

BDO UNIBANK INC., PETITIONER, VS. HON. JUDGE MARIA GRACIA A. CADIZ-CASACLANG (PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG BRANCH 155), ELISEO BORLONGAN, JR., ROBERTO HA...

Ponente: GONZALES-SISON, M., J.

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GONZALES-SISON, M., J.:

This resolves the instant petition for certiorari and prohibition, with application for temporary restraining order and writ of preliminary injunction[1] (“Petition”), wherein petitioner prays for the nullification of the Orders of Public Respondent, Presiding Judge of Regional Trial Court, Branch 155, of Pasig City (hereinafter, “Pasig RTC”), in Civil Case No. 73761, entitled Eliseo C. Borlongan, Jr. v. Equitable PCI Bank[2], dated 28 August 2013 and 6 December 2013, for having been issued without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. In the 28 August 2013 Order[3], the RTC granted plaintiff-private respondent Eliseo Borlongan, Jr.'s (“Borlongan”) Motion for Reconsideration from the RTC's Order dated 31 May 2013, dismissing the case, and ordered its reinstatement, disposing:

“ WHEREFORE, premises considered, the plaintiff's Motion for Reconsideration is partially GRANTED. Accordingly, the above-entitled case is REINSTATED with the qualification that the plaintiff's cause of action for the annulment of the surety agreements executed by Carmelita C. Borlongan and all other documents that originated or emanated therefrom shall remain dismissed for lack of jurisdiction.

Meanwhile, defendant bank is hereby directed to file its Answer to the other subsisting causes of action within the remaining reglementary period.

SO ORDERED.” (Italics by the RTC.)

In the 6 December 2013 Order[4], the RTC denied defendant- petitioner's Motion for Partial Reconsideration, disposing:

“ Acting on the “Motion for Partial Reconsideration (Re: Order dated 28 August 2013) filed by defendant Banco De Oro Unibank, Inc., and it appearing that the matters raised therein had already been sufficiently passed upon in the Order dated 28 August 2013, and thus, there are no cogent substantial reasons to disturb the assailed ruling, the instant Motion for Reconsideration is hereby DENIED for lack of merit. x x x

SO ORDERED.”

The antecedents are as follows:

On 27 January 2003, petitioner filed a Complaint for Collection of Sum of Money and Damages[5] against Tancho Corporation, Juan See, Co See, William Cotaoco, Vicente Cotaoco, Elso Cotaoco, Gerard So, Carmelita Borlongan, Aida Go, and Adelaida Tung. This was docketed as Equitable PCI Bank Corporation v. Tancho Corporation, et. al. Carmelita Borlongan is the wife of respondent Borlongan. Petitioner sued Carmelita for failing to comply with a surety agreement signed in favor of Tancho Corporation, and alleged that despite foreclosure of

a real estate mortgage, there remained a deficiency of Php32,543, 856.96, with interest.

The RTC hearing the case, RTC Makati Branch 134 (the “Makati RTC”), upon petitioner's application, issued a Writ of Attachment ordering respondent Sheriff Harina IV to attach the properties of the defaulting sureties, including a parcel of land at Sampaguita Road, Valle Verde 2, Pasig City (the “subject property”), covered by Transfer Certificate of Title (“TCT”) No. 0241, and registered to Carmelita Tung Borlongan, described in the TCT as “married to respondent Borlongan”. A Notice of Levy was duly annotated on the TCT.

Respondent Borlongan and his wife were declared in default; subsequently, on 29 November 2007, the RTC rendered judgment in favor of petitioner, and held defendants jointly and severally liable to pay petitioner the sum of the deficiency, with interest, and attorney's fees[6]. The Decision later attained finality.

Petitioner thereafter moved for execution and for the sale of the subject property, which the RTC granted. In the ensuing public auction, petitioner was the highest bidder. On 13 January 2010, the RTC issued a Certificate of Sale[7] in favor of petitioner, subject to the one year redemption period allowed by law. The Certificate of Sale was annotated on the TCT; later, on 21 December 2012, the RTC issued an Officer's Final Deed of Sale[8], there being no exercise of the right to redeem by Carmelita Borlongan.

On 21 January 2013, respondent Eliseo Borlongan filed a Complaint for Annulment of Surety Agreements, Notice of Levy on Attachment, Auction Sale and Other Documents with the Pasig RTC[9]. In that Complaint, Borlongan, alleged, among others, that he and his wife purchased the property in 1976, during their marriage; that they established their family home on the subject property; and he learned on the Notice of Levy, and its antecedents, only in 2012; that he later filed a Notice of Adverse Claim[10] to protect his interest; and that the surety agreements did not redound to the benefit of Carmelita Borlongan and respondent Borlongan's family. He added that he was not even a stockholder of the Tancho Corporation, in whose sole favor the surety was executed by his wife. He thus prayed for the nullification of surety agreements and the ensuing notice, sale, and incidental documents thereto.

Petitioner then filed a Motion to Dismiss within the appropriate period[11]. In its Motion, it asserted that the Pasig RTC lacked jurisdiction to hear Borlongan's Complaint, that the case was barred by *res judicata*, and that respondent failed to state a cause of action.

In an Order dated 31 May 2013, the Pasig RTC dismissed respondent's Complaint, citing lack of jurisdiction. The RTC held that it could not pass upon matters already brought up before the Makati RTC, a court of coordinate jurisdiction. In so doing, the RTC relied on the 2003 case of *Spouses Ching v. Court of Appeals*[12] (hereinafter, “Ching” or the “Ching case”). It ruled that the husband of a judgment debtor was not a stranger to the case, which status would allow the former to file a separate and independent action to determine the validity of levy and sale of property.

Respondent filed for reconsideration.

On 28 August 2013, the Pasig RTC granted the Motion[13]. The RTC ruled that the Ching case admits of an exception, which was discussed in the 2009 case of *Buado v. Court of Appeals*[14] (hereinafter, “Buado” or the “Buado case”). According to the RTC, the spouse of the judgment debtor is entitled to file a third-party claim depending on whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership, or not; thus, conjugal property, it quoted, cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership.

Applying its interpretation, the RTC noted that majority of respondent's causes of action were premised on a claim that the obligation contracted by his wife has not redounded to the benefit of their family, and thus, the levy

on their property was illegal. His filing of this separate case thus, albeit with another RTC, is not an encroachment on the jurisdiction of the RTC which heard the first case, as held in Buado.

The RTC clarified, however, that it cannot annul the surety agreements signed by his spouse; it agreed with petitioner that respondent had no cause of action to seek nullification since he was not a party to those agreements, and furthermore, even if the obligations are not chargeable to the conjugal property, the separate properties of his spouse, who signed, may still be sought after. It stressed too, that the validity and efficacy of these contracts have already been upheld by the Makati RTC, whose decision has already attained finality.

Thus, the RTC reinstated respondent's dismissed complaint, disposing:

“WHEREFORE, premises considered, the plaintiff's Motion for Reconsideration is partially GRANTED. Accordingly, the above entitled case is REINSTATED with the qualification that the plaintiff's cause of action for the annulment of the surety agreements executed by Carmelita C. Borlongan and all other documents that originated or emanated therefrom shall remain dismissed for lack of jurisdiction.

Meanwhile, defendant bank is hereby directed to file its Answer to the other subsisting causes of action within the remaining reglementary period.

SO ORDERED.” (Italics by the RTC.)

Petitioner filed for reconsideration, but the same was denied by the RTC in the assailed Order dated 6 December 2013.

Hence this petition.

Petitioner relied on the following grounds:

I

THE HONORABLE RESPONDENT JUDGE OF RTC PASIG BRANCH 155 COMMITTED AN ERROR OF JURISDICTION WHEN IT ASSUMED JURISDICTION OVER THE CASE A QUO, WHICH WAS PURPOSELY FILED TO REVERSE, MODIFY, REVIEW THE WRITS, PROCESSES, AND PROCEEDINGS RENDERED BY THE RTC OF MAKATI BRANCH 134 CONSIDERING THAT -

1. A REGIONAL TRIAL COURT HAS NO JURISDICITON TO REVIEW, REVERSE, MODIFY, THE WRITS, NOTICES, ORDERS, AND PROCESSES ISSUED BY ANOTHER REGIONAL TRIAL COURT, A COURT OF EQUAL JURISDICTION.

2. THE STANDING DICTUM IN THIS JURISDICTION IS THAT A SPOUSE, WHO WAS NOT A PARTY TO A SUIT BUT WHOSE CONJUGAL PROPERTY IS BEING EXECUTED ON ACCOUNT OF THE OTHER SPOUSE BEING A JUDGMENT DEBTOR, CANNOT BE DEEMED A STRANGER TO THE SAID SUIT.

II

THE HONORABLE RESPONDENT JUDGE, IN ASSUMING JURISDICTION OVER THE CASE A QUO, ERRONEOUSLY RELIED ON CASE (sic) OF SPOUSES ROBERTO BUADO AND VENUS BUADO VS. THE HONORABLE COURT OF APPEALS AND ROMULO NICOL[15] CONSIDERING THAT -

1. THE BUADO CASE IS NOT THE LATEST JURISPRUDENCE ON THE MATTER. THE BUADO CASE CANNOT ALSO ABANDON THE RULING OF THE HONORABLE SUPREME COURT IN SPOUSES ALFREDO AND ENCARNACION CHING V. COURT OF APPEALS[16].

2. THE BUADO CASE IS OF LIMITED APPLICATION, THE EXCEPTION RATHER THAN THE RULE, AND SHOULD BE APPLIED ONLY WHEN THE REASON STATED BY THE SUPREME COURT IS PRESENT.

3. DETERMINING FIRST WHETHER THE OBLIGATION REDOUNDED TO THE BENEFIT OF THE CONJUGAL PARTNERSHIP OF GAINS BEFORE IT CAN DETERMINE WHETHER IT HAS JURISDICTION OVER THE CASE WILL RESULT IN ABSURDITY.

Petitioner begins by citing the rule that courts cannot interfere, annul, or overturn the judgments, orders or processes of courts with which they share coordinate jurisdiction. It then presents the ruling in the Ching case as an example, stressing the Supreme Court's holding there that “the RTC does not have the authority to nullify the levy and sale on execution that was ordered by the CFI of Manila, a co-equal court”.

Petitioner continues on to point out that the ruling in Ching was reiterated in the 2010 case of Imani v. Metrobank, et. al.[17] (hereinafter, “Imani” or the “Imani case”) where the Court similarly held that the remedy of a separate action under Section 16, Rule 39 is no longer available to the non-debtor spouse because he could not be deemed a stranger to the case filed against his wife, and clarifying that the independent and separate action for relief was only available when the execution included one spouse's paraphernal or exclusive property.

Petitioner then contends that the Pasig RTC, in maintaining jurisdiction over Borlongan's Complaint, erred as it had no jurisdiction to do so, for such constituted interference with the orders of a co-equal body, the Makati RTC.

Petitioner also urges that the Pasig RTC erroneously relied on Buado, the basis of Borlongan's Motion for Reconsideration. Petitioner avers that Buado, decided in 2009, has been superseded by the 2010 Imani case. Petitioner contends that even without Imani, Buado could not be said to have overtaken the 2003 Ching case, since Buado was only decided by a division of the Supreme Court, not en banc[18].

Petitioner then elaborates that Buado cannot be applied in favor of Borlongan for a number of reasons. First, it posits that Buado involved circumstances different from the case at bar. Buado, petitioner stresses, concerned liability arising from a criminal offense. Second, the property in Buado never became the subject of attachment. Lastly, the cause of action in Buado arose out of the low selling price of one spouse's exclusive property, and not from the family never benefiting from the obligation.

Anent the last assigned error, petitioner avers that the Pasig RTC, in electing to first determine whether the obligation redounded to the family's benefit, before determining whether it had jurisdiction over Borlongan's Complaint (based on the respondent's standing to sue) would result in absurdity. The RTC, petitioner argues, should have dismissed the case, pursuant the Ching ruling, where it was held that “the determination of whether or not the levy and sale of property in execution of a judgment was valid, properly falls within the jurisdiction of the court that rendered the judgment and issued the writ of execution”.

Applying Buado blindly, petitioner warns, allows the Pasig RTC to trifle with the orders of another RTC; such would also totally preclude the application of Ching and Imani in any other instance. Such absurdities, petitioner avers, must be avoided by looking at Buado as merely a case for limited application, with Ching and Imani providing the controlling, general rules.

Lastly, petitioner contends that the civil case below is only a ploy to cover up Borlongan's gross negligence in not taking prompt action.

Petitioner then repleads its allegations to support its application for the issuance of a temporary restraining order and/or writ of preliminary injunction, and, on the basis thereof, make the injunction permanent against the Pasig RTC from hearing or acting on Civil Case No. 73761, nullify the assailed Orders, and order the dismissal of Civil Case No. 73761.

On 26 March 2014, this Court received respondent Borlongan's Comment[19].

Respondent Borlongan argues that the Pasig RTC had jurisdiction over his complaint, and that the rule prohibiting non-interference by one court with the orders, judgments, or decrees of a co-equal court yields to an exception, i.e., when the sheriff levies upon the assets of a third person in which the judgment debtor has no interest, in which case, the third person may seek relief before a court of competent jurisdiction in an independent and separate action[20]. Respondent then contends that the term “third person” includes the non-debtor spouse.

Respondent argues too, that petitioner erred in its interpretation of Ching and Imani. He reiterates his reliance on *Ayala Investment & Development Corp. v. Court of Appeals*[21] (hereinafter “Ayala” or the “ Ayala case”) wherein the Court ruled that “if the money or services are given to another person or entity, and the husband acted only as a surety or guarantor, that contract cannot, by itself alone, be categorized as falling within the context of obligations for the benefit of the conjugal partnership.” Thus, he maintains that to bind a conjugal partnership, the debt must redound to the benefit of the family[22].

To support his position, respondent compares the factual milieu of his case and that in *Ayala*, and argues that these facts are similar, which should lead Us to apply the logic in *Ayala*, and then reach the Supreme Court's conclusion there. He avers that there is no showing that the surety agreement signed by his wife never redounded to his family's benefit, but only worked to the sole advantage of Tancho Corporation.

With respect to the petitioner's assertion that the doctrine in *Ching and Imani* applies, respondent avers that Buado clarifies the doctrine as merely a general rule and that Buado operates as an exception. Respondent argues that pursuant to Buado, which the later *Imani* never expressly abrogated, there must first be a determination of the character of the property involved and whether the obligation of the debtor spouse redounded to the benefit of the family. If the character was conjugal and the obligation did not benefit the family, regardless of the source of the obligation, then the non-debtor spouse is treated as a third party or stranger to the suit, and he or she can then file a separate and independent action in another court of competent jurisdiction. The pursuing creditor can then prove his claim by in a full blown trial on the merits.

Contrary to the stance of petitioner, respondent avers that there would no resulting absurdity if the nature of the property would be determined first, which was the approach in Buado. It would be unfair if the non-debtor spouse is automatically excluded from being a stranger. In any case, even if the subject property was not conjugal or if the family benefited from the debt, the error would not affect the jurisdiction of the RTC, but only deprived a spouse – claimant of cause of action.

Respondent then contends that due to the status granted to him, the non-debtor spouse, by Buado, the decision of the Makati RTC cannot be said to have the effect of *res judicata*, and he thus has cause of action to file his complaint; he argues too, that instead of conjugal property, only the paraphernal properties of his wife must be attached. As to the charge that he was grossly negligent in asserting his rights, he averred that he moved to protect his right as early as he possibly could by filing a notice of adverse claim; the filing of the case later resulted after consulting his lawyers.

With respect to petitioner's application for injunctive writs, respondent asserts the same to be without basis, and points out that petitioner never bothered to raise any of the grounds under Sec. 3 of Rule 58 of the Rules of Court.

Concluding that the RTC did not act with grave abuse of discretion in reinstating his complaint, respondent prays, respectively, for the denial of the prayers for injunction and the dismissal of the petition.

On 24 September 2014, petitioner filed its Memorandum of Authorities[23]. On 2 October 2014, respondent filed his own Memorandum[24].

We now resolve this case.

Preliminarily, it is necessary to rule on the propriety of the remedy of certiorari and prohibition.

Under Sections 1 and 2 of Rule 65 of the Rules, these extraordinary remedies may be resorted to only if a tribunal, board, or officer exercising judicial or quasi-judicial (or ministerial, in case of prohibition) functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner argues that the crucial element of lack of jurisdiction is present. It contends that the Pasig RTC, in electing to hear respondent's case, despite the issuance of orders during the execution proceedings by the Makati RTC, acts without jurisdiction.

After due consideration, We find that this case requires Us to determine whether the Pasig RTC has jurisdiction. In Buado, the Court found that the jurisdiction of a court reviewing the orders of a co-equal court, based on a purported third party claim under of Sec. 16 of Rule 39 of the Rules, was a question of jurisdiction. Similarly, in Ching and Imani, the Court, interpreting the same provision, necessarily had to then determine whether the RTCs in which separate actions were filed had jurisdiction to hear those actions.

Any lingering doubt on the existence of a jurisdictional issue should be dissolved when the doctrine against interference with orders and judgments of co-equal bodies, invoked by petitioner, is considered. The non-interference rule as stated is that “no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction the rationale being founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment”[25].

Owing to this finding, it must be clarified that ordinarily, the non-interference rule precludes resort to co-equal forums or courts by the parties to a suit, while the same is pending. One instance justifying the interference would be a separate action filed by the correct party under Sec. 16 of Rule 39. Thus, petitioner inaccurately argues that the co-equal body is absolutely prohibited from taking cognizance of an action filed by an alleged third party claimant or stranger; the co-equal body, here an RTC, has jurisdiction to examine whether the plaintiff or petitioner is clothed with the exceptional status of being a stranger to the “first” suit.

We now move to the merits of the petition.

The parties rely on seemingly conflicting decisions of the Supreme Court. Petitioner relies on the 2003 Ching case, reiterated in 2010, in Imani, while private respondent cites the 2009 case of Buado. Petitioner contends that Ching and Imani squarely apply, so that the other spouse is absolutely precluded from instituting a separate action to question the levy, attachment, and sale of conjugal property arising from a debt guaranteed by only one spouse; a separate action, it avers, would violate the elementary principle prohibiting co-equal courts from interfering with the processes, orders, and judgments of each other. On the other hand, respondent argues that Buado and its precedent, Ayala, clarified that the spouse who was not a guarantor may institute a separate action if the family did not benefit from the obligation.

After due consideration, We find the petition meritorious.

The doctrine laid down in Ching and Imani applies to this case; on the other hand, We find Buado to be a case applicable only to the special circumstances prevailing in that instance.

We begin with Mariano v. Court of Appeals[26] (hereinafter “Mariano” or the “Mariano case”), which precedes and was cited in Ayala, Ching, Buado, and Imani.

In *Mariano*, the beleaguered non-debtor husband filed an annulment of execution in one RTC, asserting that conjugal assets could not be made to answer for obligations exclusively contracted by his wife. Similarly, only the wife was previously sued by the creditor in *Mariano*, in another RTC; the creditor, prevailing, had moved for execution, and levy was made on purported conjugal properties.

In *Mariano*, the Court ruled that the non-interference rule operates to bar the non-debtor spouse from initiating a separate and independent action, discussing:

“The question that arises is whether such a claim that property levied on in execution of a judgment is not property of the judgment debtor, Daniel Sanchez's wife, but of the conjugal partnership of the Sanchez Spouses is properly cognizable by a Court other than that which rendered judgment adversely to the wife.

To be sure, Section 17, Rule 39 of the Rules of Court, authorizes a "third person," i.e., "any other person than the judgment debtor or his agent," to vindicate "his claim to the property by any proper action." x x x

The "proper action" referred to in the section "is and should be an entirely separate and distinct action from that in which execution has issued, if instituted by a stranger to the latter suit:" [27] and in "such separate action, the court may issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale." [28] "Upon the other hand, if the claim of impropriety on the part of the sheriff in the execution proceedings is made by a party to the action, not a stranger thereto, any relief therefrom may be applied for with, and obtained from, only the executing court; and this is true even if a new party has been impleaded in the suit." [29]

In the case at bar, the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife." (Emphasis Ours.)

That doctrine, incidentally, was not formulated in *Mariano*. The Supreme Court drew the same from a 1976 case, *Rejuso v. Estipona*[27], and applied the same in *Mariano* due to the striking similarity of the two cases.

The doctrine in *Mariano* was then reiterated in *Ching*. In *Ching*, it may well be noted that the Court did not even determine whether the obligation solely contracted by one spouse, and enforced against conjugal property, redounded to the benefit of the family. The Court merely looked at the procedural recourse of the non-debtor spouse with a co-equal court via an independent action, and ruled, based on *Mariano*, that the spouse is not a third party to the suit and therefore the court hearing the separate action has no jurisdiction over the same.

In *Imani*, the Court similarly ruled that the non-debtor spouse must file his or her claim on the property in the same action, and not by instituting a separate suit, which is reserved only to strangers, to which class the non-debtor spouse does not belong.

Relevantly, We see in *Imani* that the Supreme Court took a two-step approach to the problem; it first determined the propriety of the remedy of the non-debtor spouse, and then it proceeded to determine whether the property was conjugal or not. From this it can be deduced that the Court necessarily delved into the legality of the remedy because the wrong remedy would result in a jurisdictional trespass; if the non-debtor spouse, in order to preserve conjugal property, initiated a separate and independent suit, the court hearing that suit has no jurisdiction, and must dismiss the action pursuant to the non-interference rule.

In 2009, the Supreme Court promulgated *Buado*. When considered alongside *Ching* and *Imani*, *Buado* presents an apparent conflict as it allowed the non-debtor spouse to initiate a separate and independent action to protect conjugal property, where the obligation involved did not redound to the benefit of the family.

This Court, however, is convinced that the rationale in *Imani*, reiterating *Ching*, must prevail.

First, Imani is the most recent case; thus, it persuades over the seeming conflicting ruling in the earlier Buado case[28].

Second, upon close analysis, Buado does not convincingly support respondent's position. In Buado, the obligation to pay stemmed from a delict. The conjugal property under a regime of conjugal partnership of gains cannot generally be held liable for civil liabilities arising from delict or quasi-delict. Under the second paragraph of Article 122 of the Family Code:

Art. 122. The payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal properties partnership except insofar as they redounded to the benefit of the family.

Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

Buado differs, albeit subtly, from the instant case because in Buado, the issue raised by petitioners and confronted by the Court is actually whether the conjugal partnership can be held liable for one spouse's crime of slander. Following the second paragraph of Art. 122 of the Family Code, the Supreme Court held in the negative. Thus, Buado is not squarely applicable because the exemption of the conjugal property there resulted not really from the non-benefiting of the family, under the first paragraph, but because the liability arose from a fine, under the second paragraph.

The Court went to to declare that “Parenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.

To reiterate, conjugal property cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership.”

On this note, We observe that the Supreme Court qualified the first statement by the word “parenthetically”, which ordinary use translates to “incidentally”. In this sense, such declaration does not stand alone but still must be related to the general non-liability of the conjugal partnership under the second paragraph of Art. 122 of the Family Code.

In other words, in Buado, there was actually no need to prove redounding to the family’s benefit since the second paragraph of Art. 122 does not require that the family must not benefit from the source of the fine or pecuniary indemnity; the Court only incidentally considered that the slander of the wife cannot be said to have benefited the family. Hence, that the obligation was created by a delict appears to be the decisive factor – otherwise, the Court need not have cited Art.122 or discussed the non-benefiting of the family only parenthetically.

In this case, however, the first paragraph of Art. 122 of the Family Code is the provision in point, which renders the application of Buado, applying the second paragraph of Art. 122 in favor of respondent, doubtful.

Third, and perhaps most importantly, Buado also draws its rationale from Mariano. A close scrutiny of Mariano, however, imparts that Sec. 16 of Rule 39[29] unconditionally excludes the non-debtor husband, thus:

“To be sure, Section 17, Rule 39 of the Rules of Court, authorizes a "third person," i.e., "any other person than the judgment debtor or his agent," to vindicate "his claim to the property by any proper action." x x x

In the case at bar, the husband of the judgment debtor cannot be deemed a "stranger" to the case prosecuted and adjudged against his wife.”

Now it cannot be ignored that in Mariano, the Court also declared that the income derived from the wife’s

business, which necessitated incurring obligations, redounded to the benefit of the family, and which inclined the Court from denying the husband the right to institute a separate action. A sharp reading of Mariano, however, reveals that this consequence is merely an incidental reason justifying the stance of Court, with the principal reason still being the husband's mistaken assumption that he could be deemed a stranger to the suit:

“In any case, whether by intervention in the court issuing the writ, or by separate action, it is unavailing for either Esther Sanchez or her husband, Daniel, to seek preclusion of the enforcement of the writ of possession against their conjugal assets. For it being established, as aforesaid, that Esther had engaged in business with her husband's consent, and the income derived therefrom had been expended, in part at least, for the support of her family, the liability of the conjugal assets to respond for the wife's obligations in the premises cannot be disputed.” (Emphasis Ours.)

As with the use of the term “parenthetically” in Buado, which We have noted, the qualifying phrase “in any case” beginning the above discussion shows that the non-benefiting of the family was only an ancillary reason which persuaded the Court that the suit must fail, with the main and principal reason still being the husband not being a stranger to the suit.

Now We turn to Ayala, which respondent claims to squarely parallel his predicament. A close study of Ayala leads Us to conclude that respondent's reliance on the same is misplaced as well. For in Ayala, the creditor never questioned the standing of both spouses to sue by separate action or the jurisdiction of the co-equal court to issue the injunction. Thus, the issue in Ayala was merely confined to whether the obligation redounded to the benefit of the family, which is not the case before Us; here We must first determine whether the non-debtor husband can validly initiate a separate action under Sec. 16 of Rule 39 without offending the non-interference rule, because it was an issue raised by petitioner.

Following the above discussions, the emerging conclusion is that respondent is not a stranger who can initiate an independent suit under Sec. 16 of Rule 39 of the Rules of Court.

Consequently, in opting to review the validity of execution, levy, and sale of the subject property pursuant to the judgment of the Makati RTC, the Pasig RTC acts without jurisdiction. At this juncture We cannot help but notice that respondent had already filed a Notice of Adverse Claim during the proceedings with the Makati RTC; respondent should have pursued that recourse and prudently avoided a confrontation with the non-interference rule.

In *Ong v. Tating*[30], cited in *Imani*, the Court held:

“Certain it is that the Trial Court has plenary jurisdiction over the proceedings for the enforcement of its judgments. It has undeniable competence to act on motions for execution (whether execution be a matter of right or discretionary upon the Court), issue and quash writs, determine if property is exempt from execution, or fix the value of property claimed by third persons so that a bond equal to such value may be posted by a judgment creditor to indemnify the sheriff against liability for damages, resolve questions involving redemption, examine the judgment debtor and his debtors, and otherwise perform such other acts as may be necessary or incidental to the carrying out of its decisions. It may and should exercise control and supervision over the sheriff and other court officers and employees taking part in the execution proceedings, and correct them in the event that they should err in the discharge of their functions.” (Emphasis Ours.)

And in *Ancheta v. Metropolitan Bank and Trust Company, Inc. and Court of Appeals*[31], the Court held:

“The reason for this is that, the power to open, modify, or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered.”

Given Our conclusion that the Pasig RTC acts without jurisdiction, it is thus no longer necessary to dwell on the

merits of petitioner's application for a TRO and/or a writ of preliminary injunction.

WHEREFORE, premises considered, the PETITION is hereby GRANTED. The Regional Trial Court of Pasig, Branch 155, is hereby ORDERED to CEASE from hearing Civil Case No. 73761 and DISMISS the same.

SO ORDERED.

De Guia-Salvador, R., Chairperson, and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 3-36.

[2] The case was filed prior to the merger of Equitable PCI Bank with Banco De Oro Unibank. In 2011, Banco De Oro Unibank changed its name to BDO Unibank, Inc.; see Petition, p. 4, at rollo, p. 6.

[3] Rollo, pp. 45-47.

[4] Rollo, p. 48.

[5] Rollo, pp. 85-99.

[6] Rollo, pp. 136-140.

[7] Rollo, pp. 202-203.

[8] Rollo, pp. 204-206.

[9] Rollo, pp. 207-214.

[10] Rollo, pp. 141-144.

[11] Rollo, pp. 234-244.

[12] Cited as G.R. No. 118830, 24 February 2003.

[13] Rollo, pp. 165-167.

[14] Cited as G.R. No. 145222, 24 April 2009.

[15] Supra, at fn. 14.

[16] Supra, at fn. 12.

[17] Cited by petitioner as Imnani v. Metrobank, et. al., G.R. No. 187023, 17 November 2010.

[18] Citing Sec. 4(3) of Art. VII of the Constitution.

[19] Rollo, pp. 660-695.

[20] Citing Naguit v. Court of Appeals, G.R. No. 137675, 5 December 2000.

[21] G.R. No. 118305, 12 February 1998.

[22] Citing Luzon Surety Co. Inc. v. Garcia, G.R. No. L-25659, 31 October 1969.

[23] Rollo, pp. 719-743.

[24] Rollo, pp. 745-761.

[25] See *Cabili v. Balindong*, A.M. No. RTJ-225, 6 September 2011.

[26] G.R. No. L-51283, 7 June 1989.

[27] G.R. No. L-27099, 31 August 1976.

[28] See *Home Guaranty Corp. v. RII Builders, Inc. and NHA*, G.R. No. 192649, 22 June 2011, where the Supreme Court acknowledged that later or more recent cases are more persuasive and controlling.

[29] Prior amendment, Sec. 16 was Sec. 17 of Rule 39 of the Rules.

[30] G.R. No. L-61042, 15 April 1987.

[31] G.R. No. 163410, 16 September 2005.

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