

FORT BONIFACIO DEVELOPMENT CORPORATION, PETITIONER, VS. YLLAS LENDING CORPORATION AND JOSE S. LAURAYA, IN HIS OFFICIAL CAPACITY AS PRESIDENT, RESPONDENTS.

G.R. No. 158997. October 06, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] of the Orders issued on 7 March 2003[2] and 3 July 2003[3] by Branch 59 of the Regional Trial Court of Makati City (trial court) in Civil Case No. 01-1452. The trial court's orders dismissed Fort Bonifacio Development Corporation's (FBDC) third party claim and denied FBDC's Motion to Intervene and Admit Complaint in Intervention.

The Facts

On 24 April 1998, FBDC executed a lease contract in favor of Tirreno, Inc. (Tirreno) over a unit at the Entertainment Center - Phase 1 of the Bonifacio Global City in Taguig, Metro Manila. The parties had the lease contract notarized on the day of its execution. Tirreno used the leased premises for Savoia Ristorante and La Strega Bar.

Two provisions in the lease contract are pertinent to the present case: Section 20, which is about the consequences in case of default of the lessee, and Section 22, which is about the lien on the properties of the lease. The pertinent portion of Section 20 reads:

Section 20. Default of the Lessee

20.1 The LESSEE shall be deemed to be in default within the meaning of this Contract in case:

(i) The LESSEE fails to fully pay on time any rental, utility and service charge or other financial obligation of the LESSEE under this Contract;

x x x

20.2 Without prejudice to any of the rights of the LESSOR under this Contract, in case of default of the LESSEE, the lessor shall have the right to:

(i) Terminate this Contract immediately upon written notice to the LESSEE, without need of any judicial action or declaration;

x x x

Section 22, on the other hand, reads:

Section 22. Lien on the Properties of the Lessee

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any, being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals, charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Tirreno began to default in its lease payments in 1999. By July 2000, Tirreno was already in arrears by P5,027,337.91. FBDC and Tirreno entered into a settlement agreement on 8 August 2000. Despite the execution of the settlement agreement, FBDC found need to send Tirreno a written notice of termination dated 19 September 2000 due to Tirreno's alleged failure to settle its outstanding obligations. On 29 September 2000, FBDC entered and occupied the leased premises. FBDC also appropriated the equipment and properties left by Tirreno pursuant to Section 22 of their Contract of Lease as partial payment for Tirreno's outstanding obligations. Tirreno filed an action for forcible entry against FBDC before the Municipal Trial Court of Taguig. Tirreno also filed a complaint for specific performance with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction against FBDC before the Regional Trial Court (RTC) of Pasig City. The RTC of Pasig City dismissed Tirreno's complaint for forum-shopping.

On 4 March 2002, Yllas Lending Corporation and Jose S. Lauraya, in his official capacity as President, (respondents) caused the sheriff of Branch 59 of the trial court to serve an alias writ of seizure against FBDC. On the same day, FBDC served on the sheriff an affidavit of title and third party claim. FBDC found out that on 27 September 2001, respondents filed a complaint for Foreclosure of Chattel Mortgage with Replevin, docketed as Civil Case No. 01-1452, against Tirreno, Eloisa Poblete Todaro (Eloisa), and Antonio D. Todaro (Antonio), in their personal and individual capacities, and in Eloisa's official capacity as President. In their complaint, respondents alleged that they lent a total of P1.5 million to Tirreno, Eloisa, and Antonio. On 9 November 2000, Tirreno, Eloisa and Antonio executed a Deed of Chattel Mortgage in favor of respondents as security for the loan. The following properties are covered by the Chattel Mortgage:

- Furniture, Fixtures and Equipment of Savoia Ristorante and La Strega Bar, a restaurant owned and managed by [Tirreno], inclusive of the leasehold right of [Tirreno] over its rented building where [the] same is presently located.
- Goodwill over the aforesaid restaurant, including its business name, business sign, logo, and any and all interest therein.
- Eighteen (18) items of paintings made by Florentine Master, Gino Tili, which are fixtures in the above-named restaurant.

The details and descriptions of the above items are specified in Annex "A" which is hereto attached and forms as an integral part of this Chattel Mortgage instrument.[4]

In the Deed of Chattel Mortgage, Tirreno, Eloisa, and Antonio made the following warranties to respondents:

- **WARRANTIES:** The MORTGAGOR hereby declares and warrants that:
- The MORTGAGOR is the absolute owner of the above named properties subject of this mortgage, free from all liens and encumbrances.
- There exist no transaction or documents affecting the same previously presented for, and/or pending transaction.[5]

Despite FBDC's service upon him of an affidavit of title and third party claim, the sheriff proceeded with the

seizure of certain items from FBDC's premises. The sheriff's partial return indicated the seizure of the following items from FBDC:

- FIXTURES

(2) - Smaller Murano Chandeliers

(1) - Main Murano Chandelier

- EQUIPMENT

(13) - Uni-Air Split Type 2HP Air Cond.

(2) - Uni-Air Split Type 1HP Air Cond.

(3) - Uni-Air Window Type 2HP Air Cond.

(56) - Chairs

(1) - Table

(2) - boxes - Kitchen equipments [sic][6]

The sheriff delivered the seized properties to respondents. FBDC questioned the propriety of the seizure and delivery of the properties to respondents without an indemnity bond before the trial court. FBDC argued that when respondents and Tirreno entered into the chattel mortgage agreement on 9 November 2000, Tirreno no longer owned the mortgaged properties as FBDC already enforced its lien on 29 September 2000.

In ruling on FBDC's motion for leave to intervene and to admit complaint in intervention, the trial court stated the facts as follows:

Before this Court are two pending incidents, to wit: 1) [FBDC's] Third-Party Claim over the properties of [Tirreno] which were seized and delivered by the sheriff of this Court to [respondents]; and 2) FBDC's Motion to Intervene and to Admit Complaint in Intervention.

Third party claimant, FBDC, anchors its claim over the subject properties on Sections 20.2(i) and 22 of the Contract of Lease executed by [FBDC] with Tirreno. Pursuant to said Contract of Lease, FBDC took possession of the leased premises and proceeded to sell to third parties the properties found therein and appropriated the proceeds thereof to pay the unpaid lease rentals of [Tirreno].

FBDC, likewise filed a Motion to Admit its Complaint-in-Intervention.

In Opposition to the third-party claim and the motion to intervene, [respondents] posit that the basis of [FBDC's] third party claim being anchored on the aforesaid Contract [of] Lease is baseless. [Respondents] contend that the stipulation of the contract of lease partakes of a pledge which is void under Article 2088 of the Civil Code for being pactum commissorium.

x x x

By reason of the failure of [Tirreno] to pay its lease rental and fees due in the amount of P5,027,337.91, after having notified [Tirreno] of the termination of the lease, x x x FBDC took possession of [Tirreno's] properties found in the premises and sold those which were not of use to it. Meanwhile, [respondents], as mortgagee of said properties, filed an action for foreclosure of the chattel mortgage with replevin and caused the seizure of the same properties which [FBDC] took and appropriated in payment of [Tirreno's] unpaid lease rentals.[7]

The Ruling of the Trial Court

In its order dated 7 March 2003, the trial court stated that the present case raises the questions of who has a better right over the properties of Tirreno and whether FBDC has a right to intervene in respondents' complaint for foreclosure of chattel mortgage.

In deciding against FBDC, the trial court declared that Section 22 of the lease contract between FBDC and

Tirreno is void under Article 2088 of the Civil Code.[8] The trial court stated that Section 22 of the lease contract pledges the properties found in the leased premises as security for the payment of the unpaid rentals. Moreover, Section 22 provides for the automatic appropriation of the properties owned by Tirreno in the event of its default in the payment of monthly rentals to FBDC. Since Section 22 is void, it cannot vest title of ownership over the seized properties. Therefore, FBDC cannot assert that its right is superior to respondents, who are the mortgagees of the disputed properties.

The trial court quoted from *Bayer Phils. v. Agana*[9] to justify its ruling that FBDC should have filed a separate complaint against respondents instead of filing a motion to intervene. The trial court quoted from Bayer as follows:

In other words, construing Section 17 of Rule 39 of the Revised Rules of Court (now Section 16 of the 1997 Rules on Civil Procedure), the rights of third-party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented but in a separate and independent action instituted by the claimants.[10]

The dispositive portion of the trial court's decision reads:

WHEREFORE, premises considered, [FBDC's] Third Party Claim is hereby DISMISSED. Likewise, the Motion to Intervene and Admit Complaint in Intervention is DENIED.[11]

FBDC filed a motion for reconsideration on 9 May 2003. The trial court denied FBDC's motion for reconsideration in an order dated 3 July 2003. FBDC filed the present petition before this Court to review pure questions of law.

The Issues

FBDC alleges that the trial court erred in the following:

- Dismissing FBDC's third party claim upon the trial court's erroneous interpretation that FBDC has no right of ownership over the subject properties because Section 22 of the contract of lease is void for being a pledge and a pactum comissorium;
- Denying FBDC intervention on the ground that its proper remedy as third party claimant over the subject properties is to file a separate action; and
- Depriving FBDC of its properties without due process of law when the trial court erroneously dismissed FBDC's third party claim, denied FBDC's intervention, and did not require the posting of an indemnity bond for FBDC's protection.[12]

The Ruling of the Court

The petition has merit.

Taking of Lessee's Properties without Judicial Intervention

We reproduce Section 22 of the Lease Contract below for easy reference:

Section 22. Lien on the Properties of the Lessee

Upon the termination of this Contract or the expiration of the Lease Period without the rentals, charges and/or damages, if any, being fully paid or settled, the LESSOR shall have the right to retain possession of the properties of the LESSEE used or situated in the Leased Premises and the LESSEE hereby authorizes the LESSOR to offset the prevailing value thereof as appraised by the LESSOR against any unpaid rentals,

charges and/or damages. If the LESSOR does not want to use said properties, it may instead sell the same to third parties and apply the proceeds thereof against any unpaid rentals, charges and/or damages.

Respondents, as well as the trial court, contend that Section 22 constitutes a pactum commissorium, a void stipulation in a pledge contract. FBDC, on the other hand, states that Section 22 is merely a dacion en pago.

Articles 2085 and 2093 of the Civil Code enumerate the requisites essential to a contract of pledge: (1) the pledge is constituted to secure the fulfillment of a principal obligation; (2) the pledgor is the absolute owner of the thing pledged; (3) the persons constituting the pledge have the free disposal of their property or have legal authorization for the purpose; and (4) the thing pledged is placed in the possession of the creditor, or of a third person by common agreement. Article 2088 of the Civil Code prohibits the creditor from appropriating or disposing the things pledged, and any contrary stipulation is void.

On the other hand, Article 1245 of the Civil Code defines dacion en pago, or dation in payment, as the alienation of property to the creditor in satisfaction of a debt in money. Dacion en pago is governed by the law on sales. *Philippine National Bank v. Pineda*[13] held that dation in payment requires delivery and transmission of ownership of a thing owned by the debtor to the creditor as an accepted equivalent of the performance of the obligation. There is no dation in payment when there is no transfer of ownership in the creditor's favor, as when the possession of the thing is merely given to the creditor by way of security.

Section 22, as worded, gives FBDC a means to collect payment from Tirreno in case of termination of the lease contract or the expiration of the lease period and there are unpaid rentals, charges, or damages. The existence of a contract of pledge, however, does not arise just because FBDC has means of collecting past due rent from Tirreno other than direct payment. The trial court concluded that Section 22 constitutes a pledge because of the presence of the first three requisites of a pledge: Tirreno's properties in the leased premises secure Tirreno's lease payments; Tirreno is the absolute owner of the said properties; and the persons representing Tirreno have legal authority to constitute the pledge. However, the fourth requisite, that the thing pledged is placed in the possession of the creditor, is absent. There is non-compliance with the fourth requisite even if Tirreno's personal properties are found in FBDC's real property. Tirreno's personal properties are in FBDC's real property because of the Contract of Lease, which gives Tirreno possession of the personal properties. Since Section 22 is not a contract of pledge, there is no pactum commissorium.

FBDC admits that it took Tirreno's properties from the leased premises without judicial intervention after terminating the Contract of Lease in accordance with Section 20.2. FBDC further justifies its action by stating that Section 22 is a forfeiture clause in the Contract of Lease and that Section 22 gives FBDC a remedy against Tirreno's failure to comply with its obligations. FBDC claims that Section 22 authorizes FBDC to take whatever properties that Tirreno left to pay off Tirreno's obligations.

We agree with FBDC.

A lease contract may be terminated without judicial intervention. *Consing v. Jamandre* upheld the validity of a contractually-stipulated termination clause:

This stipulation is in the nature of a resolutory condition, for upon the exercise by the [lessor] of his right to take possession of the leased property, the contract is deemed terminated. This kind of contractual stipulation is not illegal, there being nothing in the law proscribing such kind of agreement.

X X X

Judicial permission to cancel the agreement was not, therefore necessary because of the express stipulation in the contract of [lease] that the [lessor], in case of failure of the [lessee] to comply with the terms and conditions

thereof, can take-over the possession of the leased premises, thereby cancelling the contract of sub-lease. Resort to judicial action is necessary only in the absence of a special provision granting the power of cancellation.[14]

A lease contract may contain a forfeiture clause. *Country Bankers Insurance Corp. v. Court of Appeals* upheld the validity of a forfeiture clause as follows:

A provision which calls for the forfeiture of the remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into. A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[15]

In *Country Bankers*, we allowed the forfeiture of the lessee's advance deposit of lease payment. Such a deposit may also be construed as a guarantee of payment, and thus answerable for any unpaid rent or charges still outstanding at any termination of the lease.

In the same manner, we allow FBDC's forfeiture of Tirreno's properties in the leased premises. By agreement between FBDC and Tirreno, the properties are answerable for any unpaid rent or charges at any termination of the lease. Such agreement is not contrary to law, morals, good customs, or public policy. Forfeiture of the properties is the only security that FBDC may apply in case of Tirreno's default in its obligations.

Intervention versus Separate Action

Respondents posit that the right to intervene, although permissible, is not an absolute right. Respondents agree with the trial court's ruling that FBDC's proper remedy is not intervention but the filing of a separate action. Moreover, respondents allege that FBDC was accorded by the trial court of the opportunity to defend its claim of ownership in court through pleadings and hearings set for the purpose. FBDC, on the other hand, insists that a third party claimant may vindicate his rights over properties taken in an action for replevin by intervening in the replevin action itself.

We agree with FBDC.

Both the trial court and respondents relied on our ruling in *Bayer Phils. v. Agana*[16] to justify their opposition to FBDC's intervention and to insist on FBDC's filing of a separate action. In *Bayer*, we declared that the rights of third party claimants over certain properties levied upon by the sheriff to satisfy the judgment may not be taken up in the case where such claims are presented, but in a separate and independent action instituted by the claimants. However, both respondents and the trial court overlooked the circumstances behind the ruling in *Bayer*, which makes the *Bayer* ruling inapplicable to the present case. The third party in *Bayer* filed his claim during execution; in the present case, FBDC filed for intervention during the trial.

The timing of the filing of the third party claim is important because the timing determines the remedies that a third party is allowed to file. A third party claimant under Section 16 of Rule 39 (Execution, Satisfaction and Effect of Judgments)[17] of the 1997 Rules of Civil Procedure may vindicate his claim to the property in a separate action, because intervention is no longer allowed as judgment has already been rendered. A third party claimant under Section 14 of Rule 57 (Preliminary Attachment)[18] of the 1997 Rules of Civil Procedure, on the other hand, may vindicate his claim to the property by intervention because he has a legal interest in the matter in litigation.[19]

We allow FBDC's intervention in the present case because FBDC satisfied the requirements of Section 1, Rule 19 (Intervention) of the 1997 Rules of Civil Procedure, which reads as follows:

Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Although intervention is not mandatory, nothing in the Rules proscribes intervention. The trial court's objection against FBDC's intervention has been set aside by our ruling that Section 22 of the lease contract is not pactum commissorium.

Indeed, contrary to respondents' contentions, we ruled in *BA Finance Corporation v. Court of Appeals* that where the mortgagee's right to the possession of the specific property is evident, the action need only be maintained against the possessor of the property. However, where the mortgagee's right to possession is put to great doubt, as when a contending party might contest the legal bases for mortgagee's cause of action or an adverse and independent claim of ownership or right of possession is raised by the contending party, it could become essential to have other persons involved and accordingly impleaded for a complete determination and resolution of the controversy. Thus:

A chattel mortgagee, unlike a pledgee, need not be in, nor entitled to, the possession of the property, unless and until the mortgagor defaults and the mortgagee thereupon seeks to foreclose thereon. Since the mortgagee's right of possession is conditioned upon the actual default which itself may be controverted, the inclusion of other parties, like the debtor or the mortgagor himself, may be required in order to allow a full and conclusive determination of the case. When the mortgagee seeks a replevin in order to effect the eventual foreclosure of the mortgage, it is not only the existence of, but also the mortgagor's default on, the chattel mortgage that, among other things, can properly uphold the right to replevy the property. The burden to establish a valid justification for that action lies with the plaintiff [-mortgagee]. An adverse possessor, who is not the mortgagor, cannot just be deprived of his possession, let alone be bound by the terms of the chattel mortgage contract, simply because the mortgagee brings up an action for replevin.[20] (Emphasis added)

FBDC exercised its lien to Tirreno's properties even before respondents and Tirreno executed their Deed of Chattel Mortgage. FBDC is adversely affected by the disposition of the properties seized by the sheriff. Moreover, FBDC's intervention in the present case will result in a complete adjudication of the issues brought about by Tirreno's creation of multiple liens on the same properties and subsequent default in its obligations.

Sheriff's Indemnity Bond

FBDC laments the failure of the trial court to require respondents to file an indemnity bond for FBDC's protection. The trial court, on the other hand, did not mention the indemnity bond in its Orders dated 7 March 2003 and 3 July 2003.

Pursuant to Section 14 of Rule 57, the sheriff is not obligated to turn over to respondents the properties subject of this case in view of respondents' failure to file a bond. The bond in Section 14 of Rule 57 (proceedings where property is claimed by third person) is different from the bond in Section 3 of the same rule (affidavit and bond). Under Section 14 of Rule 57, the purpose of the bond is to indemnify the sheriff against any claim by the intervenor to the property seized or for damages arising from such seizure, which the sheriff was making and for which the sheriff was directly responsible to the third party. Section 3, Rule 57, on the other hand, refers to the attachment bond to assure the return of defendant's personal property or the payment of damages to the defendant

if the plaintiff's action to recover possession of the same property fails, in order to protect the plaintiff's right of possession of said property, or prevent the defendant from destroying the same during the pendency of the suit.

Because of the absence of the indemnity bond in the present case, FBDC may also hold the sheriff for damages for the taking or keeping of the properties seized from FBDC.

WHEREFORE, we GRANT the petition. We SET ASIDE the Orders dated 7 March 2003 and 3 July 2003 of Branch 59 of the Regional Trial Court of Makati City in Civil Case No. 01-1452 dismissing Fort Bonifacio Development Corporation's Third Party Claim and denying Fort Bonifacio Development Corporation's Motion to Intervene and Admit Complaint in Intervention. We REINSTATE Fort Bonifacio Development Corporation's Third Party Claim and GRANT its Motion to Intervene and Admit Complaint in Intervention. Fort Bonifacio Development Corporation may hold the Sheriff liable for the seizure and delivery of the properties subject of this case because of the lack of an indemnity bond.

SO ORDERED.

Azcuna, Reyes,[*] and Leonardo-De Castro, JJ., concur.

Puno, C.J., (Chairperson), no part.

* As replacement of Justice Renato C. Corona who is on official leave per Special Order No. 520.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 49-52. Penned by Judge Winlove M. Dumayas.

[3] Id. at 53.

[4] Id. at 100-101.

[5] Id. at 101.

[6] Id. at 121.

[7] Id. at 49-50.

[8] Article 2088 provides that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void."

[9] 159 Phil. 955 (1975).

[10] Rollo, p. 52.

[11] Id.

[12] Id. at 19.

[13] 274 Phil. 274 (1991).

[14] 159-A Phil. 291, 298 (1975).

[15] G.R. No. 85161, 9 September 1991, 201 SCRA 458, 464-465.

[16] Supra note 9.

[17] Proceedings where property claimed by third person. — If the property levied on is claimed by any person

other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[18] Proceedings where property claimed by third person. — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action.

When the writ of attachment is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff is sued for damages as a result of the attachment, he shall be represented by the Solicitor General, and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of the funds appropriated for the purpose.

[19] Yllas Lending Corporation filed a complaint for Foreclosure of Chattel Mortgage with Replevin. However, Yllas Lending Corporation did not allege that it is the owner of the properties being claimed, which is a requirement in the issuance of a writ of replevin. Yllas Lending Corporation merely stated that it is Tirreno's chattel mortgagee.

[20] G.R. No. 102998, 5 July 1996, 258 SCRA 102, 113-114.

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