

FIRST DIVISION

[G.R. No. 106858, September 05, 1997]

**PHILIPPINE BANK OF COMMUNICATION, PETITIONER, VS.
COURT OF APPEALS AND GAW LE JA CHUA, RESPONDENTS.**

DECISION

KAPUNAN, J.:

Before us is a petition for review on *certiorari* assailing the decision of the Court of Appeals dated August 31, 1992.

The factual background of the instant petition is as follows:

In 1984, Philippine Bank of Communication (PBCom) filed two (2) collection suits against, among others, Joseph L. G. Chua, husband of herein private respondent, who acted as one of the sureties for the financial obligations of Fortune Motors (Phils.), Inc. and the Forte Merchant Finance, Inc., with the petitioner. After the filing of the complaint, the co-defendants of Joseph L.G. Chua had no more properties left to answer for their obligations to the bank. Since Joseph L.G. Chua bound himself solidarily with the two principal debtors, the bank chose to run after Joseph L.G. Chua who was found to own a property situated in Dasmarinas, Makati. Said property was, however, discovered to have been earlier transferred to Jaleco Development Corporation by virtue of a Deed of Exchange dated October 24, 1983 executed by Joseph L.G. Chua with the conformity of private respondent. The bank considered such transfer as in fraud of creditors and thereby sought its annulment before the Regional Trial Court of Makati, docketed as Civil Case No.7889. A notice of Lis Pendens was thereafter registered on July 17, 1984.

Meanwhile, the collection suits filed by petitioners (Civil Case No. 84-25159 and Civil Case No. 84-25260) which reached this Court and the Court of Appeals, respectively, became final in favor of PBCom.

Said decisions could not be executed since petitioner was still awaiting the finality of the decision in Civil Case No. 7889 which was pending with this Court (docketed as G.R. No. 92067). Finally, on March 22, 1991, this Court declared the Deed of Exchange null and void after finding that the transfer of the property to Jaleco Development Corporation was indeed in fraud of PBCom as creditor.

When said decision became final, the subject property was immediately levied, and the auction sale was set on July 30, 1991.

On July 24, 1991, private respondent Gaw Le Ja Chua, wife of Joseph L. G. Chua, filed a Third Party Claim with the Sheriffs of Branches 8 and 9 of RTC, Manila. At the same time, she initiated two separate reivindicatory actions on the subject property in the lower court.

Petitioner, on the other hand, filed an Urgent Motion to Direct the Sheriff to Enforce the Writ of Execution/Auction Sale.

On August 15, 1991, the RTC denied petitioner's motion. The Motion for Reconsideration with a motion to quash the third party claim was, likewise, denied in an Order dated October 21, 1991.

Dissatisfied, the petitioner came to this Court assailing the RTC's Orders. The matter was, however, referred to the Court of Appeals for proper disposition.

On August 31, 1992, the respondent court dismissed the petition in this wise:

Petitioner's allegation that private respondent is not the third-party or 'stranger' referred to under the aforequoted rule is an issue which will properly be resolved by the Regional Trial Court of Makati where the separate reivindicatory actions are pending. It will be premature for Us to pass upon such issue while the same is still pending before the lower court.

WHEREFORE, there being no abuse of discretion on the part of the public respondent and there being a plain, speedy and adequate remedy available to petitioner in the ordinary course of law, this petition is dismissed with costs.

SO ORDERED.^[1]

The motion for reconsideration was likewise denied. Hence, the instant petition with the following assignment of errors:

I.

THE COURT OF APPEALS GRAVELY ERRED IN NOT DECLARING THAT BRANCH 8, REGIONAL TRIAL COURT OF MANILA, GRAVELY ABUSED ITS DISCRETION IN NOT QUASHING THE PATENT AND DUBIOUS THIRD-PARTY CLAIM OF THE HEREIN PRIVATE RESPONDENT.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PBCOM'S PETITION IS PREMATURE, THUS, CONVENIENTLY BRUSHING ASIDE THE FOLLOWING QUESTIONS OF LAW:

II.1 WHETHER OR NOT PRIVATE RESPONDENT CAN BE CONSIDERED A STRANGER WITHIN THE MEANING OF THE LAW THAT WOULD ENTITLE HER TO THE RELIEFS PROVIDED IN SECTION 17, RULE 39 OF THE RULES OF COURT.

II.2 WHETHER OR NOT PRIVATE RESPONDENT IS NOW ESTOPPED FROM FILING A THIRD-PARTY CLAIM AS WELL AS AN INDEPENDENT ACTION INVOLVING THE PROPERTY IN QUESTION. ^[2]

The real issue in this case is whether or not private respondent is considered a stranger within the meaning of Section 17, Rule 39 of the Rules of Court, as to entitle her to the remedy of a third-party claim or reivindicatory actions over the subject property.

We rule in the negative.

A stranger is a third-party who is any person other than the judgment debtor or his agent. In several cases, ^[3] we have recognized the right of a third-party claimant to file an independent action to vindicate his claim of ownership over the properties seized. This is provided by Section 17, Rule 39 which states:

SEC. 17. *Proceedings where property claimed by third person.*- If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

x x x.

While we are aware of the legal maxim that no man shall be affected by proceedings to which he is a stranger,^[4] the attendant circumstances, however, in the case at bar constrain us to rule that private respondent cannot be considered a stranger within the purview of the law.

It must be noted that the sheriffs levied on the subject property on the basis of the annulment of the Deed of Exchange executed by Chua in favor of Jaleco Development Inc. as ruled by this Court on March 22, 1991 in *Philippine Bank of Communications v. Court of Appeals, et al.*, G.R. No. 92067. In said case, we categorically stated that:

xxx. [T]he evidence clearly shows that Chua and his immediate family control JALECO. The Deed of Exchange executed by Chua and JALECO had for its subject matter the sale of the only property of Chua at the time when Chua's financial obligations became due and demandable. The records also show that despite the "sale", respondent Chua continued to