

**TOP RATE INTERNATIONAL SERVICES, INC., PETITIONER, VS.
INTERMEDIATE APPELLATE COURT AND RODRIGO TAN, DOING
BUSINESS UNDER THE NAME AND STYLE 'ASTRO
AUTOMOTIVE SUPPLY', RESPONDENTS.**

G.R. No. 67496. July 07, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The two consolidated petitions before us seek to annul the decisions of the Intermediate Appellate Court in G. R. No. 67496 dated January 6, 1984 and in G. R. No. 68257 dated June 6, 1984, respectively. The two decisions both upheld the validity of the levy made on two properties whose ownership is claimed by petitioner, notwithstanding the fact that the value of said properties are far in excess of the amount of the liens thereon. The decisions are based on the ground that what was attached and levied upon are not the properties themselves but only the vendor's equity of redemption. The petitioner also asks that the resolutions of the appellate court denying its motions for reconsideration be set aside.

In Civil Case No. 142443 now, G. R. No. 67496, the facts as found by the appellate court are:

"On August 12, 1981, petitioner (Rodrigo Tan, doing business under the name 'Astro Automotive Supply') filed a complaint against Consolidated Mines Inc. and Jose Marino Olondriz, the president of said corporation, for the payment of the purchase price of certain heavy equipment, parts and accessories sold to Consolidated Mines, Inc. with a total cost of P271,372.20. In said complaint, plaintiff asked that a writ of preliminary attachment be issued against defendants on the ground that said defendants were guilty of fraud in securing said equipment.

"On August 17, 1981, respondent Court granted plaintiff's motion for the issuance of a writ of preliminary attachment upon plaintiff's posting of a bond in the amount of P271,372.20. Pursuant to said order, a writ of attachment was issued on August 26, 1981. The sheriff served notices of garnishment on the tenants of the building owned by defendant Consolidated Mines, Inc. garnishing the rentals due from said tenants, but since there were earlier notices of garnishment served upon said tenants issued in two (2) other cases, the sheriff was not able to garnish any amount from said tenants. The sheriff levied on the properties of defendant Consolidated Mines, Inc. and the notice of levy was duly annotated on Transfer Certificate of Title No. S-68501 (143900) and Transfer Certificate of Title No. S-68500 (14329). The notice of levy was not annotated on the transfer certificate of title of a third property covered by Transfer Certificate of Title No. 79776, although notice of said levy was duly entered in the primary book of the Registry of Deeds of Rizal.

"Annotated as prior encumbrances on the first two properties on December 20, 1978 was a mortgage in favor of twelve (12) consortium banks and a notice of levy issued in Civil Case No. 136406 entitled 'Warmco Trading Company versus Consolidated Mines, Inc. and Jose Marino Olondriz' on May 15, 1981."

Meanwhile, in Civil Case No. 142598 now, G. R. No. 68257, the appellate court made the following findings:

"On August 18, 1981, the petitioner (Polaris Motor Supply, Co.) brought suit (Civil Case No. 142598) in the Court of First Instance of Manila against the respondents Consolidated Mines, Inc. (CMI) and its president Jose Marino Olondriz for the collection of P71,855.20. The amount represents the price of the heavy equipment and accessories which the respondent CMI had purchased from the petitioner. On November 3, 1981, the respondent judge ordered the attachment of CMI's properties. On November 26, 1981, notice of the attachment of real properties of the CMI was served on the Register of Deeds of Makati who on December 9, 1981 annotated the levy on Transfer Certificate of Titles Nos. S-68500 (143929), S-68501 (143900) and 79711.

"On May 31, 1982, several banks, constituting the Consortium Banks, filed a third party claim with the sheriff, alleging that they were the mortgagees of the real and personal properties of the CMI with a total book value of P656,613,303.00 and an appraised value of P4,497,443,040.00. They claimed that their mortgage was evidenced by a deed executed on November 10, 1978. They, therefore, asked that the properties be released from attachment.

"The petitioner filed a motion to quash the third party claim but its motion was denied by the respondent judge in his order of August 6, 1982. The court ruled that the Consortium Banks, as mortgagees of the real and personal properties of the CMI had a superior lien on the properties and that the petitioner could validly levy only on the mortgagor's (CMI's) equity of redemption after the sale of the mortgaged properties.

"The personal properties were foreclosed by the Consortium Banks to which the properties were sold as the highest bidder and the certificate of sale issued on July 6, 1982. The petitioner then asked that it be allowed to exercise its right of redemption. But the Consortium Banks opposed the motion on the ground that there was an equity in redemption only in case of foreclosure sale of real properties but not in the case of chattels.

"In the meantime, on March 17, 1982, the Court of First Instance of Rizal, Branch XXIII, acting as an insolvency court, authorized in Sp. Proc. No. 9623 the sale of the properties of the CMI. Accordingly, on September 17, 1982, the properties covered by TCT Nos. S-68500 (143929) and S-68501 (143900) were sold to the private respondent Top Rate International as assignee of the El Grande Development Corp. The sale is evidenced by a 'Deed of Confirmation of Sale with Assumption of Mortgage.' (Previously, a contract to sell was executed between the CMI and the El Grande (Annex C). On the basis of the sale to it, Top Rate International filed a third party claim with the sheriff. It asked that the properties covered by TCT No. S-68500 (143929) and S-68501 (143900) be discharged from attachment."

On the basis of the same "Deed of Confirmation of Sale with Assumption of Mortgage", Top Rate International, Inc. (Top Rate) also filed a third-party claim in Civil Case No. 142443 alleging that the properties involved therein had been sold to it for Forty Million Pesos (P40,000,000.00) on December 10, 1981 with the approval of the Court of First Instance of Rizal in Special Proceeding No. 69623 in the course of the involuntary insolvency proceedings filed against Consolidated Mines. Petitioner, therefore, asked that the attachment made on these properties be discharged.

After hearing on the merits, the trial court in Civil Case No. 142598 ordered the lifting and setting aside of the levy on attachment on the two properties involved while in Civil Case No. 142443, the trial court issued the same order maintaining, however, the levy on attachment on the property covered by TCT No. 79776 in favor of plaintiff Rodrigo Tan.

The plaintiffs in the above civil cases appealed to the Intermediate Appellate Court.

On January 6, 1984, the appellate court reversed the decision of the trial court in Civil Case No. 142443, and ordered the levy on the two properties maintained. The appellate court ruled:

"We find no merit in the contention of respondent Top Rate International Services that its right over the

properties in question based on the deed of sale in its favor on September 17, 1982 confirming the contract to sell of December 10, 1981 in favor of El Grande Development Corporation, should be recognized as superior to the right of petitioner under the writ of attachment issued in his favor and registered on October 1, 1981 because it succeeded to the rights of the twelve (12) consortium of banks which hold a mortgage over said properties registered on December 20, 1978. Said sale was not actually a sale or assignment by the banks of their rights as mortgagee over said properties but a sale of said properties by the mortgagor, Consolidated Mines, Inc. with the consent of the mortgagee. The consortium of banks could not have sold the properties to Top Rate International Services except through foreclosure proceedings, for as mortgagees they have no right to appropriate for themselves or dispose of the mortgaged properties (Article 2088, Civil Code Appropriation of the mortgaged properties of sale by the mortgagee of said property even if stipulated by the parties would be null and void being what is known as pactum commissorium. In the present case the sale of the properties by Consolidated Mines, Inc. to Top Rate International Services with the consent of the mortgagee banks under an arrangement where the purchase price of P40,000,000.00 would be paid directly to the banks did not adversely affect the rights of plaintiff under the writ of attachment issued in the present case."

The appellate court also found that the Regional Trial Court in the insolvency proceedings dismissed the petition to declare Consolidated Mines, Inc. insolvent on the ground that it had no jurisdiction over the same because the petitioners in said case were not residents of the Philippines and, thus, not qualified to file said petition. It, therefore, ruled that the claim of Top Rate over said properties based on the approval of the sale in its favor by the insolvency court must necessarily fail.

On June 6, 1984, the appellate court likewise reversed the decision of the trial court in Civil Case No. 142598 citing the same reasons it adopted in its earlier decision in the other civil case. It further ruled that there is no merit in Top Rate's claim that the attachment is improper because the value of the property levied upon is in excess of the total claim of the petitioners which was only P71,885.20 plus interest from November, 1979 for what was actually attached by the petitioners (Rodrigo Tan and Polaris) was the equity of redemption of Consolidated Mines, Inc. the levy made pursuant to the writ of attachment being upon "all rights, titles, interests, claims and participation of the defendant Consolidated Mines, Inc." to the properties covered by TCT No. S-68501, TCT No. S-68500 and TCT No. 79777. However, as regards the validity of the sale of the properties to Top Rate which was authorized by the insolvency court, the Court ruled that this matter should be threshed out in an independent action to give Top Rate the opportunity to ventilate its claims over said properties.

On the same day, Top Rate filed a petition before this Court assailing the decision of the appellate court in Civil Case No. 142443, docketed as G. R. No. 67496. On August 16, 1984, Top Rate again filed a similar petition, assailing the decision in Civil Case No. 142598, docketed as G. R. No. 68257.

As the two petitions raised identical issues, we issued a resolution dated January 28, 1985 ordering the consolidation of the two petitions.

The only question raised by petitioner Top Rate in these consolidated petitions, is whether or not the respondent appellate court committed grave abuse of discretion when it ruled that "because the private respondent through the sheriff could not have levied on the properties but only on the right of redemption or equity of redemption thereon, there could not have been an over-levy sufficient to justify a quashal of the notice of levy on attachment on the properties claimed by the petitioner."

Top Rate states that the respondents' claims are only P271,372.20 and P71,855.20 respectively. It contends that an over-levy is obvious because the properties levied upon are worth more than P40,000,000.00. It alleges as error the appellate court's ruling that since the equity of redemption and not the properties themselves were attached, its value has no way of exceeding the respondents' individual claims because the value of the equity of redemption

should be that which will effectively release the properties, that is P40,000,000.00. This is the amount which the respondents must necessarily pay, at the very least, to exercise such right and not the amount of their claims. There is, therefore, no over-levy.

Equity of redemption is the right of the mortgagor to redeem the mortgaged property after his default in the performance of the conditions of the mortgage but before the sale of the property or the confirmation of the sale, whereas the right of redemption means the right of the mortgagor to repurchase the property even after confirmation of the sale, in cases of foreclosure by banks, within one year from the registration of the sale. (Cf. Moran, Comments on the Rules of Court, Vol. 3, pp. 283-284, 1980 Edition; Quimson v. Philippine National Bank, 36 SCRA 26).

As we have ruled in *Northern Motors, Inc. v. Coquia*, (66 SCRA 415, 420):

"To levy upon the mortgagor's incorporeal right or equity of redemption, it was not necessary for the sheriff to have taken physical possession of the mortgaged taxicabs. x x x Levying upon the property itself is distinguishable from levying on the judgment debtor's interest in it (*McCullough & Co. v. Taylor*, 25 Phil. 110, 115)."

Likewise, in the case of *Blouse Potenciano v. Mariano*, (96 SCRA 463, 469), we ruled:

"Quirino's interest in the mort-gaged lots is merely an equity of redemption, an intangible or incorpo-real right (*Sun Life Assurance Co. of Canada v. Gonzales Diez*, 52 Phil. 271; *Santiago v. Dionisio*, 92 Phil. 495; *Northern Motors Inc. v. Coquia*, 66 SCRA 415).

"That interest could be levied upon by means of writ of execution issued by the Manila Court as had been done in the case of property encumbered by a chattel mortgage (*Levy Hermanos, Inc. v. Ramirez and Casimiro*, 60 Phil. 978, 982; *McCullough and Co. v. Taylor*, 25 Phil. 110).

It is, therefore, error on the part of the peti-tioner to say that since private respondents' lien is only a total of P343,227.40, they cannot be entitled to the equity of redemption because the exercise of such right would require the payment of an amount which cannot be less than P40,000,000.00.

When herein private respondents prayed for the attachment of the properties to secure their respective claims against Consolidated Mines Inc., the properties had already been mortgaged to the consortium of twelve banks to secure an obligation of US\$62,062,720.66. Thus, like subsequent mortgagees, the respondents' liens on such properties became inferior to that of the banks, which claims in the event of foreclosure proceedings, must first be satisfied. The appellate court, there-fore, was correct in holding that in reality, what was attached by the respondents was merely Consolidated Mines' right or equity of redemption. Thus, in the case of *Alpha Insurance and Surety Co., Inc. v. Reyes* (106 SCRA 274, 278), we ruled:

"Deciding the legal question before Us, even if the DBP were just an ordinary first mortgage without any preferential liens under Republic Act No. 85 or Commonwealth Act 459, the statutes mentioned in the Associated Insurance case relied upon by the trial court, it would be unquestionable that nothing may be done to favor plaintiff-appellant, a mere second mortgage, until after the obligations of the debtors-appellees with the first mortgagee have been fully satisfied and settled. In law, strictly speaking, what was mortgaged by the Reyeses to Alpha was no more than their equity of redemption."

We, therefore, hold that the appellate court did not commit any error in ruling that there was no over-levy on the disputed properties. What was actually attached by respondents was Consolidated Mines' right or equity of redemption, an incorporeal and intangible right, the value of which can neither be quantified nor equated with the actual value of the properties upon which it may be exercised.

WHEREFORE, the petitions in G. R. No. 67496 and G. R. No. 68257 are hereby DISMISSED for lack of merit. The decisions of the respondent court are AFFIRMED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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