Sugiyama v. Etpison, 3 ROP Intrm. 247 (1992)

JOHN T, SUGIYAMA.
Appellant.

v.

NGIRATKEL ETPISON and NGIRATKEL ETPISON COMPANY,
Appellees.[1]

CIVIL APPEAL NO. 6-92
Civil Action No. 473-89

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: November 13, 1992

Counsel for Appellant: Roy T. Chikamoto and Johnson Toribiong

Counsel for Appellees: Carlos H. Salii

BEFORE: ARTHUR NGIRAKLSONG, Acting Chief Justice; ROBERT HEFNER, Part-time Associate Justice; and ALEX MUNSON, Part-time Associate Justice.

PER CURIAM:

BACKGROUND

On August 18, 1989, plaintiff Bank of Guam (the "Bank") filed a lawsuit seeking a money judgment against defendant John Sugiyama ("Sugiyama"). On October 31, 1989, after Sugiyama filed his answer, the trial court granted all the relief requested in ⊥248 plaintiff's complaint and entered a money judgment for over $31,000. Plaintiff thereupon sought to execute on its money judgment upon the boat Sea Ray, together with other property of Sugiyama.

During these proceedings, various third parties appeared claiming interests in the property targeted for execution by a prejudgment writ of attachment and the post-judgment writ of execution. Motions to intervene by several parties were filed and accepted by the trial court. [2]

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[1] This matter was appealed under a different caption. We have revised it to reflect the actual (and only) parties to this appeal. The original caption of this case was entitled: "*Bank of Guam, Plaintiff v. John T. Sugiyama, Defendant*." Before the appeal was filed, a Mary Sugiyama was assigned the interests of the Bank of Guam and she was substituted as the plaintiff. The appellees herein were inserted in the caption of this case after they "intervened." See footnote 1.

[2] This Court believes that these interventions were not proper. The intervenors did not have an interest in the subject matter of the lawsuit (the money judgment sought by plaintiff for

Among these was NECO's motion claiming to own the Sea Ray.

By Orders filed September 1, 1989 and October 4, 1989, the trial court ordered that upon its posting of a bond for the maintenance and care of the Sea Ray, NECO was allowed to retain possession of the Sea Ray pending a decision as to the boat's ownership.

Eventually, on September 17, 1990, the trial court found that Sugiyama was the lawful owner of the Sea Ray. On October 15, 1990, NECO filed a Notice of Appeal of this decision with the Appellate Division of this Court.

Even though NECO had appealed the decision regarding the Sea ⊥249 Ray's ownership, the trial court made a further determination of the ownership of the Sea Ray. On August 7, 1991, the trial court issued a "Decision and Orders" stating that because NECO had to forfeit its bond due to its failure to maintain the Sea Ray, title would thereafter vest in NECO. The proceeds from the bond were paid over to the plaintiff as a credit on the amount of the money judgment, and the writ of execution on the Sea Ray was vacated. After the August 7 Decision and Orders, NECO abandoned its appeal.

The gravamen of this appeal is that the August 7, 1991 "Decision and Orders" improperly divested Sugiyama of title to the Sea Ray. We agree.

ANALYSIS

From a simple complaint seeking a money judgment, this action was transformed into a complicated proceeding which resulted in confusion and error.

The Bank of Guam, in filing its complaint, elected its remedy at the very outset. It did not seek a foreclosure of a chattel mortgage. It opted instead for a money judgment and after obtaining that judgment, there was only the recourse of 14 PNC sec. 2100 *et. seq.* to collect on its judgment.[3]

As noted above in footnote 1, once a writ of execution is issued, the proper proceedings for claimants to the property ⊥250 subject to execution is by supplemental proceedings. Once title to the asset is determined to be in the judgment debtor, the provisions of 14 PNC sec. 2103 can be implemented and the sale pursuant to 14 PNC sec. 2104 may proceed.

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defendant's debt) and none of the other criteria set forth in ROP Civ. Pro. Rule 19(a) were present. The only way the parties could intervene and dispute title to the property meant to satisfy the money judgment was by way of a supplemental proceeding after the writs of execution were issued. *Florida Guaranty Securities v. McAllister*, 47 F.2d 762 (S.D. Fla. 1931); 30 Am. Jur. 2d *Appeal and Error* secs. 784, 816. Accordingly, this Court will construe the intervention of these parties as such.

[3] 14 PNC 2103 provides: "Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of the party against whom the judgment has been rendered . . .". 14 PNC 2104 provides the procedures by which the court shall execute upon the property.

Yet two errors were committed by the trial court. First, it did not proceed pursuant to the statutory provisions of 14 PNC secs. 2103 and 2104. Second, the trial court's order divesting appellant of the ownership of the vessel Sea Ray was made after NECO had appealed the 9/17/90 Order which had found appellant was the owner of the Sea Ray. Once the notice of appeal was filed on October 15, 1990, the trial court was divested of jurisdiction to transfer title to the Sea Ray or anyone else by any other means other than by a levy of execution and sale of the boat under 14 PNC secs. 2103 and 2104.[4]

The statutory provisions for the sale of an asset of a judgment debtor have equitable underpinnings. *Toplitz v. Baueer* , 161 N.Y. 325, 332, 55 N.E. 1059, 1061 (1 __). II Gilmore, *Security Interests In Personal Property* sec. 44.5 (1965). It is to assure as near as possible to the judgment debtor that a fair and reasonable price is obtained for his or her asset so that the judgment can be satisfied to the maximum extent.

The anomalous result reached below is obvious. NECO posted a ⊥251 bond to keep possession of the Sea Ray pending the determination of ownership. A condition of the bond was that NECO would maintain the vessel while it had possession. The trial court specifically found NECO violated that condition and forfeited the bond to be credited on the judgment. This was proper since the money from the bond was actually an asset of appellant for damages done to his property. As an asset of the judgment debtor, the trial court properly applied it on the money judgment.

However, the "vesting" of title in NECO rewarded it for its own violation of the condition of the bond and penalized the appellant, the owner of the Sea Ray. Thus, NECO benefitted from the possession of the vessel (and presumably the profits from its use of the boat for over a year) and obtained title to the vessel for no monetary consideration since the $25,000 paid under the bond was not for the purchase of the vessel but for its dereliction of duty under the conditions of the bond.

In light of our resolution of this appeal, the other issues raised on appeal are moot and need not be addressed.

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[4] There was no stay of execution pending appeal under ROP Civ. Pro. 62. Therefore, there was no impediment to the trial court from proceeding to satisfy the judgment. A notice of appeal does not divest the trial court of jurisdiction for this purpose. 4 Am. Jur. 2d *Appeal and Error* sec. 365, citing *Slaughter-house Cases*, 19 L.Ed. 915 (1840).

CONCLUSION

This matter is reversed and remanded to the trial court with instructions to order by appropriate process, the delivery of the vessel Sea Ray to the appellant forthwith. Title to the Sea Ray is hereby confirmed to be in the appellant. Should the judgment creditor desire a writ of execution, the trial court shall proceed ⊥252 pursuant to 14 PNC secs. 2103 and 2104.