

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**THE NEW OWNERS/MANAGEMENT
OF TML GARMENTS, INC.,
REPRESENTED HEREIN BY GEDELIZA
F. CELEBRE,**

Petitioners,

-versus-

**G.R. No. 75866
February 23, 1989**

**ANTONIO V. ZARAGOZA, OFFICE OF
THE SHERIFF OF QUEZON CITY AND
SHERIFF JUANITO B. LINDO,**

Respondents.

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D E C I S I O N

PARAS, J.:

TML Garments, Inc. was organized as a domestic corporation on May 13, 1975 at Quezon City, and later registered with the Securities & Exchange Commission (SEC). The Company's original incorporators, stockholders and directors were: Teresita Zablan, Merle Hemedes, Josefino Pascual, Valentin Hemedes, Leandra Pascual, Rafael Vilar, Jr., Milagros Vilar and Minerva Miller who shall collectively be referred to as the "Former Owners of TML Garments, Inc.," (Former Owners, for brevity).

On February 1, 1977, the Former Owners, including the Company (TML), represented by Rafael M. Vilar, Jr., entered as lessees into a Contract of Lease with Antonio Zaragoza (herein private respondent), for the occupancy of a building at No. 13 Doña Juana Rodriguez Avenue, Quezon City, together with the use of some machineries and equipment, at Seven Thousand Five Hundred (P7,500.00) Pesos a month.

Failing to pay their rentals on time, the Former Owners, by July of 1978, incurred an obligation in Antonio Zaragoza's favor in the sum of One Hundred Twenty Nine Thousand Six Hundred Sixty Five Pesos & Thirty Four Centavos (P129,665.34). This increased to One Hundred Fifty Three Thousand, One Hundred Sixty Five Pesos and Thirty Four Centavos (P153,165.34), As a consequence thereof, Antonio Zaragoza on February 15, 1980 filed against the Former Owners and Rafael M. Vilar, Jr., a complaint in court docketed as Civil Case No. Q-29325.

After issues were joined, the defendants and their lawyers failed to appear during a scheduled hearing. Thus, on March 10, 1982, Zaragoza presented his evidence ex-parte.

On June 5, 1982, the Former Owners (defendants in Civil Case No. Q-29325) sold, transferred and conveyed their ownership, interest, participation and rights over TML Garments, Inc. in favor of Rogelio T. Zamora, by virtue of a "Memorandum of Agreement (Annex "1", p. 51 Rollo).

On October 15, 1982 the court rendered a Decision^[**] requiring defendants to jointly and severally pay plaintiff Zaragoza the principal sum of P129,665.34, plus interest; P60,000.00 as unpaid rentals corresponding to the rental of the eighth month unexpired period of the lease contract, P5,000.00 as exemplary damages, costs of suit and attorney's fees (Decision, p. 42, Rollo).

To enforce said decision, a writ of execution was issued on June 2, 1983. Said writ was returned unsatisfied because the whereabouts of the defendants were unknown.

On August 7, 1986, an alias writ of execution was issued. On August 27, 1986, sheriff Juanito B. Lindo levied upon certain properties of the New Owners situated at the new address of the TML Company at South Super Hi-way, Parañaque and set the sale of the same on September 4, 1986.

A “Motion for Leave to Intervene and to Quash alias writ of execution” was filed by the New Owners on September 9, 1986 with the trial court, (pp. 11-17, Rollo, Annex “A”), attaching therewith their Affidavit of Third Party Claim dated September 1, 1986 signed by the TML Company’s general manager, Gedeliza F. Celebre and the affidavit of Minerva Miller attesting among others to the fact of the sale of the company to the new owners and/or Mr. Rogelio P. Zamora and that the properties levied upon by sheriff Juanito P. Lindo are owned by the New Owners and the management of TML Garments, Inc., (pp. 55-56, Rollo).

Said Motion was requested by counsel for the New Owners to be heard by the trial court on September 10, 1986 at 8:30 a.m. (p. 17, Rollo). The trial court scheduled the reception of evidence on October 30, 1986. Notwithstanding this, Sheriff Lindo on the following day, September 11, 1986, issued another Notice of Sheriffs Sale scheduling the auction sale of the questioned properties on September 18, 1986 at 10:00 a.m. (p. 59, Rollo).

Because of this, the New Owners, were constrained to file an Urgent Petition for Certiorari before Us dated September 15, 1986, praying that:

- “a) Petitioners’ proprietary rights and legal interests on the levied properties be first resolved before Branch 83 of the Regional Trial Court of Quezon City, before any auction sale can proceed;
- “b) Petitioners be accorded the right to due process in a proper hearing before the above Regional Trial Court of Quezon City where they will be given a chance to prove their ownership over the levied properties as claimed by them in their Third Party Claim;

“c) To protect their right to property and constitutional right to due process, a temporary restraining order be issued to enjoin Sheriff Juanito Lindo from proceeding with the auction sale on September 18, 1986 at 10:00 a.m. until the issue of ownership is finally resolved.

“All other remedies just and equitable in the premises are prayed for. (p. 9, Rollo)

In Our resolution dated September 17, 1986, We resolved to issue a temporary restraining order, addressed to respondent Sheriff (Sheriffs) of Quezon City to enjoin him (them) from enforcing the writ of execution until otherwise ordered by Us. (p. 60, Rollo).

In their petition, the “New Owners/Management of TML Garments, Inc.,” submit that:

- “a) Properties of persons who are not parties in a case are not subject to execution and levy; and
- “b) The issue of whether the properties levied upon belong to the judgment debtor or not, is factual in nature and should, therefore, be resolved by the Regional Trial Court of Quezon City.” (p. 182, Rollo).

Petitioners’ contentions deserve Our consideration. The issues revolve on whether or not there was really a change of ownership and management of TML Garments, Inc. and if so whether or not the new owners and management should be held liable for the obligation of the Former Owners and management of the Company. The issue of ownership is a factual issue which can be threshed out only after the petitioners herein are given the opportunity to present their evidence or the opportunity to be heard in court. Otherwise, their constitutional right to due process is violated.

There is no-question that the writ of execution was issued against the judgment debtors (the Former Owners) in Civil Case No. Q-29325, Court of First Instance (now Regional Trial Court) Branch IV of Quezon City. However, what was levied upon by the Sheriff are the properties allegedly owned by the New Owners of the TML Garments,

Inc. This fact of ownership was claimed by the New Owners or petitioners herein in their Motion to Intervene before the trial court. Petitioners contend that they were not the original parties impleaded as co-defendants in Civil Case No. Q-29325; that they were not summoned to appear before the court; that they did not participate in any manner in the proceedings before the court and that the decision of the court a quo did not include them as judgment debtors who should pay the judgment debt, and therefore to compel them to pay the obligation incurred by the former owners of TML Garments, Inc., without due process of law will amount to a deprivation of their property. Well-settled is the rule that a writ of execution can only be issued against one who is a party to the action and not against one who, not being a party in the case, has not yet had his day in court.

In filing a Motion to Intervene before the trial court, petitioners wanted an opportunity to be heard and to prove that they are the owners of the properties levied upon by Sheriff Lindo, and that the obligations sought to be collected were incurred by the Former Owners of TML Garments, Inc. The truth to the allegations of the petitioners and the conclusions or opinions of respondents can only be justly determined by giving both parties their day in court.

However the issues involved here are factual issues which only the trial court has the jurisdiction to resolve because it is beyond the function of this Court to make its own findings of essential or important facts different from those of the trial court, especially in the presence of the conflicting claims of the parties and without the evidence being properly before it, as in the case at bar. The reason for this entrenched principle are laid down by then Chief Justice Querube C. Makalintal in his concurring opinion in the case of Chemplex (Phils.), Inc., et al. vs. Ramon C. Pamatian, et al., (57 SCRA 412) to wit:

“For this Court to make such factual conclusions is entire]y unjustified – first, because if material facts are controverted, as in this case, and they are issues being litigated before the lower court, the petition for certiorari would not be in aid of the appellate jurisdiction of this Court; and, secondly, because it preempts the primary function of the lower court, namely, to try the case on the merits, receive all the evidence to be presented

by the parties, and only then come to a definite decision, including either the maintenance or the discharge of the preliminary injunction it has issued.” (pp. 190-191, Rollo).

WHEREFORE, premises considered, We resolve to **GIVE DUE COURSE** to the petition and order Branch 83 of the Regional Trial Court of Quezon City to hear and decide the factual issue of ownership over the levied upon properties, and enjoin the Sheriff (Sheriffs) of Quezon City, including private respondent Antonio V. Zaragosa, from enforcing the Alias Writ of Execution in Civil Case No. 29325, pending resolution of the above issue of ownership.

SO ORDERED.

Melencio-Herrera, Padilla, Sarmiento and Regalado, JJ., concur.

[**] Penned by then Judge Ricardo Tensuan, later Justice of the Court of Appeals.