

QUEZON BEARING & PARTS CORPORATION, PETITIONER, VS. HONORABLE COURT OF APPEALS AND TOP RATE INTERNATIONAL SERVICES, INC., RESPONDENTS.

G.R. No. 76537. August 28, 1989

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

This petition for review on certiorari seeks to annul: (a) the decision of the Court of Appeals promulgated on September 17, 1986 in CA-G.R. SP No. 01634 affirming the decision of the Regional Trial Court of Manila, Branch IV, in Civil Case No. 142496 dated March 15, 1983, granting the third-party claims of private respondent Top Rate International Services, Inc. (Top Rate for brevity), over certain attached real properties and lifting the writ of attachment in favor of petitioner Quezon Bearing & Parts Corporation (petitioner for brevity) over them; and (b) the resolution of the Court of Appeals dated November 12, 1986, denying petitioner's motion for reconsideration.

The pertinent facts follow:

On August 18, 1981, petitioner filed a complaint against Consolidated Mines, Inc. (CMI for brevity), and Jose Marino Olondriz, president of said corporation, to recover the unpaid price (of P356,842) for certain heavy equipment, parts and accessories sold by the petitioner to CMI. In said complaint, petitioner (therein plaintiff) asked that a writ of preliminary attachment be issued against CMI (defendant) on the ground that the defendants were guilty of fraud in contracting the obligation.

On September 29, 1981, the trial court issued an order of attachment upon petitioner's posting a bond of P356,000. Pursuant to that order, a writ of attachment was issued on November 3, 1981. On December 9, 1981, the sheriff levied on CMI's interest in the properties covered by its Transfer Certificate of Title No. S-68501 (143900) and Transfer Certificate of Title No. S-68500 (143929) (Rollo, pp. 54-55).

Annotated as a prior encumbrance on the titles of said properties on December 20, 1978, was a mortgage in favor of the consortium of twelve (12) banks to secure CMI's obligation of US\$62,062,720.66 to the consortium (p. 210, Rollo).

On March 9, 1982 (p. 7, Rollo), the Court of First Instance of Rizal, Branch XXIII, acting as an insolvency court in Sp. Proc. No. 69623, authorized the sale of the CMI properties covered by TCT Nos. S-68500 (143929) and S-68501 (143900) to respondent Top Rate as assignee of the El Grande Development Corporation. The sale is evidenced by a "Deed of Confirmation of Sale with Assumption of Mortgage" dated September 17, 1982 (Annex L-2). On October 19, 1982 (p. 55, Rollo), Top Rate filed with the deputy sheriff a third-party claim over the properties of CMI alleging that they had been sold to it for P40,000,000 on December 10, 1981, with the approval of the Court of First Instance of Rizal in the involuntary insolvency proceedings against CMI (SP No. 69623).

On November 4, 1982, petitioner moved to quash Top Rate's third-party claim on the ground that its (petitioner's)

writ of attachment was annotated on December 9, 1981, hence, ahead of the sale to Top Rate dated December 10, 1981, and the Deed of Confirmation of Sale with the Assumption of Mortgage dated September 17, 1982 (p. 209, Rollo).

After hearing the motion on March 15, 1982, the trial court in Civil Case No. 142496, denied petitioner's motion to quash the third-party claim of Top Rate and ordered the lifting and setting aside of petitioner's levy on attachment on the two properties of CMI (or its vendee Top Rate) on the grounds that:

- In view of the prior recorded real estate mortgage of the consortium of banks over the two properties, what remains to the mortgagor CMI is only the equity of redemption, hence, the petitioner's lien will not be valid and effective against Top Rate who, as the vendee in the "Sale with Assumption of Mortgage," with the consent of the mortgagee-consortium of banks, stepped into the shoes of said mortgagee banks.
- The levy on the CMI's (now Top Rate's) properties is marked by gross disproportion between petitioner's claim of P365,842 and the real value of the properties which were sold by CMI to Top Rate for Forty Million Pesos (P40,000,000).

On September 17, 1986, the Court of Appeals affirmed the order of the trial court, hence, this petition for review.

The main issue in this case is the nature of the lien of a judgment creditor, like the petitioner, who has levied an attachment on the judgment debtor's (CMI) real properties which had been mortgaged to a consortium of banks and were subsequently sold to a third party, Top Rate.

The answer to that question is supplied by this Court's decision in the consolidated cases of Top Rate International Services, Inc. vs. IAC; Tan and Top Rate International Services, Inc. vs. IAC; and Polaris Motor Supply Co. (142 SCRA 467) promulgated on July 7, 1986, involving identical facts and affecting the same properties subject of this case. We ruled therein that:

"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, of the Civil Code provides that appropriation of the mortgaged properties by the mortgagee of said property even if stipulated by the parties would be null and void for being what is known as a 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 sheriff's levy on CMI's properties, under the writ of attachment obtained by the petitioner, was actually a levy on the interest only of the judgment debtor CMI on those properties. Since the properties were already mortgaged to the consortium of banks, the only interest remaining in the mortgagor CMI was its right to redeem said properties from the mortgage. The right of redemption was the only leviable or attachable property right of CMI in the mortgaged real properties. The sheriff could not have attached the properties themselves, for they had already been conveyed to the consortium of banks by mortgage (defined as a "conditional sale"), so his levy must

be understood to have attached only the mortgagor's remaining interest in the mortgaged property - the right to redeem it from the mortgage. Levying upon the property itself is distinguishable from levying on the judgment debtor's interest in it (*McCullough & Co. vs. Taylor*, 25 Phil. 110). The Sheriff's failure to qualify or particularize the nature of the judgment debtor's interest that was levied upon is not reason to nullify the levy.

Since what was actually attached was only CMI's right of redemption over the disputed properties, there could not have been an over-levy by the petitioner. CMI's equity or right of redemption, is 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.

The petitioner's lien on the properties is inferior to the mortgage held by the consortium of banks whose claim, in the event of foreclosure proceedings, must first be satisfied (*Top Rate vs. IAC*, 142 SCRA 467), but it is superior to the sale in favor of Top Rate which must first discharge the attachment lien by paying the petitioner's judgment before it may redeem the properties from the mortgage of the consortium of banks.

With regard to the validity of the sale of the mortgaged properties to Top Rate upon authority of the insolvency court, we hold that this question should be threshed out in a separate action to give Top Rate the opportunity to defend its claim to them.

WHEREFORE, the decision of the Court of Appeals is modified by maintaining the petitioner's levy by attachment but limiting said levy to the residual interest only, or to the right of redemption of the mortgagor, Consolidated Mines, Inc. (or its successor-in-interest, Top Rate), in the properties subject of the real estate mortgage in favor of the consortium of banks. Costs against the private respondent.

SO ORDERED.

Narvasa, Cruz, Gancayco and Medialdea, JJ., concur.

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