-320673 CSA580-2602730

After the MTC ascertained that the personal properties offered by respondent as substitute for the levied real properties were more than sufficient to satisfy the judgment, an Order[17] was issued on 22 October 1997 [First MTC Order] directing the replacement of the levied real properties upon surrender of the substituted personal properties the custody of the Sheriff together with their corresponding Certificates of Registration and Official Receipts, subject to the condition that the previously levied real properties shall not be sold by respondent until the judgment against it has been satisfied.

Upon respondent's surrender of its personal properties as substitutes for the levied real properties, the MTC, on 23 October 2007, issued another Order [Second MTC Order][18] directing the Registry of Deeds of Pasay City to cancel and/or Lift the Entry of Levy made by the Sheriff on TCTs No. 128152 and No. 128153. The MTC declared the Second MTC Order final and executory in an Order dated 28 October 1997 [Third MTC Order].[19]

On the ground that the Motion to Lift Levy/Attachment on Real Properties[20] is a contentious motion and respondent failed to comply with the three-day notice rule as required by Section 4, Rule 15 of the Revised Rules of Court,[21] petitioner moved for the nullification of the First, Second and Third MTC Orders.

On 10 August 1998, the MTC issued an Order[22] [Fourth MTC Order] denying petitioner's motion for nullification of its three earlier orders, thus, upholding the lifting of the levy on respondent's real properties given that they were substituted with personal properties. According to the MTC, its previous orders were sanctioned by procedural laws.

Arguing that the MTC gravely abused its discretion in issuing its Orders dated 22 October 1997, 23 October 1997, 28 October 1997 and 10 August 1998, petitioner filed a Petition for Certiorari[23] before the RTC, docketed as

Civil Case No. 98-0406.

In its Order[24] issued on 14 June 2000, the RTC affirmed the allowance by the MTC of the substitution of respondent's levied real properties with personal properties. The RTC reasoned that even granting that the offered personal properties were not sufficient to satisfy the judgment against respondent, petitioner can always file a Motion for the Issuance of Alias Writ of Execution so the court can order the levy of additional properties belonging to respondent. The RTC, however, did nullify the Third MTC Order, for orders shall only become final and executory after the lapse of time prescribed by law and not by mere declaration of the court.

Dissatisfied, the petitioner filed a Partial Motion for Reconsideration[25] with the RTC.

Finding merit in petitioner's motion, the RTC reconsidered its earlier order. In an Order dated 21 February 2005, the RTC decreed that respondent's Ex Parte Motion to Lift Levy/Attachment on Real Properties, which precipitated the assailed MTC Orders, was a mere scrap of paper for failure to comply with the three-day notice rule.[26] Resultantly, the MTC Orders issued pursuant to respondent's defective motion were null and void. The dispositive portion of the 21 February 2005 RTC Order reads:

WHEREFORE, the foregoing duly considered, the motion for partial reconsideration being well taken, the same is granted.

Accordingly, therefore, the Orders dated October 22, 1997 and October 23, 1997 both issued by the court a quo, are hereby ordered set aside for being null and void and without force and effect.[27]

Aggrieved, respondent raised the matter before the Court of Appeals via Petition for Certiorari[28] under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 90716. In its Petition, respondent argued that the RTC gravely abused its discretion in nullifying the MTC Orders directing the lifting of levy on respondent's real properties. Respondent asserted that its filing of the Motion to Lift Levy/Attachment was in the exercise of its legal option under Section 9(b) of Rule 39 of the Revised Rules of Court without need for complying with the three-day notice rule.

On 27 April 2006, the Court of Appeals rendered a Decision[29] granting respondent's petition and reversing the RTC Order dated 21 February 2005. The appellate court recognized respondent's prerogative to choose which property or part thereof it wanted to be levied as sanctioned by the Revised Rules of Court. Consequently, respondent's failure to comply with the three-day notice rule in moving for the substitution of its levied real properties with personal properties was not a serious transgression of petitioner's right to due process.

Petitioner's Motion for Reconsideration was denied by the Court of Appeals in its Resolution[30] dated 13 July 2006.

Hence, this instant Petition for Review on Certiorari[31] filed by petitioner. For the resolution of this Court, then, is the sole issue of whether the Motion to Lift Levy/Attachment is a contentious motion that needs to comply with the three-day notice rule.

Petitioner maintains that the Ex Parte Motion to Lift Levy/Attachment was a mere scrap of paper that could not be acted upon by the MTC without compliance with the required notice and hearing. Petitioner, thus, assails the First, Second and Fourth Orders of the MTC.

Harping on the disquisition of the Court of Appeals, respondent argues that its Ex Parte Motion to Lift Levy/Attachment filed before the MTC was only an exercise of its prerogative, as a judgment obligor, to choose which property or part thereof may be levied, and to convey such preference to the court, even in the absence of the judgment obligee's participation.

There is no dispute that the petitioner did not receive a copy of the assailed motion since it was filed and granted ex parte by the MTC. Respondent's bone of contention is that there is no more need to comply with the required notice and hearing since its motion was non-litigious, the allowance or disallowance of which would not prejudice petitioner's right.

There is merit in the present Petition.

Respondent's filing of its ex parte motion for the lifting of the levy on its real properties violated the general rule that every motion shall be set for hearing since a motion to lift levy is not one of those which the court can act upon without possibly prejudicing the rights of the other party. The motion to lift levy or attachment is a contentious motion that needs to comply with the required notice and hearing and service to the adverse party as mandated by the following provisions of Rule 15 of the Revised Rules of Court:

SEC. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SEC. 6. Proof of service necessary. - No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied. This procedure can be found in Rule 39 of the Revised Rules of Court on execution of judgment. The said Rule provides that in the event that the judgment obligor cannot pay the monetary judgment in cash, the court, through the sheriff, may levy or attach properties belonging to the judgment obligor to secure the judgment.

Thus, when the sheriff levied TCTs No. 128152 and No. 128153 in satisfaction of the 26 May 1994 MTC Decision, petitioner already acquired right over such levied real properties as the prevailing party in Civil Case No. 8778. To discharge such properties, therefore, without hearing or even at the least, notice to petitioner, constitutes a serious violation of petitioner's right to due process and should be struck down by this Court.

Petitioner's right to these levied properties is founded on its right, as a prevailing party, to enjoy the finality of the decision by execution and satisfaction of the judgment. It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," ratio legis est anima,[32] this Court has zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory. A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.[33]

Respondent argues that it was merely exercising its legal right to choose which among its properties it wanted to be levied, in accordance with Section 9(b), Rule 39 of the Revised Rules of Court, which provides:

Section 9(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.

and, therefore, cannot be intruded upon by anyone.

Respondent's contention cannot be given credence. The option under Section 9(b), Rule 39 of the Revised Rules of Court is granted to a judgment obligor before the sheriff levies its properties and not after. Hence, the judgment obligor should communicate to the sheriff its choices before the sheriff implements the levy. The judgment obligor's failure to seasonably exercise such option, either by deliberate inaction or mere oversight, cannot be countenanced by this Court. To allow the judgment obligor to substitute the levied properties according to its whims dissipates court officers' precious time and effort and thereby unduly delays the execution of the judgment to the damage and prejudice of the prevailing party. Technicalities cannot be invoked to defeat the execution of a judgment, which as we held, is the fruit and end of the suit and is the life of the law.

Neither can this Court find merit in respondent's excuse that it was not able to promptly exercise its legal option to choose which of its properties should be levied upon because the sheriff prevented it from doing so. It is not only weak, but is obviously a mere afterthought. We have perused its Ex Parte Motion to Lift Levy/Attachment of Real Properties and it was never alleged therein that the reason for the filing of such motion was that it was prevented by the sheriff from exercising its legal prerogative prior to the levy. In the absence of evidence to the contrary, it is presumed that official duty has been regularly performed.[34]

Evidently, the MTC erroneously acted on respondent's Ex Parte Motion to Lift Levy/Attachment of Real Properties, for it is an elementary doctrine that a motion, without notice and hearing, is pro forma, a mere scrap of paper that cannot be acted upon by the court. It presents no question which the court can decide. The court has no reason to consider it, and the clerk has no right to receive it.[35] Indisputably, any motion that does not contain proof of service and notice to the adverse party is not entitled to judicial cognizance.[36]

This Court never failed to stress the mandatory nature of the foregoing requirement. As we have ruled in *Pallada v. Regional Trial Court of Kalibo, Branch 1*[37]:

Anent the second error, there is tenability in petitioners' contention that the Writ of Execution was irregularly issued insofar as the Ex-Parte Motion for Execution of private respondents did not contain a notice of hearing to petitioners. Sections 4 and 5 of Rule 15 of the Revised Rules of Court, read:

x x x x

The foregoing requirements -- that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion -- are mandatory, and if not religiously complied with, the motion becomes pro forma. A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon. (Emphasis supplied.)

The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion; and if he objects, to hear him on his objection.[38] Harsh as they may seem, these rules were introduced to avoid a capricious change of mind in order to provide due process to both parties and to ensure impartiality in the trial.[39]

It is important, however, to note that these doctrines refer exclusively to a motion, since a motion invariably contains a prayer, which the movant makes to the court, and which is usually in the interest of the adverse party to oppose. The notice of hearing to the adverse party is therefore a form of due process; it gives the other party the opportunity to properly vent his opposition to the prayer of the movant. In keeping with the principles of due process, therefore, a motion which does not afford the adverse party the chance to oppose it should simply be disregarded.[40]

Failure to comply with the required notice and hearing is a fatal defect that is deleterious to respondent's cause. As this court declared in *New Japan Motors, Inc. v. Perucho*[41]:

Under Sections 4 and 5 of Rule 15 of the Rules of Court, x x x a motion is required to be accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that '(n)o motion shall be acted upon by the Court, without proof of service of the notice thereof x x x.' It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing. We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.

Since the assailed motion of the respondent failed to comply with Sections 4 and 5 of Rule 15 of the Revised Rules of Court, the MTC, therefore, had no jurisdiction to act upon it. Such motion is nothing but a piece of paper unworthy of judicial cognizance. Hence, the MTC, in receiving and granting such motion, committed patent errors that must accordingly be rectified. Thus, the Orders dated 22 October 1997, 23 October 1997, and 10 August 1998 issued by the MTC are null and void and must be set aside.

WHEREFORE, premises considered, the instant Petition is GRANTED. The Decision dated 27 April 2006 and Resolution dated 13 July 2006 of the Court of Appeals in CA-G.R. SP No. 90176 are hereby REVERSED AND SET ASIDE. The Order dated 21 February 2005 of the Regional Trial Court of Parañaque, Branch 274 in Civil Case No. 98-0406 is hereby REINSTATED. No cost.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Rosmari D. Carandang and Japar B. Dimaampao, concurring. Rollo, pp. 51-61.

[2] Rollo, p. 63.

[3] Penned by Presiding Judge Fortunito L. Madrona. Rollo, pp. 59-60.

[4] Rollo, pp. 64-69.

[5] Id. at 70-74.

[6] Id. at 64-69.

[7] Id.

[8] Id. at 86-98.

[9] Id. at 110-113.

[10] In a Decision dated 3 June 1997, the RTC affirmed with modification the MTC Decision in Civil Case 8778.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the decision appealed being in accordance with law is hereby affirmed with the following modifications:

- Ordering defendant-appellant and all persons claiming rights under it to immediately vacate the premises described as Lot No. 3353 and portion of Lot 2657 and peacefully surrender possession thereof to the plaintiff;
- Ordering defendant-appellant to pay plaintiff-appellee for the unpaid rentals as stipulated under the lease agreement dated February 18, 1992 and carried over and incorporated by reference in the Agreement dated 27 May 1993, the sum of P8,802.60 broken down as follows:

a) P393,500.80 (for period of August 1993 to February 1994)

b) P742,030.20 (for period of March 1994 to February 1995)

c) P816,386.40 (for period of March 1995 to February 1996)

d) P896,875.20 (for period of March 1996 to March 1997)

e) P85,463.67 (for the 3% interest per month on delay of unpaid rentals)

P2,934,255.20

-

Sub-total

x 3

-

Liquidated Damages Stipulated in par. 15 of Lease Agreement

P8,802,765.60

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Total Amount Due

- Appellant to further pay plaintiff-appellee reasonable value for the use and occupation of the premises at the rate previously stipulated until appellant fully vacates the premises;

- P20,000.00 for and as attorney's fees;

- To pay the costs. (Rollo, pp. 147-148.)

On appeal before the Court of Appeals, the appellate court affirmed the RTC Decision dated 3 June 1997 in its Decision dated 30 August 2004.

The Petition for Certiorari filed by respondent before this Court and docketed as G.R. No. 165946 was likewise denied in a Resolution dated 21 February 2005.

The Petition for Review on Certiorari docketed as G.R. No. 165946 filed before this Court was denied in a Resolution dated 21 February 2005 for failure to attach proof of authority of Evelyn Castro to cause the preparation of the petition. On 1 August 2005, this Court's Resolution dated 21 February 2005 become final and executory and is recorded in the Book of Entries of Judgment.

[11] Rollo, pp. 118-119.

[12] Id. at 120-121.

[13] Id. at 125-126.

[14] Id.

[15] Revised Rules of Court, Rule 39, Section 9(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.

[16] Rollo, pp. 162-163.

[17] Id. at 164.

[18] Id. at 165.

[19] Id. at 166.

[20] Id. at 168-173.

[21] Rule 15, SEC. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[22] Rollo, p. 202.

[23] Id. at 203-228.

[24] Id. at 242-246.

[25] Id. at 247-258.

[26] Rule 15, SEC. 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SEC. 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the

time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

[27] Rollo, p. 260.

[28] Id. at 285-312.

[29] Id. at 51-61.

[30] Id. at 63.

[31] Id. at 22-47.

[32] The reason of the law is its soul.

[33] *Florentino v. Rivera*, G.R. No. 167968, 23 January 2006, 479 SCRA 522, 532.

[34] *Cristobal v. Court of Appeals*, 384 Phil. 807, 815 (2000).

[35] *Balagtas v. Sarmientio, Jr.*, A.M. No. MTJ-01-1377, 17 June 2004, 432 SCRA 343, 349.

[36] *Cui v. Hon. Madayag*, 314 Phil. 846, 859 (1995).

[37] 364 Phil. 81, 88-89 (1999).

[38] *Balagtas v. Sarmientio, Jr.*, *supra* note 35 at 349.

[39] *Meris v. Ofilada*, 355 Phil. 353, 362 (1998).

[40] *Neri v. De la Peña*, A.M. No. RTJ-05-1896, 29 April 2005, 457 SCRA 538, 546.

[41] *New Japan v. Perucho*, 165 Phil. 636, 641 (1976), as cited in *De la Peña v. De la Peña*, 327 Phil. 936, 941 (1996).

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