



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“G.R. No. 230804 – CHERRY JOY S. BIGTAS, petitioner, versus STERLING BANK OF ASIA, respondent.

This is a petition for review on *certiorari*¹ (Petition) filed under Rule 45 of the 1997 Rules of Court (1997 Rules) against the Orders dated February 1, 2017² (first assailed Order) and March 28, 2017³ (second assailed Order) rendered by the Regional Trial Court of Makati City, Branch 62 (RTC) in Civil Case No. 13-1484 entitled “*Sterling Bank of Asia v. Spouses John Bigtas and Jacqueline Ang-Bigtas, doing business under the name and style ‘Jonjaclyn Marketing’ and John Doe.*”

The first and second assailed Orders denied the Motion to Set Aside Notice of Sheriff’s Sale with Supplemental Third-Party Claim and Urgent Motion to Quash filed by petitioner Cherry Joy S. Bigtas (Cherry) in said case.

The Facts

Spouses John and Jacqueline Bigtas (Spouses Bigtas) were the previous registered owners of a parcel of land located at Block 2, Lot 25, Philips North Point Park, San Bartolome, Novaliches, Quezon City (subject property).⁴

On December 20, 2013, respondent Sterling Bank of Asia (SBA) filed with the RTC a Complaint for Sum of Money, Attorney’s

- over – eleven (11) pages ...

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¹ *Rollo*, pp. 7-20.

² *Id.* at 21-25. Penned by Judge Selma Palacio Alaras.

³ *Id.* at 26.

⁴ *Id.* at 103.

Fees, Liquidated Damages, and Costs of Suit with Prayer for the Issuance of a Writ of Preliminary Attachment (Complaint) against Spouses Bigtas.⁵

The RTC granted SBA's application for issuance of a writ of preliminary attachment. Thus, on January 9, 2014, a Writ of Attachment was issued, directing Sheriff Rey B. Magsajo (Sheriff Magsajo) to attach real and personal properties owned by Spouses Bigtas.⁶

On January 16, 2014, Sheriff Magsajo went to the subject property to serve summons. In his Sheriff's Report, Sheriff Magsajo explained that no one was at the subject property to receive said summons, thus:

"x x x The undersigned and [the representative of SBA] tried to serve said court processes at the [subject property] but to no avail for the reason that per inquiry made at their neighborhood, occupants of said townhouse unit visited their unit at least once a month only and just remained padlocked most of the time."⁷
(Emphasis omitted)

Subsequently, a Notice of Levy on Attachment (Notice of Levy) was registered and annotated on Spouses Bigtas' Transfer Certificate of Title (TCT) No. N-199316 on January 17, 2014.⁸

On February 6, 2014, Cherry filed a Third-Party Claim in Civil Case No. 13-1484, alleging that a Deed of Conditional Sale had been executed by Spouses Bigtas in her favor. Notably, TCT No. N-199316 did not bear any annotation pertaining to the Deed of Conditional Sale.⁹

Curiously, however, a Deed of Absolute Sale dated December 23, 2013 between Spouses Bigtas and Cherry concerning the subject property was subsequently registered on February 24, 2014, nearly a month after the annotation of the Notice of Levy on Spouses Bigtas' TCT No. N-199316.¹⁰ On the basis of this sale, Spouses Bigtas' TCT No. N-199316 was cancelled and replaced by TCT No. 004-2014003765 issued in the name of Cherry. Nevertheless, the annotation of the Notice of Levy was carried over to Cherry's TCT.¹¹

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⁵ Id.

⁶ Id. at 104.

⁷ Id. at 104, 115.

⁸ Id. at 104.

⁹ Id. at 104-105.

¹⁰ Id. at 105.

¹¹ See id. at 106.

On September 8, 2015, the RTC issued a Decision¹² (September 2015 Decision) in favor of SBA. A copy of said Decision was served upon Spouses Bigtas at the subject property. However, based on a Certification issued by the Novaliches Post Office on October 27, 2015, said copy was returned to sender as it was unclaimed.¹³

Upon Motion for Execution filed by SBA, the RTC issued a Writ of Execution (WOE) to enforce the September 2015 Decision. Pursuant to the WOE, a Notice of Sheriff's Sale was issued on January 3, 2017, and a public auction for the sale of the subject property was scheduled on February 2, 2017.¹⁴

On January 24, 2017, Cherry filed in Civil Case No. 13-1484 a Motion to Set Aside Notice of Sheriff's Sale with Supplemental Third-Party Claim insisting that Spouses Bigtas no longer have any rights, title, interest, shares, claims or participation in the subject property. Cherry added that the subject property serves as her family home which makes it exempt from execution.¹⁵

At the hearing set for the aforesaid motion, Cherry was not allowed to present evidence since she failed to file the required judicial affidavit at least five days before the scheduled hearing.¹⁶

Subsequently, SBA filed its Opposition (To Movant's "Motion to Set Aside Notice of Sheriff's Sale").¹⁷

On January 30, 2017, Cherry again filed in Civil Case No. 13-1484 an Urgent Motion to Quash reiterating that the subject property is her family home. Cherry further claimed that she was not notified of the September 2015 Decision and SBA's subsequent Motion for

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¹² Id. at 147-151. Penned by Judge Selma Palacio Alaras.

¹³ Id. at 105.

¹⁴ Id.

¹⁵ See id. at 9.

¹⁶ Id. at 9, 106. Section 2 of the Judicial Affidavit Rule states in part:

SECTION 2. *Submission of Judicial Affidavits and Exhibits in Lieu of Direct Testimonies.* – (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

- (1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
- (2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

x x x x

¹⁷ Id. at 106.

Execution.¹⁸ Thus, she prayed that her motion be heard on February 1, 2017 since the public auction was scheduled the following day. Attached to the Urgent Motion to Quash was a Manifestation with Judicial Affidavit which Cherry requested to be considered as her direct examination.¹⁹

During the hearing, the RTC did not allow Cherry to present evidence since she failed to set a hearing for the Manifestation to which her Judicial Affidavit had been attached, effectively violating anew the five (5)-day requirement under the Judicial Affidavit Rule.²⁰ In turn, the public auction proceeded as scheduled.

Subsequently, the RTC issued the first assailed Order, the dispositive portion of which reads:

WHEREFORE, the Motion to Set Aside Notice of Sheriff's Sale with Supplemental Third[-]Party Claim dated January 18, 2017 and Urgent Motion to Quash filed by Movant Cherry S. Joy Bigtas are both **DENIED** for lack of merit.

SO ORDERED.²¹

The RTC held that as a third party, Cherry may only challenge the levy upon the subject property by resorting to the remedies detailed in Section 16, Rule 39 of the 1997 Rules. These are either *terceria*, to determine whether the sheriff has rightly or wrongly taken hold of property not belonging to the judgment debtor, or an independent action, to vindicate a claim of ownership and/or possession over the levied property.²²

In this regard, the RTC ruled that Cherry's motions cannot be collectively treated as a proper resort to the remedy of *terceria*. The RTC added that even if technicalities were to be brushed aside, Cherry's motions would still fail on the merits since the rule on exemption from levy which she invokes only applies to the judgment obligor's family home.²³

Assuming further that such exemption may extend to family homes not constituted by the judgment obligor, Cherry's motions still fail considering that the subject property had been levied upon as early as January 17, 2014, as shown in Entry No. 20140017 annotated

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¹⁸ Id. at 9.

¹⁹ Id.

²⁰ See id. at 9, 106-109.

²¹ Id. at 25.

²² Id. at 22.

²³ See id. at 22-23.

on Spouses Bigtas' TCT No. N-199316. While the purported Deed of Absolute Sale between Spouses Bigtas and Cherry was executed on December 13, 2013, this sale was registered only on February 24, 2014, long after the Notice of Levy was issued and annotated on TCT No. N-199316.²⁴ Thus, Cherry is bound by the September 2015 Decision since she stands as a transferee pending litigation.

In any event, the RTC held that Cherry is not without remedy, since she may vindicate her claim by redeeming the subject property in accordance with Section 27, Rule 39 of the 1997 Rules.²⁵

The RTC denied Cherry's subsequent motion for reconsideration through the second assailed Order.²⁶

Cherry received the second assailed Order on April 6, 2017. She later filed a Motion for Extension before the Court on April 19, 2017. In said motion, Cherry prayed for an additional period of thirty (30) days from April 21, 2017, or until May 21, 2017 to file her petition for review.

This Petition was filed on May 19, 2017.

Without necessarily giving due course to the Petition, the Court issued a Resolution dated October 9, 2017 directing SBA to file its comment thereto.²⁷ In compliance with said Resolution, SBA filed its Comment,²⁸ to which Cherry filed her Reply.²⁹

Subsequently, Cherry filed an Application for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction³⁰ informing the Court that the subject property had been sold at the scheduled public auction. Cherry thus prayed for the issuance of injunctive relief to prohibit SBA or any person acting on its behalf from committing acts which would dispossess her of the subject property.³¹

In this Petition, Cherry argues that the WOE was issued in violation of Section 1, Rule 39 of the 1997 Rules which requires the

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²⁴ Id. at 23.

²⁵ Id. at 24.

²⁶ Id. at 26.

²⁷ Id. at 102.

²⁸ Id. at 103-125.

²⁹ Id. at 180-184.

³⁰ Id. at 186-193.

³¹ Id. at 189.

party filing a motion for execution to notify the adverse parties of such fact. Cherry claims that since her property was made subject of the WOE, she stands as an adverse party who should have been notified of SBA's Motion for Execution.³²

Further, Cherry maintains that the subject property is her family home which is exempt from execution under Article 153 of the Family Code.³³ She submits that this exemption applies whether the family home is owned by a judgment obligor or a third party who is a complete stranger to the proceedings where the judgment subject of execution had been rendered. Consequently, Cherry asserts that the RTC should have received evidence relating to her claim of exemption and made a factual determination as to the nature of the subject property instead of denying her motions based on mere technicalities.³⁴

For its part, SBA argues that the Petition should be dismissed outright due to several procedural defects. Foremost, SBA argues that Cherry's resort to a petition for review to appeal the first and second assailed Orders is improper since she is not a party in Civil Case No. 13-1484.³⁵ According to SBA, Cherry should have filed an independent action to assert her claim.³⁶

Assuming *arguendo* that resort to a petition for review is proper, Cherry violated the rule on hierarchy of courts by filing the present Petition directly with the Court.³⁷ Worse, the Petition raises questions of fact which cannot be reviewed by the Court in a Rule 45 petition.³⁸

On the substantive issues, SBA argues that Cherry's motions were not denied by the RTC based on mere technicalities since the RTC "painstakingly considered and focused on the material and relevant allegations of both parties," and that the first and second assailed Orders denied Cherry's motions due to lack of factual and legal basis.³⁹

In addition, SBA claims that the WOE was properly issued and thus, should not be quashed because Cherry failed to prove that the

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³² Id. at 14.

³³ Erroneously referenced as "Civil Code" in the Petition, see *rollo*, p. 11.

³⁴ *Rollo*, pp. 12-13.

³⁵ Id. at 108-109.

³⁶ Id. at 109.

³⁷ Id. at 112.

³⁸ Id. at 110-111.

³⁹ Id. at 122.

subject property is in fact her family home. In any case, the RTC correctly ruled that the exemption for execution applies only to family homes constituted by the judgment obligor, and not those constituted by third parties who are strangers to the case where the judgment is rendered.⁴⁰

Finally, SBA asserts that a duly registered levy on attachment takes precedence over a prior unregistered sale. Here, the Notice of Levy was issued and annotated before the alleged sale to Cherry was registered with the Register of Deeds. In fact, the Notice of Levy was carried over to Cherry's TCT No. 004-2014003765.⁴¹

The Issues

The issues presented for the Court's resolution are:

1. Whether Cherry's direct resort to the Court via the present Petition is proper; and
2. Whether the RTC erred in upholding the validity of the WOE and the subsequent Notice of Levy on the subject property.

The Court's Ruling

The Petition is denied.

The Petition stems from the denial of Cherry's Motion to Set Aside Notice of Sheriff's Sale with Supplemental Third-Party Claim and Urgent Motion to Quash filed in Civil Case No. 13-1484.

As a basic premise, it is well to recall that at the time Cherry asserted her claim of ownership over the subject property in Civil Case No. 13-1484, third-party claims were governed by Section 16, Rule 39 of the 1997 Rules. Thus:

SEC. 16. 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

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⁴⁰ See *id.* at 117-119.

⁴¹ *Id.* at 120.

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 a 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. (Emphasis supplied)

Under Section 16, Rule 39 of the 1997 Rules, the third-party claimant may assert his or her claim of ownership and/or possession over the property in question through two distinct remedies.

First, the third-party claimant may resort to the remedy of *terceria* by making “an affidavit of his [or her] title thereto or right to the possession thereof” and serving such affidavit upon the sheriff making the levy, and a copy thereof to the judgment obligee. Alternatively, the third-party claimant may file a separate action to vindicate his or her right of ownership and/or possession over the property so levied.

Should the third-party claimant’s opposition against the levy be defeated, he or she may seek further redress by either: (i) filing an action for damages against the sheriff within 120 days from posting of the judgment obligee’s bond (in cases where such bond is filed); or (ii) filing a separate action to vindicate his or her right of ownership and/or possession (assuming that no such separate action is already pending).

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In view of these specific remedies, neither an appeal nor a petition for *certiorari* serves as a proper remedy from the denial of a third-party claim.⁴² The Court's ruling in *Solidum v. Court of Appeals*⁴³ is instructive:

We have held that neither an appeal nor a petition for *certiorari* is the proper remedy from the denial of a third-party claim. In the case of *Northern Motors, Inc. v. Coquia*, the petitioner filed, among others, a third-party claim which was denied by the respondent judge in the disputed resolution. Northern Motors, Inc. thereafter filed a petition for *certiorari* to nullify the resolution and order of the respondent judge. In resolving whether the respondent judge acted with grave abuse of discretion in denying petitioner's third-party claim, the Court held:

“Pursuant to [Section 17,⁴⁴ Rule 39 of the Revised Rules of Court], a third-party claimant has two remedies, such as, an action for damages against the sheriff to be brought within 120 days from the filing of the bond, and a separate and independent action to vindicate his claim to the property. In the case at bar, petitioner's and intervenor's remedy against the bond proved to be unavailing because of the disputed order of the respondent Judge cancelling the indemnity bond. Such an order as well as the order denying a motion to reconsider the same in effect discarded or quashed the third-party claims. What then would the remedy be of the third-party claimants?

In the recent case of *Serra vs. Rodriguez*, x x x this Court (First Division), thru Mr. Justice Makasiar, ruled:

From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition for *certiorari* is the proper remedy. The remedy of petitioner would be to file a separate and independent action to determine the ownership of the attached property or to file a complaint for damages chargeable against the bond filed by the judgment creditor in favor of the provincial sheriff.

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⁴² *Solidum v. Court of Appeals*, G.R. No. 161647, June 22, 2006, 492 SCRA 261, 270.

⁴³ *Id.*

⁴⁴ Now Section 16, Rule 39 of the 1997 Rules of Court.

In *Lara vs. Bayona*, x x x this Court, thru Mr. Justice Concepcion, later Chief Justice, in denying the petition for certiorari to set aside the order of the lower court quashing the third-party claim of a chattel mortgagee, held:

Pursuant to this provision, nothing contained therein shall prevent petitioner 'from vindicating his claim to the property by any proper action.' Neither does the order complained of deprive petitioner herein of the opportunity to enforce his alleged rights by appropriate proceedings. In short, he has another 'plain, speedy and adequate remedy in the ordinary course of law,' and, hence is not entitled either to a writ of certiorari or to a writ of prohibition." x x x

The Court further held that **since the third-party claimant is not one of the parties to the action, he could not, strictly speaking, appeal from the order denying its claim, but should file a separate reivindicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. The rights of a third-party claimant should be decided in a separate action to be instituted by the third person. In fine, the appeal that should be interposed, if the term "appeal" may be properly employed, is a separate reivindicatory action against the execution creditor or complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff.**⁴⁵ (Emphasis supplied; citations omitted)

Proceeding from the foregoing, the Court agrees with SBA's assertion that Cherry resorted to the wrong remedy when she filed this present Petition.

Further, it is worth adding that the resolution of the substantive issues raised in the Petition requires a factual determination with respect to the ownership and the nature of the subject property. These questions are evidently factual in nature and are beyond the scope of the Court's power under a petition for review on *certiorari* filed under Rule 45 of the 1997 Rules.

In view of the foregoing, the Court shall not pass upon the substantive issues raised in the Petition, as well as Cherry's prayer for injunctive relief.

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⁴⁵ *Solidum v. Court of Appeals*, supra note 42, at 270-271.

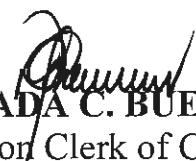

WHEREFORE, premises considered, the Petition is **DENIED**. The Orders dated February 1, 2017 and March 28, 2017 rendered by the Regional Trial Court of Makati City, Branch 62 in Civil Case No. 13-1484 entitled "*Sterling Bank of Asia v. Spouses John Bigtas and Jacqueline Ang-Bigtas, doing business under the name and style 'Jonjaclyn Marketing' and John Doe*" are hereby **AFFIRMED**.

This Resolution is without prejudice to the filing of a separate action where the issues of ownership and possession raised by petitioner Cherry Joy S. Bigtas may be determined with finality.

The petitioner's motion for early resolution, praying that the instant petition for review on certiorari be resolved for reasons stated therein, is **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court 

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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REYNO TIU DOMINGO & SANTOS
Counsel for Petitioner
12/F, Strata 100 Building, F. Ortigas Jr. Road
Ortigas Center, 1605 Pasig City

The Hon. Presiding Judge
Regional Trial Court, Branch 62
1200 Makati City
(Civil Case No. 13-1484)

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Atty. Rosstun C. Lacson
LEGAL SERVICES GROUP
Counsel for Respondent
3/F, Sterling Bank of Asia Corp. Center
8004 Ortigas Avenue, Greenhills
1502 San Juan City

Philippine Judicial Academy (x)
Supreme Court

Judgment Division (x)
Supreme Court

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