

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, EX-OFFICIO
SHERIFF OF THE REGIONAL TRIAL COURT OF VALENZUELA,
METRO MANILA, CLERK OF COURT AND EX-OFFICIO SHERIFF OF
THE REGIONAL TRIAL...**

G.R. No. 114951. July 18, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 31251 nullifying the Order of the Regional Trial Court (RTC) of Makati[2] in Civil Case No. 91-2495 dated February 23, 1993 lifting the writ of preliminary injunction earlier issued by the said RTC.

The Antecedents

Between January 1988 to April 1990, the private respondents Ley Construction & Development Corporation (Ley Construction), LC Builders & Developers Corporation (LC Builders), Metro Container Corporation (MCC) and the spouses Manuel and Janet Ley obtained loans from the petitioner Philippine Commercial International Bank (PCIB) amounting to around to P98,800,000 evidenced by eighteen promissory notes. To secure the said loans, the private respondents executed real estate mortgages and amended real estate mortgages over its property situated in Mandaluyong covered by Transfer Certificate of Title (TCT) No. 43131, and its property situated in Valenzuela City covered by TCT Nos. 6572 and 6580. They also executed three chattel mortgages over several of their movable properties in favor of petitioner PCIB.

The private respondents defaulted in the payment of their obligations in the amount of P105,442,145 and despite demands made by petitioner PCIB, failed to pay their account. On August 16, 1991, petitioner PCIB filed separate requests for extrajudicial foreclosure of the amended real estate mortgages with the petitioner ex-officio sheriff of the RTC of Pasig City and with the petitioner ex-officio sheriff of the RTC of Valenzuela, and a letter for the extrajudicial foreclosure of chattel mortgage with the petitioner ex-officio sheriff of the RTC of Valenzuela.[3] In due course, the petitioner ex-officio sheriff of Pasig City set the sale at public auction on September 24, 1991 of the property covered by TCT No. 43131 on September 24, 1991. Meanwhile, the petitioner ex-officio sheriff of Valenzuela City set the sale of the personal properties at public auction on September 16, 1991 at the compound of the mortgagors at Barrio Pulang Lupa, Valenzuela, and the sale of properties covered by TCT Nos. 6572 and 6580 on October 3, 1991.

Before any of the auction sales could proceed, the private respondents, through their counsel, the law firm of Quisumbing Torres & Evangelista, filed a complaint against the petitioners PCIB and the ex-officio sheriffs on September 10, 1991 with the RTC of Makati, for injunction and damages with a prayer for the issuance of a temporary restraining order, seeking to enjoin the said sheriffs from selling at public auction the real and personal properties covered by the mortgage contracts. The private respondents as plaintiffs had eight causes of action against the petitioner. On their first to fourth causes of action, the private respondents as plaintiffs therein alleged

inter alia that petitioner PCIB had agreed to the extensions of the due dates of the private respondents' loan to March 1992, with a moratorium on the payment of interest during the extension of the same; however, petitioner PCIB foreclosed the said mortgages before the lapse of the said extension. On their fifth to eighth causes of action, the private respondents alleged inter alia that the notice of sale of the chattels was defective because (a) it included the sale of the chattels for the payment of loans not covered by the said chattels; (b) it refers to the foreclosure of only one chattel mortgage but the properties sought to be sold covered all the properties subject of the three chattel mortgages, and as such, the requests to foreclose the chattel mortgages were premature; and (c) it failed to comply with the requirements of Section 14 of Act No. 1508, otherwise known as the Chattel Mortgage Law.

The private respondents prayed that a temporary restraining order or writ of preliminary injunction be issued enjoining the defendants sheriffs from conducting already scheduled auction sales, any other sale of the plaintiffs' assets, and any other foreclosure of the real estate mortgages and chattel mortgages and ordering the restructuring of the obligations of the plaintiffs Ley Construction and LC Builders so that they could be repaid on easier terms over a period of several years or at least until the current recession in the construction industry is over, and to condemn defendant PCIB to pay damages; and after due proceedings, judgment be rendered making permanent any writ of preliminary injunction which may have been issued by the court.

The case was raffled to the RTC of Makati Branch 147[4] and docketed as Civil Case No. 91-2495.[5]

On September 12, 1991, the RTC issued a temporary restraining order temporarily enjoining the petitioners sheriffs and their respective deputies from proceeding with the September 16 and 24, and October 3, 1991 auction sales, respectively.[6] On September 16, 1991, the RTC issued another temporary restraining order enjoining the petitioner ex-officio sheriff of the RTC of Valenzuela and his deputies from proceeding with the October 3, 1991 auction sale.

Instead of filing an answer to the complaint, petitioner PCIB filed a motion to dismiss on the ground that it did not grant the private respondents any extension to pay their account; hence, the private respondents as plaintiffs had no cause of action against the petitioner.

The application for the issuance of a preliminary injunction was set for hearing. On October 16, 1991, the RTC issued an order denying the motion to dismiss and granting a writ of preliminary injunction enjoining the conduct of any of the auction sales, conditioned upon the posting of a bond by the private respondents in the amount of P1,000,000. On November 20, 1991, petitioner PCIB filed a motion for reconsideration of the October 16, 1991 Order, but the court denied the said motion per its Order on February 26, 1992. The private respondents posted the requisite injunction bond of P1,000,000.

Petitioner PCIB filed a petition for certiorari and mandamus[7] with the Court of Appeals (CA) for the nullification of the October 16, 1991 and February 26, 1992 Orders of the RTC. While the case was still pending with the said court, the law firm of Quisumbing Torres & Evangelista withdrew their appearance as counsel for the private respondents with the conformity of the latter.[8] The law firm of San Vicente De Leon & Associates entered its appearance as new counsel for the private respondents.

On January 14, 1993, the CA rendered its decision[9] dismissing the petition.[10] Entry of judgment was made of record on February 8, 1993.[11] The private respondents, through the law firm of San Vicente De Leon & Associates, were served with a copy of the said entry of judgment.

With the dismissal of its petition by the CA, petitioner PCIB filed on February 3, 1993 its answer to the complaint in Civil Case No. 91-2495 in the RTC of Makati, serving a copy thereof on the law firm of San Vicente De Leon

& Associates.[12]

On February 4, 1993, the law firm of San Vicente De Leon & Associates filed a manifestation with the RTC that it had no authority to represent the private respondents in Civil Case No. 91-2495 as it was not the counsel of record in the said case.[13] Petitioner PCIB filed a counter-manifestation stating that since the law firm of Quisumbing Torres & Evangelista had withdrawn its appearance and the law firm of San Vicente De Leon & Associates had entered its appearance, the copy of the petitioners' answer to the complaint was duly served on the private respondents through the latter law firm.[14] Petitioner PCIB further manifested that, nonetheless, it was serving a copy of its answer to the complaint on the private respondents themselves. Petitioner PCIB served a copy of the said answer on the private respondents on February 4, 1993.[15]

Simultaneous with the filing of its answer to the complaint, petitioner PCIB filed a second motion to lift the writ of preliminary injunction issued by the court on October 16, 1991 on the following grounds: (a) at the time of the filing of the said second motion, the private respondents' obligation had reached P161,033,070.49; hence, the bond filed by the private respondents in the amount of P1,000,000 was grossly inadequate; and (b) the extension alleged by the private respondents to have been granted to them by petitioner PCIB to pay their obligation had already lapsed.[16] The petitioner served a copy of the said motion on the law firm of San Vicente De Leon & Associates.[17]

On February 8, 1993, the law firm of San Vicente De Leon & Associates filed a manifestation with the RTC reiterating therein that it was not the counsel of record in the said case, and as such was not authorized to represent the private respondents. The said law firm was the counsel of the private respondents only in CA-G.R. SP No. 27573 and not in Civil Case No. 91-2495 before the RTC.[18]

Petitioner PCIB filed a second counter-manifestation that service to the law firm of San Vicente De Leon & Associates should be considered valid and binding on the private respondents because the law firm of Quisumbing Torres & Evangelista had already withdrawn its appearance as counsel of the private respondents in CA-G.R. SP No. 27573. Petitioner PCIB prayed to the court to order the private respondents to indicate which law office was their counsel. The petitioner served a copy of the said manifestation to the private respondents. It also served a copy of the second motion to lift the writ of preliminary injunction on February 9, 1993 on the private respondents.[19] The private respondents did not file any opposition to the said motion, and likewise failed to appear during the hearing of February 12, 1993.

The private respondents thereafter engaged the service of Atty. Noel M. Malaya, who entered his appearance as counsel for the private respondents in Civil Case No. 91-2495 on February 15, 1993, serving a copy thereof on the petitioner's counsel.[20] Atty. Malaya alleged in his appearance that the same was with the conformity of the private respondents. He did not file any opposition or comment on the second motion of petitioner PCIB.

On February 23, 1993, the RTC issued an order lifting the writ of preliminary injunction it previously issued for the following reasons: (a) there was no opposition to the petitioners' motion; and (b) the continued effectivity of the writ of preliminary injunction had become improvident.[21]

With the lifting of the writ of preliminary injunction, the petitioner ex-officio sheriff of the RTC of Pasig issued on March 1, 1993 a notice of sheriff's sale, scheduling the sale of the Mandaluyong property on March 30, 1993.[22] On March 2, 1993, the petitioner ex-officio sheriff of the RTC of Valenzuela likewise issued a notice of sheriff's sale setting the sale of the Valenzuela properties also on March 30, 1993.[23] The sale of the mortgaged chattels at public auction was scheduled on March 18, 1993 in front of the compound of the private respondents in Valenzuela, Metro Manila, where the chattels were located. The private respondents were served with copies of the said notices. As required, the notices of sale for the real properties in Valenzuela were published in the

Metropolitan Newsweek on its March 2, 13 and 20, 1993 issues.

Instead of filing with the RTC of Makati in Civil Case No. 91-2495 a motion for the reconsideration of its February 23, 1993 Order or a supplemental complaint therein, the private respondents filed on March 17, 1993 with the RTC of Manila, through Atty. Malaya, a complaint for injunction and damages against the petitioners docketed as Civil Case No. 93-65135[24] with a prayer for a temporary restraining order to enjoin the respondents and proceeding with the auction sale of the mortgaged chattels on March 18, 1993. The private respondents alleged inter alia that the sale at public auction of the chattels had been enjoined by the RTC of Makati, Branch 147; and that they were suddenly notified that the sale at public auction was reset on March 18, 1993; they were not given the requisite notice of the sale of the mortgaged chattels on March 18, 1993 as mandated by Act No. 1508; and that the sale at public auction was to be conducted in a private place in front of the compound of the private respondents in Valenzuela and not in a public place as mandated by the said law. On the same day, Executive Judge Rosalio dela Rosa of the RTC of Manila issued a temporary restraining order enjoining the sale of the mortgaged chattels.[25] The case was raffled to Branch 34 of the court.[26] On March 18, 1993, the petitioners, as defendants therein, filed a motion to dismiss the complaint on the ground that the private respondents had no cause of action against them, serving a copy thereof to Atty. Malaya.

In a parallel development, the private respondents, through Atty. Malaya, opted to file a reply to the answer of petitioner PCIB. He filed a Motion dated March 23, 1993 to admit reply in Civil Case No. 91-2495 to the answer of petitioner PCIB. A copy of the motion was duly served on the counsel of petitioner PCIB. The private respondents set the hearing of their motion on April 2, 1993 at 10:00 a.m.

The foreclosure sale of the mortgaged real properties in Mandaluyong and Valenzuela proceeded as scheduled on March 30, 1993 with petitioner PCIB as the highest bidder. On March 30, 1993, the petitioner sheriff of the RTC of Valenzuela executed a certificate of sale over the said properties in favor of the petitioner.[27] On March 31, 1993, the petitioner sheriff of the RTC of Pasig executed a certificate of sale over the properties in favor of petitioner PCIB. The private respondents were furnished with copies of the said certificates.

On March 31, 1993, the private respondents, through the Quisumbing Torres & Evangelista Law Office, filed in Civil Case No. 91-2495 an emergency motion for reconsideration, set for hearing on April 9, 1993 with an application for temporary restraining order of the February 23, 1993 Order of the court lifting the writ of preliminary injunction previously issued, for the reinstatement of the writ of preliminary injunction issued by the court on October 16, 1991,[28] and for the expansion of the coverage of the said writ, thus:

WHEREFORE, plaintiffs urgently and respectfully pray that the Order dated 23 February 1993 be reconsidered, that the writ of preliminary injunction be immediately reinstated, and that said writ be expanded to enjoin defendants and their deputies, employees and agents from implementing the foreclosure and sheriff's sale of 30 March 1993, including but not limited to (a) the issuance of the certificate of sale, (b) the annotation of the sheriff's sale on Transfer Certificate of Title No. 43131, (c) the filing of any petition for a writ of possession of the subject real property, and (d) the consolidation of title in favor of defendant PCIB.

In the meantime and pending the hearing and resolution of this Emergency Motion, plaintiffs urgently and respectfully pray for the issuance of a temporary restraining order enjoining defendants and their deputies, employees and agents from implementing the foreclosure and sheriff's sale of 30 March 1993, including but not limited to (a) the issuance of the certificate of sale, (b) the annotation of the sheriff's sale on Transfer Certificate of Title No. 43131, and (c) the filing of any petition for writ of possession of the subject real property.[29]

The private respondents alleged inter alia that they had not been served with a copy of the second motion of petitioner PCIB for the lifting of the writ of preliminary injunction heretofore issued by the court, as well as a

copy of the order of the court lifting the same. They also alleged that Atty. Noel M. Malaya was merely their collaborating counsel. Petitioner PCIB opposed the emergency motion of the private respondents, alleging inter alia that the said motion was a mere scrap of paper as the private respondents' counsel of record is Atty. Malaya; the motion was set on Good Friday; the sales at public auction of the Mandaluyong and Valenzuela properties had already been consummated; and that private respondents indulged in forum shopping by earlier filing a complaint in the RTC of Manila in Civil Case No. 93-65135 with a plea for a temporary restraining order to abort the March 18, 1993 sale at public auction of the mortgaged chattels, instead of filing a motion for reconsideration of the February 23, 1993 Order of the RTC in Civil Case No. 91-2495.[30]

The private respondents were served with a copy of the said pleading of petitioner PCIB through Atty. Malaya. The private respondents, through the Quisumbing Torres & Evangelista Law Office, filed a reply to the opposition of the petitioners. They alleged inter alia that their emergency motion was not a mere scrap of paper because Atty. Malaya was their collaborating counsel.[31] However, the RTC of Makati did not issue any temporary restraining order. The private respondents filed an amended notice of hearing for their emergency motion on April 13, 1993 at 8:30 a.m. but served a copy thereof on petitioner PCIB only at 11:00 a.m. of the same day. The branch clerk of court reset the hearing of the said motion on April 16, 1993 at 8:30 a.m.

In the meantime, on April 1, 1993, petitioner PCIB filed an ex-parte petition with the RTC of Pasig for the issuance of a writ of possession over the property covered by TCT No. 43131 sold by the petitioner sheriff of the RTC of Pasig at public auction to petitioner PCIB.[32]

On April 26, 1993, petitioner PCIB filed a petition for a writ of possession with the RTC of Valenzuela City over the properties sold at public auction. The case was raffled to Branch 75 of the court.[33] The private respondents, through Atty. Vicente T. Verdadero, filed an opposition to the said petition.[34] On May 24, 1993, the RTC of Valenzuela issued an order granting the petition for a writ of possession on a bond of P1,200,000 to be approved by the court.[35] Petitioner PCIB assured the court that:

The petitioner likewise assured the respondent that the former will not disrupt the operation of the respondent which employs more or less 5,000 people and will not also take possession of the chattels inside the compound of the respondent corporation referring to heavy machineries because the mortgages on the chattels have not yet been foreclosed by the petitioner.

With these assurances made by the petitioner thru counsel to respondent, the court has no alternative except to give due course to the instant petition for issuance of a writ of possession pursuant to Act 3135 as amended by Act 4118 pending redemption which will expire on March 31, 1994.[36]

Meanwhile, on April 29, 1993, the RTC of Manila, Branch 34, issued an order granting the petitioners' motion to dismiss in Civil Case No. 93-65135 on the ground of the pendency of Civil Case No. 91-2495 filed with the RTC of Makati. The court ratiocinated that it had no power to interfere by injunction with the judgment or orders of the RTC of Makati of concurrent or coordinate jurisdiction.[37] The private respondents did not file any motion for reconsideration of the said order. With the dismissal of the complaint in Civil Case No. 93-65135, the deputy sheriff of Valenzuela issued a notice of sheriff's sale on April 21, 1993 setting the sale of the mortgaged chattels at the compound of the private respondents in Valenzuela on May 4, 1993.[38]

On May 3, 1993 or barely four days after the dismissal by the RTC of Manila of Civil Case No. 93-65135 and barely a day before the sale at public auction, the private respondents, through Atty. Malaya, filed another complaint[39] with the RTC of Manila against the petitioner and the sheriff of Valenzuela with a prayer for temporary restraining order to enjoin the said sheriff and petitioner PCIB from conducting the auction sale of the mortgaged chattels on May 4, 1993. The case was raffled to Branch 54.[40] The private respondents alleged inter

alia that in Civil Case No. 91-2495, the RTC of Makati had lifted the writ of preliminary injunction it had previously issued but that the private respondents had filed a motion for the reconsideration thereof which remained unresolved; their complaint for injunction and damages in Civil Case No. 93-65135 was still pending with the RTC of Manila and thus the temporary restraining order issued by the said court had already been lifted. The sheriff set the sale at public auction of the mortgaged chattels on May 4, 1993 without giving the mortgagees notice thereof as required by Act 1508. Despite the allegations of the private respondents in their complaint, Executive Judge Rosalio dela Rosa of the RTC of Manila issued on the said date, a temporary restraining order enjoining the sale of the mortgaged chattels at public auction.[41] As a consequence, the petitioner ex-officio sheriff of Valenzuela had to cancel the auction sale of the mortgaged chattels on May 4, 1993 and to reset the same on June 14, 1993.[42]

On June 10, 1993, the private respondents, through the Quisumbing, Torres & Evangelista Law Office, filed a petition for certiorari and mandamus with the CA, docketed as CA-G.R. SP No. 31251, for the nullification of the February 23, 1993 Order of the RTC of Makati in Civil Case No. 91-2495, lifting the writ of preliminary injunction it previously issued. Although the sale of the chattels at public auction set on June 14, 1993 was the subject of the private respondents' complaint in Civil Cases Nos. 93-65135 and 93-65757, the petition prayed for the issuance of a temporary restraining order enjoining the sale of the mortgaged chattels on June 14, 1993. The private respondents argued that they had not been served with a copy of the second motion to lift the writ of preliminary injunction. The service of a copy of the said motion on the law firm of San Vicente De Leon & Associates instead of the law firm of Quisumbing Torres & Evangelista was ineffectual insofar as the private respondents were concerned, as the law firm of Quisumbing Torres & Evangelista remained as their counsel of record in Civil Case No. 91-2495. The law firm of San Vicente De Leon & Associates was the counsel of record of the private respondents only in CA-G.R. SP No. 27573. The private respondents were denied their right to due process when the RTC issued its February 23, 1993 Order without affording them a chance to be heard on the petitioners' second motion.

On August 13, 1993, the CA rendered its decision in CA-G.R. SP No. 31251 setting aside the February 23, 1993 Order of the RTC of Makati, declaring the same null and void and restoring the status of the parties prior to the issuance of the said order. The decretal portion of the decision reads:

WHEREFORE and upon all the foregoing, the order of respondent court dated February 23, 1993 and all subsequent proceedings arising from the said questioned order are hereby SET ASIDE as null and void. The parties are restored to the status quo ante, i.e., to their respective positions before the issuance of the order of February 23, 1993.[43]

The CA ruled that the service to the San Vicente De Leon & Associates Law Office of the petitioners' second motion to lift the writ of preliminary injunction was not binding on the private respondents since their counsel of record in Civil Case No. 91-2495 was the Quisumbing Torres & Evangelista Law Office. The private respondents were denied their right to due process when the RTC granted the second motion of the petitioners without affording the private respondents their right to be heard thereon. The private respondents were not guilty of forum shopping in filing their complaint with the RTC of Manila in Civil Case No. 93-65135. Petitioner PCIB filed a motion for the reconsideration of the decision of the CA.

Meanwhile, on August 19, 1993, the RTC of Manila, Branch 54, issued an order in Civil Case No. 93-65757 dismissing the complaint of the private respondents, holding that the latter engaged in forum shopping and that it was improper for the said court to interfere with a case pending in the RTC of Makati being a court of equal rank, and more so with the pending certiorari filed in CA-G.R. SP No. 31251 with the CA.[44] The court stated that it was leaving it up to petitioner PCIB (defendants therein) to take steps for disciplinary action against the counsel

of the private respondents (the plaintiffs therein). The private respondents did not appeal the order.

On April 13, 1994, the CA issued an order in CA-G.R. SP No. 31251 denying petitioner PCIB's motion for reconsideration.[45]

In the meantime, the trial court issued an order on July 28, 1994 in Civil Case No. 91-2495 dismissing the case for failure of the private respondents to prosecute the same.[46] On September 12, 1994, the private respondents filed a motion for reconsideration of the said order.[47]

Hence, the petition at bar.

The petitioners aver that contrary to the ruling of the CA, the private respondents were accorded their right to due process. When the Makati RTC came out with its February 23, 1993 Order granting their second motion for the lifting of the writ of preliminary injunction heretofore issued by the said court, the private respondents had no counsel when petitioner PCIB filed its second motion and had to serve a copy thereof on the private respondents. The private respondents engaged in a *rigodon de abogados* thus confusing the petitioners, besides being grossly negligent in failing to respond to and oppose the second motion of petitioner PCIB and in failing to file a motion for reconsideration of the February 23, 1993 Order of the RTC before filing their emergency motion. The private respondents resorted to forum shopping to abort the sale at public auction of the mortgaged chattels before and after filing their emergency motion. The RTC had the authority to dissolve *ex parte* the writ of preliminary injunction heretofore issued by it for the reason that the continued effectivity of the writ of preliminary injunction heretofore issued by it had become improvident. Finally, the RTCs of Pasig City and Valenzuela City had already issued writs of possession over the subject properties sold at public auction. The CA should have dismissed the private respondents' petition for *certiorari* and *mandamus*, for being moot and academic.

In their comment on the petition, the private respondents aver that their counsel of record in Civil Case No. 91-2495 was the Quisumbing Torres & Evangelista Law Office and not the firm of San Vicente De Leon & Associates. The service on the latter law firm of a copy of the second motion of petitioner PCIB was not binding on the private respondents. The RTC of Makati denied the private respondents the right to due process when it granted *ex parte* the second motion of petitioner PCIB and lifted the writ of preliminary injunction heretofore issued by it without affording the private respondents a chance to be heard on the said motion. They acted with due diligence in filing their emergency motion to stave off the sale at public auction of the mortgaged chattels on May 4, 1993. Neither did they commit forum shopping in filing their complaint in Civil Case No. 93-65153 with the RTC of Manila, as their causes of action in the said case[48] were different from their principal causes of action before the Makati RTC in Civil Case No. 93-2495.[49]

The petition is impressed with merit.

We agree with the private respondents that their counsel of record when they filed their complaint with the RTC of Makati in Civil Case No. 91-2495 was the Quisumbing Torres & Evangelista Law Office. The firm withdrew its appearance as counsel for the private respondents and was substituted by San Vicente De Leon & Associates as counsel of said parties only in the CA case. Thus, despite the withdrawal by the Quisumbing Torres & Evangelista Law Office as counsel of the private respondents in CA-G.R. SP No. 27573, it remained as counsel of the private respondents in Civil Case No. 91-2495 pending in the RTC of Makati. Petitioner PCIB was mandated to serve a copy of its second motion for the lifting of the writ of preliminary injunction on the private respondents through their counsel of record, Quisumbing Torres & Evangelista Law Office, conformably to Section 2, Rule 13 of the Rules of Court, as amended, which reads:

Section 2. Filing and service, defined. - Filing is the act of presenting the pleading or other papers to the clerk of court.

Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

The service of pleadings and processes must be made on counsel and not on the parties.[50] There was no order from the trial court directing the service of the petitioner's second motion on the private respondents personally.

Prescinding from petitioner PCIB's procedural faux pas, we do not agree with the ruling of the CA that the private respondents were denied their right to due process. In the case of *Development Bank of the Philippines v. Court of Appeals*,[51] we ruled that the essence of due process is that a party be afforded a reasonable opportunity to be heard in support of his defense. What the law abhors and prohibits is the absolute absence of the opportunity to be heard. Hence, a party cannot feign denial of due process when he had been afforded the opportunity to present his side. In *Bernardo v. Court of Appeals*,[52] we ruled that lack of opportunity to be heard and not necessarily absence of prior notice constitutes a violation of due process. As long as a party is given the opportunity to be heard either through oral arguments or through pleadings, such as a motion for reconsideration, and defend his interest in due course, he would have no reason to complain for it is this opportunity to be heard that makes up the essence of procedural due process.[53]

In this case, the private respondents were accorded their right to due process but by their negligence they failed to take the appropriate immediate remedies to protect their rights and interests. Worse, the private respondents indulged in forum shopping and flagrantly violated the principle of judicial stability. As aforesaid, the private respondents were served with a copy of the petitioner's second motion on February 9, 1993. They secured the professional services of Atty. Malaya as their counsel who filed his notice of appearance on February 15, 1993. As such new counsel of the private respondents, he was presumed and obliged to acquaint himself with all the antecedent processes and pleadings of the parties, and all the proceedings that may have transpired prior to his appearance as counsel.[54] It was also incumbent on the said counsel to communicate with the private respondents' counsel of record, Quisumbing Torres & Evangelista Law Office, to ascertain the status of the case and of any pleadings that may have been filed by petitioner PCIB. The private respondents were also obliged to apprise their counsel, Atty. Malaya, of the service on them by petitioner PCIB on February 9, 1993 of its second motion for the lifting of the writ of preliminary injunction heretofore issued by the trial court. This is to enable the new counsel, Atty. Malaya, to prepare and file with dispatch the appropriate pleadings to protect the private respondents' rights and interests.

In *Gold Line Transit Inc. v. Ramos*,[55] we ruled that litigants represented by counsel should not expect that all they need to do is sit back and relax and await the outcome of the case. They should give all the necessary assistance to their counsel, for at stake is their interest in their case. It is safe to presume that Atty. Malaya did confer with the Quisumbing Torres & Evangelista Law Office and that the private respondents turned over to their new counsel the copy of petitioner PCIB's second motion that had been served on them. However, the private respondents, through their counsel, Atty. Malaya, failed to file any comment or opposition to the second motion of petitioner PCIB. It was not unreasonable for the RTC of Makati to assume that the private respondents would no longer file any opposition to or comment on the petitioner's second motion, and thus resolved petitioner PCIB's second motion.

The RTC of Makati issued its Order on February 23, 1993 granting the second motion of petitioner PCIB and lifting the writ of preliminary injunction, thus allowing the sale at public auction of the mortgaged real and personal properties. The petitioners' sheriffs forthwith issued notices of the sale of the mortgaged real properties at public auction on March 30, 1993 and of the mortgaged chattels on March 18, 1993. The private respondents were

served with copies of the said notices as required by law. A copy of the February 23, 1993 Order of the trial court was likewise served on them. It behooved the private respondents to file with deliberate speed their motion for the reconsideration of the February 23, 1993 Order of the trial court, or to file a supplemental complaint in Civil Case No. 91-2495 with a plea for a temporary restraining order or writ of preliminary injunction to abort the sale at public auction. The private respondents dilly-dallied and failed to do so.

What is so disconcerting is that the private respondents, through counsel, filed with the trial court on March 23, 1993 a Motion to Admit their Reply to the answer of petitioner PCIB to the complaint of the private respondents, setting the hearing of the said motion on April 2, 1993 at 8:30 a.m. or three days after the scheduled sale at public auction of the mortgaged real properties on March 30, 1993. It is incredible that the private respondents were able to file a motion to admit their reply to the answer of petitioner PCIB and yet failed to file a motion for the reconsideration of the February 23, 1993 Order of the trial court to thwart the sale at public auction of the real properties set on March 30, 1993 by the petitioners ex-officio sheriffs. The private respondents insouciantly allowed the sale at public auction of the mortgaged real properties to proceed on March 30, 1993 without a whimper of protest. Worse, the private respondents temporized and filed their emergency motion only on March 31, 1993 after the sale at public auction of the real properties with a prayer for an expanded preliminary injunction not only to thwart the sale at public auction that had already been a *fait accompli* but also to enjoin--

... defendants and their deputies, employees and agents from implementing the foreclosure and sheriff's sale of 30 March 1993, including but not limited to (a) the issuance of the certificate of sale, (b) the annotation of the sheriff's sale on Transfer Certificate of Title No. 43131, (c) the filing of any petition for a writ of possession of the subject real property, and (d) the consolidation of title in favor of defendant PCIB.[56]

The private respondents cannot feign ignorance of the said order of the RTC of Makati because they, through their counsel, were obliged, upon receiving the notices of sale at public auction of the mortgaged real estate and chattels, to make immediate inquiries from the office of the petitioners ex-officio sheriffs why the sale at public auction of the mortgaged properties were set when the trial court had issued a writ of preliminary injunction barring said sale. The private respondents likewise failed to consult with their counsel. For his part, the counsel of the private respondents was obliged to proceed posthaste to the RTC of Makati and ascertain if it had lifted the writ of preliminary injunction heretofore issued by it. It is reasonable to presume that the said counsel did so. For sure, the said counsel was able to confirm that the trial court had indeed issued its February 23, 1993 Order setting aside the said writ on motion of petitioner PCIB.

The private respondents even opted to split their remedies into two, by filing their petitions in separate *fori*, through two sets of lawyers, one remedy much later than the other, obviously to vex the petitioners and derail the placid, inexpensive and speedy administration of justice. Thus, the private respondents filed, through Atty. Malaya, a complaint for injunction with the RTC of Manila in Civil Case No. 93-65135 on March 17, 1993 on the eve of the sale at public auction of the chattels to enjoin the same. On March 31, 1993, an emergency motion was filed in the RTC of Makati in Civil Case No. 91-2495, through Quisumbing Torres & Evangelista Law Office, to enjoin the sale at public auction of the real properties earlier set on March 31, 1993, thus impelling the petitioners to litigate before the RTC of Manila in Civil Case No. 93-65135 and respond to the emergency motion of the private respondents before the RTC of Makati in which they prayed not only for the reconsideration of the February 23, 1993 Order of the RTC of Makati but even for an expanded writ of preliminary injunction.

The CA erred in holding that the private respondents did not indulge in forum shopping when they filed their complaints for injunction in the RTC of Manila in Civil Cases Nos. 93-65135 and 93-65757 despite the pendency of their complaint for injunction in Civil Case No. 91-2495 with the RTC of Makati.[57] The CA ratiocinated that the private respondents believed that the said complaints affected the properties situated in areas apart from those

over which the RTC of Makati could act and that they had no apparent intention to procure thereby something which they had not been able to get from another court. Even a cursory reading of the complaints of the private respondents in said cases would readily show the utter untenability of the CA's ruling. The records indicate that the private respondents filed their complaint for injunction in Civil Case No. 91-2495 and secured injunctive relief from the court to enjoin the sale of the mortgaged chattels at public auction located in the compound of the private respondents in Valenzuela (now Valenzuela City). The private respondents then believed that the RTC of Makati was the proper court from which they could secure injunctive relief to frustrate the sale at public auction of the mortgaged chattels in Valenzuela. It is incredible that the private respondents filed their complaint for injunction in the RTC of Manila to enjoin the sale of the same mortgaged chattels subject of their complaint in the RTC of Makati, on their perception that the latter court was not the proper venue to grant injunctive relief. It is clear as day that the private respondents filed their complaints in Civil Cases Nos. 93-65135 and 93-65757 for injunctive relief after the RTC of Makati set aside on February 23, 1993 the writ of preliminary injunction heretofore issued by it. In so doing, the private respondents are guilty of forum shopping.[58] In *Bugnay Construction & Development Corporation v. Judge Laron*,[59] we ruled that:

This rule has been equally applied in the recent case of *Limpin, Jr., et al. vs. Intermediate Appellate Court, et al.*, where the party having filed an action in one branch of the regional trial court shops for the same remedies of a restraining order and a writ of preliminary injunction in another branch of the same court. We ruled therein that:

"So, too, what has thus far been said more than amply demonstrates Sarmiento's and Basa's act of forum shopping. Having failed to obtain the reliefs to which they were not entitled in the first place from the "Solano Court," the Court of Appeals, and the Supreme Court, they subsequently instituted two (2) actions in the 'Beltran Court' for the same purpose, violating in the process the ruling against splitting causes of action. The sanction is inescapable: dismissal of both actions, for gross abuse of judicial processes."

Even the private respondents belie the CA's conclusion because in their comment on the petition at bar, they insist that they were not guilty of forum shopping for the reasons stated in the CA decision, thus:

9.1. The first case, Civil Case No. 91-2495 filed on 10 September 1991 sought mainly the restructuring of the loan agreement between the parties.

9.2. Civil Case No. 93-65135, filed on 17 March 1993 sought to enjoin the sheriff's foreclosure sale scheduled on 18 March 1993 which violated the requirement of personal notice under Act No. 1508.

9.3. Civil Case No. 93-65757 which was filed on 3 May 1993, sought to enjoin the sheriff's foreclosure sale scheduled on 4 May 1993 which was also violative of Act No. 1508.

9.4. Clearly, the cases arose from different sets of facts and involved different issues and incidents over which the petitioners are entitled to relief. The accusation of forum shopping is therefore baseless.[60]

We do not agree with the private respondents. It bears stressing that the essence of forum shopping is the filing of multiple suits involving the same parties for the same cause or action, either simultaneously or successively, for the purpose of obtaining a favorable judgment or other relief. It exists where the essential requisites of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* as a ground for the dismissal of an action has the following essential requisites: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other case.[61] This Court ruled that where a litigant sues the same party against whom another action or actions for the alleged violations of the same right and the enforcement of the

same relief is/are still pending, the defense of *litis pendentia* in one case is a bar to the other or others.[62] In such a case, the other party may ask for summary dismissal of the two cases.[63] The well-entrenched rule is that a party cannot by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.[64]

In this case, the parties as well as the chattels subject of Civil Case No. 91-2495 pending in the Makati RTC and those in the Manila RTC in Civil Cases Nos. 93-65135 and 93-65757 are the same. The fifth to eighth causes of action of the private respondents in Civil Case No. 91-2495 and their causes of action in Civil Cases Nos. 93-65135 and 93-65757 complaints were for injunction with damages with a plea for injunctive relief to enjoin the sale at public auction of the said mortgaged chattels. Although the private respondents in Civil Case No. 91-2495 prayed for a restructuring of their loans with petitioner PCIB, they also sought as one of their causes of action, the nullification of the notice of sale at public auction, and the sale at public auction set on September 16, 1991 because the said notice was defective for *inter alia* non-compliance with Act 1508. Not only did the private respondents pray for injunctive relief to enjoin the sale at public auction of the mortgaged chattels on September 16, 1991 but also to enjoin the said sale at public auction permanently.

The private respondents cannot evade the application of the doctrine of *litis pendentia* in Civil Cases Nos. 93-65135 and 93-65757 on their claim that, in their complaint in the said cases, they sought for the nullification of the sales at public auction on March 18, 1993 and May 4, 1993 because of the sale of the mortgaged chattels at the private respondents' compound in Valenzuela where the chattels were located and for failure of the petitioner sheriff of Valenzuela to serve them notice of the said sale as provided for in Act 1508.

First. If the position of the private respondents was correct, their remedy was to file a supplemental complaint in Civil Case No. 91-2495 and not a separate complaint in Civil Case No. 93-65135. It bears stressing that the action in Civil Case No. 91-2495 did not become *functus officio* with the lifting of the writ of preliminary injunction issued by the said court.[65] Hence, the private respondents should have filed in Civil Case No. 91-2495 a supplemental complaint or a motion for reconsideration with the Makati RTC for the reconsideration of its February 23, 1993 Order.

Second. The claim of the private respondents is but an afterthought, a sinister scheme to give a semblance of justification for their plea for injunctive relief in the RTC of Manila. The records show that the petitioner sheriff of the RTC of Valenzuela served a copy of the notice of sheriff's sale of the chattels set on September 16, 1991 on the private respondents. Moreover, the petitioner sheriff of Valenzuela stated that the sale at public auction would be held at the compound of the private respondents in Valenzuela where the said chattels were stored.[66] If the private respondents believed that the sale of the chattels at their compound was a violation of Act 1508, they should have questioned the said sale in their complaint in Civil Case No. 91-2495. They did not. They did so, for the first time, only in their complaint in Civil Case No. 93-65135. In *Florendo v. Vda. De Gonzalez*, [67] we held that "if a party is allowed to urge one ground at a time, or even all grounds except one or two, it would result in piecemeal and endless litigation which the law seeks to avoid." [68] Moreover, the private respondents had agreed, under the chattel mortgages, that the sale at public auction may be held at any place where the chattels may be found:

- The auction sale of the mortgaged properties may be held, at the Mortgagee's option, at Makati, the place where the Mortgagee's branch mentioned above is situated, or the place where the mortgaged property may be found. In case of judicial foreclosure, the action for foreclosure may be filed, at the Mortgagee's option, in the Court of First Instance for Makati, Metro Manila.[69]

In this case, the RTC of Makati had assumed jurisdiction over the foreclosure of the mortgaged real properties and chattels including all incidents related to the conduct and actuations of the sheriffs thereof.[70] The February 23,

1993 Order of the RTC of Makati lifting the writ of preliminary injunction heretofore issued by it and allowing the sale at public auction of the personal properties by the petitioners sheriffs after petitioner PCIB had posted the requisite bond was an interlocutory order; hence, always under the control of the said court; the order may be modified and rescinded by it upon sufficient grounds shown at any time before judgment. The trial court had the inherent power to control its processes and orders so as to make them conformable to law and justice.[71] Thus, it behooved the private respondents to file their motion with the RTC of Makati for the reconsideration of its February 23, 1993 Order or file a supplemental complaint in Civil Case No. 91-2495 instead of filing two separate complaints one after another, docketed as Civil Case Nos. 93-65135 and 93-65757, with two different branches of the court, praying for injunctive relief to enjoin the sale at public auction of the mortgage chattels as decreed by the RTC of Makati per its February 23, 1993 Order, otherwise the private respondents may correctly be declared as indulging in forum shopping.[72] After all, the ex-officio sheriff of Valenzuela was one of the respondents before the RTC of Makati over whom and over whose actuations the said court had supervision and control. Even if the said sheriff failed to comply with Act 1508 in setting the sale at public auction of the mortgaged chattels, the RTC of Makati had jurisdiction to order the said sheriff to comply with the law.[73]

The private respondents even brazenly violated the principle of judicial stability, which essentially states that the judgment or order of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction for the simple reason that the power to open, modify or vacate the said judgment or order is not only possessed but is restricted to the court in which the judgment or order is rendered or issued. Accordingly, no court has the power to interfere by injunction with the judgment or decrees of a court of concurrent jurisdiction having the power to grant relief sought by injunction. The various branches of the RTC having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction should not, cannot and are not permitted to intervene with their respective cases, much less with their orders or judgments. A contrary rule would lead to confusion, and seriously hamper the administration of justice.[74]

The private respondents filed on March 17, 1993 their complaint with the RTC of Manila in Civil Case No. 93-65135 for injunction with a plea for a temporary restraining order and writ of preliminary injunction to enjoin only the sale at public auction of the chattels on March 18, 1993, despite the admission made in their complaint that the RTC of Makati had already enjoined the said sale at public auction. The private respondents did not allege in its complaint that the RTC of Makati had lifted the said writ heretofore issued by it. Because of the temporary restraining order issued by the RTC of Manila, the sale at public auction of the chattels on March 18, 1993 had to be reset. What the RTC of Makati allowed in its February 23, 1993 Order, the RTC of Manila enjoined, via the issuance of the temporary restraining order prayed for by the private respondents. The sale at public auction had to be reset to May 4, 1993 only to be stymied anew when the private respondents filed another complaint docketed as Civil Case No. 93-65757 with the RTC of Manila on May 3, 1993, praying for a temporary restraining order and writ of preliminary injunction to enjoin the said sale at public auction. The private respondents admitted in their complaint that their emergency motion for the reconsideration of the February 23, 1993 Order of the RTC of Makati was still unresolved. Moreover, at the time the private respondents filed their complaint in Civil Case No. 93-65757, the Order of the RTC of Manila in Civil Case No. 65135 had not yet become final and executory. The petitioner sheriff had to reset the said sale on June 14, 1993 when the RTC of Manila issued in Civil Case No. 93-65757 another temporary restraining order. Although the sale at public auction of the chattels had been enjoined by the RTC of Manila in Civil Case No. 93-65757, the private respondents filed their petition for certiorari and prohibition with a plea for a temporary restraining order or writ of preliminary injunction to enjoin the sale of the mortgaged chattels at public auction on June 14, 1993. In fine, the private respondents sought injunctive relief from the CA to enjoin the sale at public auction of the chattels on June 14, 1993 despite the pendency of their complaint with the RTC of Manila in Civil Case No. 93-65757, praying for the

same injunctive relief. The private respondents were able to frustrate the February 23, 1993 Order of the RTC of Makati not only once but three times, through temporary restraining orders issued by the RTC of Manila, and through the assailed decision of the CA. The two branches of the RTC of Manila saw through the nefarious ploy of the private respondents and issued separate orders dismissing the complaints on the ground of *litis pendencia*, forum shopping, and violation of the principle of judicial stability. We note that the RTC of Manila in Civil Case No. 93-65757 even directed the private respondents to pay jointly and severally to the petitioners treble costs, and gave the petitioners the option to initiate disciplinary action against the counsel of the private respondents. The private respondents did not even appeal the order of the two branches of the RTC of Manila.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 31251 is REVERSED AND SET ASIDE. The complaint of the private respondents in Civil Case No. 91-2495 is DISMISSED WITH PREJUDICE.

This is without prejudice to the liability for contempt of the counsels for the private respondents for violation of the Supreme Court Circular No. 28-91 on forum shopping, as may be determined by the trial courts concerned.

Costs against the private respondents.

SO ORDERED.

Bellosillo, (Chairman), Austria-Martinez, and Tinga, JJ., concur.
Quisumbing, J., on official leave.

[1] Penned by Associate Justice Cezar D. Francisco, with Associate Justices Gloria C. Paras and Buenaventura J. Guerrero concurring.

[2] Presided by Judge Teofilo Guadiz, Jr.

[3] Records, pp. 128-139.

[4] Presided by Judge Teofilo Guadiz, Jr.

[5] Annex "J," Petition.

[6] Annex "K," Petition.

[7] Entitled and docketed as Philippine Commercial International Bank v. Hon. Teofilo Guadiz, Jr., et al., CA-G.R. No. 27573 (SP).

[8] Rollo, p. 352.

[9] Penned by Justice Asaali S. Isnani, with Justices Gloria C. Paras and Ricardo P. Galvez concurring.

[10] Rollo, pp. 323-331.

[11] Id. at 332.

[12] Annex "M," Petition.

[13] Rollo, p. 349.

[14] Id. at 350-351.

[15] Id. at 351.

[16] Annex "N," Petition.

[17] Rollo, p. 205.

[18] Id. at 360-361.

[19] Id. at 362-364.

[20] Id. at 366-367.

[21] Id. at 293.

[22] Id. at 368-369.

[23] Id. at 471.

[24] Entitled and docketed as Ley Construction & Development Corporation, et al. v. Ex-Officio Sheriff of the Regional Trial Court of Valenzuela, et al., Civil Case No. 93-65153.

[25] Annex "P-1," Petition.

[26] Presided by Judge Cesar V. Alejandria.

[27] Rollo, 370-371.

[28] Id. at 374-383.

[29] Id. at 381-382.

[30] Id. at 327-380.

[31] CA Rollo, pp. 137-143.

[32] Rollo, at 414-420.

[33] Presided by Judge Emilio L. Leachon, Jr.

[34] Rollo, pp. 651-653.

[35] Id. at 654-655.

[36] Id. at 655.

[37] Annex "P-2," Petition.

[38] Id. at 254.

[39] Entitled Ley Construction & Development Corporation, et al. v. Ex-Officio Sheriff of the Regional Trial Court of Valenzuela, et al., Civil Case No. 93-65757.

[40] Presided by Judge Manuel T. Muro.

[41] Rollo, pp. 256-257.

[42] CA Rollo, p. 155.

[43] Rollo, p. 648.

[44] Annex "Q-2," Petition.

[45] Annex "S-1," Petition.

[46] Rollo, p. 728.

[47] Id. at 732-739.

[48] Primarily for the nullification of the sale at public auction set on March 18, 1993 for failure of the ex-officio sheriff to comply with the mandates of Act No. 1508 (The Chattel Mortgage Law).

[49] For the nullification of the sale at public auction of the properties mortgaged by the private respondents as security for their loans on the ground that the extrajudicial foreclosure of the said mortgages by petitioner PCIB was premature and for the restructuring of their loans with the said petitioner.

[50] TCL Sales Corporation v. Court of Appeals, 349 SCRA 35 (2001).

[51] 302 SCRA 362 (1999).

[52] 275 SCRA 413 (1997).

[53] Philhouse Development Corporation v. Consolidated Orix Leasing & Financing Corporation, 356 SCRA 281 (2001).

[54] Development Bank of the Philippines v. Court of Appeals, supra.

[55] 363 SCRA 262 (2001).

[56] Rollo, pp. 381-382.

[57] To prevent Forum Shopping, the Supreme Court issued Circular No. 28-91 as follows:

Subject: Additional requisites for Petitions filed with the Supreme Court and the Court of Appeals to Prevent Forum Shopping or Multiple Filing of Petitions and Complaints.

The attention of the Court has been called to the filing of multiple petitions and complaints involving the same issues in the Supreme Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, with the result that said tribunals or agency have to resolve the same issues.

To avoid the foregoing, every petition or complaint filed with the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, shall comply with the following requirements aside from pertinent provisions of the Rules of Courts and existing circulars:

- Caption of petition or complaint - The caption of the petition or complaint must include the docket number of the case in the lower court or quasi-judicial agency whose order or judgment is sought to be reviewed.

- Certification - The party must certify under oath that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If there is any other action pending he must state the status of the same. If he should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, he should notify the court, tribunal or agency within five (5) days from such notice.

- Penalties. --

- a)

Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint;

b)

Any willful and deliberate forum shopping by any party and his lawyer with the filing of multiple petitions or complaints to ensure favorable action shall constitute direct contempt of court.

c)

The submission of a false certification under Par. 2 of the Circular shall likewise constitute contempt of court without prejudice to filing of criminal action against the guilty party. The lawyer may also be subjected to disciplinary proceedings.

- Effectivity Date. - This Circular shall take effect on Jan. 1, 1992. The Circular has been incorporated in the 1997 Rules of Civil Procedure as Section 5, Rule 7.

[58] *Fil-Estate Gold and Development, Inc. v. Court of Appeals*, 265 SCRA 614 (1996).

[59] 176 SCRA 240 (1989).

[60] *Rollo*, pp. 702-703.

[61] *Melo v. Court of Appeals*, 318 SCRA 94 (1999).

[62] *Prubankers Association v. Prudential Bank & Trust Company*, 302 SCRA 74 (1999).

[63] *First Philippine International Bank v. Court of Appeals*, 252 SCRA 259 (1996).

[64] *Ibabao v. Intermediate Appellate Court*, 150 SCRA 76 (1987).

[65] *Palm Avenue Realty Development Corporation v. Presidential Commission on Good Government*, 153 SCRA 579 (1987); *First Philippine International Bank v. Court of Appeals*, *supra*.

[66] In *Manhattan v. Checker*, 171 N.E., 705 (1930), Mr. Chief Justice Benjamin Cardozo of the Circuit Appeals Court of New York stated that a sale at public auction is effected where the property sought to be sold is at hand and within the view of those attending. It is the essence of an auction that there shall be full and free opportunity for competition among bidders. A sale at public auction may be made at the place where the chattel is located as long as the notice of sale states the place where the chattel is found and to be sold.

[67] 87 Phil. 638.

[68] Cited in *Salido v. Court of Appeals*, 173 SCRA 429 (1989).

[69] *Rollo*, p. 121.

[70] *PNB v. Pineda*, 197 SCRA 1 (1991).

[71] *Ley Construction & Development Corporation v. Union Bank of the Philippines*, 334 SCRA 443 (2000).

[72] *Silahis International Hotel, Inc. v. NLRC*, 225 SCRA 94 (1993); *PNB v. Pineda*, *supra*.

[73] *PNB v. Pineda*, *supra*.

[74] *Cojuangco v. Villegas*, 184 SCRA 374 (1999).

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