



Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY
Welfredo M. Sison
 WILFREDO M. SISON
 Division Clerk of Court
 Third Division
 DEC 19 2016

RECEIVED
 DEC 20 2016
 BY: [Signature]
 TIME: [Signature]

THIRD DIVISION

**24-K PROPERTY VENTURES,
 INC.,**
 Petitioner,

G.R. No. 193371

- versus -

Present:

VELASCO, JR., J.,
 Chairperson,
 PERALTA,
 DEL CASTILLO,*
 PEREZ, and
 JARDELEZA, JJ.

**YOUNG BUILDERS
 CORPORATION,**
 Respondent.

Promulgated:

December 5, 2016

Welfredo M. Sison

x-----x

DECISION

PEREZ, J.:

Assailed in the present petition for review on *certiorari* is the Decision¹ dated 27 April 2010 and the Resolution² dated 11 August 2010 of the Court of Appeals in CA-G.R. S.P. No. 111895, effectively affirming the Orders dated 28 October 2009 and 7 December 2009 of the Construction Industry Arbitration Commission (CIAC) denying the Motion to Set Aside

* Designated as Additional Member in lieu of Associate Justice Bienvenido L. Reyes, per Raffle dated 7 December 2016.

¹ Penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Mario L. Guariña III and Rodil V. Zalameda; *rollo*, pp. 9-23

² Id. at 83-84.

RS

Execution Sale and Motion for Reconsideration filed by (petitioner) 24-K Property Ventures, Inc.

Factual Background

This case is an offshoot of the Request for Arbitration/Adjudication filed before the CIAC by (respondent) Young Builders Corporation against petitioner, and docketed as CIAC Case No. 32-1999.

The records show that on 7 August 1996, petitioner and respondent entered into a Construction Contract wherein respondent undertook to construct for petitioner a 20-storey office/residential building along Tomas Morato, Quezon City for the price of ₱165,000,000.00.³ This building was to be known as Lansbergh Place.⁴

In 1988, petitioner was hit by the Asian Financial Crisis of 1997 and it incurred arrearages. Respondent refused to continue with the construction unless petitioner issued securities for its unpaid obligations. Petitioner then executed in respondent's favor a Deed of Real Estate Mortgage over two parcels of land covered by TCT No. N-164112 and No. N-164113. At that time, these lots were bare and without improvements.⁵

In 1999, respondent filed a complaint for collection of sum of money against petitioner before the CIAC.

Meanwhile, petitioner commenced the construction of another condominium project on the two parcels of land covered by TCT No. N-164112 and No. N-164113, to be known as Torre Venezia.⁶

On 19 December 2005, the CIAC rendered a Final Award⁷ ordering petitioner to pay respondent the sum of ₱91,084,206.43, with interest at the rate of 6% *per annum* from the date of the final award, and 12% *per annum* from the date the award becomes final and executory until it is fully paid.⁸ This award became final and executory on 28 October 2008.⁹

³ CIAC Final Award; *rollo*, p. 738.

⁴ Reply; *rollo*, p. 302.

⁵ *Id.*

⁶ *Id.*

⁷ Rendered by Beda G. Fajardo, Cesar V. Canchela, and Wenfredo A. Firme; *rollo*, pp. 738-762.

⁸ CIAC Final Award; *id.* at 761.

⁹ CA Decision; *id.* at 10.

In the meantime, while the case was on appeal, the CIAC, upon motion of respondent, issued a writ of execution dated 2 May 2006 for the award of ₱91,084,206.43, as well as for the amount of ₱1,208,801.81 as arbitration costs. Respondent Sheriff Villamor R. Villegas (Sheriff Villegas) of the Regional Trial Court of Makati (RTC Makati) was designated to enforce the writ.¹⁰

As reported by Sheriff Villegas, he exerted diligent efforts to serve the writ upon the officers of petitioner, but said officers refused to acknowledge receipt of said writ, causing him to serve the writ and the letter of request for compliance to petitioner's counsel who acknowledged receipt thereof.¹¹

Sheriff Villegas also served notices of garnishment to the following banks: Banco de Oro Universal Bank, Philippine National Bank, Metropolitan Bank and Trust Company, United Coconut Planters Bank, and East West Banking Corporation.¹²

Sheriff Villegas subsequently levied on the real properties of petitioner, particularly on those covered by Condominium Certificate of Title No. N-14163, No. N-14183 and No. N-14286, etc. and Transfer Certificate Title No. N-164112 and No. N-164113.¹³ The levy effected by Sheriff Villegas was on sixteen (16) condominium units of Lansbergh Place and on the two parcels of land upon which Torre Venezia, a 27-storey building with 302 condominium units, presently stands.¹⁴

Antecedent Proceedings

Petitioner filed a Manifestation with Motion to Suspend Enforcement of Notice of Sale and Re-computation of Award but the auction sale proceeded and the subject properties were sold to respondent for ₱110,504,888.05. A Certificate of Sale was consequently issued in respondent's favor.

Petitioner filed a Motion to Set Aside Execution Sale, claiming that the sale was violative of various provisions of the Rules of Court and that the subject properties were sold at a grossly inadequate price. The CIAC,

¹⁰ Writ of Execution; id. at 85.

¹¹ Sheriff's Report/Return; id. at 87-88.

¹² Id. at 87

¹³ Id.

¹⁴ Reply; id. at 311.

however, denied said motion as well as the subsequent Motion for Reconsideration.¹⁵

Petitioner elevated the case to the Court of Appeals (CA), contending that the CIAC gravely abused its discretion in upholding the execution sale on the basis of an erroneous application of the presumption of regular performance of official duties, laches, and making the filing of an administrative case against the erring sheriff a pre-requisite for the nullification of the execution sale. Petitioner additionally averred that although the gross inadequacy of the price of the sale does not invalidate the sale, such principle does not apply to the case at bar where the execution sale was attended with numerous violations of the Rules of Court and established jurisprudence.¹⁶ The CA dismissed the petition. Hence, the present petition for review on *certiorari*.

Issues

In the present petition, petitioner raises the following issues:¹⁷

As First Assignment of Error

THE COURT OF APPEALS ERRED IN AFFIRMING THE CIAC'S ORDER DENYING PETITIONER'S MOTION TO SET ASIDE EXECUTION SALE AND ITS MOTION FOR RECONSIDERATION THEREOF, WHEN CLEARLY THE EXECUTION SALE WAS FRAUGHT WITH IRREGULARITIES AND NON-COMPLIANCE WITH THE RULES OF PROCEDURE ON EXECUTION OF MONEY JUDGMENTS.

As Second Assignment of Error

THE COURT OF APPEALS ERRED IN HOLDING THAT GROSS INADEQUACY OF THE PURCHASE PRICE IS NOT SUFFICIENT GROUND TO NULLIFY THE EXECUTION SALE THEREBY ALLOWING THE PRIVATE RESPONDENT TO ENRICH ITSELF UNJUSTLY AT THE EXPENSE OF THE PETITIONER.

As Third Assignment of Error

THE COURT OF APPEALS ERRED IN VALIDATING THE EXECUTION SALE DESPITE LACK OF FULL PAYMENT BY THE HIGHEST BIDDER (PRIVATE RESPONDENT) OF THE BID PRICE.

¹⁵ CA rollo, pp. 31-34.

¹⁶ CA Decision; rollo, p. 12.

¹⁷ Id. at 37.

The Petition-in-Intervention

On 1 February 2013, a petition-in-intervention was filed¹⁸ and adopted¹⁹ by certain condominium unit buyers of Torre Venezia.

The intervenors claim that although petitioner already executed Deeds of Absolute Sale and Certificates of Ownership in their favor, petitioner failed to issue the respective Condominium Certificates of Title despite repeated demands. The intervenors later on learned that the mother titles of the lots upon which Torre Venezia is erected are in the possession of respondent by virtue of an execution sale pursuant to a final award issued by the CIAC. The intervenors assert, however, that they were not notified of the execution sale. Thus, they are now joining petitioner in assailing the validity of the execution sale for failure to comply with the pertinent rules under Act 3135.

The intervenors additionally argue that when the CIAC issued the order confirming the sale and the conditional writ of possession in respondent's favor, they were already the owners of and in possession of their respective condominium units. Hence, the issuance of a writ of possession is not purely ministerial as intervenors are third parties not privy to the contract between petitioner and respondent, and who stand to be unjustifiably deprived of their respective properties.

Our Ruling

We grant the petition.

¹⁸ Marriel Maano, Sean Carrascal Barrameda, Elenita Sabastian, Nelpha Vinoya, Evangeline Lee, Emelyn Cischke, Norman San Vicente, Carina Del Rosario, Lillian Chirapuntu, Calixto Adriatico, Marilou Cayetona, Juanito Quizon, Katherine Guinhawa, Harpinder Signh Gill, Joselito Cruz, Rachel Dela Cruz, Emmanuel Dating, Katherine San Vicente, Kristine Guinhawa, Lee Faminialagao, Isabelita Guinhawa, Karen Lee, Josefina Ayco, Romulo Vergara, Teresita Salcedo, Oneal San Vicente, Catalino Redondo, Jr., Mei Hwa Fang, Manuel Calayan, Hazel Gonzales, Ellery Gidaya, GL Equinox Pro. & Mgt., Inc., and Futuris Realty Corporation; id. at 380-381.

¹⁹ Iluminada Lo, Joan Ado, Virginia Ascano, Maria Fe Pimentel, Sia Key Guan, Hendra Setiady, Grace Jingco, Elena Reyes, Agnes Tojino, Lydia Manlangit, Gil Guevarra, Michael Reyes, Roselyne Marie Balita, Mahmoud Moein, Emmylou Malgapo San Andres, Voltaire Arriola, Apolonia Macatangay, Alma De Guzman, Conrado Sanchez, Rodolfo Tumulak, Jr., Edgardo Ayento, and Agripina Amparo; id. at 985.



It is doctrinal that “a lawful levy of execution is a prerequisite to an execution sale, either of real estate or of personalty, to the conveyance executed in pursuant thereof, and to the title acquired thereby.”²⁰ A proper levy is indispensable to a valid execution sale, and an execution sale, unless preceded by a proper levy, is void and the purchaser in said sale acquires no title to the property sold thereunder.²¹

In the case at bar, we find that the levy effected on the real properties of petitioner was improper.

A valid demand for the immediate payment of the full amount stated in the writ of execution and all lawful fees is necessary to a proper levy.

Section 9, Rule 39 of the Revised Rules of Court provides that in the execution of money judgments, “(t)he officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees.”

The first crucial step in the execution of money judgments is a valid demand on the judgment obligor, usually via a valid service of the writ of execution. In the case at bar, the Sheriff’s Report/Return stated:²²

By virtue of the Writ of Execution, dated May 2, 2006 issued by Construction Industry Arbitration Commission, the undersigned sheriff tried to serve said writ upon officer of respondent corporation, however, despite [diligent] effort exerted by herein sheriff to serve to the officer of respondent corporation[,] [service] proved futile because they refused to acknowledge receipt thereof x x x.

Noticeably, the Sheriff’s Report/Return failed to specifically indicate material information on the alleged attempted service on petitioner. It failed to state the name of the officer who allegedly refused to receive the writ and the circumstances surrounding such refusal, and even the date when said attempted service was allegedly made.

²⁰ Commentaries and Jurisprudence on Attachment and Execution by Laureta and Nolleto; id. at 392.

²¹ *Yupangco Cotton Mills v. CA, et al.*, 424 Phil. 469, 480 (2002), citing *The Consolidated Bank and Trust Corp. (Solidbank) v. Court of Appeals*, 271 Phil. 160, 179 (1991).

²² *Rollo*, p. 87.

The CIAC and the CA unquestionably accepted Sheriff Villegas' ambiguous statements regarding the alleged attempted service on petitioner, relying on the presumption that the former performed his official duty regularly. The Court, however, holds that such presumption cannot be applied in the case at bar given the abstracted and vague declarations in the Sheriff's Report/Return. The ambiguity in the sheriff's statements as to the alleged attempted service on petitioner disputes the presumption that said sheriff performed his official duty in a regular manner.

Sheriff Villegas also reported that service was made on petitioner's counsel after the alleged unsuccessful service on petitioner. The next query, then, is whether such service translates to a valid demand as required by Section 9, Rule 39 of the Revised Rules of Court.

We answer in the negative.

The CIAC and the CA perfunctorily declared that there was a service of the writ of execution on petitioner and its counsel.²³ Both of them, however, failed to consider the material dates in the case at bar.

It is to be noted that the service of the writ of execution was made on petitioner's counsel on 9 May 2006²⁴ or on the very day when levy was made on the real properties of petitioner.²⁵ The lateness of the service of the writ of execution on petitioner's counsel or the prematurity of the levy precluded petitioner from having a real opportunity to effect the immediate payment of the judgment debt and the lawful fees.

In requiring a valid demand, Section 9, Rule 39 of the Revised Rules of Court contemplates a situation where the judgment obligor is first given the chance to effect immediate payment of the judgment debt and the lawful fees through cash or certified bank checks. If this is not feasible, it is only then that a levy is effected, giving the judgment obligor the choice as to which property to levy upon, or if the judgment obligor does not exercise his choice, to effect the levy first on personal properties, and then on real properties.

A valid levy must first be effected on personal properties, if any, and then on

²³ CA Decision; id. at 15.

²⁴ Id. at 169.

²⁵ As stated in the Sheriff's Report/Return; id. at 87.

real properties if personal properties are insufficient to answer for the judgment.

The Rules provide the order by which the property of the judgment debtor may be executed upon for the satisfaction of a money judgment.²⁶

(b) Satisfaction by levy. – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank checks 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.

Real property, stocks, shares, debts, credits, and other personal property or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

In case the judgment debtor fails to choose which of his properties should be levied upon, the sheriff must first levy on the judgment debtor's personal properties, if any, and should such properties be insufficient, then the sheriff may levy on the judgment debtor's real properties. In all of these cases, the sheriff may levy and sell only such properties as are sufficient to satisfy the judgment debt and the lawful fees.

The Sheriff's Report/Return, presumably in an effort to comply with the Rules, stated that a levy on petitioner's bank accounts was first attempted.²⁷

That by virtue of said writ of execution[,] herein sheriff[,] on May 5, 2006[,] served a Notice of Garnishment on the following banks:

²⁶ Section 9, Rule 9 of the Revised Rules of Court.

²⁷ *Rollo*, p. 87.

1. Banco de Oro Universal Bank
2. Philippine National Bank
3. Metropolitan Bank and Trust Company
4. United Coconut Planters Bank
5. East West Banking Corporation

and in response to said Notice of Garnishment, the said banks informed [me] that respondent 24-K Property Ventures, Inc. has no deposits, credits or money which are in possession and control of said banks. [Xerox] copies of said replies are hereto attached x x x.

The CA accepted the sheriff's statements as gospel truth. In its recital of facts, the CA stated that "*on 05 May 2006, [Sheriff Villegas] served Notice of Garnishment to a number of banks but he was informed that the petitioner had no deposits, credits or money in those banks. On 9 May 2006, he levied on two real properties of the petitioner x x x*"²⁸

A perusal of the bank replies shows, however, that the attempt to first effect garnishment on petitioner's bank accounts before levying on petitioner's real properties is a mere ruse. Of the banks notified by Sheriff Villegas, only Equitable PCI Bank²⁹ and Metropolitan Bank and Trust Company³⁰ stated that petitioner had no garnishable funds with their banks. The Philippine National Bank,³¹ United Coconut Planters Bank,³² and East West Banking Corporation³³ all replied that they were still validating with their branches whether petitioner had any accounts with them.

More importantly, all these bank replies, even those stating that petitioner had no accounts with them, were all issued after 9 May 2006. This is quite understandable as the banks were served the Notice of Garnishment only on 5 May 2006.

And yet, the levy on petitioner's real properties was made on 9 May 2006, clearly showing that petitioner was deprived of the opportunity to have his personal properties garnished or levied upon first before his real properties.

All in all, it being shown that there was no proper levy in the case at bar, the consequent execution sale is thus declared invalid. As previously

²⁸ Id. at 15.
²⁹ Id. at 170.
³⁰ Id. at 172.
³¹ Id. at 171.
³² Id. at 173.
³³ Id. at 174.

discussed, “(a) sale unless preceded by a valid levy, is void, and the purchaser acquires no title.”³⁴

Petitioner and petitioners-in-intervention raise a number of irregularities supposedly attendant to the execution sale, and petitioner also questions the gross inadequacy of the purchase price for which the two lots were sold. The Court, however, deems it unnecessary to discuss these issues further in view of the declaration of invalidity of the execution sale owing to the improper levy.

Nevertheless, the Court would like to remind our sheriffs to be circumspect in the levy and sale of the judgment debtor’s properties. A sheriff’s authority to levy and to sell properties under a writ of execution extends only to those properties as are sufficient to satisfy the judgment debt and lawful fees. Indeed:³⁵

Under his power, coupled with a trust, the execution officer is duty-bound to see that the property belonging to the judgment which were previously levied under a writ of execution “is not unduly sacrificed,” and for this purpose, he need not obey such instructions of the execution creditor as will produce a sacrifice. His authority to sell the debtor’s property levied under an execution is good only to what the rule considers “sufficient to satisfy the execution.” His authority under the writ ends there.

WHEREFORE, in view of the foregoing, the present petition is hereby **GRANTED**. The execution sale over the properties covered by TCT Nos. N-164112 and N-164113 in favor of respondent is declared **NULL and VOID**.

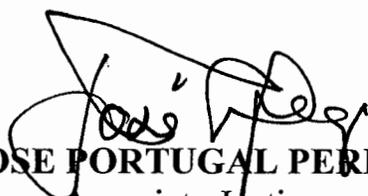
Respondent Young Builders Corporation is **ENJOINED** from consolidating ownership and taking possession over the properties covered by TCT No. N-164112 and No. N-164113 or from exercising acts of ownership over them, while Sheriff Villamor R. Villegas of the Regional Trial Court of Makati City is **ENJOINED** from issuing a Final Deed of Sale confirming respondent’s ownership of the subject properties, and the Register of Deeds of Quezon City is **ENJOINED** from annotating any final deed of sale over the subject properties and from issuing new titles over the same.

³⁴ *Llenares v. Valdeavella*, 46 Phil. 358, 361 (1924).

³⁵ Commentaries and Jurisprudence on Attachment and Execution by Laureta and Nollobo; p. 447.

The Final Award dated 19 December 2005 of the Construction Industry Arbitration Commission in CIAC Case No. 32-1999 is not affected by the disposition of the present petition, and respondent may obtain the issuance of another execution.

SO ORDERED.

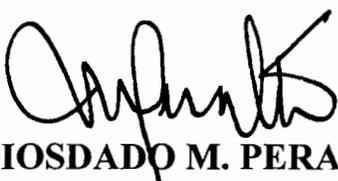


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

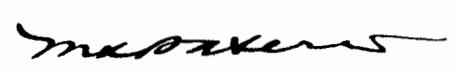
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



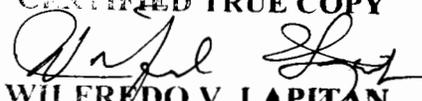
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 19 2016