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THIRD DIVISION

[G.R. No. 204778; December 6, 2021]

KHOO BOO BOON, *Petitioner*, *v.* **BELLE CORPORATION,** *Respondent*.

D E C I S I O N

CARANDANG, *J.*:

This resolves the Petition for *Certoriari*[1] under Rule 45 filed by petitioner Khoo Boo Boon assailing the Decision[2] dated November 29, 2011 and the Resolution[3] dated December 11, 2012 of the Court of Appeals in CA-G.R. SP No. 121334, which set aside the Resolutions dated May 12, 2011[4] and July 11, 2011[5] of the National Labor Relations Commission (NLRC). The NLRC had affirmed the Order dated March 8, 2011[6] of the Labor Arbiter (LA), which upheld the levy on execution over a parcel of land located in Parañaque City, denying Belle Corporation's (respondent) third-party claim thereto and ordering the sheriff to proceed with the public auction of said land and to apply the proceeds in satisfaction of the LA's final and executory judgment in NLRC Case No. RAB-III-04-14735-09.

Antecedents

Petitioner Kho Boo Boon, a Malaysian national, was the chief executive officer (CEO) of Legend International Resorts, Ltd.,

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[1] *Rollo*, pp. 3-56.

[2] Penned by then Associate Justice Rodil V. Zalameda (now a Member of this Court), with the concurrence of Associate Justices Mariflor P. Punzalan-Castillo and Francisco P. Acosta; id. at 62-81.

[3] Id. at 85-87.

[4] Penned by Presiding Commissioner Herminio V. Suelo, with the concurrence of Commissioners Angelo Ang Paleña and Numeriano D. Villena; id. at 675-687.

[5] Id. at 722-725.

[6] Penned by Labor Arbiter Mariano L. Bactin; id. at 567-578.

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(LIRL) previously named Subic Bay Resorts (HK), a foreign corporation doing business in the Philippines and duly organized and existing under the laws of Hong Kong-Special Administrative Region.[7]

On June 9, 2006, a Hong Kong court placed LIRL under liquidation and appointed David Maund (Maund) as one of the liquidators.[8]

On July 10, 2006, Boon received a notice of termination from said liquidators and sued for illegal dismissal. In a decision dated October 22, 2009, the LA ruled in favor of Boon and ordered LIRL and Maund to jointly and severally liable pay him backwages, separation pay, 13th month pay, damages, and attorney's fees.[9] The dispositive states:

WHEREFORE, premises considered, JUDGMENT is hereby rendered finding complainant's dismissal to be illegal and in violation of due process of law.

Respondents are jointly and severally liable to pay the complainant his monetary awards as follows:

1. Full Backwages (7/10/06 to 10/22/09)	US$394,615.38
2. Separation Pay (12 x 6 years = 72 months)	US$720,000.00
[3.] 13th month pay (US$10,000.00 x 3 years)	US$30,000.00
[4.] Moral Damages	₱5,000,000.00
[5.] Exemplary Damages	₱5,000,000.00
[6.] 10% Attorney's Fees	US$114,461.538
TOTAL	US$1,259,076.918
Plus	₱10,000,000.00

[7] Id. at 63-64.

[8] Id. at 64.

[9] Id.

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Payment of the award in dollars shall be computed based on the prevailing rate of exchange at the time of actual Payment of the judgment award.

All other claims of the complainant are hereby ordered dismissed for lack of merit.

SO ORDERED.[10]

LIRL sought to appeal said decision but failed to post a cash or surety bond. As such, the NLRC dismissed the appeal in its Decision[11] dated March 25, 2010 and declared that the LA's Decision had attained finality. LIRL moved for reconsideration but was denied in the NLRC's Resolution[12] dated May 28, 2010. In an entry of judgment dated July 26, 2010,[13] the NLRC notified the parties that the LA's decision had become final and executory on June 26, 2010.[14]

Boon sought the execution of LA's Decision, but the garnished amounts were insufficient to satisfy the judgment. Thus, in a Very Urgent Ex-parte Manifestation with Motion,[15] Boon moved to levy Lot 6A, a 2,899 sqm. parcel of land located in Parañaque City (hereinafter "Parañaque property") and registered in the name of Manila Bay Landholdings, Inc. (MBLI) under Transfer of Certificate Title (TCT) No. 169886. In said motion, Boon averred that although the property was registered to MBLI, the real owner is LIRL. Documents attached to Boon's motion reveal that MBLI was a wholly owned subsidiary of Belle Bay City Corporation (BBCC), a real estate development corporation. Among the corporate stockholders of BBCC were herein respondent and LIRL, then called Subic Bay Resort. LIRL had a paid-up capital investment in BBCC in the amount of ₱49,351,612.00. In

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[10] Id. at 65.

[11] Id. at 343-346.

[12] Id. at 360-362.

[13] Id. at 66, 363.

[14] Id. at 568.

[15] Id. at 368-445.

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July 1997, the boards of MLBI and BBCC approved a merger plan, where BBCC would absorb MLBI and its assets, which include the Parañaque property. The articles and plan of merger were subsequently approved by the Securities and Exchange Commission (SEC). In 2005, BBCC was dissolved. During the liquidation process, BBCC drew up a distribution plan for its assets. Under said plan, a property covered under TCT No. 95324 would be subdivided into nine (9) smaller titles, one of which was TCT No. 167915. This was further divided into smaller lots, one of which was the Parañaque property covered under TCT No. 169886 and allocated to LIRL as its liquidating dividends.[16]

In an Order[17] dated August 16, 2010, the LA found Boon's motion in order and directed the sheriff to levy the Parañaque property. The following day, the sheriff registered the notice of levy with the Register of Deeds (ROD) of Parañaque City and the same was annotated on TCT No. 169886.[18]

Respondent, the parent company of both MBLI and BBCC,[19] filed a third-party claim[20] with the LA on September 13, 2010, asserting that it is the lawful owner of the Parañaque property by virtue of: (1) a contract to sell executed on June 2, 2010 in which BBCC, with the conformity of LIRL, sold the property and LIRL's liquidating rights thereto to respondent for ₱72,475,000.00;[21] and (2) a Deed of Absolute Sale dated August 5, 2010 between MBLI/BBCC and respondent over the same property.[22] For the most part, the salient provisions of the contract to sell confirmed petitioner's contentions in his Very Urgent Ex-parte Manifestation with Motion. They are reproduced below:

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[16] Id.

[17] Id. at 446-449.

[18] Id.

[19] Id. at 568.

[20] Id. at 450-452.

[21] Id. at 453-479.

[22] Id. at 480-482.

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CONTRACT TO SELL

BELLE BAY CITY CORPORATION x x x represented by its Chairman and President, Willy N. Ocier (hereinafter referred to as "BBCC")

-with the conformity of-

LIRL INTERNATIONAL RESORTS LTD. (IN LIQUIDATION) x x x represented herein by its Joint and Severally-appointed Liquidator, David Giles Maund (hereinafter referred to as "LIRL")

-in favor of-

BELLE CORPORATION x x x

ACKNOWLEDGES: That

WHEREAS, LIRL is a stockholder of BBCC, a juridical entity organized under Philippine laws which is now in the process of liquidation;

WHEREAS, at the time of the dissolution of BBCC, its shareholders, upon the recommendation of its Board of Liquidators, approved a Distribution Plan covering its remaining assets at dissolution, consisting primarily of its real estate properties situated in the Aseana Business Park in the Manila Bay Reclamation Area, Brgy. Tambo, Parañaque City;

WHEREAS, being one of the stockholders of BBCC at the time of its dissolution, LIRL was entitled to receive its share in the remaining assets of BBCC as part of its liquidating dividends;

WHEREAS, pursuant to the Distribution Plan of BBCC, a parcel of land, with an area of Two Thousand Eight Hundred Ninety-Nine (2,899) square meters (hereinafter referred to as the "PROPERTY"), more particularly described as follows:

Transfer Certificate of Title No. 169866
Lot 6A x x x

was allocated to be received by LIRL as part of its liquidating dividend.

WHEREAS, **LIRL has expressed interest in disposing of all its rights, interests, and title over the PROPERTY (hereinafter referred to as the "Liquidation Rights")** inasmuch as it is not qualified to be the registered owner of the PROPERTY;

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WHEREAS, **LIRL has offered to sell to BELLE the Liquidation Rights** which offer has been accepted by BELLE, subject to the terms and conditions set forth herein x x x

NOW THEREFORE, the parties hereby agree as follows:

1. SALE AND PURCHASE OF THE LIQUIDATION RIGHTS AND SALE OF THE PROPERTY. — Subject to the terms and conditions of this Contract, at Closing (as defined in Section 3 hereof), **LIRL shall sell, assign, transfer and convey the Liquidation Rights unto BELLE, free from all liens and encumbrances, and BELLE shall purchase and accept such Liquidation Rights**. As a consequence of the sale by LIRL of the Liquidation Rights, BBCC shall assign to BELLE the PROPERTY.

2. PURCHASE PRICE AND MODE OF PAYMENT. — The purchase price for the Liquidation Rights x x x shall be SEVENTY-TWO MILLION FOUR HUNDRED SEVENTY-FIVE THOUSAND PESOS (₱72,574,00.00) x x x[23] (Emphasis supplied)

The instruments of conveyance on which respondent based its third-party claim were not registered with the ROD. Thus, Boon opposed, invoking the ruling in *Pineda v. Arcalas*[24] and previous cases that a levy on execution duly registered takes preference over a prior unregistered sale.[25] Furthermore, Boon argued that the sale to respondent was intended to defraud him as a judgment creditor. He claimed that the purchase price was too low compared to properties in the same vicinity and that the timing of the sale was suspicious. He pointed out that the contract to sell was executed only a few days after the NLRC, in its Order dated May 28, 2010, had rebuffed LIRL's motion for reconsideration to allow its appeal in the illegal dismissal case. Boon also argued that the contract to sell included stipulations that would allow respondent to undo the sale if LIRL has liabilities attached to the property.[26]

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[23] Id. at 453-479.

[24] 563 Phil. 919 (2007).

[25] *Rollo*, p. 484.

[26] Id. at 483-492.

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In its Reply,[27] respondent argued that it purchased the property in good faith. It presented e-mails between LIRL and BBCC's officers and lawyers showing that as early as October 2009, LIRL was looking for a buyer for its liquidating dividends in BBCC. Respondent claimed that it was only on February 24, 2010 that it made an offer to LIRL for the latter's liquidating rights in the property. Then on June 1, 2010, LIRL gave respondent instructions on how to pay the purchase price. It was only on September 9, 2010 that respondent learned of the notice of levy on the subject property when it was served a copy thereof. Respondent maintained that it had no knowledge of any claim against LIRL or BBCC in relation to the property, because there had been no annotations on the certificate of title at the time of the sale. It argues that under the Torrens system, it only had to examine the face of TCT 169886 for any liens or encumbrances that might affect ownership of the property. For respondent, it is Boon who is in bad faith for failing to inquire whether LIRL owns or had leviable interest in the property.[28]

Boon filed a Rejoinder,[29] arguing that the annotated notice of levy will remain superior over an unregistered sale regardless of whether the third-party claimant is in good faith. Furthermore, respondent knew that LIRL was in the process of liquidation and therefore, it behooved Belle to check if LIRL had any creditors left to pay. Boon maintained that LIRL had leviable interest over the property as shown in the rehabilitation receiver's report dated November 9, 2007 submitted to the Regional Trial Court of Olongapo City. The receiver reported that according to Maund, LIRL was inclined to pay its share in the real property tax for its "landholding through its investment in [BBCC], for which the treasurer of Parañaque City issued a final notice . . . in order not to run the risk of the property being auctioned off by the Treasurer's Office." For Boon, this indicated that LIRL is the owner of the property.

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[27] Id. at 494-503.

[28] Id. at 497-498.

[29] Id. at 505-515.

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Respondent requested additional time to file a memorandum before the third-party claim would be deemed submitted for resolution. The LA granted such request,[30] but also directed respondent to post a cash or surety bond equivalent to its claim (the contract price of ₱72,475,000.00) in accordance with Section 12, Rule XI and Section 6, Rule VI of the 2005 NLRC Rules of Procedure.[31] Respondent filed motions asking the LA to reconsider the posting of the bond.[32]

Ruling of the Labor Arbiter

In his Order[33] dated March 8, 2011, the LA found no merit in respondent's third-party claim. Furthermore, the LA held that he had the authority under Section 12, Rule XI of the 2005 Rules of the NLRC to require a third-party claimant to post a cash or surety bond. Citing a long line of cases that trace back to this Court's ruling in *Gomez v. Levy Hermanos*,[34] the LA held that the registered notice of levy is preferred over respondent's unregistered Contract to Sell. The LA also perceived that the sale of the subject property was done by LIRL to escape its judgment obligation but stopped short of explicitly stating that it was to defraud a creditor. Thus, the LA disposed of the proceedings as follows:

> WHEREFORE, premises considered, the instant Motion for Reconsideration dated December 17, 2010, Supplemental Motion dated December 20, 2010 and Third-Party Claim dated September 13, 2010 filed by Belle Corporation are all DENIED for lack of merit.

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[30] Id. at 525-526.

[31] 2005 NLRC Rules of Procedure, Rule XI, Section 12. THIRD PARTY CLAIM. — x x x The Labor Arbiter who issued the writ may require the third party claimant to adduce additional evidence in support of his third party claim and to post a cash or surety bond equivalent to the amount of his claim, as provided for in Section 6 of Rule VI, without prejudice to the posting by the prevailing party of a supersedeas bond in an amount equivalent to that posted by the third party claimant[.]

[32] *Rollo*, pp. 533-553.

[33] Id. at 567-578.

[34] 67 Phil. 134 (1939).

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The Sheriff assigned to this case is hereby ordered to proceed with the public auction sale of the levied real property after proper compliance with all the requirements necessary in public auction sale of the subject real property covered by TCT NO. 169886.

SO ORDERED.[35]

Respondent appealed to the NLRC. Nevertheless, in a Compliance *Ad Cautelam* with Motion to Discharge Levy, respondent posted a surety bond from Prudential Guarantee and Assurance, Inc., in the amount of ₱72,475,000.00.[36]

Ruling of the National Labor Relations Commission

In a Resolution[37] dated May 12, 2011, the NLRC dismissed respondent's appeal and affirmed the LA's Order *in toto*. The NLRC held that respondent's appeal was not perfected as it failed to invoke any of the valid grounds for appeal as required under Sections 2 and 4 of Rule VI of the NLRC Rules.[38] Still, the NLRC looked into the merits of the case but found no error in the LA's disposition. Citing *Tanongon v. Samson*[39] and Article 1387 of the New Civil Code (NCC), the NLRC held that the sale of the Parañaque property is presumed to be fraudulent. The NLRC observed that the deed of absolute sale was executed on the same day that the LA held pre-execution hearings on August 5, 2010, during which the counsel for LIRL manifested that it would not object to the issuance of a writ of execution.[40] The NLRC also

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[35] *Rollo*, p. 578.

[36] Id. at 69; 579-589.

[37] Id. at 675-687.

[38] Section 2. GROUNDS. — The appeal may be entertained only on any of the following grounds: a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director; b) If the decision, resolution or order was secured through fraud or coercion, including graft and corruption; c) If made purely on questions of law; and/or d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

[39] 431 Phil. 729 (2002).

[40] *Rollo*, p. 684.

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noted that just as in *Tanongon*, the purchase price was almost the same as the judgment award. Thus, the NLRC disposed of the appeal as follows:

> WHEREFORE, the foregoing premises considered, the Appeal is hereby DISMISSED for lack of merit.
>
> Accordingly, the assailed *Order* of the Labor Arbiter dated March 8, 2011 is hereby SUSTAINED and AFFIRMED in toto.
>
> SO ORDERED.[41]

The NLRC denied reconsideration. Thus, respondent brought the matter to the CA in a petition for *certiorari* with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.[42]

Ruling of the Court of Appeals

The CA granted respondent's petition and held that LIRL had no real right or title over the Parañaque property. The cornerstone of the CA's decision is the following pronouncement in *Fernando v. Spouses Lim*:[43]

> The share of each stockholder in the remaining assets of the corporation upon liquidation, after the payment of all corporate debts and liabilities, is what is known as liquidating dividend. In its interpretation of recent tax laws, the Bureau of Internal Revenue viewed the distribution of liquidating dividends not as a sale of asset by the liquidating corporation to its stockholder but as a sale of shares by the stockholder to the corporation or the surrender of the stockholder's interest in the corporation, in place of which said stockholder receives property or money from the corporation about to be dissolved. Thus, on the part of the stockholder, any gain or loss is subject to tax, while on the part of the liquidating corporation, no tax is imposed on its receipt of the shares surrendered by the stockholder or transfer of assets to said stockholder because said transaction is not treated as a sale.[44]

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[41] Id. at 687.

[42] Id. at 62.

[43] 585 Phil. 141 (2008).

[44] Id. at 161-162.

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On the basis of said ruling, the CA held that "[since] the sale of liquidating dividends involves the shares of a stockholder's interest in a corporation in which the stockholder may receive property or money in lieu thereof, [but] does not convert the same in to a real action involving title to the property, x x x a shareholder does not acquire a real right or interest over liquidating dividend consisting of properties or assets."[45]

The CA then referred to this Court's ruling in *Bisaya Land Transportation Co., Inc. v. Cuenco*[46] that stockholders of a corporation undergoing liquidation cannot file notices of *lis pendens* on the corporation's real assets as they have no title or possessory rights thereto.[47] The CA perceived that a notice of *lis pendens* is analogous to a notice of levy. Thus, putting the two rulings together, the CA held that LIRL did not acquire title or possessory rights to the Parañaque property and consequently, it could not be levied upon by the LA in satisfaction of LIRL's judgment obligations.[48]

The CA was unconvinced with petitioner's claim that the sale of the Parañaque property was made in fraud of creditors. The CA ruled that presumption of fraud of creditors under Article 1387 of the New Civil Code and the case of *Tanongon v. Samson* can only apply if LIRL was the party who conveyed the Parañaque property. Here, the sale occurred between BBCC and respondent. As such, the presumption of fraud cannot apply.[49] Furthermore, the CA ruled that the LA does not have the authority or the competence to determine whether fraud of creditors occurred. Citing *Asian Footwear v. Soriano*,[50] the CA ruled that that is a question only

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[45] *Rollo*, p. 75.

[46] 131 Phil. 627 (1968).

[47] *Rollo*, p. 75.

[48] Id. at 76.

[49] Id. at 78.

[50] 225 Phil. 535 (1986).

the courts can rule upon proper adversarial proceedings.[51] Thus, the CA reversed the NLRC and disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition is **GRANTED** and the assailed 12 May 2011 and 11 July 2011 Resolutions of the NLRC are **ANNULED** and **SET ASIDE**. Accordingly, the 08 March 2011 Order of the Labor Arbiter is likewise **ANNULED** and **SET ASIDE**.
>
> Consequently, the Notice of Levy on Real Property dated 17 August 2010 over the property covered by Transfer Certificate of Title No. 169886 issued by Sheriff Aida G. Gervacio is likewise declared **NULL** and **VOID**.
>
> **SO ORDERED**.[52]

The CA denied petitioner's motion for reconsideration in its Resolution dated December 11, 2012.[53] Hence, this petition.

The contentions of the parties

Petitioner argues that the CA misunderstood and misapplied *Bisaya Land Transportation Co., Inc. v. Cuenco*. He argues that rightly understood, the said case held that stockholders cannot register a notice of *lis pendens* on a corporation's real assets only while said corporation is still in the process of being dissolved. Petitioner emphasizes that BBCC had long ago been dissolved in 2005 and that as a result thereof, LIRL acquired a tangible interest on the Parañaque property. This is supported by the fact that the Contract to Sell bears Maund's signature as proof of LIRL's conformity to the conveyance. Such interest may be levied upon in satisfaction of LIRL's judgment obligation. Petitioner also insists that the facts of this case are essentially similar to that in *Tanongon*. Therefore, the sale of the Parañaque property should be presumed to be in fraud of a creditor.[54]

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[51] *Rollo*, p. 80.

[52] Id. at 81.

[53] Id. at 85-87.

[54] Id. at 44-51.

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In its Comment,[55] respondent maintains that LIRL did not have any right or title to the subject property because the Constitution prohibits foreign ownership of private lands. All that LIRL sold was its liquidation rights over said property, but not the property itself *per se*, which LIRL could not own and is still indubitably registered in the name of BBCC or MBLI. Consequently, the sheriff should not have levied the subject property because it did not belong to the judgment debtor. Respondent also argues that the LA and NLRC do not have the jurisdiction to determine the ownership of the subject property. The logical conclusion, therefore, is that the levy on the property was invalid. Consequently, it cannot have preference over respondent's right as buyer.[56]

Respondent maintains that it is a purchaser in good faith and that the ruling in *Tanongon* has no bearing in this case. For one, LIRL was looking for a buyer long before the LA had promulgated its Decision dated October 22, 2009. Furthermore, respondent did not know of petitioner's illegal dismissal case against LIRL until it received a copy of the notice of levy. At the time it paid for the property in June 2010, there were no annotations on TCT No. 169886. Not being a party to LIRL's liquidation proceedings, respondent claims that it had no duty to check on LIRL's creditors. For respondent, these circumstances show that the sale was not fraudulent.[57]

Petitioner addressed the constitutional prohibition in his Reply, arguing that aliens may acquire rights and interest in real property as long as there is no sale or transfer. He insists that he was able to sufficiently show how LIRL acquired its interest in the subject property. Even then, he argues that the main issue is whether the unregistered sale of the property to respondent takes precedence over the registered notice of levy. Petitioner maintains that it does not.[58]

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[55] Id. at 929-945.

[56] Id. at 936-941.

[57] Id. at 941-944.

[58] Id. at 951-957.

Issues

Based on the foregoing submissions, the Court is tasked to resolve the foregoing issues:

1. Whether the liquidating dividends of a judgment creditor in a corporation may be levied on execution;
2. Whether LIRL, a foreign stockholder in a dissolved Filipino corporation, may acquire leviable interest over private lands as their liquidating dividend without violating the constitutional prohibition of foreign ownership of private land;
3. Whether a registered notice of levy takes precedence over a prior unregistered sale;
4. Whether the LA has competent jurisdiction to declare LIRL to have fraudulently sold the Parañaque property to respondent; and
5. Whether LIRL sold the levied property to defraud a judgment creditor, herein petitioner Boon.

Ruling of the Court

The petition is impressed with merit.

I. LIRL had equitable interest in the Parañaque property, which may be levied on execution

The first and second issues are intimately related and are jointly dealt with.

To levy a property on execution is to "[set] it aside . . . from the general property of the debtor and placing it in the custody of the law until it can be sold and applied to the payment of execution."[59] It is clear from the NLRC Sheriff's Manual that, for a property to be leviable against the judgment creditor, it is sufficient that they have some valuable interest in it. It is not

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[59] Black's Law Dictionary 4th Ed. Rev., p. 1051, citing *Bent v. H.W. Weaver, Inc.*, 106 W.Va. 164, 145 S.E. 594, 595.

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necessary for them to be the absolute owner of or have a real right (*jus in re*[60] available against the whole world) over the property. Thus, both the 2002 and 2012 versions of Section 3, Rule V of the NLRC Sheriff's Manual on Execution of Judgment[61] provides:

> Section 3. Levy on Real Property. — **Real property or any interest** therein may be levied in the following manner: x x x
>
> b) **Real property**, or growing crops thereon **or any interest therein, belonging to the party against whom levy is issued, and held by any other person or standing on the records of the register of deeds in the name of any other person**, by filing with the register of deeds a copy of the decision, order or award, together with a description of the property, held or standing, in the name of such other person x x x When the property has been brought under the operation of the land registration system, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. x x x x[62]

The LA, NLRC, and the CA all agreed that the Parañaque property is LIRL's liquidating dividend in BBCC. The question is whether such liquidating dividends are within the class of interests in real property that may be levied. The Court is of the mind that they are, notwithstanding the fact that LIRL is a foreign corporation. To arrive at this conclusion, it is first necessary to identify the legal relationships between MBLI, BBCC, and LIRL pertaining to the Parañaque property.

In accordance with Section 80(4) of Batas Pambansa Bilang (B.P.) 68 (the Corporation Code), the law in effect at the time the LA rendered judgment, the Parañaque property was deemed transferred and vested, without further act or deed, to BBCC as the surviving corporation that absorbed MBLI. As the absorbed corporation, MBLI's corporate existence effectively ceased. Therefore, BBCC, for all intents and purposes of the law, acquired

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[60] Black's Law Dictionary 4th Ed. Rev., p. 997.

[61] NLRC En Banc Resolution No. 10-12, Series of 2012. This provision remained unchanged from the 2002 version of the Manual which was in force at the time the Labor Arbiter issued its Order dated March 8, 2011.

[62] Id.

title over the Parañaque property although the same remains registered in the name of MBLI.

Upon dissolution, all assets of BBCC were distributed to its stockholders, with the Parañaque property being allocated to LIRL. In accordance with the second paragraph of Section 122 of B.P. 68,[63] BBCC had three years after its dissolution, or until 2008, to convey the assets to trustees. Thereafter, the legal interest in the assets is vested in the trustees, and the beneficial interest in the stockholders, members, creditors, or other persons in interest. In *Clemente v. Court of Appeals*,[64] We held that if the three-year period expires without a trustee or a receiver having been expressly designated, the board of directors itself "may be permitted to continue as trustee by legal implication to complete the corporate liquidation." In this case, it was BBCC's directors who continued to hold the property in trust for the benefit of LIRL. This is confirmed by the fact that it was BBCC's chairperson of the board, Willy N. Ocier, who represented BBCC in the contract to sell and deed of absolute sale. Thus, applying Section 122 of B.P. 68, it may be deduced that there existed an "implied trust" between LIRL and BBCC (or the latter's board of directors) over the subject property.

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[63] Section 122. Corporate liquidation. – Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

[64] 312 Phil. 823, 829 (1995).

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"A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling them to the performance of certain duties and the exercise of certain powers by the latter."[65] "Legal title denotes registered ownership, while equitable title means beneficial ownership."[66] In *Estate of Cabacungan v. Laigo*,[67] the court defined "implied trusts," otherwise known as "trust by operation of law," "indirect trusts," or "involuntary trusts," as those that "arise by legal implication based on the presumed intention of the parties or on equitable principles independent of the particular intention of the parties."[68]

Accordingly, We hold that the CA misapplied the passage it quoted from *Fernando v. Spouses Lim*.[69] Rightly understood, the doctrine in *Fernando* is that the stockholder acquires an interest in the remaining assets of the corporation upon liquidation, but such acquisition of interest is not considered a sale of property from the corporation to the stockholder for purposes of taxation. As such, it does not follow that LIRL did not acquire an interest in the Parañaque property just because the manner of acquisition is not considered a sale. Section 122 of B.P. 68 is expressly clear that it is precisely through liquidating dividends, as a return of investment, that the stockholder acquires an interest in the corporation's assets upon liquidation. The CA, therefore, was categorically wrong when it said that "the shareholder does not acquire a real right or interest over liquidating dividends consisting of properties or interest."[70] It is clear to the court that LIRL, as the trust beneficiary, had full interest in the property, albeit in the equitable sense.

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[65] *Cañezo v. Rojas*, 563 Phil. 551, 563-564 (2007).

[66] *Residents of Lower Atab v. Sta. Monica Industrial and Development Corporation*, 745 Phil. 554, 563 (2014) citing Ballantine's Law Dictionary.

[67] 671 Phil. 132 (2011).

[68] Id. at 146-147.

[69] 585 Phil. 141 (2008).

[70] *Rollo*, p. 75.

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We also agree with petitioner that the CA misapplied *Bisaya Land Transportation Co., Inc. v. Cuenco*. There is much disparity in the facts and issues of that case and the instant petition. In *Bisaya Land*, the question was whether a petition for quo warranto filed by the solicitor general for the dissolution of "[a] corporation affects the latter's title or right of possession to the real properties so as to permit a stockholder to file notices of *lis pendens* on said properties."[71] We held that it does not. In a quo warranto proceeding, the issue is "the propriety of the dissolution of the corporation upon the grounds set forth in the petition."[72] Thus, the corporation is not automatically dissolved upon the institution of quo warranto proceedings. Consequently, the stockholders of the corporation cannot yet lay claim over the real assets of the corporation. Since they have no title or possessory right over such real property, a notice of *lis pendens* is a remedy not yet available to them. In this case, BBCC has already been dissolved and the assets allocated to the stockholders. It is precisely for this reason that in the contract to sell, it is explicitly stated that the Parañaque property had been allocated to LIRL, which consequently has "rights, interests, and title" thereto. As such, the CA made a quite logical leap when it found "[no] reason why x x x [the pronouncement in *Bisaya Land*] cannot apply by analogy to the present case."[73]

II. LIRL has a leviable interest in the Parañaque property, but the same will never amount to absolute ownership because of the constitutional prohibition against foreign ownership of private lands

The Court, however, must still treat respondent's invocation of the constitutional prohibition in Section 7, Article XII of the 1987

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[71] Id.

[72] *Bisaya Land Transportation Co., Inc. v. Cuenco*, supra note 46 at 631.

[73] *Rollo*, p. 76.

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Constitution[74] against transfers or conveyances of private land to foreigners. Respondent argues that because of such prohibition, LIRL could not have acquired any interest in the property whatsoever.[75]

This argument is of no help to respondent. *First*, it must first be underlined that respondent cannot now argue, as it does in its Comment, that the "liquidating dividend [is not] a real right, title to[,] or possessory right over the [Parañaque property]."[76] The contract to sell explicitly states that LIRL had "rights, interests, and title" over the property. This in accordance with the principle of estoppel: "Whenever a party has, by [their] own declaration, act[,] or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, [they] cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."[77]

Moreover, it is logically self-defeating for respondent to forward such an argument. If LIRL had no right or title to the Parañaque property, respondent could purchase no such right or title. *Nemo dat quod non habet*.[78] Otherwise, it was mighty generous of respondent to have bought nothing for ₱72,574,000.00.

Second, while the Constitution prohibits the "transfer" or "conveyance" of private lands to foreigners, in *Republic v. Register of Deeds of Roxas City*,[79] We held that "the law disregards the constitutional disqualification of the buyer to hold the land if the

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[74] 1987 Philippine Constitution. Article XII, Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

[75] *Rollo*, pp. 936-938.

[76] Id. at 9.

[77] *De Castro v. Ginete*, 137 Phil. 453 (1969).

[78] *Alano v. Planter's Development Bank*, 667 Phil. 81 (2011).

[79] 580 Phil. 405 (2008), citing *De Castro v. Ten Queen Tan*, 214 Phil. 68 (1984); *Chavez v. Public Estates Authority*, 451 Phil. 1 (2003).

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land is subsequently transferred to a qualified party, or the buyer [themselves] becomes a qualified party," because the purpose of the constitutional ban to limit land ownership to Filipinos will have been achieved. In this case, whether the court affirms the LA's Order to sell the subject property in public auction or affirms respondent's third-party claim, the purpose of the constitution will have been served.

An important distinction exists in this case in that LIRL's acquisition of interest over the subject property was not through a "transfer" or "conveyance" as contemplated in previous cases dealing with the constitutional prohibition. As discussed above, LIRL acquired equitable interest in the property through an "implied trust," by operation of law, because of BBCC's liquidation. The question is whether the Constitution permits a foreign corporation to acquire such an interest. From the prevailing doctrine in such cases as *Republic v. Register of Deeds of Roxas City*,[80] it is reasonable to extrapolate that it does. However, such an equitable interest cannot and will never amount to absolute ownership. That said, the constitutional prohibition cannot be construed to mean that the foreign stockholder automatically forfeits their liquidating dividends just because all of the corporation's remaining assets consist of private land. The constitutional prohibition must be counter-balanced with the constitutional right to property and due process.[81]

The recent case of *Parcon-Song v. Parcon & Maybank Philippines*[82] concerned foreign banks' interests in mortgaged land. In said case, We held that under the Foreign Bank Liberalization Act, whether before or after it was amended by Republic Act No. (R.A.) 10641, a mortgagee-bank constitutionally prohibited from acquiring public lands (*i.e.*, Maybank, a foreign corporation) may possess the mortgaged property for five years for the

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[80] Id. at 413.

[81] 1987 Constitution. Article III, Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[82] G.R. No. 199582, July 7, 2020.

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purpose of foreclosure. Prior to amendment R.A. 10641, the foreign mortgagee-bank was prohibited from participating in the foreclosure sale, but the same is now permitted. In either case, the law forbids the foreign mortgagee from registering the property in its name, but it nevertheless recognizes the mortgagee's interests therein. A similar line of reasoning may be applied concerning foreign stockholders of liquidated corporations. Stockholders, both Filipinos and non-Filipinos, are entitled to a return of their investment upon the corporation's dissolution if there are remaining assets. To deny a foreign stockholder a return of investment, merely because the liquidating dividend could only be in the form of private land, is tantamount to a forfeiture of property, *i.e.*, their shareholding, without due process. In such a case, Filipino stockholders would be unduly better off than foreign stockholders.

The Court cannot countenance such a view as it is against the equal protection clause and would only dissuade foreign investment. It is, therefore, worth recalling that in the passage of *Fernando v. Spouses Lim* quoted by the CA, liquidating dividends may also be in the form of cash. For Filipino stockholders, the liquidating dividends may include cash, personal property, or any real property. Meanwhile, foreign stockholders are limited to cash, personal property, or real property not consisting of private land. By necessary implication of the constitutional prohibition, if the remaining assets of the dissolving corporation consist only of private land, the foreign stockholder's liquidating dividend is deemed the equivalent of such land in cash, personal property, or nonland realty. The law on trusts and Section 122 of B.P. 68 creates an equitable obligation on the trustee to convert the land into money—or some other property that foreigners are permitted to own—and deliver the same to the foreign stockholder. Until the land is converted into such, the foreign stockholder shall have an equitable interest in the land, but such an interest does not and will never consist of a registrable title. In this way, We uphold both the constitutional prohibition against foreign ownership of private land and the foreign stockholder's right to property, due process, and equal protection of law.

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The issue now turns to whether LIRL's equitable interest in the Parañaque property is leviable. In *Reyes v. Grey*,[83] the court clarified what may count as "property" liable to execution under Section 450 of the Code of Civil Procedure,[84] *viz.*:

The term "property" as here applied to lands comprehends every species of title, inchoate or complete; legal or equitable. This statute authorizes the sale under execution of every kind of property, and every interest in property which is, or may be, the subject of private ownership and transfer. **It deals with equitable rights and interests as it deals with legal, without anywhere expressly recognizing or any distinction between them.**[85]

Premised on the above, We held in *Reyes v. Grey*[86] that the usufructuary interests of a judgment debtor is liable to execution. *A fortiori*, the equitable title of a beneficial owner, whose interests is naturally greater than that of a mere usufructuary, is also liable to execution.

Section 450 of the Code of Civil Procedure was worded similarly to Section 9, Rule 39 of the Rules of Court,[87] which

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[83] 21 Phil. 73 (1911).

[84] Section 450. Property liable to execution. – All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interests in any corporation or company, and debts, credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment.

[85] *Reyes v. Grey*, supra note 83 at 75.

[86] Id.

[87] Section 9, Rule 39 of the Rules of Court.

Section 9. Execution of judgments for money, how enforced. –

x x x x

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

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in turn has suppletory application to the NLRC Rules. Section 9, Rule 39 provides that the properties of the judgment obligor may be levied as long as it can be disposed of for value and not otherwise exempted from execution by law. There appears to be no law specifically exempting the Parañaque property or LIRL's liquidating rights thereto; yet, it is quite clear from that fact that it may disposed of for value, at the least to the tune of ₱72,475,000.00. Thus, it is precisely because legal title is held by one person, while equitable title by another, that property may be levied even if it is "held by any other person or standing on the records of the register of deeds in the name of any other person."[88]

More than this, there is also authority explicitly stating that the trust property may be used to satisfy the beneficiary's judgment obligation, *viz.*:

> x x x The interest of the *cestui que trust* is now generally recognized as a property right and liable for the owner's debts equally with his legal interests. It must be remembered however that in an active trust the trustee has legal title to the *res* and that the beneficiary has only equitable interest therein. **It is this equitable interest, whether it consists of the right to receive the income from the trust *res* or the right to the trust *res* absolutely at a future date, that can be reached by legal process**.[89] x x x
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> **Where a debtor is the sole beneficiary of a trust and he is entitled to an immediate conveyance of the trust property, the court may order a sale of the trust property and payment to the creditor from the proceeds.**[90] x x x (Emphasis supplied)

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value and not otherwise exempt from execution x x x 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.

[88] Section 3, Rule V of the NLRC Sheriff's Manual on Execution of Judgment.

[89] Thomas B. Pennington, *Remedy of a Creditor against a Beneficiary*, 3 Southwestern Law Journal 216 (1949), At p. 218. Article on-line. Accessed at <https://scholar.smu.edu/smulr/vol3/iss2/10> on January 16, 2021.

[90] Id., citing 1 Scott on Trusts, Section 147.2 (1939).

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All things considered, the court sees no cogent reason to invalidate the notice of levy on the Parañaque property.

III. The LA Sheriff's registered notice of levy takes precedence over the prior unregistered sale between LIRL/BBCC and respondent.

The third issue may be resolved with relative straightforwardness. The doctrine is well settled that "a levy on execution duly registered takes preference over a prior unregistered sale, and that even if the prior sale is subsequently registered before the sale in execution but after the levy was duly made, the validity of the execution sale should be maintained, because it retroacts to the date of the levy; otherwise, the preference created by the levy would be meaningless and illusory."[91] This necessarily and logically proceeds from the fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens titles as far as third persons are concerned. Such a principle is now codified in Sections 51[92] and 52[93] of the Property Registration

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[91] *Defensor v. Brillo*, 98 Phil. 427 (1956).

[92] Presidential Decree No. 1529, Section 51. *Conveyance and other dealings by registered owner*. An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

[93] Presidential Decree No. 1529, Section 52. *Constructive notice upon registration*. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, **be constructive notice to all persons from the time of such registering, filing or entering**.

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Decree (Presidential Decree No. 1529). Thus, "where there was nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser [or indeed a government authority with powers to levy property in execution, *e.g.*, the NLRC or LA] is not required to explore farther than what the Torrens title upon its face indicates."[94] As discussed above, the notice of levy is valid and was duly registered. At the time that the LA's sheriff registered the notice of levy on August 17, 2010, the contract to sell between BBCC, LIRL, and respondent had not been registered. The sale of the property to respondent, therefore, was not binding upon third persons, including petitioner Boon in his capacity as judgment creditor.

IV. The sole issue to be determined in a third-party claim is whether the judgment debtor has any remaining leviable interest in the levied property; a determination as to whether the third-party claimant is a purchaser in bad faith or otherwise is beyond the NLRC's powers to implement and enforce its final judgments

Petitioner argues that in denying respondent's third-party claim, the NLRC may also declare the sale to have been in fraud of creditors and that respondent is a purchaser in bad faith, applying Article 1387 of the New Civil Code and the ruling in *Tanongon*. The respondent and the CA take the opposite stance: that such a determination is exclusively judicial. These contentions strike at the separate jurisdictions of the regular courts and the NRLC. A restatement of the relevant principles is necessary.

In *Asian Footwear*, We held that the NLRC's powers of execution extends only to properties unquestionably belonging to

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[94] *Spouses Peralta v. Heirs of Abalon*, 737 Phil. 310, 327 (2014).

the judgment debtor alone. In *Co Tuan v. NLRC*,[95] We noted an apparent inconsistency between the ruling in *Asian Footwear* and the NLRC Sheriff's Manual on Executions. We had ruled in *Asian Footwear* that, a government functionary like the LA is incompetent to decide if the sale was made in fraud of creditors. The task is judicial and the proceedings must be adversary. And yet, the Sheriff's Manual allows for third-party claims. We reconciled the perceived inconsistency as follows:

> x x x However, such Rule prescribes the procedure to be followed by the sheriff (or the arbiter or officer of the Commission) if the levied property is claimed by any person other than the losing party or [their] agent. It applies only to the sheriff and such other officers; and only when the third-party claimant chooses to file [their] claim with the Labor Arbiter or the NLRC. It does not limit the procedure to be followed by the third-party claimant [themselves].
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> **It should be noted that a person having a third-party claim has two options by which [they] can maintain [their] right of action**. Under Section 17, Rule 39 of the Revised Rules of Court, after which the aforecited section of the Sheriff's Manual has been patterned, a third person who claims that [their] property has been wrongfully seized, may file an action for damages against the sheriff within 120 days from the filing of the bond (this remedy is known as *terceria*).
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> The same rule gives the third party claimant another option to bring an entirely separate and distinct action from that in which the execution issued — ". . . nothing herein shall prevent such claimant or any third person from vindicating [their] claim to the property by any proper action." More so when the action arises out of an entirely different transaction. x x x
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> Furthermore, as held in the case of Ong v. Tating, 149 SCRA 267, Rule 39, Section 17 is limited to a determination of whether or not the sheriff has acted correctly in enforcing the writ of execution. "**The Court does not and cannot pass upon the question of title to the property with any character of finality. The rights of a third party claimant over properties levied upon by the sheriff cannot be decided in the**

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[95] 352 Phil. 240 (1998).

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action where the third party claims have been presented but in the separate action instituted by such claimants."[96] (Emphasis supplied)

Later, We held in *Delta Ventures Resources, Inc. v. Hon. Cabato*[97] that the regular courts have no jurisdiction over complaints that in effect seek the quashal of a writ execution issued by the Labor Arbiter or question the legality or propriety of the levy. Reiterating *Delta Ventures*, We emphasized in *Ando v. Campo, et al.*,[98] that the broad powers granted to the LA and NLRC by the "Labor Code can only be interpreted as vesting in them jurisdiction over incidents arising from, in connection with or relating [to the enforcement of decisions, orders, or awards rendered in] labor disputes." This may be juxtaposed with the case of *Peñalosa v. Hon. Villanueva*,[99] where We affirmed that the RTC may issue a writ of injunction against the NLRC if the third-party claimant was a complete stranger to a labor dispute, had acquired the property through extrajudicial foreclosure and public auction, and was issued a certificate of sale which was registered long before the NLRC levied the same property. The reason is simple: at the time of the NLRC's levy, the judgment debtor in the labor dispute no longer had any leviable interest in the property.

To summarize, in a third-party claim lodged before the NLRC, the sole issue to be resolved is whether the judgment debtor has any remaining leviable title interest in the subject property. If so, it may be levied on execution. The LA and the NLRC cannot go on further to elaborate whether the third-party claimant is a purchaser in good faith in relation to Article 1387 of the Civil Code.When the alienation of property by onerous title is presumed fraudulent by operation of law, it falls upon the transferee to rebut the presumption of fraud with satisfactory and convincing evidence[100] so that they may acquire the status of a purchaser in

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[96] Id. at 249-250.

[97] 384 Phil. 252, 260 (2000).

[98] 658 Phil. 636, 644 (2011).

[99] 258 Phil. 575 (1989).

[100] *Cabaliw v. Sadorra*, 159-A Phil. 584 (1975).

good faith. However, such rebuttal evidence cannot be properly received in execution proceedings, which are summary in nature. Summary proceedings are designed to promptly settle a controversy and developed to provide for an efficient method of collecting a debt.[101] They are not the proper forum to determine with finality the third-party claimant's rights over the property, which may include a determination of whether it is a purchaser or transferee in good faith. As per *Co Tuan, et al. v. NLRC*,[102] that is a question that may be determined in a regular proceeding before the courts.

The Court ordered the parties to "move in the premises," which is a resolution obliging the parties to inform the Court of developments pertinent to the case. Such a resolution is ordinarily issued considering the length of time that this case has remained pending with the Court and to determine whether there have been supervening events that may render the case moot and academic.[103]

In response, petitioner's wife informed the Court that petitioner died on December 26, 2020. However, his claim is not thereby extinguished as he has been substituted by his wife. In labor cases, the heirs of the employee may formally substitute them upon their death and execution of judgment may proceed in their favor. In relation to this, Section 20, Rule V of the 2011 NLRC Rules of Procedure particularly provides:

Section 20. DEATH OF PARTIES. — In case any of the parties dies during the pendency of the proceedings, he/she may be substituted by his/her heirs. In the event a favorable judgment is obtained by the complainants, the same shall be enforced in accordance with Section 11, Rule XI of this Rules. *(As amended by En Banc Resolution No. 14-17, Series of 2017)*

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[101] Bauman, John A. (1956) "The Evolution of the Summary Judgment Procedure: An Essay Commemorating the Centennial Anniversary of Keating," Indiana Law Journal: Vol. 31: Iss. 3, Article 1. Accessed at <https://www.repository.law. indiana.edu/ilj/vol31/iss3/1>.

[102] 352 Phil. 240 (1998).

[103] *Oliveras v. Lopez*, 250 Phil. 430 (1988).

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Meanwhile, Section 11 of Rule XI of the same rules provides:

> Section 11. EXECUTION IN CASE OF DEATH OF PARTY. — Where the complainant or respondent dies after the entry of judgment or issuance of certificate of finality, he/she may be substituted by his/her heirs. However, the liability of the substituting heirs of the respondent shall be up to the extent of the assets left by the decedent. Execution thereon may issue, or one already issued may be enforced in accordance with the applicable provisions of this Rules. *(As amended by En Banc Resolution No. 01-17, Series of 2017; En Banc Resolution No. 06-18, Series of 2018)*

Clearly, petitioner's death is no impediment to the enforcement of the judgment award on the surety bond posted by respondent or, should the same be insufficient, to the execution sale, the proceeds of which shall be remitted to petitioner's substitute less the amount he had previously received.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 29, 2011 and the Resolution dated December 11, 2012 of the Court of Appeals in CA-G.R. SP No. 121334 are hereby **REVERSED** and **SET ASIDE**. The Order dated March 8, 2011 of the Labor Arbiter in NLRC Case No. RAB-III-04-14735-09 is hereby **REINSTATED**.

The Third-Party Claim dated September 13, 2010 filed by respondent Belle Corporation is **DENIED** for lack of merit.

The unpaid balance of the judgment award in the Labor Arbiter's Decision dated October 22, 2009 shall first be enforced on the surety bond posted by respondent Belle Corporation through Prudential Guarantee and Assurance, Inc.

Should the surety bond be insufficient or could not be enforced upon, the Sheriff assigned to this case is **ORDERED** to **PROCEED** with the public auction sale of the subject real property covered by Transfer Certificate of Title No. 169886 and apply the proceeds thereof in such an amount as would fully satisfy the judgment award.

SO ORDERED.

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Leonen (Chairperson), Caguioa,[*] *Rosario,* and *Marquez, JJ.*, concur.

APPEARANCES OF COUNSEL

Joseph Cohon for petitioner.
Tan Venturanza Valdez for respondent.

[*] Designated additional Member per Raffle dated January 23, 2020 *vice* Zalameda, *J.*, due to his prior participation in the Court of Appeals.