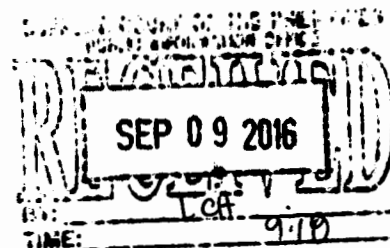




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

MARY JANE G. DY CHIAO,
 Petitioner,

G.R. No. 192491

Present:

- versus -

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ.*

SEBASTIAN BOLIVAR,
SHERIFF IV, REGIONAL
TRIAL COURT, BRANCH 19,
IN NAGA CITY
 Respondent.

Promulgated:

AUG 17 2016

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DECISION

BERSAMIN, J.:

A losing party cannot seek relief from the execution of a final judgment by bringing a separate action to prevent the execution of the judgment against her by the enforcing sheriff. Such action contravenes the policy on judicial stability. She should seek the relief in the same court that issued the writ of execution.

The Case

The petitioner – a subsidiary judgment debtor – appeals the resolution promulgated on November 12, 2009,¹ whereby the Court of Appeals (CA) denied her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* filed in CA-G.R. SP No. 111113 entitled *Mary Jane G. Dy Chiao v. Sebastian Bolivar, Regional Trial Court of Naga City*, and declared the case closed and terminated, on the ground that her appeal by petition for review on *certiorari* could only be brought to the Supreme Court.

¹ *Rollo*, pp. 32-34; Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justice Noel G. Tijam and Associate Justice Sixto C. Marella, Jr. concurring.

Antecedents

The antecedents are not disputed. On March 31, 1999, the CA promulgated its decision in CA-G.R. SP No. 44261 declaring the petitioner subsidiarily liable to pay the exact amount of ₱5,711,164.00, to wit:

WHEREFORE, judgment is hereby rendered declaring the assailed decision dated December 13, 1993 of the respondent court as *NULL and VOID and without legal force and effect*. Co[r]ollarily, the execution and the public auction sale held thereunder are likewise VOID.

The Clerk of Court of the Regional Trial Court of Naga City is directed to deliver within ten (10) days from finality of this judgment the amount of ₱15,482,200.00 together with all interests earned thereby, to the respondent court, which court is hereby directed to distribute the aggregate amount to the buyers of the properties of Benito Dy Chiao, Sr., in proportion to the amounts they paid therefor.

Benedick Arevalo, through his mother, Shirley Arevalo, is directed to turn over to the respondent court within ten (10) days from finality of this judgment the amount of ₱5,711,164.00 which she received from Sheriffs Rubio and Cledera, together with all other amounts she might have been paid on the Compromise Agreement, without prejudice to the buyer's right of recourse against Mary Jane, who is hereby declared to be subsidiarily liable therefor. Upon receipt thereof, the respondent court shall likewise return to the buyers the aggregate amount in the same proportion as above stated.

Thereafter the properties shall be delivered to the intestate estate of Benito Dy Chiao, Jr. for proper disposition by the intestate court.

Let a copy of this judgment be furnished the Office of the Court Administrator for whatever action it might deem proper to take on the premises.

SO ORDERED.²

The decision in CA-G.R. SP No. 44261 was ultimately affirmed by the Court, and thus attained finality. Execution proceedings followed in due course upon issuance of the writ of execution by the RTC (Branch 19) as the court of origin, but respondent Branch Sheriff of the RTC (Branch 19) filed a sheriff's report to the effect that, one, the amount of ₱5,711,164.00 could not be satisfied by principal obligor Benedick Arevalo because he had no assets that could be levied on execution; and that, two, the liability could be paid out of the assets of the petitioner under her subsidiary liability as decreed in the final judgment. Accordingly, the respondent recommended that an alias writ of execution be issued against the properties of the latter.

² Id. at 339-340; penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Cancio C. Garcia and Artemio G. Tuquero concurring.

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On June 12, 2008, the RTC (Branch 19) issued the writ of execution and directed the respondent to levy as much properties of the petitioner as would be sufficient to satisfy the amount of ₱5,711,164.00, and to sell the properties at public auction.³

On November 21, 2008, the respondent proceeded with the public auction of the petitioner's levied properties, and sold two parcels of her realty with areas of 69 square meters and 85 square meters, both located in Naga City, to the highest bidders for ₱8,000,000.00, namely: Jose R. Rivero, Jessie Rivero, Jr. and Amalia Rivero Rañosa.⁴ In due course, the respondent issued a provisional certificate of sale dated November 24, 2008.

The respondent, allegedly without any order from the Presiding Judge of the RTC (Branch 19), or without an alias writ of execution being issued by the court, and without notice to the petitioner, pursued further execution proceedings against the petitioner. She learned of such proceedings only from Atty. Greta Paraiso, the Registrar of Deeds of Naga City.⁵

The notice of levy dated March 10, 2009 issued by the respondent, addressed to the petitioner, identified the two parcels of land located in Naga City registered in her name under Transfer Certificate of Title (TCT) No. 8933 of the Register of Deeds of Camarines Sur. The first property had an area of 386 square meters, while the second an area of 387 square meters.⁶ Although the notice stated that it was being issued by virtue of a writ of execution, it did not bear the date of its issuance.

On May 8, 2009, the petitioner received a notice of sale of real property on execution dated April 15, 2009 stating that the two real properties of the petitioner were being levied to satisfy the sum of ₱5,711,164.00; and that the public auction was set from 9:00 a.m. to 3:00 p.m. on May 15, 2009.

To fend off the public auction, the petitioner filed on May 13, 2009 a so-called *Petition for Prohibition with Application for Temporary Restraining Order and Preliminary Injunction*. On the same date, the Executive Judge of the RTC in Naga City issued a 72-hour temporary restraining order (TRO) enjoining the respondent from conducting the scheduled public auction.⁷ The case was raffled to the RTC (Branch 23) in Naga City.

³ Id. at 58-59.

⁴ Id. at 59.

⁵ Id. at 60.

⁶ Id.

⁷ Id. at 60-61.

After receiving the respondent's comment and opposition, the petitioner's reply, and the respondent's rejoinder, the RTC (Branch 23) dismissed the case for lack of jurisdiction,⁸ opining that the processes being undertaken by the respondent were deemed proceedings in the same civil case assigned to and still pending before the RTC (Branch 19); and that the RTC (Branch 19) continued to exercise general supervision and control over such proceedings.⁹

After the RTC (Branch 23) denied the petitioner's *Motion for Reconsideration*, she filed in the CA her *Motion for Extension of Time to File Verified Petition for Review on Certiorari* indicating therein that she would be raising a question of law. The case was docketed as CA-GR. SP No. 111113.

As stated, the CA promulgated the assailed resolution on November 12, 2009,¹⁰ pertinently holding:

The motion must fail.

A motion praying for an extension of time to file a petition for review on certiorari filed before this Court pursuant to Section 2 of Rule 45 of the Rules of Court raising only questions of law is improper.

A petition for review on certiorari is governed by Section 1 of Rule 45, viz:

“Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.”

Clearly therefore, the proper remedy under the afore-quoted rule where only questions of law are raised or involved, is a petition for review on certiorari which shall be filed with the Supreme Court and not with this Court.

Thus, the instant motion praying for an extension of time to file a petition for review on certiorari must be denied outright pursuant to Supreme Court Circular No. 2-90 dated March 9, 1990 which mandates the dismissal of appeals involving pure questions of law erroneously brought to the Court of Appeals, to wit:

⁸ Id. at 61.

⁹ Id. at 105.

¹⁰ Supra note 1.

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“4. Erroneous appeals. - An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

(c) Raising issues purely of law in the Court of Appeals, or appeal by wrong mode. - If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court...

x x x x”

WHEREFORE, the instant motion praying for an extension of thirty (30) days to file a petition for review on certiorari is hereby **DENIED** and the above-entitled case is considered **CLOSED** and **TERMINATED**.

Let this case be excluded from the Court's docket.

SO ORDERED.¹¹

The petitioner filed a *Motion for Reconsideration*, but the CA denied the motion on May 12, 2010.¹²

Hence, this appeal by the petitioner.

Issues

The petitioner hereby urges the Court to consider:

WHETHER IT WAS PROPER FOR THE APPELLATE COURT TO DENY PETITIONER'S MOTION FOR EXTENSION, WHICH INDICATED THAT IT WOULD BE RAISING A QUESTION OF LAW, ON THE GROUND THAT IT SHOULD HAVE BEEN FILED BEFORE THE SUPREME COURT DESPITE THE RECOGNIZED PRINCIPLE OF HIERARCHY OF COURTS.

WHETHER OR NOT IT WAS PROPER FOR THE ORIGINAL PETITION FOR PROHIBITION BEFORE THE REGIONAL TRIAL COURT TO BE DENIED ON THE GROUND OF LACK OF JURISDICTION.¹³

¹¹ Id. at 33-34.

¹² Id. at 36-37

¹³ Id. at 23.

Ruling of the Court

We deny the petition for review on *certiorari* for its lack of merit.

First of all, the CA properly denied the petitioner's *Motion for Extension of Time to File Verified Petition for Review on Certiorari* and justifiably considered the case closed and terminated. The petitioner was patently guilty of taking an erroneous appeal in view of her *manifest* intention to limit her appeal to questions of law. Such an appeal would only be by petition for review on *certiorari*, to be filed in this Court pursuant to Section 1, Rule 45 of the *Rules of Court*, as follows:

Section 1. *Filing of petition with Supreme Court.*—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Pursuant to Section 2,¹⁴ Rule 50 of the *Rules of Court*, an appeal raising only questions of law brought to the CA instead of to this Court shall be dismissed. The same rule expressly forbids the erroneous appeal to be transferred to the Court.

Secondly, the petitioner, as the party appealing, had only a limited period of 15 days from notice of the judgment or final order appealed from within which to perfect her appeal to the Court pursuant to Section 2, Rule 45 of the *Rules of Court*, which states:

Section 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (1a, 5a)

¹⁴ Section 2. *Dismissal of improper appeal to the Court of Appeals.* — An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed. (n)

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright. (3a)

The petitioner obviously failed to perfect her appeal from the dismissal by the RTC (Branch 23) of the case commenced through her so-called *Petition with Application for a Temporary Restraining Order and Preliminary Injunction*. The consequence of such failure to perfect the appeal was to render the dismissal final and immutable. This meant that no court, including this Court, could thereafter alter, modify or reverse the result. As such, her present appeal to this Court cannot but be viewed and condemned as a futile attempt to resurrect the lost appeal.

And, lastly, the present appeal, even assuming that it was timely taken, would still fail for its lack of merit. We would still uphold the dismissal of the case by RTC (Branch 23) considering that the assailed actions and processes undertaken by the respondent to levy the properties of the petitioner were deemed proceedings in the same civil action assigned to the RTC (Branch 19) as the court that had issued the writ of execution. Such proceedings, being incidents of the execution of the final and executory decision of the RTC (Branch 19), remained within its exclusive control.¹⁵

On the other hand, to allow the petitioner's action in the RTC (Branch 23) would disregard the doctrine of judicial stability or non-interference, under which no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction.¹⁵ Courts and tribunals with the same or equal authority — even those exercising concurrent and coordinate jurisdiction — are not permitted to interfere with each other's respective cases, much less their orders or judgments therein.¹⁶ This is an elementary principle of the highest importance essential to the orderly administration of justice.¹⁷ Its observance is not required on the grounds of judicial comity and courtesy alone; it is enforced to prevent unseemly, expensive, and dangerous conflicts of jurisdiction and of processes.¹⁸ A contrary rule would dangerously lead to confusion and seriously hamper the administration of justice.¹⁹

That the respondent was the sole party sought to be prevented from further acting in the execution proceedings, or that the RTC (Branch 23) was not impleaded by the petitioner did not matter. The effect is still an undue interference that disregarded the doctrine of judicial stability or non-interference. The Court has made this unsettling situation quite clear when it explicitly observed in *Cabili v. Balindong*:²⁰

¹⁵ *Heirs of the late Spouses Laura Yadno and Pugsong Mat-an v. Heirs of the late Spouses Mauro and Elisa Anchales*, G.R. No. 174582, October 11, 2012, 684 SCRA 106, 115.

¹⁶ *Pacific Ace Finance Ltd. (PAFIN) v. Yanagisawa*, G.R. No. 175303, April 11, 2012, 669 SCRA 270, 281.

¹⁷ *Republic v. Reyes*, Nos. L-30263-5, October 30, 1987, 155 SCRA 313, 324.

¹⁸ *Lee v. Presiding Judge, MTC of Legaspi City, Br. 1*, No. L-68789, November 10, 1986, 145 SCRA 408, 416.

¹⁹ *Ching v. Court of Appeals*, G.R. No. 118830, February 24, 2003, 398 SCRA 88, 93.

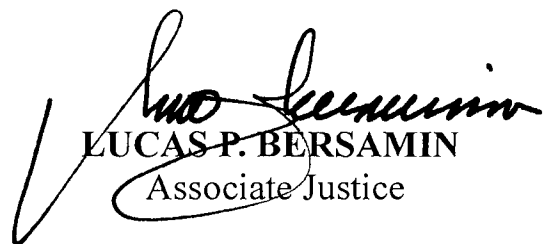
²⁰ A.M. No. RTJ-10-2225, September 6, 2011, 656 SCRA 747, 758.

It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. The duty of a sheriff in enforcing writs is ministerial and not discretionary. As already mentioned above, the appropriate action is to assail the implementation of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body.

Indeed, the respondent was under the direct control and supervision of the RTC (Branch 19) as the court that had issued the writ of execution enforcing the final decision of the CA against the petitioner. The determination of whether or not the notice of levy was valid and proper rightfully fell within the exclusive prerogative of the RTC (Branch 19) to ascertain and pronounce. If she doubted the authority of the respondent to issue the notice of levy, she should have sought clarification of the matter from the RTC (Branch 19), and should the outcome be adverse to her, she could then have sought fitting redress from a superior court vested with authority to review and reverse the action of the respondent instead of resorting to her action before the RTC (Branch 23).

WHEREFORE, the Court **AFFIRMS** the decision promulgated on November 12, 2009 in CA-G.R. SP No. 111113; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

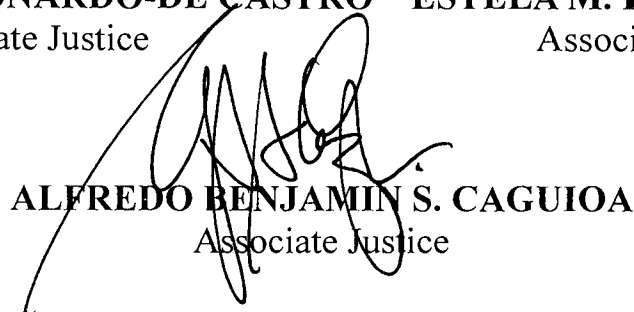
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

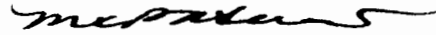

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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