



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 16, 2019**, which reads as follows:

“G.R. No. 233359 (*Spouses Jose V. Martel and Olga Martel represented by Michael Victor Martel, and Michael Victor S. Martel vs. Security Bank Corporation*). — This is a petition for *certiorari*¹ under Rule 65 of the Rules of Court which seeks to reverse and set aside the Decision² dated January 17, 2017 and the Resolution³ dated July 20, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 36815, which reversed the Decision⁴ dated November 28, 2013 of the Regional Trial Court (RTC), Branch 57, Makati City, in Civil Case No. 04-1219 finding respondent Security Bank Corporation liable for indirect contempt.

On October 27, 2004, the Spouses Jose and Olga Martel (Spouses Martel) and their son Michael Victor Martel filed a Petition for Contempt of Court with Prayer for Leave of Court to Serve Written Interrogatories against respondent Security Bank Corporation (SBC). The case stemmed from the alleged disobedience or resistance of the respondent to a lawful order issued by the RTC, Branch 146, Makati City.

On October 23, 2002, in a public auction sale administered by the Clerk of Court and Ex-Officio Sheriff of Makati City, SBC purchased a property covered by Transfer Certificate of Title (TCT) No. 146489 owned by the Spouses Martel. A Certificate of Sale was issued to SBC, and thereon annotated and inscribed on the memorandum of encumbrance of TCT No. 146489.⁵ The annotation and inscription were done on November 18, 2002. Thus, the Spouses Martel had one year from the date of annotation and inscription of the Certificate of Sale, or until November 18, 2003, to redeem the property. Otherwise, the ownership thereof will be transferred to SBC by operation of law.

¹ Rollo, pp. 14-40.

² Penned by Associate Justice Magdangal M. De Leon with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes concurring; id. at 46-57.

³ Id. at 59-60.

⁴ Id. at 238-240.

⁵ Id. at 222-223.

Spouses Martel failed to redeem the foreclosed property within the one-year redemption period. Thereafter, SBC filed its Affidavit of Consolidation with the Office of the Register of Deeds of Makati City. TCT No. 146489 was cancelled and TCT No. 219694 was issued by the Register of Deeds in the name of SBC. Upon consolidation of ownership under its name, SBC sent a letter to Spouses Martel demanding that they vacate the premises, which demand remains unheeded. This prompted SBC to file a Petition for Writ of Possession docketed as Case No. M-4510 and raffled to Branch 146 of the RTC of Makati City.⁶

In a Decision dated September 21, 2004, the RTC granted the ex-parte Petition for Writ of Possession filed by SBC and ordered the Sheriff to place SBC in possession of the subject property by causing the ejectment of its present occupants, Spouses Martel.⁷ On October 1, 2004, Sheriff Rommel M. Ignacio, together with the representatives of SBC, went to the premises of the subject property to implement the Writ of Possession and cause the ejectment of its current occupants. However, for humanitarian reasons, the Spouses Martel were given an extension of another two weeks or until October 15, 2004 to complete their packing and moving of their things. The extension of time and promise to vacate within two weeks were expressly contained in the Deed of Undertaking⁸ executed by the Spouses Martel in favor of SBC.⁹

However, on October 12, 2004, SBC received a letter from Atty. Raymond Caraos, counsel of Spouses Martel, requesting that the latter be allowed another extension of two weeks to stay in the property as they were still unable to finish packing and moving their things. But SBC denied their request and raised the agreement contained in the Deed of Undertaking executed by Spouses Martel. SBC maintained that Spouses Martel had until October 15, 2004 to vacate the property, otherwise, they would be forced to evict them.

On October 14, 2004, SBC received an Urgent Motion for Extension of Time to Vacate Premises Subject of the Writ of Possession from Spouses Martel. The motion was filed with the RTC on October 11, 2004, although it was dated October 12, 2004¹⁰ and set for hearing on October 15, 2004. However, in an Order dated October 15, 2004 issued by the RTC, Branch 146 of Makati City, such hearing was postponed "on account of the absence of its proof of service upon [respondent] Security Bank Corporation."¹¹ But the same court, on the same day, issued an Order¹² dated October 15, 2004,

⁶ Id. at 229.

⁷ Id. at 122-123.

⁸ Id. at 208.

⁹ Id. at 223.

¹⁰ Id. at 48.

¹¹ Id. at 128.

¹² Id. at 210-211.

extending the stay of the Spouses Martel in the premises for another two weeks, or until November 4, 2004.

On October 16, 2004, pursuant to the Deed of Undertaking, the representatives of SBC went to the subject property to implement the Writ of Possession and take possession of the premises. Spouses Martel refused to vacate the premises by virtue of the Order dated October 15, 2004 issued by the RTC, Branch 146 of Makati City, extending their stay in the premises for another two weeks.

SBC refused to acknowledge the said Order, alleging that it was not aware of the issued Order and there was no proper service to it. As a proof of its lack of knowledge, respondent SBC presented a witness testifying that it received an official copy of the Order dated October 15, 2004 only on November 3, 2004 or 19 days after its issuance.

Comotions ensued between the parties. Spouses Martel refused to vacate the subject property while SBC refused to acknowledge the Order of extension allegedly granted to the former. SBC's security guards forced the eviction of Spouses Martel and allegedly threw their belongings to the streets. The counsel of Spouses Martel explained to the SBC personnel the effect of the abovementioned Order; however, they refused to recognize the same alleging that there was no proper service to it. Even the police and former Mayor Jejomar Binay became involved to pacify the situation. After some negotiations, the standoff was mollified.

SBC raised the defense that there was no proper service to it of the Order dated October 15, 2004, extending the stay of Spouses Martel in the premises. There being no proper service of the Order, it was allegedly under no legal compulsion to honor the same.¹³

In a Decision¹⁴ dated November 28, 2013, the RTC, Branch 57 of Makati City, found SBC liable for indirect contempt. Citing Section 3, Rule 71 of the Revised Rules of Civil Procedure, the RTC ruled that SBC disobeyed or resisted a lawful writ, process, order, judgment or command of a court when it refused to acknowledge and obey the Order dated October 15, 2004, extending the stay of the Spouses Martel in the premises until November 4, 2004. The RTC found that there was a clear and contumacious refusal to obey a lawful order of the court. Thus, the case was disposed of in this wise:

WHEREFORE, in view of the foregoing defendants Security Bank Corporation, et al., are hereby found liable for indirect contempt and is hereby imposed of a fine amounting to Php30,000.00 and costs of suit.

¹³ Id. at 49.

¹⁴ Id. at 238-240.

SO ORDERED.¹⁵

On appeal filed by SBC, the CA reversed and set aside the decision of the RTC. In a Decision¹⁶ dated January 17, 2017, the CA ruled that there must be actual receipt of the lawful order before a party may be compelled to honor its contents and before a suit for indirect contempt may be brought against such party who allegedly disobeyed the lawful order. No sheriff or process server was deployed to make sure that SBC actually and duly received a copy of the Order. It is illogical to compel SBC to follow an order, however lawful, when the court or adverse party failed to ensure that they received it in the first place.¹⁷ The decretal portion of the Decision reads:

WHEREFORE, the appeal is **GRANTED**. The November 28, 2013 *Decision* of the Regional Trial Court, Branch 57, Makati in Civil Case No. 04-1219 finding appellants Security Bank Corporation, et al., liable for indirect contempt and ordered to pay a fine of ₱30,000.00 and costs is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.¹⁸ (Emphasis and italics in the original)

The Spouses Martel moved for reconsideration, but the CA denied the same on July 20, 2017¹⁹ which they received on August 14, 2017. They filed a Motion for Extension of Time to File Petition on August 29, 2017, seeking for an extension of 30 days within which to file their petition.²⁰ This Court in a Resolution²¹ dated September 13, 2017 granted the extension and warned that no further extension shall be allowed. On September 28, 2017, Spouses Martel filed this present Petition.

ISSUE

The main issue for the Court's resolution is whether or not the CA erred in reversing the ruling of the RTC finding respondent SBC liable for indirect contempt.

RULING OF THE COURT

The petition is bereft of merit.

Spouses Martel filed the present petition for *certiorari* under Rule 65 of the Rules of Court alleging that the CA committed grave abuse of discretion when it granted the appeal of SBC and set aside the decision of the RTC finding SBC liable for indirect contempt. However, the petition for

¹⁵ Id. at 240.

¹⁶ Id. at 46-57.

¹⁷ Id. at 55-56.

¹⁸ Id. at 56.

¹⁹ Id. at 59-60.

²⁰ Id. at 3-11.

²¹ Id. at 12.

certiorari under Rule 65 is the wrong mode to question the decision of the CA, a petition for review under Rule 45 being more appropriate.

Although the petition states that it is one for *certiorari* under Rule 65 as it imputes grave abuse of discretion committed by the CA, the Court shall treat the petition as one for review on *certiorari* under Rule 45, considering that it was filed within the reglementary period for filing a petition for review on *certiorari*, and the issues and arguments raised basically seek the review of the CA judgment.

Spouses Martel contend that the CA failed and refused to appreciate the Rules of Court and evidence that there was a proper service of the Order dated October 15, 2004 of the RTC, Branch 146 of Makati City, to SBC. Likewise, they allege that there was judicial admission on the part of SBC that it has received the aforementioned Order dated October 15, 2004.

Consequently, Spouses Martel argue that SBC continued to defy the Order dated October 15, 2004 despite proper service thereof, establishing a clear and convincing evidence that there was disobedience or resistance to a lawful order of the court which would make SBC liable for indirect contempt.

Firstly, the CA correctly found that there was no proper service of the Order dated October 15, 2004 to SBC; thus, they cannot be expected to comply with the same. Rule 13, Section 9 of the Rules of Court provides:

Section 9. *Service of judgments, final order, or resolutions.* – Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

Thus, judgments, orders and resolutions of the court must be served either personally or by registered mail. Spouses Martel contend that there was personal service of the Order dated October 15, 2004 when they sent a facsimile copy to SBC and when they showed SBC's personnel the aforementioned Order on the day of the standoff.

However, it must be noted that court-issued judgments, orders and resolutions are personally served by court officers such as sheriffs and process servers. As found by the CA, there was no sheriff or process server deployed in the premises during the standoff to make sure that SBC actually and duly received a copy of the Order.²² The CA correctly ruled in this wise:

It must be remembered that *service* of orders and court processes to parties are in place to ensure the orderly administration of justice. The

²² Id. at 55.

courts are burdened with the duty to inform litigants of its acts and pronouncements. Sending a facsimile of a court order by a party to its opponents does not constitute service by the courts as contemplated by the Rules of Court. This is why we have process servers and sheriffs, court officers who make sure actual receipt is made by parties who must carry out these orders. Parties cannot get ahead of the courts or [their] processes and carry out orders not duly released and served yet as this will lead to preemption and chaos.²³

Secondly, there is no judicial admission on the part of SBC when it offered in evidence the Order dated October 15, 2004. The Order was offered in evidence precisely to question the date and manner of receipt of the said Order. There was no admission that the Order dated October 15, 2004 was duly received in accordance with the Rules of Court and court processes. Likewise, the admissions that SBC received the Order by fax and later by actual receipt when the Order was presented by the Spouses Martel's counsel to the lawyer and representatives of SBC cannot be deemed to be judicial admission that there was proper service and receipt of the Order dated October 15, 2004. To the contrary, these admissions support their claim that there was improper service of the said Order when the same was neither served by a sheriff nor by a court processor during the standoff, but instead by Spouses Martel's counsel.

The Court has issued Administrative Circular No. 12 which provides for the guidelines and procedure in the service and execution of court writs and processes in the reorganized courts under Batas Pambansa Blg. 29. The Circular specifically provides:

1. **All Clerks of Court, who are also ex-officio sheriffs, and/or their deputy sheriffs shall serve all court processes** and execute all writs of their respective courts within their territorial jurisdiction. (Emphasis supplied)

Court processes include judgments, orders, resolutions and writs issued by the court having jurisdiction over the case. Precisely, Administrative Circular No. 12 was promulgated in order to streamline the service and execution of court writs and processes in courts, and to better serve the public good and facilitate the administration of justice.²⁴ The parties cannot take the law upon their hands. Rules and guidelines in court proceedings are specifically enacted to properly facilitate order and deliver justice to the people.

Absent the proper service of the Order dated October 15, 2004, SBC cannot be faulted when it refused to recognize and obey the said Order. Thus, it was correctly ruled by the CA that SBC is not liable for indirect contempt. As aptly said by the CA, lawful orders of the court have to be

²³ Id.

²⁴ *Torres v. Cablesuela*, 418 Phil. 445, 450 (2001).

actually received before the expectation to comply or enforce them attaches.²⁵

Lastly, in order for an indirect contempt charge to prosper, it must be proven that the contemnor committed any of the acts enumerated under Rule 71, Section 3 of the Rules of Court, to wit:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under [S]ection 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

In this case, Spouses Martel contend that SBC committed disobedience of or resistance to a lawful writ, process, order or judgment of a court when it refused to obey the Order dated October 15, 2004. However, as discussed above and aptly found by the CA, SBC cannot be faulted for failing or refusing to obey the Order dated October 15, 2004 because the same was not properly served to it.

As the CA correctly ruled:

In appreciating whether or not a person must be found in contempt, intent is necessary. *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines* discussed the importance of assessing intent in contempt cases, viz[.]:

²⁵ Rollo, p. 52.

Misbehavior means something more than adverse comment or disrespect. There is no question that in contempt the intent goes to the gravamen of the offense. Thus, the good faith, or lack of it, of the alleged contemnor should be considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. **A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose,** however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose. (Emphasis supplied; citations omitted)²⁶

SBC relied on the Decision²⁷ dated September 21, 2004 granting its petition for issuance of a writ of possession of the subject property, the Sheriff's Return²⁸ dated October 7, 2004 turning over the possession of the subject property to it on October 1, 2004, and the Deed of Undertaking²⁹ executed by the Spouses Martel, obligating themselves to vacate the premises on or before October 15, 2004. SBC had the right of possession over the subject property and it exercised such right, in good faith, when it asked the Spouses Martel to vacate the premises pursuant to the Deed of Undertaking. Thus, it cannot be condemned for contempt for exercising in good faith its right to possession over the subject property.

Given the foregoing, the Court finds no compelling reason to reverse and set aside the decision of the CA. The CA did not err when it found that SBC is not liable for indirect contempt.

WHEREFORE, the petition is **DISMISSED.** The Decision dated January 17, 2017 and the Resolution dated July 20, 2017 of the Court of Appeals in CA-G.R. CR No. 36815 are hereby **AFFIRMED.**

SO ORDERED." (LEONEN, J., on wellness leave)

Very truly yours,

Mis D C Batt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

9th 11/2/19

²⁶ Id. at 54-55.
²⁷ Id. at 122-123.
²⁸ Id. at 124.
²⁹ Id. at 125.

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(Civil Case No. 04-1214)

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