

**HONESTO ONG, RENATO LLOBRERA, AVELINO DE GRACIA, JR.,  
ALFONSO ONG, AND SANTIAGO OCAMPO, PETITIONERS, VS. HON.  
INTERMEDIATE APPELLATE COURT, HON. RICARDO D. DIAZ, AS  
JUDGE OF THE...**

*G.R. No. 74073. September 13, 1991*

Ponente: PARAS, J.

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**PARAS, J.:**

This is a petition for review on certiorari seeking to reverse and set aside: (a) the decision [\*] of the Intermediate Appellate Court dated January 31, 1986 in AC-G.R. SP No. 05490 entitled "Honesto Ong, et al. v. Hon. Ricardo D. Diaz, et al." which dismissed the petition for lack of merit and (b) the resolution dated March 26, 1986 denying the motion for reconsideration.

The undisputed facts of the case are as follows:

On July 27, 1977, Madrigal Shipping Co., Inc. applied for and was granted a loan by the Consolidated Bank and Trust Corporation (Solidbank for short) in the amount of P2,094,000.00 payable on or before July 27, 1978 at ten (10%) percent interest per annum as evidenced by Promissory Note No. 57884 (Rollo, p. 61).

To secure the fulfillment of the obligations of Madrigal Shipping Co., Inc. to the Solidbank, and credit accommodations which the former may from time to time obtain from the latter both parties executed a document denominated as "Pledge Agreement" dated December 4, 1978 (Rollo, pp. 77-78).

Under the said Pledge Agreement, Madrigal Shipping, Co., Inc. gave additional securities or collaterals in the form of a pledge in favor of the bank, its barge and tugboat particularly described, as follows:

"Tugboat CARBPM" of 27/42 gross tonnage 13.87 net tonnage, one (1) deck, no mast, 13.77 mt. long, 4.32 mt. broad, 1.73 mt. steep, with Certificate of Ownership No. 1283 and Certificate of Registration No. 6886."

"MSC Barge No. 601, of 372.28 gross tonnage, 361.96 net tonnage, 120 mt. long, 32 mt. broad, 10 ft. deep, with Certificate of Ownership No. 6213, Certificate No. 127--68". (Ibid.).

Madrigal Shipping Co., Inc. failed to pay its obligation to the Solidbank. The creditor bank had to sell the pledged properties. Nevertheless, when the pledgee bank was to sell the pledged properties, it found out that the tugboat and the barge had surreptitiously been taken from the Tanque Bodega, Pasig River, Manila, where the vessels were moored and towed to Pier 2, North Harbor, Manila, without the knowledge and consent of the Solidbank (Rollo, p. 62).

Meanwhile, on August 1, 1979, petitioner Honesto Ong bought one (1) MSC Barge No. 601 with 300 net tonnage, the same barge which was subject of the pledge from Santiago S. Ocampo, a successful bidder in a public auction by virtue of a writ of execution issued by the National Labor Relations Commission (NLRC) in a case entitled "Union de Marineros v. Madrigal Shipping Co., Inc." (Rollo, Annex "A", p. 23).

On August 6, 1979, private respondent (Solidbank) filed a complaint against Honesto Ong, et al. for Replevin with Damages before the defunct Court of First Instance (now Regional Trial Court) and was docketed as Civil Case No. 125651 (Rollo, pp. 42-46).

On August 7, 1979, the respondent court (CFI) issued an order for the seizure of the above described personal property upon posting of a bond in the sum of P1,000,000.00 (Rollo, p. 23; pp. 75-76).

On August 8, 1979, petitioner Honesto Ong filed a Motion to Lift Order of Seizure, claiming great and irreparable damage would be suffered by him if the Court would not recall the above stated order. In the same motion, petitioner Honesto Ong maintained that he purchased in good faith MSC Barge No. 601 and even offered to post a counterbond in an amount to be determined by respondent Court of First Instance (Rollo, p. 24).

On August 13, 1979, private respondent Solidbank, filed an opposition to lift order of seizure and accused the petitioner Honesto Ong of being a purchaser in bad faith. In its opposition, the private respondent outlined numerous circumstances pointing to an alleged conspiracy where the petitioners resorted to foul schemes to place the subject barge beyond the reach of the plaintiff Solidbank (Rollo, p. 9).

On August 31, 1979, the petitioners, Honesto Ong and Alfonso Ong filed their answer, and set forth their specific denials and affirmative defenses to the complaint filed by Solidbank (Rollo, pp. 156-164).

On September 7, 1979, a reply and answer to the counterclaim was filed by the private respondent Solidbank, where additional issues and matters were averred as against the petitioners (Rollo, p. 24).

On September 25, 1979, the respondent court (CFI) issued an order lifting the order of seizure and ordered the sheriff to return the MSC Barge No. 601 to the petitioner-defendant Honesto Ong (Rollo, p. 166).

On September 28, 1979, a motion for reconsideration was filed by the private respondent Bank (Rollo, p. 115).

On December 16, 1980, after an opposition to the motion for reconsideration and a reply to the opposition had been filed by the parties, the Court of First Instance denied the motion for reconsideration but ordered the petitioners Alfonso Ong and Honesto Ong to post a counterbond of P400,000.00 executed to the herein plaintiff-private respondent. The pertinent part of the order and its dispositive portion read:

"The alleged Pledge Agreement between plaintiff and Madrigal Shipping Company covering the vessel (barge) in question was not registered in the registry of vessels. Considering that plaintiff does not charge private defendants with knowledge of such pledge (see par. 8, complaint), said defendants, being third persons, cannot be said to be bound by said pledge. Plaintiff, therefore, vis-a-vis private defendants and third persons, cannot be considered, at this stage of the action, to be entitled to possession of the vessel for purposes of maintaining the efficacy of the writ of replevin earlier issued and pursuant to the law applicable and pertinent to the matter, the defendants, Alfonso L. Ong and Honesto Ong, are ordered to put up a counterbond of P400,000.00 which is double the value of the subject vessel (barge), executed to the herein plaintiff if such delivery be adjudged in favor of the plaintiff.

WHEREFORE, the motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED." (Rollo, p. 50) (Italics supplied).

On January 1, 1981, Solidbank filed a motion to release the properties subject matter of replevin for failure of the petitioners to post the required counterbond (Rollo, p. 10).

On March 3, 1981, a motion for clarification and opposition to the motion to release properties was filed by the petitioners (Rollo, p. 25).

On February 21, 1983, the respondent Court (CFI) issued an order stating that its order dated December 16, 1981 is clear and needs no clarification, and that the order requiring the petitioners to post a counterbond is reiterated. The dispositive portion reads:

"WHEREFORE, the defendants, Alfonso Ong and Honesto Ong, are hereby ordered to put up a counterbond of P400,000.00 executed in favor of the plaintiff within ten (10) days from receipt of this order. Otherwise, the plaintiff's motion to release properties subject matter of replevin will be granted." (Rollo, p. 26).

On April 21, 1983, a motion for reconsideration to the above stated order was filed by the petitioners Ong (Ibid.).

On October 27, 1983, the respondent court (CFI) issued an order directing petitioners Alfonso Ong and Honesto Ong to deliver and release the barge in question. In the same order, the motion for reconsideration filed by the petitioners was denied for lack of merit. Plaintiff's motion, in short, dated January 22, 1981 was granted. The dispositive portion of the order reads:

"WHEREFORE, defendants Alfonso Ong and Honesto Ong are hereby ordered to deliver and/or release the barge in question (MSC Barge No. 601) to herein plaintiff from receipt (hereof) of this order.

SO ORDERED." (Rollo, PP. 51-53).

On June 11, 1984, the new counsel filed a second motion for reconsideration in behalf of the petitioners to the above stated order (Rollo, pp. 167-170). And on June 21, 1984, a supplement to the second motion for reconsideration was filed again by the counsel of the petitioners (Rollo, pp. 172-175).

Acting on the second motion for reconsideration and supplement filed by the defendants Ongs, as well as, the opposition interposed by the plaintiff Solidbank the lower court denied the second motion for reconsideration. (Rollo, p. 65)

The defendants Alfonso Ong and Honesto Ong filed with the Intermediate Appellate Court a petition for certiorari docketed as AC-G.R. No. 05490 (Rollo, *ibid.*).

On January 31, 1986, the Intermediate Appellate Court rendered a decision, dismissing the petition for lack of merit, the dispositive portion reading:

"WHEREFORE, the petition is hereby DISMISSED for lack of merit. The restraining order previously issued is dissolved, lifted and set aside. No costs.

SO ORDERED." (Rollo, p. 34).

Petitioner Ong's motion for reconsideration of said decision was denied. (Rollo, p. 48)

Hence, this petition.

This Court, in its resolution dated April 6, 1987 gave due course to the petition and required both parties to file their respective memoranda (rollo, petition, pp. 7-20; Resolution, p. 100).

The main issues in this case are: (1) whether or not the contract of pledge entered into by and between Solidbank and Madrigal Shipping Co., Inc. is binding on the petitioners Ong (2) whether or not there is a necessity for the Ongs to post a counterbond in the amount of P400,000.00.

## I.

Undoubtedly, petitioners rely heavily on the fact that the contract of pledge by and between Solidbank and Madrigal Shipping Co., Inc. was not recorded under Sections 804 and 809 of the Tariff and Customs Code and

argue that it is not binding on third persons like the petitioners.

It is, however, stated under Article 2096 of the Civil Code that for a pledge to take effect against third persons, it should be in a public instrument which must contain the description of the thing pledged and the date of the pledge.

In the case of *Bachrach Motor Co. v. Lacson Ledesma*, 64 Phil. 681 (1937), Art. 2096 has been interpreted in the sense that for the contract to affect third persons, apart from being in a public instrument, possession of the thing pledged must in addition be delivered to the pledgee.

All these requirements have been complied with, in the case at bar. The pledge agreement is a public instrument, the same having been notarized and under the notarial seal of Vicente A. Casim, as Doc. No. 1487; Page No. 179; Book V and Series of 1978. Subject of the pledge (MSC Barge No. 601) was delivered to the Solidbank which had it moored at Tanque Bodega, Pasig River, Manila where it was guarded by a security guard. (Rollo, pp. 69-70).

Undeniably, Madrigal Shipping Co., Inc, owner of MSC Barge No. 601, pledged said vessel and tugboat to secure the shipping company's obligation to the creditor bank (Solidbank) in the amount of P2,094,000.00, and no payment was made by Madrigal Shipping Co., Inc., as pledgor. Therefore the Solidbank has the right of retention of the barge in question pledged to it until it is paid. The Civil Code expressly provides:

"Art. 2090. The contract of pledge gives right to the creditor to retain the thing in his possession or in that of a third person to whom it has been delivered, until the debt is paid".

Applying these concepts in the case at bar, the pledgee is obviously a lawful and rightful possessor of the personal property pledged.

## II.

As to the second issue of whether or not there is necessity for the Ongs to post a counterbond, the provisions of the Rules are clear. This Court has explained that a defendant in a replevin suit, (petitioners Ong in this case) may demand the return of possession of the property replevined by filing a redelivery bond executed to the plaintiff in double the value of the property as stated in the plaintiff's affidavit, within the periods specified in Sections 5 and 6 of Rule 60 of the Rules of Court. Under Section 5, petitioner may "at any time before the delivery of the property to the plaintiff" require the return of the property; in Section 6, he may do so, "within five (5) days after the taking of the property by the officer." Both these periods are mandatory in character. Thus, a lower court which approves a counterbond filed beyond the statutory periods, acts in excess of jurisdiction (*Yang v. Valdez*, 177 SCRA 143 [1989]).

As correctly explained by the Intermediate Appellate Court (now Court of Appeals):

"x x x The intent of the law requiring the posting of the bond by the applicant is clear and manifest, which is to cover and insulate the defendant's interest from undue damage. x x x

To forestall the possession by the plaintiff of the property our procedural law provides that the defendant must post a counterbond and must furnish the plaintiff with the copy of the undertaking. (*Chan vs. Villanueva*, L-3420. April 30, 1982; Sections 5 & 6, Rule 60, Revised Rules of Court) Again, if only for the purpose of emphasis, this is required to protect the plaintiff, should his action be adjudged meritorious. We need not mention, that this procedure was purposely formulated to allow the defendant to continue possessing the property. Not to require him to post any bond would likewise, be counter to the objectives and intent sought by the framers of the law. In short, whoever holds the property must post the bond to stand as security to the non-holder pending the final determination of the case." (Rollo, pp. 33-34)

Verily, respondent Appellate Court aptly observed that the questioned orders reveal that the Court a quo exercised prudence in the highest degree. Solidbank was required and has already posted a bond in favor of the Ongs should the suit for replevin be declared improper. Conversely, petitioner Ong must post a bond if he seeks the continued possession of the property, in favor of Solidbank should the suit for replevin prosper.

Under the circumstances, the court a quo's orders which were affirmed by the Court of Appeals cannot be faulted.

PREMISES CONSIDERED, the petition is DISMISSED for lack of merit, and the assailed decision dated January 31, 1986 of the Intermediate Appellate Court is AFFIRMED.

**SO ORDERED.**

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.  
Sarmiento, J., on leave.

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[\*] Penned by Associate Justice Alfredo M. Lazaro and concurred in by Associate Justices Santiago M. Kapunan and Alfredo V. Cruz, Jr.

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