

**NORMAL HOLDINGS AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. THE HON. COURT OF APPEALS AND J.R. HEAVY  
EQUIPMENT CENTER, INC., RESPONDENTS.**

*G.R. No. 91461. February 25, 1991*

Ponente: GRIÑO-AQUINO. J.

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**GRIÑO-AQUINO. J.**

This is a petition for review on certiorari of the decision of the Court of Appeals dated October 16, 1989 in CA-G.R. SP No. 17514 "Normal Holdings and Development Corporation vs. Hon. Fernando Agdamag, et al." affirming the orders of the Regional Trial Court of Makati, Branch 138, partially setting aside the writ of replevin which it had issued in Civil Case No. 12507.

The facts as found by the Appellate Court are the following:

Sometime in February, 1984, Normal engaged the services of private respondent J.R. Heavy Equipment Center, Inc. (JRHECI for brevity), for the hauling and complete repairs, i.e. rebuilding equipment described in paragraph 3 of both the Complaint and Amended Complaint in Civil Case No. 12507, including the supply by said JRHECI of available spare parts and labor necessary or required to restore said heavy equipment into good running A-I condition.

In accordance with their agreement and understanding, JRHECI executed and performed the required labor, supplied all materials needed and spare parts available and accordingly sent progress billings that were paid by NORMAL on installment, the last of which was on January 15, 1985. After that date, progress billings of JRHECI were no longer paid by NORMAL and as of December 4, 1985, NORMAL'S total obligations to JRHECI was P1,850,073.24 which remained unpaid despite repeated demands.

Since there was no payment made on JRHECI's progress billings and repeated demands thereof were completely ignored, it notified NORMAL of its desire to exercise its right to a mechanic's lien under the law over the heavy equipment, having exercised and performed the necessary works, supplied all materials and the available parts, unless NORMAL comes up with a better alternative for the settlement of the claims.

NORMAL, claiming that it had already paid the sum of P3,546,875.00 and that JRHECI had not been able to complete the repairs instituted in 1985 an action for accounting and damages with prayer for the issuance of a writ of preliminary injunction (Annex 2) on December 12, 1985 with the Regional Trial Court of Makati, Branch 138, docketed as Civil Case No. 12507. Subsequently, NORMAL amended its complaint and prayed for the issuance of a writ of replevin to enable it to recover possession of its properties which it claimed were being unjustly detained by JRHECI.

On December 27, 1985, respondent Judge Fernando P. Agdamag issued an order granting NORMAL'S application for a writ of replevin. On the same day, Deputy Sheriff Norberto Doblada, at the instance of JRHECI, started implementing said writ of seizure starting late afternoon and continued to do so until December 31, 1985,

(p. 51, Rollo). On January 6, 1986, JRHECI filed a motion to quash writ of replevin alleging among others that it was irregularly, improperly and improvidently issued and was likewise implemented in an oppressive, malevolent manner. Most particularly, JRHECI accused that the Deputy Sheriff and NORMAL'S representative, in implementing the writ of seizure, did not only seize the twelve (12) heavy equipment specifically described in the Writ of Seizure but also carted away component parts and component assemblies of heavy equipment, imported spare parts, undercarriage components/ parts of heavy equipment not belonging to petitioner NORMAL and specifically belonging to JRHECI, R.C. GONZALEZ CO., INC. and other customers. NORMAL subsequently filed its opposition dated January 31, 1986 after which both parties, by order of the Court dated August 22, 1986, filed their respective memoranda in support of their contentions.

On March 18, 1987, respondent trial court issued an order partially granting the motion to quash the writ of replevin, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Motion to Quash Writ of Replevin is hereby partially granted in the sense that within fifteen (15) days from receipt of a copy of this Order, the plaintiff [NORMAL] is hereby directed to return to the defendant [JRHECI] the equipment parts not attached to the equipment described in the writ of seizure and described in the several receipts attached to the Partial Report of the sheriff who implemented the writ." (p. 52, Rollo.)

On April 14, 1987, NORMAL filed a motion for reconsideration maintaining that the sheriff acted within his authority when he seized the items not mentioned in the writ of seizure nor in the amended complaint and the affidavit attached thereto and that it is incumbent upon JRHECI to prove ownership of the items which were allegedly illegally seized. NORMAL likewise filed a supplement to the motion for reconsideration, this time alleging that the properties taken by way of replevin were properly described in the amended complaint, and that JRHECI admitted that the twelve (12) x x x units of tractors were dismantled to prevent the enforcement of the writ of replevin.

On October 11, 1988, JRHECI filed its omnibus opposition to the motion for reconsideration and the supplement thereto, reiterating its argument that the sheriff exceeded his authority since some of the items seized are properties of JRHECI.

On April 3, 1989, the trial court issued an order denying NORMAL'S motion for reconsideration (pp. 50-52, Rollo)

On May 5, 1989, NORMAL filed a petition for certiorari in the Court of Appeals to annul and set aside the orders of the trial court which were allegedly issued in grave abuse of discretion amounting to lack of, or, excess of jurisdiction, (p. 11, Rollo.)

On October 16, 1989, the Court of Appeals (Fifteenth Division) dismissed NORMAL'S petition for certiorari for lack of merit (p. 54, Rollo) and on December 13, 1989 denied its motion for reconsideration (p. 72, Rollo)

In this petition for review, NORMAL alleges that the Court of Appeals erred:

- in dismissing the petition for certiorari and not holding that the trial court committed grave abuse of discretion amounting to lack of jurisdiction or excess thereof when it issued the disputed orders; and
- in not holding:
  - (a) that JRHECI should prove that items seized do not belong to NORMAL consistent with the rule that affirmative allegations need be proved by the proponent;

- (b) that the replevied properties are properly described in the amended complaint;
- (c) that JRHECI dismantled all the heavy equipment, except one;
- (d) that JRHECI waived any defect in the description of the properties in the writ of replevin, (pp. 8-9, Rollo.)

The petition has no merit.

The trial court, in its orders dated March 18, 1987 and April 3, 1989, stated the reason why it partially quashed the writ of replevin, to wit:

"Neither the amended complaint nor in the affidavit submitted to support the application for a writ of seizure, it is alleged that the equipment sought to be seized have been dismantled and that the dismantled parts should likewise be seized. If it were true as alleged in the Sheriff's Partial Report that most of the equipment directed to be seized were dismantled of its parts, then the Sheriff should have reported the matter to the court and upon proper motion by the plaintiff, with notice to the defendant, the matter of whether such dismantled parts were indeed parts of the equipment subject of the writ of seizure could have been determined by the court after a proper hearing. In failing to follow this procedure and instead deciding by himself that the dismantled parts were parts of the equipment to be seized, the Deputy Sheriff enforcing the writ exceeded his authority under the Writ of Seizure issued by this Court." (Italics supplied; pp. 33-34, Rollo.)

"The record reveals that the deputy sheriff did not confine the seizure to the items specifically described in plaintiffs [NORMAL'S] amended complaint. This is buttressed by the report of Mr. Fermin C. Evangelista of the Tamaraw Security Services, Inc., attached as Annexes A and A-1 of defendants' [JRHECI's] Omnibus Opposition. The Writ of Seizure described with particularity the twelve (12) equipment to be seized. It does not mention any component assemblies, spare parts and undercarriage component detached from the equipment

xxx sought to be seized were dismantled parts x x x should also be seized. Plaintiff's (NORMAL'S) allegation that the component parts and component assemblies of the twelve (12) tractors are described in the Amended Complaint, is not borne out by the records. The court maintains that if it is true that the implementing sheriff discovered when he served the Writ, that the equipment ordered to be seized were short of their component parts and component assemblies, etc., he should have informed the court so that the court could have ordered the defendant [JRHECI] to surrender the missing parts and/or assemblies after a proper hearing, where the identity of such parts or assemblies could have been resolved. When the implementing sheriff seized the said spare parts and undercarriage assemblies, etc. on his own initiative, he acted beyond the scope of his authority as set forth in the Writ of Replevin." (Italics supplied; pp. 88-89.)

The Appellate Court correctly observed that the trial court did not abuse its discretion in issuing those orders for it acted in accordance with existing law and jurisprudence (Garcia vs. Vasquez, 27 SCRA 505).

In the case of Machinery and Engineering Supplies, Inc. vs. Court of Appeals, 96 Phil. 70, we had ruled:

"While the seizure of the equipment and personal properties was ordered by the respondent court, it is however, logical to presume that the same did not authorize the petitioner or its agents to destroy said machineries and equipment. The Provincial Sheriffs tortious act has no justification in law, notwithstanding the sheriffs claim that his duty was ministerial. It was the bounden duty of the respondent judge to give redress to the respondent company for the unlawful and wrongful acts committed by the petitioner and its agents. And as this was the true object of the order, we can not but hold that the same was within its jurisdiction to issue."

Since there was no legal basis for the acts of the deputy sheriff and NORMAL'S representative in carting away component parts not specified in the writ of replevin, their acts were unlawful and unjustified. As possessor of the items (before they were illegally seized) JRHECI had every right to be respected in its possession and may not be

deprived of it without due process (*Viloria vs. Puno, etc., et al.*, 95 Phil. 802; *Maglasang vs. Maceren, et al.*, 46 O.G. No. 11, 90). Since its possession was disturbed illegally, such possession should be restored to it by means established in the laws of procedure (*Rodriguez vs. Tiño*, 16 Phil. 301).

There is no merit in petitioner's contention that JRHECI should have been required to prove that the properties seized do not belong to NORMAL. In the first place, a party need not prove a negative allegation. In the second place, the law has laid the burden of proving its ownership and/or right of possession over the items to be seized, on the shoulders of the applicant (NORMAL) for the writ of replevin. Section 2, Rule 60, requires it to state in an affidavit that it is the owner of the property claimed, particularly describing it, or that it is entitled to the possession thereof and that it is "wrongfully detained by the defendant."

The component parts and component assemblies of heavy equipment, imported spare parts, and undercarriage components/ parts of heavy equipment that were illegally carted away by the sheriff and NORMAL'S representative were found by the trial court and the Court of Appeals to be "not attached to the equipment described in the writ of seizure" (p. 56, Rollo). That factual observation is binding on this Court and may not be disturbed.

Whether or not JRHECI dismantled or removed those parts from the equipment and machinery belonging to petitioner, and whether the said private respondent "waived" the defective description in the writ of replevin of the machineries to be seized, are likewise factual issues. The fact that JRHECI filed a motion to quash the writ plainly refutes and belies the supposed acquiescence of JRHECI to the seizure of the items not particularly described in NORMAL'S application for, and in the writ of, replevin.

WHEREFORE, the petition for review is DISMISSED for lack of merit. The decision of the Court of Appeals in CA-G.R. SP No. 17514 is AFFIRMED. With costs against the petitioner.

**SO ORDERED.**

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

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