

MARY JOSEPHINE GOMEZ AND EUGENIA SOCORRO C. GOMEZ-SALCEDO, PETITIONERS, VS. ROEL, NOEL, AND JANNETTE BEVERLY STA. INES AND HINAHON STA. INES, RESPONDENTS.

G.R. NO. 132537. October 14, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals reversing the Order[2] of the Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, Branch 27, dismissing the complaint of herein respondents for lack of jurisdiction.

The pertinent facts are as follows:

On 17 June 1986, Mary Josephine C. Gomez (Mary Josephine) and Eugenia Socorro C. Gomez-Salcedo (Socorro) filed a complaint for damages before the RTC of Pasig against Marietta dela Cruz Sta. Ines (Marietta) alleging that they are the children of the deceased Purificacion dela Cruz Gomez who, during her lifetime, entrusted her rice land with an area of 25,087 square meters located at Bayombong, Nueva Vizcaya, to Marietta, together with the Transfer Certificate of Title (TCT) No. 47082 covering said land, for the latter to manage and supervise. Mary Josephine and Socorro further alleged that they have demanded for an accounting of the produce of said rice land while under the management of Marietta, and for the return of the TCT to the property, but the latter refused, thus compelling the sisters to file a civil case[3] before the Pasig RTC.

During the pre-trial conference of the case, both Marietta and her counsel failed to appear, thus, by motion of counsel for Mary Josephine and Socorro, the trial court declared Marietta in default.

On 24 January 1989, the trial court rendered judgment against Marietta ordering her to deliver to Mary Josephine and Socorro the owner's copy of TCT No. 47082 and to pay P40,000.00 as moral damages, P20,000.00 as actual or compensatory damages, P30,000.00 as exemplary or corrective damages, and P15,000.00 as attorney's fees.

After said judgment became final and executory, a writ of execution was issued by the Pasig RTC, by virtue of which, a parcel of land (with improvements) located in Bayombong, Nueva Vizcaya, with an area of 432 square meters, covered by TCT No. T-55314 registered in the name of Marietta dela Cruz Sta. Ines, was levied upon by Flaviano Balgos, Jr., then Provincial Sheriff of Nueva Vizcaya, to satisfy the damages awarded in the civil case. Said property was sold at a public auction on 25 August 1992 to Mary Josephine as the highest bidder. The sale was registered with the Register of Deeds of Nueva Vizcaya on 17 September 1992.

On 12 July 1993, a complaint[4] for annulment of said sale was filed before the RTC of Bayombong, Nueva Vizcaya, by Hinahon Sta. Ines together with Noel, Roel, and Jannette, all named Sta. Ines, husband and children of Marietta, respectively, against Mary Josephine and Sheriff Flaviano Balgos, Jr. on the ground that said house and lot sold during the public auction is their family residence, and is thus exempt from execution under Section 12(a), Rule 39 of the Rules of Court, and under Article 155 of the Family Code.

Mary Josephine moved to dismiss the complaint on the following grounds: 1) the Nueva Vizcaya RTC has no jurisdiction over the case; 2) the plaintiffs have no legal capacity to sue; and 3) the complaint does not state a cause of action.

Acting on the Motion to Dismiss, the Nueva Vizcaya RTC issued an Order on 10 November 1993 denying said motion. According to the court a quo:

After studying the law, rules and jurisprudence, the Court is convinced that the motion to dismiss has no legal basis.

On the claim that this court has no jurisdiction over the case, inasmuch as this case involves proceedings to execute the decision of the Pasig RTC, it must be noted that the petitioners are not parties to the Pasig case. They are third-party claimants who became such only after trial in the previous (the Pasig) case has been terminated and the judgment therein has become final and executory. They are not indispensable nor necessary parties in the Pasig case and they could not, therefore, even intervene in the said case.

Execution proceedings are entirely a different proceedings from the trial proper of a case inasmuch as trial proper is conducted by the Court while execution proceedings are conducted by the Sheriff after the judgment in a trial proper has become final and executory. The petitioners, therefore, could not, even if they wanted to, intervene in the trial proper because they are neither indispensable nor necessary parties and because, precisely, the trial was already over and the judgment has become final and executory.

But they could, as they have done, intervene in the execution stage because their rights have been violated by the action of the sheriff. Under Section 17 of Rule 39, of the Rules of Court, the petitioners could, as they have done, file an independent action to protect their rights. Under the Judiciary Reorganization Act and Section 2, paragraph a, of Rule 4, Rules of Court, this Court can take cognizance of the action. There is, therefore, no doubt that this court has jurisdiction over this case.

It must be mentioned that there are legal obstacles for the petitioners to seek remedy from the Pasig Court.

Firstly, they are not indispensable nor necessary parties to the Pasig case. Secondly, the judgment therein has become final and executory. Thirdly, under paragraph a, Section 2 of Rule 4 of the Rules of Court, cases involving real properties must be filed in the province where the property or any part thereof lies. The property levied upon is located in the province of Nueva Vizcaya. Fourthly, as the judgment in the Pasig case has become final and executory, the said Pasig court has already lost jurisdiction over the said case except in some instances and the exception does not apply to this case.

While it is, therefore, true that conflicts of jurisdiction should be avoided, nonetheless, there can be no conflict of jurisdiction in this case because there is no concurrent jurisdiction between the Pasig court and this court for reasons already set forth above.

On the allegation that the petitioners have no legal capacity to sue, the court believes that they have, in fact, that capacity to sue. Under Article 154 of the Family Code of the Philippines, the petitioner Hinahon Sta. Ines and the other petitioners are beneficiaries of the Family home. Any one or all of them can, therefore, legally question the execution, forced sale or attachment which is prohibited under Article 155 thereof. It should be noted that, as already pointed out, the right of the petitioners as beneficiaries of the family home has been violated when the said family home was levied upon on execution and sold in violation of the law.

As for lack of cause of action, the Court has already stated above that the right of the petitioners as beneficiaries of the family home has been transgressed. They, therefore, have a cause of action against the sheriff's act of unlawfully levying upon and selling the rights, interests, title and participation in the land in question and its improvement of Marietta dela Cruz-Sta. Ines.

Pertinently, it may be asked whether an undivided interest of the owner of the family home like Marietta Sta.

Ines can be levied upon on execution and this fact will not violate the prohibition on such levy found in the Family Code.

The court believes that this can not be done.

Article 154 of the Family Code expressly enumerates the beneficiaries of a family home. If a person other than any of those enumerated in Article 154 would be allowed to have an undivided interest in the family home, then he becomes a beneficiary of such property in violation of the said provision under the principle of *expressio unius est exclusio alterius*.

Moreover, Article 152 of the Family Code provides that "the family home, constituted jointly by the husband and the wife x x x, is the dwelling house where they and their family reside, and the land on which it is situated."

The family home as defined by the said article can not be split in such a way that part of it, albeit undivided, is owned by a non-beneficiary. To allow this would be to diminish the family home which can be used and enjoyed by those entitled thereto under the law. This is so because whoever buys the undivided portion belonging to one of the owners, as in this case, can demand an equal exercise of the right of co-ownership from the other beneficiaries thereof. To the extent that such demand can be made effective, the full enjoyment of the property by the beneficiaries thereof will be correspondingly diminished. The court believes that when the Family Code allows the constitution of a family home, it does so with the idea that the beneficiaries thereof can have untrammelled use and enjoyment thereof; hence, the express prohibition to levy on such property.

WHEREFORE, for lack of basis, the motion to dismiss is hereby DENIED. The respondent is hereby directed to file her answer within 15 days from receipt of this Order.[5]

On 01 December 1993, herein petitioners filed a Motion for Reconsideration, which was then granted by the Nueva Vizcaya RTC in an Order dated 28 January 1994. The trial court reasoned thus:

After restudying the jurisprudence involved in the motion for reconsideration impinging [sic] on the jurisdiction of this court in relation to the execution of a judgment rendered by another Regional Trial Court (in Pasig, Metro Manila), indeed, the only conclusion that can be honestly reached is that this court has no jurisdiction over the nature of the herein action.

As correctly posited by the defendant's counsel, it is the Pasig Regional Trial Court that should still exercise jurisdiction over execution of its judgments, "a power that carries with it the right to determine every question of fact and law which may be involved in the execution." (see *GSIS vs. Guines*, 219 SCRA 724; *Darwin vs. Takonaza*, 197 SCRA 442). In fine, plaintiffs should have challenged the action of the Sheriffs in the civil case wherein the judgment being executed was promulgated, and not in an independent action filed with a different or even the same court.

WHEREFORE, for this court's lack of jurisdiction to hear and decide this case, the instant action is hereby DISMISSED, with costs de officio.[6]

Herein respondents filed a Motion for Reconsideration of said Order of dismissal which was denied by the lower court in an Order dated 15 March 1994.

Aggrieved, respondents appealed said Order to the Court of Appeals raising the following errors: 1) the lower court erred in holding that it lacks jurisdiction for the question presented in this case should have been brought in the Pasig Court as a part of the proceedings therein and not as a separate case; and 2) the lower court erred in holding that plaintiffs (herein respondents) cannot be considered third-party claimants.

In their Appellee's Brief, herein petitioners assailed the jurisdiction of the appellate court to entertain the said appeal arguing that the issues raised were purely questions of law which the Supreme Court has exclusive

appellate jurisdiction.

On 29 March 1996, the Court of Appeals rendered a Decision reversing the Order of dismissal. According to the appellate court:

Section 17, Rule 39 of the Revised Rules of Court provides:

"Proceedings where property claimed by third person -If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and served the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. xxx xxx xxx" (Italics supplied)

To fall within the ambit of a third-party claimant within the contemplation of the foregoing, it is not required that one must claim title to the property levied upon, a claim to the right to the possession thereof being enough, provided that the grounds of such right are amply explained.

The plaintiffs-appellants in this case claim in their complaint that they have occupied the house and lot subject of the levy as a family residence since 1972 and that, under Articles 153 and 155 of the Family Code, the same is exempt from execution. Additionally, if indeed the house and lot subject of this suit are components of a family home, under Article 154 of the same Code, the plaintiffs are the beneficiaries thereof.

As such third-party claimants, plaintiffs-appellants may avail of the remedy known as "terceria" provided in Section 17 above quoted, by serving upon the sheriff and the judgment creditor their affidavit attesting to their right of possession of the property under the Family Code. Also, the plaintiffs-appellants, as third-party claimants, may invoke the supervisory power of the Pasig Court, as explained in *Ong vs. Tating, et al.*, 149 SCRA 265, and after a summary hearing, the Pasig Court may command that the house and lot be released from the mistaken levy and restored to the rightful possessors or owners. But, as held in *Ong vs. Tating, supra*, the Pasig Court is limited merely to the determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment. The Pasig Court cannot pass upon the question of title to or right to the possession of the property subject of the levy with any character of finality and this question has to be resolved in a "proper action" entirely separate and distinct from that in which the execution was issued, if instituted by a stranger to the latter suit (*Sy vs. Discaya*, 181 SCRA 378). Plaintiffs-appellants are not impleaded as parties in the case decided by the Pasig Court. While, as previously stated, plaintiffs-appellants may avail of the "terceria", or may apply for a summary hearing with the Pasig Court as contemplated in *Ong vs. Tating, supra*, or may file an independent proper action to assert their right of possession to the house and lot levied upon, such remedies are not cumulative and may be resorted to by them independent of or separately from and without need of availing of the others (*Sy vs. Discaya, supra*).

...

Given the foregoing premises, the Nueva Vizcaya Court was therefore in error in ousting itself of jurisdiction to try Civil Case No. 5853 on the submission that it is only the Pasig Court, which decided Civil Case No. 53555, that has general supervisory control over the execution of the judgment in said case, which carries with it, the right to determine every question of fact and law which may be involved in the execution process.

Coming now to the issue of whether this Court has jurisdiction over this appeal.

The defendant-appellee maintains that since the issue raised in this appeal is purely a question of law, which is, whether the Nueva Vizcaya Court erred in dismissing plaintiffs-appellants' complaint, the latter should have taken their case directly to the Supreme Court.

True it is, that it has been held in a number of cases, that there is a "question of law" when there is doubt or

difference of opinion as to what the law is on a certain state of facts and which does not call for an examination of the probative value of the evidence presented by the litigants and that there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts (Far East Marble [Phils.], Inc. vs. Court of Appeals, 225 SCRA 249 [1993]; Caiña vs. People, 213 SCRA 309 [1992]; Cheesman vs. Intermediate Appellate Court, 193 SCRA 93 [1991]). But a reading of defendant-appellee's Motion to Dismiss dated October 1, 1993 filed with the Nueva Vizcaya Court shows that she raised questions of fact in asserting that plaintiffs have no legal capacity to sue, claiming that Marietta Dela Cruz Sta-Ines is not a party plaintiff in Civil Case No. 5853 and that the other plaintiffs are not real parties in interest. The determination of whether plaintiffs-appellants are real parties in interest hinges on the factual issue of whether or not they are beneficiaries of a family home within the contemplation of Article 154 of the Family Code and this would require the reception of factual evidence as to whether said plaintiffs are really the husband and children of Marietta Sta. Ines and whether they actually reside in the house and lot subject of Civil Case No. 5853 as to qualify said properties to be considered a "family home" within the contemplation of Article 153 of the same Code. Moreover, defendant-appellee argues that the complaint is premature as there is no Sheriff's Final Deed of Sale yet. This, again is a factual issue. There is likewise the question of whether the house and lot exclusively belong to Marietta Dela Cruz Sta. Ines or whether they are conjugal properties, and if they are conjugal properties, whether they could be levied upon to satisfy the personal liability of the defendant Marietta Sta. Ines in Civil Case No. 53555 of the Pasig Court. Again, in the Order dated March 15, 1994 of the Nueva Vizcaya Court, it expressed doubts whether plaintiffs-appellants are really "third-party claimants in the legal sense of the word" because the house and lot levied upon in Civil Case No. 53555 exclusively belong to Marietta Dela Cruz Sta. Ines and the plaintiffs-appellants seem to have no right thereto. As to whether the latter have a right to the house and lot is a question that has to be resolved factually. The dispute or controversy in this case, therefore, would inevitably raise a question of fact, and accordingly, the appeal to this Court is proper.

But prescinding from the question of whether the issue raised herein is purely one of law, it seems odd that if the Nueva Vizcaya Court had ruled that it had jurisdiction over Civil Case No. 5853 and defendant-appellee would seek to forthwith assail assumption of jurisdiction. She could do so only by way of certiorari filed with this Court, and not with the Supreme Court, considering the prevailing principle upholding the so-called "hierarchy of courts". But since the Nueva Vizcaya Court dismissed the complaint on ground of lack of jurisdiction, defendant-appellee now vehemently argues that this Court has no jurisdiction to resolve the same issue which could have been raised by her before this same Court had the ruling of the Nueva Vizcaya Court been different.

IN VIEW OF THE FOREGOING, the Order of the Court a quo dated January 28, 1994, dismissing plaintiffs-appellants' complaint for lack of jurisdiction, and the Order of the same Court dated March 15, 1994, denying plaintiffs-appellants' motion for reconsideration, are both REVERSED AND SET ASIDE. The Court a quo is directed to proceed with the hearing of its Civil Case No. 5853 until its termination, and to thereafter decide the case accordingly, as the evidence may warrant.[7]

Petitioners' Motion for Reconsideration was subsequently denied by the Court of Appeals. Claiming that the appellate court committed serious and reversible errors of law in issuing its 29 March 1996 decision, petitioners filed before this Court a Petition for Review on Certiorari, raising the following assignment of errors[8]:

I.

The Court of Appeals committed serious error of law and grave abuse of discretion in ruling that the RTC of Nueva Vizcaya had jurisdiction over the respondent's petition.

II.

The Court of Appeals committed serious error of law and grave abuse of discretion in finding respondents as

proper third-party claimants.

III.

The Court of Appeals committed serious error of law and grave abuse of discretion in assuming jurisdiction of the appeal of respondents that involves only questions of law; and in reversing the RTC of Nueva Vizcaya.

Ruling of the Court

First, we shall endeavor to dispose of the issue of whether or not the appellate court has jurisdiction to entertain the appeal from the Order of dismissal.

Petitioners maintain that the question of whether or not the dismissal by the Nueva Vizcaya RTC of the complaint filed by respondents due to lack of jurisdiction, lack of capacity to sue, and failure to state a cause of action is a pure question of law which does not require evidence and should be resolved on the basis of the allegations in the complaint alone. Petitioners further argue that the case involves only two issues: 1) whether or not the Nueva Vizcaya RTC can annul and set aside an execution sale made by the sheriff pursuant to a writ of execution issued by the Pasig RTC; and 2) whether or not the beneficiaries of a family home can claim exemption from the execution under Art. 155 of the Family Code for wrongful acts committed by Marietta from 1977 up to 1986 before the effectivity of the Family Code on 03 August 1988. Petitioners conclude that the disposition of these two issues does not necessitate the reception of factual evidence, thus, are clearly questions of law.

We agree with petitioners that the appeal of respondents to the Court of Appeals raises only questions of law. It must be stressed at this point that the appeal of respondents to the appellate court stemmed from the Order of the Nueva Vizcaya RTC dated 28 January 1994 dismissing the complaint "for lack of jurisdiction to hear and decide the case." Whether or not such dismissal is correct is neither a question of fact nor of fact and law; it involves a pure question of law because what is to be resolved is whether, admitting the facts alleged in the complaint to be true, the trial court has jurisdiction over it in the light of the laws governing jurisdiction.[9]

There is a question of law when the issue does not call for an examination of the probative value of evidence presented, the truth or falsehood of facts being admitted and the doubt concerns the correct application of law and jurisprudence on the matter.[10] On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. When there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct is a question of law.[11] In cases of motions to dismiss on ground of lack of jurisdiction, the allegations in the complaint are deemed admitted.[12] Thus, the hypothetical admission in a motion to dismiss of the facts alleged in the complaint renders them beyond dispute and forecloses any issue of fact for purposes of the motion.[13] And the question of whether the conclusion drawn therefrom for purposes of applying the law on jurisdiction is accurate or correct is a question of law.[14]

Therefore, respondents' appeal having been improperly brought before the Court of Appeals, it should have been dismissed by the appellate court pursuant to Sec. 2, Rule 50 of the Rules of Court, which provides:

Sec. 2. Dismissal of improper appeal to the Court of Appeals. - An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by the said court. . . .

Nonetheless, in order to put to rest this case involving the execution of the house and lot in the name of Marietta dela Cruz Sta. Ines, the Court deems it proper to discuss the issue of whether or not herein respondents, husband and children of the owner of the levied property, may validly seek the annulment of the sale of said property.[15]

It is a basic principle of law that money judgments are enforceable only against property unquestionably

belonging to the judgment debtor, and any third person adversely affected by the mistaken levy of his property to answer for another man's debt may validly assail such levy through the remedies provided for by Rule 39 of the Rules of Court. Under said rule, a third person may avail himself of the remedies of (1) *terceria*[16] to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor; and (2) independent "separate action" to vindicate their claim of ownership and/or possession over the foreclosed property.[17] If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ.[18]

In the case at bar, herein respondents are strangers to the action where the writ of execution was issued. As pointed out by the Nueva Vizcaya RTC in its original Order denying the motion to dismiss, the husband and children of Marietta were not parties to the Pasig RTC case and are third-party claimants who became such only after trial in the previous case had been terminated and the judgment therein had become final and executory. Neither are they indispensable nor necessary parties in the Pasig RTC case, and they could not, therefore, intervene in said case. As strangers to the original case, respondents cannot be compelled to present their claim with the Pasig RTC which issued the writ of execution.[19] In choosing to institute a "separate action" before a competent court in the province where the levied property is located (Nueva Vizcaya RTC), respondents correctly exercised a remedy provided for in the Rules of Court in order that they may vindicate their alleged claim to the levied house and lot. It was, therefore, erroneous for the trial court to dismiss the complaint based on lack of jurisdiction.

Nevertheless, respondents' complaint for annulment of sale of the levied property must still be dismissed. In their petition before Nueva Vizcaya RTC, herein respondents aver that the property is exempt from execution under Section 12, Rule 39 of the 1988 Rules on Civil Procedure as said property is the judgment debtor's duly constituted family home under the Family Code. According to respondents, the house and lot was constituted jointly by Hinahon and Marietta as their family home from the time they occupied the same as a family residence in 1972 and that under Section 153 of the Family Code, there is no longer any need to constitute the said property as family home, whether judicially or extrajudicially, because it became such by operation of law. Furthermore, respondents assert that the money judgment against Marietta was rendered by the trial court in January 1989 long after the constitution of the said family home.

Such contentions are erroneous. Under Article 155 of the Family Code, the family home shall be exempt from execution, forced sale, or attachment except for, among other things, debts incurred prior to the constitution of the family home. In the case at bar, the house and lot of respondents was not constituted as a family home, whether judicially or extrajudicially, at the time Marietta incurred her debts. Under prevailing jurisprudence, it is deemed constituted as such only upon the effectivity of the Family Code on 03 August 1988, thus, the debts were incurred before the constitution of the family home. As stated in the case of *Modequillo v. Brevia*[20]:

. . . Under Article 162 of the Family Code, it is provided that "the provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable." It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code. Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code, are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.

Neither is it correct to say that the obligation sought to be satisfied by the levy of the property was incurred only upon the issuance of the judgment in the original case in January of 1989. As stated by herein petitioners, the

complaint against Marietta was instituted on 17 June 1986 to seek redress for damages suffered by them due to acts and omissions committed by Marietta as early as 1977 when she assumed management and supervision of their deceased mother's rice land. This means to say that Marietta's liability, which was the basis of the judgment, arose long before the levied property was constituted as a family home by operation of law in August 1988. Under the circumstances, it is clear that the liability incurred by Marietta falls squarely under one of the instances when a family home may be the subject of execution, forced sale, or attachment, as provided for by Article 155 of the Family Code, particularly, to answer for debts incurred prior to the constitution of the family home.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision of the Court of Appeals is REVERSED and SET ASIDE. Special Civil Action No. 5853 entitled, "Roel Sta. Ines, et al. v. Mary Josephine Gomez, et al.," filed before the Regional Trial Court of Bayombong, Nueva Vizcaya, is hereby DISMISSED. No Costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] CA-G.R. CV No. 45656, dated 29 March 1996, penned by Associate Justice Ricardo P. Galvez with Associate Justices Emeterio C. Cui and Antonio P. Solano, concurring.

[2] Special Civil Action No. 5853, dated 28 January 1994, penned by Judge Jose B. Rosales.

[3] Docketed as Civil Case No. 53555 before Pasig RTC, Branch 165.

[4] Docketed as Special Civil Action No. 5853.

[5] Penned by Judge Jose B. Rosales, RTC Records, pp. 63-65.

[6] *Id.*, p. 87.

[7] CA Rollo, pp. 88-93.

[8] Rollo, p. 25.

[9] *Victorias Milling Co., Inc. v. Intermediate Appellate Court*, G.R. No. 66880, 02 August 1991, 200 SCRA 01, 06-07.

[10] *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. No. 111324, 05 July 1996, 258 SCRA 186, citing *Vda. De Arroyo v. El Beaterio del Santissimo Rosario de Molo*, G.R. No. L-22005, 03 May 1968, 23 SCRA 525.

[11] *Far East Marble (Philippines), Inc. v. Court of Appeals*, G.R. No. 94093, 10 August 1993, 225 SCRA 249.

[12] *Supra*, note 9, citing *Time, Inc. v. Reyes*, G.R. No. L-28882, 31 May 1971, 39 SCRA 303.

[13] *Ibid.*

[14] *Ibid.*

[15] See *Tamayo v. Court of Appeals*, G.R. No. 147070, 17 February 2004, 423 SCRA 175.

[16] Remedy provided in Section 17, Rule 39 of the 1988 Rules of Civil Procedure (now Section 16 of Rule 39) by serving on the officer making the levy an affidavit of his title and a copy thereof upon the judgment creditor. The officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the

officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the sheriff within one hundred twenty (120) days from filing of the bond.

[17] *China Banking Corporation v. Ordinario*, G.R. No. 121943, 24 March 2003, 399 SCRA 430, 435, citing *Naguit v. Court of Appeals*, G.R. No. 137675, 05 December 2000, 347 SCRA 60 and *Sy v. Discaya*, G.R. No. 86301, 23 January 1990, 181 SCRA 378.

[18] *Id.*, p. 436.

[19] See *Sy v. Discaya*, *supra*, note 17.

[20] G.R. No. 86355, 31 May 1990, 185 SCRA 766, 771-772.

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