Republic of the Philippines
**SUPREME COURT**
Baguio City

## SPECIAL THIRD DIVISION

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| **CARMELITA T. BORLONGAN,**<br>Petitioner,<br><br>- versus -<br><br>**BANCO DE ORO (formerly EQUITABLE PCI BANK),**<br>Respondent.<br>x----------x | **G.R. No. 217617**<br><br>Present:<br><br>VELASCO, JR., *J.*, Chairperson,<br>PERALTA,<br>REYES,<br>JARDELEZA, and<br>TIJAM, *JJ.* |
| **ELISEO C. BORLONGAN, JR.,**<br>Petitioner,<br><br>- versus -<br><br>**BDO UNIBANK, INC. (formerly EQUITABLE PCI BANK),**<br>Respondent.<br>x----------x | **G.R. No. 218540**<br><br><br><br><br>Promulgated:<br><br>April 5, 2017 |

## RESOLUTION

**VELASCO, JR., *J.*:**

### Nature of the Case

Before the Court are two consolidated petitions invariably assailing the foreclosure sale of a property without properly serving the summons upon its owners.

### Factual Antecedents

Sometime in 1976, Eliseo Borlongan, Jr. (Eliseo) and his wife Carmelita, acquired a real property located at No. 111, Sampaguita St., Valle Verde II, Pasig City covered by Transfer Certificate of Title (TCT) No. 0421 (the subject property). In 2012, they went to the Registry of Deeds of Pasig City to obtain a copy of the TCT in preparation for a prospective sale of the subject property. To their surprise, the title contained an annotation that the property covered thereby was the subject of an execution sale in Civil Case (CC) No. 03-0713 pending before Branch 134 of the Regional Trial Court of Makati City (Makati RTC).

Petitioner immediately procured a copy of the records of CC No. 03-0713 and found out that respondent Banco de Oro (BDO), formerly Equitable PCI Bank, filed a complaint for sum of money against Tancho Corporation, the principal debtor of loan obligations obtained from the bank. Likewise impleaded were several persons, including Carmelita, who supposedly signed four (4) security agreements totaling ₱13,500,000 to guarantee the obligations of Tancho Corporation.

It appears from the records of CC No. 03-0713 that on July 2, 2003, the Makati RTC issued an Order directing the service of summons to all the defendants at the business address of Tancho Corporation provided by BDO: Fumakilla Compound, Amang Rodriguez Avenue, Brgy. Dela Paz, Pasig City (Fumakilla Compound).

Parenthetically, the records of CC No. 03-0713 show that respondent BDO already foreclosed the Fumakilla Compound as early as August 21, 2000, following Tancho Corporation's failure to pay its obligation, and BDO already consolidated its ownership of the property on November 16, 2001.

Understandably, on July 31, 2003, the process server filed an Officer's Return stating that summons remained unserved as the "defendants are no longer holding office at [Fumakilla Compound]."

On October 27, 2003, after the single attempt at personal service on Carmelita and her co-defendants, BDO moved for leave to serve the summons by publication. On October 28, 2003, the RTC granted the motion.

On August 10, 2004, BDO filed an ex-parte Motion for the Issuance of a Writ of Attachment against the defendants, including Carmelita. During the hearing on the motion, BDO submitted a copy of the title of the subject property. The Makati RTC thereafter granted BDO's motion and a Writ of Attachment was issued against the defendants in CC No. 03-0713, effectively attaching the subject property on behalf of BDO.

On December 20, 2005, BDO filed an ex-parte motion praying, among others, that the summons and the complaint be served against Carmelita at the subject property. The Makati RTC granted the motion. On February 9, 2006, the Sheriff filed a return stating that no actual personal service was made as Carmelita "is no longer residing at the given address and the said address is for 'rent,' as per information gathered from the security guard on duty."

On May 30, 2006, however, BDO filed a manifestation stating that it had complied with the October 28, 2003 Order of the Makati RTC having

caused the publication of the alias summons and the complaint in *People's Taliba* on May 15, 2006.

Thereafter, upon BDO's motion, the Makati RTC declared the defendants in CC No. 03-0713, including Carmelita, in default. BDO soon after proceeded to present its evidence ex-parte.

On November 29, 2007, the Makati RTC rendered a Decision holding the defendants in CC No. 03-0713 liable to pay BDO ₱32,543,856.33 plus 12% interest per annum from the time of the filing of the complaint until fully paid and attorney's fees. The Makati RTC decision was published on June 9, 2008.

On August 20, 2008, the Makati RTC issued a Writ of Execution upon BDO's motion. The Order states that in the event that the judgment obligors cannot pay all or part of the obligation, the sheriff shall levy upon the properties of the defendants to satisfy the award.

On October 28, 2008, the Makati RTC's sheriff filed a Report stating that he tried to serve the Writ of Execution upon the defendants at Fumakilla Compound but he was not able to do so since the defendants were no longer holding office thereat. The Sheriff also reported that, on the same day, he went to the subject property to serve the execution but likewise failed in his attempt since Carmelita was no longer residing at the said address.

On November 11, 2008, BDO filed a Motion to Conduct Auction of the subject property. The motion was granted by the Makati RTC on May 5, 2009 so that the subject property was sold to BDO, as the highest bidder, on October 6, 2009.

Following the discovery of the sale of their property, Eliseo executed an affidavit of adverse claim and, on January 21, 2013, filed a Complaint for Annulment of Surety Agreements, Notice of Levy on Attachment, Auction Sale and Other Documents, docketed as CC No. 73761, with the Regional Trial Court of Pasig City (Pasig RTC).[1]

He alleged in his Complaint that the subject property is a family home that belongs to the conjugal partnership of gains he established with his wife. He further averred that the alleged surety agreements upon which the attachment of the property was anchored were signed by his wife without his consent and did not redound to benefit their family. Thus, he prayed that the surety agreements and all other documents and processes, including the ensuing attachment, levy and execution sale, based thereon be nullified.

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[1] The Complaint was raffled to Branch 155 of the Pasig RTC.

BDO filed a Motion to Dismiss the Complaint, asserting that the Pasig RTC has no jurisdiction to hear Eliseo's Complaint, the case was barred by *res judicata* given the Decision and orders of the Makati RTC, and, finally, the Complaint failed to state a cause of action.

In an Order dated May 31, 2013, the Pasig RTC dismissed the case citing lack of jurisdiction. The RTC held that it could not pass upon matters already brought before the RTC Makati and, citing *Spouses Ching v. Court of Appeals*,[2] the husband of a judgment debtor is not a stranger to a case who can file a separate and independent action to determine the validity of the levy and sale of a property.

On a motion for reconsideration filed by Eliseo, the Pasig RTC reinstated the case with qualification. Relying on *Buado v. Court of Appeals*,[3] the Pasig RTC held that since majority of Eliseo's causes of action were premised on a claim that the obligation contracted by his wife has not redounded to their family, and, thus, the levy on their property was illegal, his filing of a separate action is not an encroachment on the jurisdiction of the Makati RTC, which ordered the attachment and execution in the first place.

The Pasig RTC clarified, however, that it cannot annul the surety agreements supposedly signed by Carmelita since Eliseo was not a party to those agreements and the validity and efficacy of these contracts had already been decided by the Makati RTC.

Both Eliseo and BDO referred the Pasig RTC's Decision to the Court of Appeals (CA).

In its petition, docketed as CA-G.R. SP No. 133994, BDO contended that it was an error for the Pasig RTC to apply *Buado* as it does not apply squarely to the circumstances of the case and has not superseded *Ching*. BDO maintained that by reinstating the complaint, Pasig RTC has violated the rule prohibiting non-interference by one court with the orders of a co-equal court.

In its January 20, 2015 Decision,[4] the appellate court granted BDO's petition and ordered the Pasig RTC to cease from hearing CC No. 73761 commenced by Eliseo. In so ruling, the CA held that Eliseo is not a stranger who can initiate an action independent from the case where the attachment and execution sale were ordered. Thus, the CA concluded that in opting to review the validity of the levy and execution sale of the subject property

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[2] G.R. No. 118830, February 24, 2003, 398 SCRA 88.

[3] G.R. No. 145222, April 24, 2009, 586 SCRA 396.

[4] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rebecca Guia-Salvador and Ramon A. Cruz.

pursuant to the judgment of the Makati RTC, the Pasig RTC acted without jurisdiction.

Eliseo moved for, but was denied, reconsideration by the appellate court. Hence, he came to this Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court, docketed as **G.R. No. 218540**.

On August 19, 2015, the Court issued a Resolution denying Eliseo's petition. Eliseo begs to differ and takes exception from the said holding in his motion for reconsideration dated October 5, 2015, which is presently for Resolution by this Court.

Meanwhile, on an *ex-parte* omnibus motion filed by BDO, the Makati RTC ordered the issuance of a Writ of Possession and the issuance of a new TCT covering the subject property in favor of the respondent bank.

Arguing that the Makati RTC had not acquired jurisdiction over her person as the service of the summons and the other processes of the court was defective, Carmelita filed a Petition for Annulment of Judgment (With Urgent Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA, docketed as CA-G.R. SP No. 134664.

Before the CA can act on the Petition for Annulment, the Borlongans found posted on the subject property a Writ of Possession dated August 1, 2014 and a Notice to Vacate dated August 29, 2014.

In its Resolution dated November 12, 2014,[5] the appellate court denied Carmelita's prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI).

Aggrieved, Carmelita interposed a motion for the reconsideration of the CA's November 12, 2014 Resolution. On March 23, 2015, however, the appellate court denied her motion for reconsideration, holding that "upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute."

Thus, on April 27, 2015, Carmelita filed a Petition for Review, docketed as **G.R. No. 217617**, before this Court, ascribing to the appellate court the commission of serious reversible errors. The Court denied the petition on June 22, 2015. Hence, on September 1, 2015, Carmelita interposed a Motion for Reconsideration urging the Court to take a second hard look at the facts of the case and reconsider its stance.

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[5] Penned by Associate Justice Eduardo B. Peralta and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

Considering that both cases originated from the same facts and involved interrelated issues, on January 25, 2016, the Court resolved to consolidate G.R. No. 218540 with G.R. No. 217617.

## Issues

The question posed in G.R. No. 217617 is whether or not the CA erred in refusing to issue a TRO and/or WPI stopping the consolidation of BDO's ownership over the subject property. On the other hand, the issue in G.R. No. 218540 revolves around whether the Pasig RTC has jurisdiction to hear and decide a case filed by the non-debtor husband to annul the levy and execution sale of the subject property ordered by the Makati RTC against his wife.

## Our Ruling

A reexamination of the antecedents and arguments in G.R. Nos. 217617 and 218540 compels the reversal of the appellate court's resolutions in both cases.

### G.R. No. 217617

### The Issuance of a TRO/WPI is not a prejudgment of the main case

On the propriety of CA's refusal to issue a TRO/WPI, it is worthy to note that Section 3, Rule 58 of the Rules of Court provides the grounds for the issuance of a preliminary injunction, viz:

> Section 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

From the foregoing provision, it is clear that a writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

In ***Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company***,[6] the Court already explained that the issuance of a TRO is not conclusive of the outcome of the case as it requires but a sampling of the evidence, viz:

> Indeed, a writ of preliminary injunction is generally based solely on initial and incomplete evidence adduced by the applicant (herein petitioner). **The evidence submitted during the hearing of the incident is not conclusive, for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits.** As such, the findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature. Moreover, **the sole object of a preliminary injunction is to preserve the status quo until the merits of the case can be heard.** Since Section 4 of Rule 58 of the Rules of Civil Procedure gives the trial courts sufficient discretion to evaluate the conflicting claims in an application for a provisional writ which often involves a factual determination, the appellate courts generally will not interfere in the absence of manifest abuse of such discretion. **A writ of preliminary injunction would become a prejudgment of a case only when it grants the main prayer in the complaint or responsive pleading**, so much so that there is nothing left for the trial court to try except merely incidental matters. (emphasis supplied)

Notably, the primary prayer of the Petition for Annulment before the appellate court is the declaration of the nullity of the proceedings in the RTC and its Decision dated November 29, 2007; it is not merely confined to the prevention of the issuance of the writ of possession and the consolidation of the ownership of the subject property in BDO's name—the concerns of the prayer for the TRO and/or WPI.

Indeed, the petitioner's prayer for the issuance of a TRO and/or WPI was intended to preserve the *status quo ante*,[7] and not to pre-empt the appellate court's decision on the merits of her petition for annulment. Thus, it was a grievous error on the part of the CA to deny her of this provisional remedy.

The appellate court's error is readily apparent given the stark existence of the grounds for the issuance of a writ of preliminary injunction.

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[6] G.R. No. 132993, June 29, 2005, 462 SCRA 52.

[7] *Los Baños Rural Bank, Inc. v. Africa*, G.R. No. 143994, July 11, 2002, 384 SCRA 535.

On the first ground, petitioner has a clear and unmistakable right that must be protected. This right is not just her proprietary rights over the subject property but her **constitutionally protected right to due process** before she can be deprived of her property. No less than Section 1 of the Bill of Rights of the 1987 Constitution mandates that:

> **No person shall be deprived of** life, liberty, or **property without due process of law**, nor shall any person be denied the equal protection of the laws. (emphasis supplied)

In its classic formulation, due process means that any person with interest to the thing in litigation **must be notified** and **given an opportunity to defend** that interest.[8] Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, **she must be properly served the summons of the court**. In other words, the service of summons is a vital and indispensable ingredient of due process[9] and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction.[10] Unfortunately, as will be discussed, it would seem that the Constitutional right of the petitioner to be properly served the summons and be notified has been disregarded by the officers of the trial court.

At this very juncture, the existence of the second ground for the issuance of a TRO and/or WPI is self-evident. **Without a TRO and/or WPI** enjoining the respondent bank from continuing in the possession and consolidating the ownership of the subject property, petitioner's **right to be afforded due process will unceasingly be violated**.

It need not be stressed that a continuous violation of constitutional rights is by itself a grave and irreparable injury that this or any court cannot plausibly tolerate.

Without a doubt, the appellate court should have acted intrepidly and issued the TRO and/or WPI posthaste to protect the constitutional rights of petitioner, as it is duty-bound to do.

**The performance of official duty was not regular**

Regrettably, the appellate court fell short in the fulfillment of its mandate and instead relied on the disputable presumption that "official duty

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[8] *De Pedro v. Romasan Development Corporation*, G.R. No. 194751, November 26, 2014, 743 SCRA 52.

[9] *Chu v. Mach Asia Trading Corporation*, G.R. No. 184333, April 1, 2013, 694 SCRA 302.

[10] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 670.

has been regularly performed." The Court cannot subscribe to the position taken by the appellate court.

As a rule, **summons should be personally served on a defendant**. When summons cannot be served personally within a reasonable period of time, substituted service may be resorted to. Service of summons by publication can be resorted to only if the defendant's "whereabouts are unknown and cannot be ascertained by diligent inquiry." The relevant sections of Rule 14 of the Rules of Court provide, thus:

> SEC. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.
>
> SEC. 7. Substituted service. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.
>
> x x x x
>
> SEC. 14. Service upon defendant whose identity or whereabouts are unknown. – In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.

It is, therefore, proper to state that the hierarchy and rules in the service of summons are as follows:

(1) Personal service;

(2) Substituted service, if for justifiable causes the defendant cannot be served within a reasonable time; and

(3) Service by publication, whenever the defendant's whereabouts are unknown and cannot be ascertained by diligent inquiry.

Simply put, personal service of summons is the preferred mode. And, the rules on the service of summons other than by personal service **may be used *only* as prescribed and *only* in the circumstances authorized by statute.** Thus, **the *impossibility* of prompt personal service must be shown** by stating that efforts have been made to find the defendant personally and that such efforts have failed before substituted service may be

availed.[11] Furthermore, their rules must be followed strictly, faithfully and fully as they are extraordinary in character and considered in derogation of the usual method of service.

In ***Manotoc v. Court of Appeals***,[12] the Court enumerated and explained the requirements to effect a valid service of summons other than by personal service, viz:

> (1) **Impossibility of Prompt Personal Service**
>
> x x x x
>
> Sheriffs are asked to discharge their duties on the service of summons with due care, utmost diligence, and reasonable promptness and speed so as not to prejudice the expeditious dispensation of justice. Thus, they are enjoined to try their best efforts to accomplish personal service on defendant. On the other hand, since the defendant is expected to try to avoid and evade service of summons, the sheriff must be resourceful, persevering, canny, and diligent in serving the process on the defendant. **For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.**
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> (2) **Specific Details in the Return**
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> **The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return.** The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service. The form on Sheriff's Return of Summons on Substituted Service prescribed in the Handbook for Sheriffs published by the Philippine Judicial Academy requires a narration of the efforts made to find the defendant personally and the fact of failure. Supreme Court Administrative Circular No. 5 dated November 9, 1989 requires that "**impossibility of prompt service should be shown by stating the efforts made to find the defendant personally and the failure of such efforts," which should be made in the proof of service.**

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[11] *Chu v. Mach Asia Trading Corporation*, supra note 9; citing *Casimina v. Legaspi*, 500 Phil. 560, 569 (2005) and *B.D. Long Span Builders, Inc. v. R.S. Ampeloquio Realty Development, Inc.*, G.R. No. 169919, September 11, 2009, 599 SCRA 468, 474-475. See also *Manotoc v. Court of Appeals*, G.R. No. 130974, August 16, 2006, 499 SCRA 21.

[12] Supra note 11.

In the case now before Us, the summons was served on the petitioner by **publication**. Yet, the circumstances surrounding the case do not justify the resort.

Consider: in July 2003, the sheriff attempted to serve the summons on the defendants, including petitioner Carmelita, at Fumakilla Compound, i.e., at the property already foreclosed, acquired, and possessed by the respondent bank as early as August 2001. Immediately after this ***single attempt*** at personal service in July 2003, the respondent bank moved in October 2003 for leave to serve the summons by publication (and not even substituted service), which motion the RTC granted.

Clearly, **there was no diligent effort** made to find the petitioner and properly serve her the summons before the service by publication was allowed. Neither was it impossible to locate the residence of petitioner and her whereabouts.

It should be noted that the principal obligor in CC No. 03-0713 was Tancho Corporation and petitioner Carmelita was impleaded only because she supposedly signed a surety agreement as a director. As a juridical person, Tancho Corporation is required to file mandatory corporate papers with the Securities and Exchange Commission (SEC), such as its General Information Sheet (GIS). In 1997 and 2000, the GIS filed by Tancho Corporation with the SEC provided the names of its directors and their addresses. One of these directors included petitioner Carmelita with her address listed at 41 Chicago St., Quezon City. The GIS of Tancho Corporation was readily available to the public including the RTC's process server and respondent bank.

Patently, it cannot be plausibly argued that it was impossible to find the petitioner and personally serve her with summons. In like manner, it can hardly be stated that the process server regularly performed his duty.

**The subject property was not *foreclosed* by the respondent bank; right of BDO to the possession of the subject property is questionable**

Still unwilling to issue the TRO and/or WPI fervently prayed for by petitioner, the appellate court held that "upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute." This Court cannot affirm the appellate court's ruling.

At the outset, it must be pointed out that the subject property was never mortgaged to, much less foreclosed by, the respondent bank. Thus, it was error for the CA to refer to the subject property as "foreclosed property."

Rather, as disclosed by the records, the possession of the subject property was acquired by BDO through attachment and later by execution sale. However, it is presumptive to state that the right of BDO over the possession of the subject property is now absolute considering that there is an action that questions the validity of the bank's acquisition over the same property.

In ***Cometa v. Intermediate Appellate Court***,[13] we explained that the expiration of the redemption period does not automatically vest in the auction purchaser an absolutely possessory right over the property, viz:

> From the foregoing discussion, it can be seen that the writ of possession may issue in favor of a purchaser in an execution sale when the deed of conveyance has been executed and delivered to him after the period of redemption has expired and no redemption has been made by the judgment debtor.
>
> A writ of possession is complementary to a writ of execution (see Vda. de Bogacki v. Inserto, 111 SCRA 356, 363), and in an execution sale, it is a consequence of a writ of execution, a public auction sale, and the fulfillment of several other conditions for conveyance set by law. The issuance of a writ of possession is dependent on the valid execution of the procedural stages preceding it. Any flaw afflicting any of its stages, therefore, could affect the validity of its issuance.
>
> In the case at bar, **the validity of the levy and sale of the properties is directly put in issue in another case by the petitioners**. This Court finds it an issue which requires pre-emptive resolution. For **if the respondent acquired no interest in the property by virtue of the levy and sale, then, he is not entitled to its possession.**
>
> The respondent appellate court's emphasis on the failure of The petitioner to redeem the properties within the period required by law is misplaced because **redemption,** in this case, **is inconsistent with the petitioner's claim of invalidity of levy and sale. Redemption is an implied admission of the regularity of the sale and would estop the petitioner from later impugning its validity on that ground.** (emphasis supplied)

Thus, even given the expiration of the redemption period, a TRO and/or WPI is still obtainable and warranted where the validity of the acquisition of the possession is afflicted by Constitutional and procedural infirmities.

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[13] No. L-69294, June 30, 1987, 151 SCRA 563.

**G.R. No. 218540**

**Eliseo can file an independent action for the annulment of the attachment of their conjugal property**

As to the question of the Pasig RTC's jurisdiction to hear Eliseo's complaint, we cannot subscribe to BDO's contention that Eliseo cannot file a separate and independent action for the annulment of the levy on their conjugal property.

Section 16, Rule 39 of the Rules of Court allows third-party claimants of properties under execution to vindicate their claims to the property in a separate action with another court. It states, thus:

> SECTION 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 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. (emphasis supplied)

Clearly, the availability of the remedy provided under the foregoing provision requires only that that the claim is a third-party or a "stranger" to the case. The poser then is this: is the husband, who was not a party to the suit but whose conjugal property was executed on account of the other spouse's debt, a "stranger" to the suit? In *Buado v. Court of Appeals*,[14] this Court had the opportunity to clarify that, to resolve the issue, it must first be determined whether the debt had redounded to the benefit of the conjugal partnership or not. In the negative, the spouse is a stranger to the suit who can file an independent separate action, distinct from the action in which the writ was issued. We held, thus:

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[14] Supra note 3.

> A third-party claim must be filed [by] a person other than the judgment debtor or his agent. In other words, only a stranger to the case may file a third-party claim.
>
> This leads us to the question: Is the husband, who was not a party to the suit but whose conjugal property is being executed on account of the other spouse being the judgment obligor, considered a "stranger?"
>
> x x x x
>
> Pursuant to *Mariano* however, **it must further be settled whether the obligation of the judgment debtor redounded to the benefit of the conjugal partnership or not.**
>
> Petitioners argue that the obligation of the wife arising from her criminal liability is chargeable to the conjugal partnership. We do not agree.
>
> There is no dispute that contested property is conjugal in nature. Article 122 of the Family Code explicitly provides that payment of personal debts contracted by the husband or the wife before or during the marriage shall not be charged to the conjugal partnership except insofar as they redounded to the benefit of the family.
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> x x x x
>
> Parenthetically, by no stretch of imagination can it be concluded that the civil obligation arising from the crime of slander committed by Erlinda redounded to the benefit of the conjugal partnership.
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> To reiterate, **conjugal property cannot be held liable for the personal obligation contracted by one spouse, unless some advantage or benefit is shown to have accrued to the conjugal partnership**.
>
> x x x x
>
> Hence, the filing of a separate action by respondent is proper and jurisdiction is thus vested on Branch 21. (emphasis supplied)

In the present case, it is not disputed that the conjugal property was attached on the basis of **a surety agreement** allegedly signed by Carmelita for and in behalf of Tancho Corporation. In our 2004 Decision in *Spouses Ching v. Court of Appeals*,[15] we elucidated that **there is no presumption that the conjugal partnership is benefited when a spouse enters into a contract of surety**, holding thusly:

> In this case, the private respondent failed to prove that the conjugal partnership of the petitioners was benefited by the petitioner-husband's act of executing a continuing guaranty and suretyship agreement with the private respondent for and in behalf of PBMCI. The contract of loan was between the private respondent and the PBMCI, solely for the benefit of the latter. **No presumption can be inferred from the fact that when the petitioner-husband entered into an accommodation agreement or a contract of surety, the conjugal partnership would thereby be**

[15] G.R. No. 124642, February 23, 2004.

> **benefited. The private respondent was burdened to establish that such benefit redounded to the conjugal partnership.**
>
> It could be argued that the petitioner-husband was a member of the Board of Directors of PBMCI and was one of its top twenty stockholders, and that the shares of stocks of the petitioner-husband and his family would appreciate if the PBMCI could be rehabilitated through the loans obtained; that the petitioner-husband's career would be enhanced should PBMCI survive because of the infusion of fresh capital. However, these are not the benefits contemplated by Article 161 of the New Civil Code. **The benefits must be those directly resulting from the loan. They cannot merely be a by-product or a spin-off of the loan itself.**
>
> This is different from the situation where the husband borrows money or receives services to be used for his own business or profession. In the Ayala case, we ruled that it is such a contract that is one within the term "obligation for the benefit of the conjugal partnership." Thus:
>
> x x x x
>
> The Court held in the same case that the rulings of the Court in *Cobb-Perez* and *G-Tractors, Inc.* are not controlling because the husband, in those cases, contracted the obligation for his own business. In this case, the petitioner-husband acted merely as a surety for the loan contracted by the PBMCI from the private respondent. (emphasis supplied)

Furthermore, it is not apparent from the records of this case that BDO had established the benefit to the conjugal partnership flowing from the surety agreement allegedly signed by Carmelita. Thus, Eliseo's claim over the subject property lodged with the RTC Pasig is proper, with the latter correctly exercising jurisdiction thereon.

Besides, BDO's reliance on *Spouses Ching v. Court of Appeals*[16] (2003) is improper. In the present case, Eliseo and his wife discovered the attachment of their conjugal property only after the finality of the decision by the RTC Makati. There was, therefore, no opportunity for Eliseo to intervene in the case before the RTC Makati which attached the conjugal property, as a motion to intervene can only be filed "at any time before rendition of judgment by the trial court."[17] This spells the whale of difference between the case at bar and the earlier *Spouses Ching*. Unlike in the present case, the debtor in the case cited by BDO was properly informed of the collection suit and his spouse had the opportunity to question the attachment of their conjugal property before the court that issued the levy on attachment, but simply refused to do so. Thus, to now deny Eliseo the opportunity to question the attachment made by the RTC Makati in a separate and independent action will be to, again, refuse him the due process of law before their property is taken. As this Court is duty-bound to protect and enforce Constitutional rights, this we cannot allow.

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[16] Supra note 2.
[17] RULES OF COURT, Rule 19, Section 2.

**WHEREFORE**, the petitions are **GRANTED**.

(1) The January 20, 2015 Decision and May 26, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 133994 are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court of Pasig, Branch 155 is ordered to continue with the proceedings and decide Civil Case No. 73761 with reasonable dispatch.

(2) The November 12, 2014 and March 23, 2015 Resolutions of the appellate court in CA-G.R. SP No. 134664 are **REVERSED** and **SET ASIDE**.

Accordingly, let a Temporary Restraining Order (TRO) be issued enjoining, prohibiting, and preventing respondent Banco De Oro, its assigns, transferees, successors, or any and all other persons acting on its behalf from possessing, selling, transferring, encumbering or otherwise exercising acts of ownership over the property subject of the controversy. Said TRO shall remain valid and effective until such time as the rights and interests of the parties in CA-G.R. SP No. 134664 shall have been determined and finally resolved.

**SO ORDERED.**

**PRESBITERO J. VELASCO, JR.**
Associate Justice

WE CONCUR:

**DIOSDADO M. PERALTA**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

**NOEL G. TIJAM**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**
Chief Justice