



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LOURDES C. AKIAPAT, BILLY G.R. No. 222505
CACHERO and NOEL
CACHERO,

Petitioners,

- versus -

SUMMIT BANK (RURAL
BANK OF TUBLAY
[BENGUET], INC.),

Respondent.

X-----X
RICHARD CACHERO, G.R. No. 222776
JEANETTE C. GAMBOA and
TERESITA C. MAINEM, Present:

Petitioners,

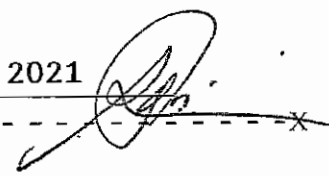
LEONEN, J., Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

- versus -

SUMMIT BANK (RURAL
BANK OF TUBLAY Promulgated:
[BENGUET], INC.),

Respondent.

June 28, 2021

X-----X 

DECISION

INTING, J.:

For consideration are two consolidated Petitions¹ for Review on *Certiorari* assailing the Decision² dated February 27, 2015 and the Resolution³ dated January 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 125707. The CA found grave abuse of discretion on the part of Branch 63, Regional Trial Court (RTC), La Trinidad, Benguet which directed Summit Bank [Rural Bank of Tublay [Benguet], Inc.] (Summit Bank) to reapply for an extrajudicial foreclosure of the real estate mortgage and exclude the *pro indiviso* shares of the third-party claimants, namely: Lourdes C. Akiapat (Lourdes), Billy Cachero (Billy), and Noel Cachero (Noel) (Lourdes, *et al.*).⁴

The pertinent facts are as follows:

Domacia⁵ Galipen (Domacia), Renato Cachero (Renato), Richard Cachero (Richard), Teresita C. Mainem (Teresita), Jeanette C. Gamboa (Jeanette), and Lourdes, *et al.* were co-owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-34811 (subject property).⁶

In 1996 and 1997, Domacia, Renato, Richard, Teresita, and Jeanette (Domacia, *et al.*) executed Promissory Notes⁷ in favor of Summit Bank to cover their separate loans.⁸ As security of the loans, they executed a Real Estate Mortgage⁹ over the subject property. Meanwhile, Lourdes *et al.* (co-owners but non-borrowers) joined in executing the real estate mortgage.

*First foreclosure sale of
January 11, 2000*

Domacia, *et al.* failed to pay their loan obligations.¹⁰ Thus, on December 3, 1999, Summit Bank extrajudicially foreclosed the real

¹ *Rollo* (G.R. No. 222505), pp. 27-36; *rollo* (G.R. No. 222776), pp. 12-29.

² *Rollo* (G.R. No. 222505), pp. 11-18; penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario (now a member of the Court) and Marlene Gonzales-Sison, concurring.

³ *Id.* at 20-22.

⁴ *Id.* at 16-17.

⁵ Referred to as Domasia and Dumasia in some parts of the *rollo* and *CA rollo*.

⁶ *Rollo* (G.R. No. 222505), p. 12.

⁷ *CA rollo*, pp. 38-51.

⁸ *Rollo* (G.R. No. 222505), p. 12.

⁹ *CA rollo*, pp. 53-54.

¹⁰ *Rollo* (G.R. No. 222505), p. 12.

estate mortgage. The foreclosure sale was held on January 11, 2000 wherein Summit Bank emerged as the winning bidder.¹¹

Domacia, *et al.* assert that Summit Bank had no basis to foreclose the real estate mortgage; thus they instituted an action for annulment and/or declaration of nullity of the loans, the real estate mortgage, and the foreclosure proceedings.¹² The case was docketed as Civil Case No. 01-CV-1584 and raffled to Presiding Judge Agapito K. Laoagan of Branch 63, Regional Trial Court (RTC), La Trinidad, Benguet¹³

Ruling of the RTC

On September 17, 2007, the RTC rendered a Decision¹⁴ upholding the validity of the Real Estate Mortgage and Promissory Notes, but nullifying the December 3, 1999 extrajudicial foreclosure sale. The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. Declaring the Real Estate of Mortgage executed by the plaintiffs dated December 27, 1996 as valid and binding;
2. Declaring the Promissory Notes individually executed by the plaintiffs dated December 24, 1996 and January 8, 1997 as valid and binding with the modification that the rate of penalty as well as the back charges be reduced from 9% to 3%;
3. Declaring the Promissory Notes individually executed by the plaintiffs dated December 24, 1997 and January 8, 1998 as valid and binding with a modification that [the] rate of interest be reduced from 23% to 17% per annum and the penalty be reduced from 18% to 3% per annum and the bank charges be reduced from 18% to 3% per annum. The renewal fee at 3% is hereby declared null and void.
4. Declaring the Foreclosure proceedings and the sheriff's Certificate of Sale null and void.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Rollo* (G.R. No. 222776), pp. 32-52; penned by Presiding Judge Benigno M. Galacgac.

5. The defendant-bank is hereby ordered to make another accounting of the accounts of the plaintiffs based on the rates of interests of 17% per annum, penalties at 3% per annum and bank charges at 3% per annum to be computed from the date of the execution of the subject Promissory Notes dated December 24, 1996 and January 8, 1997.

No pronouncement as to the award of damages and cost of the suit.

SO ORDERED.¹⁵

The RTC noted the following: except for their bare allegations, Domacia, *et al.* did not present any evidence to support their claim that at the time they signed the promissory notes, the [blank spaces] for the rate of interest, the penalty, and the bank charges were unfilled.¹⁶ Renato himself admitted that after they signed their respective promissory notes, Summit Bank furnished them separately with copies of documents with the annual rate of interest, penalty, and bank charges already indicated; and Domacia, *et al.* did not object to the contents of the documents. Thus, all of them knew at the outset that they were bound by the interest, penalty, and the bank charges.¹⁷

Nevertheless, the RTC sustained the assertion of Domacia, *et al.* that the increase in the rate of interest to 28% *per annum* on the restructured loans was confiscatory, inequitable, and excessive.¹⁸ Thus, it ruled for the nullification of the foreclosure proceedings, Sheriff's Certificate of Sale, the 18% increase on the annual penalty, bank charges, and the auction sale undertaken by the sheriff.¹⁹

On August 17 2009, after Summit filed a written manifestation agreeing to reduce the penalty, the RTC issued a Resolution²⁰ confirming the indebtedness of Domacia, *et al.* in the amount of ₱28,508,425.50.²¹ The Resolution became final and executory on September 3, 2009.²²

¹⁵ *Id.* at 51-52.

¹⁶ *Id.* at 46.

¹⁷ *Id.*

¹⁸ *Id.* at 48-49.

¹⁹ *Id.* at 49.

²⁰ *CA rollo*, pp. 77-83; penned by Presiding Judge Benigno M. Galacgac.

²¹ *Rollo* (G.R. No. 222505), pp. 13-14.

²² *Id.* at 14. See also Certificate of Finality dated September 8, 2009, *CA rollo*, p. 85.

*Second Foreclosure Sale of
May 12, 2010*

Again, Summit Bank demanded payment from Domacia, *et al.*, but the latter failed to pay. Thus, Summit proceeded with a second foreclosure proceeding. On December 15, 2009, the RTC issued a writ of execution. On January 14, 2010, it annotated the notice of levy on TCT No. T-34811.²³ Following the publication of the notice of sale, an auction sale over the subject property proceeded on May 12, 2010 with a final certificate of sale issued in the name of Summit Bank on May 26, 2011.²⁴ In the process, TCT No. T-34811 was cancelled and TCT No. 016-2011001590²⁵ was issued in lieu thereof. On September 29, 2011, the RTC issued a Writ of Possession²⁶ in favor of Summit Bank.²⁷

The Third-Party Claim

In October 2011, Lourdes, *et al.* (the co-owners but non-borrowers) filed a Third-Party Affidavit of Claim or *Terceria*²⁸ before the RTC alleging that their consent was not sought when they were impleaded as co-plaintiffs in Civil Case No. 01-CV-1584.²⁹ Meanwhile, Renato, Richard, Teresita, and Jeanette filed an Entry of Appearance with Omnibus Motion³⁰ for the annulment of: (1) the levy of the property covered by TCT No. T-34811 made on January 14, 2010; (2) the public auction sale held on May 12, 2010; (3) the sheriff's Certificate of Sale dated May 14, 2010; (4) the Sheriff's final certificate of sale dated May 26, 2011; and (5) the writ of possession dated September 29, 2011 on the ground that Lourdes, *et al.* had filed a third-party claim.³¹

In the Resolution³² dated November 25, 2011, the RTC nullified (1) its previous Order dated November 10, 2009 granting Summit Bank's Motion for the Issuance of Writ of Execution; (2) the Writ of Execution dated December 15, 2009; and (3) the Writ of Possession dated September 29, 2011. It further directed Summit Bank to reapply for an

²³ *Id.*

²⁴ *Id.*

²⁵ CA rollo, pp. 87-91.

²⁶ *Id.* at 316-317.

²⁷ *Id.* at 316.

²⁸ *Id.* at 325-327.

²⁹ Rollo (G.R. No. 222505), p. 14.

³⁰ CA rollo, pp. 318-324.

³¹ *Id.* at 318.

³² Rollo (G.R. No. 222776), pp. 53-57; penned by Acting Presiding Judge Agapito K. Laoagan, Jr.

extrajudicial foreclosure of the real estate mortgage but to exclude the *pro indiviso* shares of Lourdes et al. It adjudged as follows:

WHEREFORE, the Order dated November 10, 2009 granting the Motion for Issuance of Writ of Execution, the Writ of Execution dated December 15, 2009, the Order granting the Motion for Issuance of Deed of Conveyance, as well as the Order for the Issuance of Writ of Possession and the Writ of Possession itself, dated September 29, 2011 and all other subsequent issuances are hereby recalled and set aside, for all being null and void.

As above stated, defendant Summit Bank is hereby directed to re-apply for an Extrajudicial Foreclosure of the Real Estate Mortgage, pursuant to Act No. 3135, but should exclude the pro-indiviso shares of Lourdes C. Akiapat, Billy Cachero and Noel Cachero, of the subject parcel of land.

SO ORDERED.³³

Summit Bank moved for a reconsideration, but the RTC denied it in its Order³⁴ dated March 16, 2012. It explained in this wise:

In its Resolution dated November 25, 2011, the Court ruled that since Lourdes, Billy and Noel did not avail of or did not secure loans from Summit Bank, their share in the mortgaged property should be excluded from foreclosure. On this point, Summit Bank argues that a Real Estate Mortgage is one and indivisible. Hence, it is error on the part of this Court to order the exclusion of the pro indiviso shares of said Lourdes, Billy and Noel.

Resolving the Motion, it is still the firm opinion of this Court that it is more in accordance with justice and equity for Summit Bank to exclude the shares of Lourdes, Billy and Noel, by whatever means. If Summit Bank argues that the REM is indivisible, then they should buy out the pro-indiviso shares of Lourdes, Billy and Noel, then foreclose the remaining Real Estate Mortgage.

If the Court allow reconsideration as prayed for, then one who did not avail of loan services will be prejudiced and it is axiomatic that no one should be unjustly enriched, at the expense of another.

WHEREFORE, the Motion for Reconsideration is hereby denied. The second paragraph of the dispositive portion of the Resolution, dated November 25, 2011 is hereby affirmed.

³³ *Id.* at 56-57.

³⁴ *Id.* at 83-85; penned by Presiding Judge Agapito K. Laoagan, Jr.

SO ORDERED.³⁵

Aggrieved, Summit Bank elevated the matter to the CA by way of a Petition³⁶ for *Certiorari* raising the sole issue of whether the RTC gravely abused its discretion in ordering the exclusion of the *pro indiviso* shares of Lourdes, *et al.* in the mortgaged property for the foreclosure proceedings.³⁷

The CA Ruling

In the Decision³⁸ dated February 27, 2015, the CA granted the petition. It found that: *first*, the RTC erred in entertaining the third-party claim of Lourdes, *et al.*, emphasizing that the remedy of *terceria* is only available to a third person other than the judgment obligor or the latter's agent; *second*, the RTC cannot declare the *pro indiviso* shares of Lourdes, *et al.* to be excluded from the foreclosure proceedings sale as it would modify an earlier decision which had already attained finality; and *third*, by directing Summit Bank to reapply for an extrajudicial foreclosure, the Resolution dated November 25, 2011 of the RTC effectively added a new directive to the final decision in Civil Case No. 01-CV-1584.³⁹

Petitioners filed their respective motions for reconsideration.⁴⁰ The CA denied both in its Resolution dated January 8, 2016.

Hence, the consolidated petitions.

Lourdes, *et al.*, petitioners in G.R. No. 222505, averred that they belatedly filed their third-party claim as it was only after two years from the finality of the Decision in Civil Case No. 01-CV-1584 that they came to know that their *pro indiviso* shares in the subject property were included in the Sheriff's demand to vacate.⁴¹ They further averred that

³⁵ *Id.* at 84.

³⁶ *Rollo* (G.R. No. 222505), pp. 63-83.

³⁷ *Id.* at 69.

³⁸ *Id.* at 11-18.

³⁹ *Id.* at 17.

⁴⁰ See Motion for Clarification and/or Reconsideration of Richard Cachero, Renato Cachero, and Jeanette C. Gamboa, *rollo* (G.R. No. 222776), pp. 94-98, and Motion for Reconsideration of Lourdes C. Akiapat, Billy Cachero, and Noel Cachero, *rollo* (G.R. No. 222505), pp. 52-59.

⁴¹ *Rollo* (G.R. No. 222505), p. 32.

the act of the RTC in correcting or amending its own judgment was in harmony with justice and the facts of the case.⁴²

On the other hand, Richard, Jeanette, and Teresita, *petitioners in G.R. No. 222776*, explained: that the whole controversy stemmed from the first extrajudicial foreclosure sale held on January 11, 2000 which was declared null and void *per* RTC Decision dated September 17, 2007;⁴³ that while the Decision sustained the validity of the real estate mortgage, it nonetheless nullified some of the charges imposed by the bank, the foreclosure proceeding, and the sheriff's certificate of sale;⁴⁴ that after the decision, the parties reverted to their original situation prior to the foreclosure; that the option was once again opened to Summit Bank to either foreclose the mortgage or to recover the indebtedness by instituting an ordinary action;⁴⁵ and that soon after, Summit Bank asked for the issuance of a writ of execution as if the decision sought to be enforced is one for collection of indebtedness.⁴⁶ Thus, Richard, Jeanette and Teresita argued that the changes violated their right to due process.⁴⁷

In its Joint Comment,⁴⁸ Summit Bank disclosed that after the RTC resolution confirming the indebtedness of Domacia, *et al.*, it again demanded payment from the petitioners.⁴⁹ As no payment was made despite demand, it filed another petition for extrajudicial foreclosure against the mortgaged property.⁵⁰ On March 12, 2012, the *ex-officio* sheriff issued a notice of public auction sale wherein Summit Bank became the highest bidder at the public auction held on April 10, 2012.⁵¹ On the basis thereof, Branch 63, RTC, La Trinidad, Benguet issued a Writ of Possession on January 17, 2013.⁵² The petitioners failed to redeem the subject property within the one year redemption period, and hence, a final certificate of sale was issued in its favor on April 23, 2013.⁵³

⁴² *Id.* at 34.

⁴³ *Rollo* (G.R. No. 222776), p. 25.

⁴⁴ *Id.* at 25-26.

⁴⁵ *Id.* at 26.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 105-120.

⁴⁹ *Id.* at 107.

⁵⁰ *Id.* at 107-108.

⁵¹ *Id.* at 108.

⁵² See Order dated January 17, 2013, *id.* at 124-127; penned by Judge Danilo P. Camacho.

⁵³ *Id.* at 108.

The Issue

In the main, the issue before the Court is whether the CA erred in granting Summit Bank's petition for *certiorari*.

Our Ruling

The petitions are without merit.

As mortgagors, the petitioners already lost all interests over the foreclosed property after the expiration of the redemption period. On the other hand, Summit Bank, as purchaser, became the absolute owner thereof when no redemption was made. As such, Summit Bank is entitled to the possession of the subject property as a matter of right. In *Town and Country Enterprises, Inc. v. Hon. Quisumbing, Jr., et al.*,⁵⁴ the Court declared:

Not having exercised its right of redemption in the intervening period, TCEI cannot be heard to complain about the cancellation of its titles and the issuance of new ones in favor of Metrobank on 26 June 2003. In *Union Bank of the Philippines v. Court of Appeals*, the Court ruled that, after the purchaser's consolidation of title over foreclosed property, the issuance of a certificate of title in his favor is ministerial upon the Register of Deeds, thus:

In real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with a view to applying the proceeds to the payment of the principal obligation. Foreclosure may be effected either judicially or extrajudicially. In a public bidding during extra-judicial foreclosure, the creditor-mortgagee, trustee, or other person authorized to act for the creditor may participate and purchase the mortgaged property as any other bidder. Thereafter the mortgagor has one year within which to redeem the property from and after registration of sale with the Register of Deeds. In case of non-redemption, the purchaser at foreclosure sale shall file with the Register of Deeds, either a final deed of sale executed by the person authorized by virtue of the power of attorney embodied in the deed or mortgage, or his sworn statement attesting to the fact of non-redemption; whereupon, the Register of Deeds shall issue a new certificate of title in favor of the purchaser after the owner's duplicate of the certificate has been previously delivered and cancelled. Thus,

⁵⁴ 696 Phil. 1 (2012).

*upon failure to redeem foreclosed realty, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds.*⁵⁵ (Italics supplied.)

Still, the Court cannot order the exclusion of the *pro indiviso* shares of Lourdes, *et al.* for the following reasons:

First, the Court is not convinced with the assertion of Lourdes, *et al.* that they did not authorize their inclusion as plaintiffs in Civil Case No. 01-CV-1584; and that they only discovered the public auction two years after the RTC resolution confirming the indebtedness of their co-owners had become final and executory.

In *Bank of America, NT and SA, v. American Realty Corp.*⁵⁶ (*Bank of America*), American Realty Corporation (ARC) executed two real estate mortgages in favor of therein petitioner Bank of America, NT and SA (Bank of America) as security for the restructured loans. The borrowers eventually defaulted in the payment of their loans which compelled Bank of America therein to file collection suits before foreign courts. Afterwards, it filed an application for extrajudicial foreclosure of the real estate mortgage against ARC. Meanwhile, ARC filed an action for damages against Bank of America.⁵⁷ In sustaining the action of therein Bank of America against ARC, the Court considered the fact that ARC constituted real estate mortgages over its properties as security for the debt of the principal debtors. By doing so, ARC subjected itself to the liabilities of a third-party mortgagor.⁵⁸

Similarly, in *Lustan v. CA*⁵⁹ (*Lustan*), the Court ruled that third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property. So long as a valid consent was given, the fact that the loans were solely for the benefit of the private respondent in that case would not invalidate the mortgage with respect to petitioner's property. In consenting thereto, even granting that therein petitioner may not be assuming personal liability for the debt, her property shall secure and respond for the performance of the principal obligation.⁶⁰

⁵⁵ *Id.* at 19-20.

⁵⁶ 378 Phil. 1279 (1999).

⁵⁷ *Id.* at 1279.

⁵⁸ *Id.* at 1291.

⁵⁹ 334 Phil. 609 (1997).

⁶⁰ *Id.* at 619.

In this case, it is not disputed that co-owners but non-borrowers Lourdes, *et al.* assented to, and in fact signed, the real estate mortgage constituted by their co-owners Domacia, *et al.* as security for the latter's loan with Summit Bank. Considerably, Lourdes, *et al.* have undeniably assumed the personality of a third-party mortgagor. As stated in *Bank of America and Lustan*, the property of third persons like Lourdes, *et al.* which has been expressly mortgaged to guarantee an obligation to which they are foreign, is directly and jointly liable for the fulfillment thereof. It is subject to execution and sale for the purpose of paying the amount of the debt for which it is liable.⁶¹ The fact that the loans did not accrue to the benefit of Lourdes, *et al.* would not invalidate the mortgage. The RTC properly observed:

x x x In a nutshell, the petitioner argues that the oppositors-in-intervention are not third parties "holding the property adversely to the judgment obligor" but are parties to the mortgage contract.

The Court went over the record again and found that indeed the oppositors-in-intervention Lourdes Cachero Akiapat, Billy Cachero, and Noel Cachero xxx, are not third persons who have adverse claim to the property sought to be possessed by petitioner. In the Real Estate Mortgage, the oppositors-in-intervention were named as mortgagors:

x x x x

This deed was duly signed by the said oppositors-in-intervention. The oppositors Renato Cachero, Richard Cachero, Jeanette Gamboa and Teresita Mainem xxx and oppositors-in-intervention filed a case for Annulment and/or Declaration of Nullity of Real Estate Mortgage xxx, which was raffled to, heard, and decided by the Regional Trial Court, Branch 63, La Trinidad Benguet xxx. In the Decision of RTC, Branch 63, the validity of the Real Estate Mortgage was upheld. This ruling was made without qualification; there is nothing in the decision which segregates the shares of the oppositors-in-intervention from the mortgage or which states that the oppositors-in-intervention are not bound by the mortgage. The oppositors and oppositors-in-intervention did not appeal the decision; hence, it has become final and executory.

It was only when the decision was being executed that the oppositors-in-intervention filed a third party claim. This was the basis of the RTC Branch 63 in stating in the Resolution dated 11 November 2011 that the shares of the oppositors-in-intervention "should be excluded from foreclosure", and Order dated 16 March 2012 "that it

⁶¹ *Id.* at 620, citing *Lack v. Alfonso*, 14 Phil. 630 (1903).

is more in accordance with justice and equity xxx to exclude the shares of Lourdes, Billy and Noel". xxx Nonetheless, in the said Resolution and Order, it was not ruled that the Real Estate Mortgage as against the oppositors-in-intervention is null and void.

Subsequently, in the letter-petition for extrajudicial foreclosure of the mortgage filed by the petitioner, oppositors-in-intervention were included as mortgagors. Notice of the public auction sale was published and posted. The oppositors-in-intervention however did not oppose this, neither did they move to be excluded as mortgagors.⁶²

Besides, Lourdes, *et al.* have actively participated in the proceedings before the RTC as shown by the following circumstances: (a) in the Pre-trial Briefs for Richard, Jeanette, and Teresita, they were listed as witnesses for the presentation of the former's evidence-in-chief;⁶³ (b) on May 8, 2002, as co-plaintiffs in Civil Case No. 01-CV-1584, they were declared in default for their failure to appear during the pre-trial of the case;⁶⁴ (c) Lourdes, *et al.* filed a Motion to Lift the Order of Default⁶⁵ against them and in the Affidavit of Merit attached to the Motion, they alleged that they failed to attend the pre-trial because they had important business matters to attend to; (d) on June 21, 2002, the RTC lifted the default order against them after finding their explanation satisfactory;⁶⁶ (e) the Notice of Hearing⁶⁷ dated July 10, 2002 of the RTC included Lourdes *et al.* as plaintiffs to the case; (f) the Motion to Withdraw as Counsel by Atty. Panfilo U. Salango, Jr., indicated their conformity;⁶⁸ (g) the appearance with Motion to Move Hearing dated May 3, 2004 filed by Atty. Rudolfo A. Lockey likewise showed the conformity of Lourdes, *et al.* with the rest of the petitioners;⁶⁹ and lastly, (h) the Motion to Withdraw as counsel dated September 8, 2009 of Atty. Rudolfo A. Lockey indicated the conformity of Lourdes, *et al.*⁷⁰

Moreover, the mere filing of a *terceria*, or an affidavit stating the title of Lourdes, *et al.* should not have stayed the proceedings. They are not "strangers" or "third persons" with respect to Civil Case No. 01-CV-1584. Section 16, Rule 39 of the Rules of Court reads:

⁶² *Rollo* (G.R. No. 222776), pp. 124-125.

⁶³ *Id.* at 114.

⁶⁴ See Order dated May 8, 2002, *CA rollo*, pp. 102-103.

⁶⁵ *Id.* at 104-105.

⁶⁶ See Order dated June 21, 2002, *id.* at 109.

⁶⁷ *Id.* at 110.

⁶⁸ *Id.* at 112-113.

⁶⁹ *Id.* at 114-115.

⁷⁰ *Id.* at 116-117.

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 copy 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. (Italics supplied.)

It should be apparent that the provision, and the others like it,⁷¹ providing for an expeditious mode of recovering property alleged to have been wrongfully or erroneously taken by a sheriff pursuant to a writ of execution, has reference to *a stranger to the action*, and not to a party therein. The remedy is meant to accord a stranger, whose property is taken by the sheriff to secure or satisfy a judgment against a party to said action, a speedy, simple, and expeditious method of getting it back. If the sheriff is persuaded of the validity of the third party's claim, then he gives back the property and the purpose of the provision is achieved. If, on the other hand, the sheriff is not convinced and opts to retain the property, the third party may vindicate his claim to the property by any proper action.⁷²

The case of *Tillson v. Court of Appeals, et al.*,⁷³ is illustrative at this point. Petitioner David S. Tillson (petitioner Tillson) therein brought suit against Leonard La Pierre (La Pierre) and Seacraft International

⁷¹ See Section 14, Rule 57 which reads in part:

SEC. 14. *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. (Emphasis supplied.)

⁷² 274 Phil. 880, 899 (1991).

⁷³ *Id.*

Corporation (Seacraft) for specific performance and damages. In its answer, Seacraft denied petitioner Tillson's claim to the subject vessels and asserted that there was no privity between it and petitioner Tillson relative to the construction of the "Creala 40." La Pierre failed to answer within the reglementary period and was declared in default. At the instance of petitioner Tillson, the trial court authorized the execution of the default judgment against La Pierre. In July 1988, the sheriff levied on and took possession of the "Creala 40" as well as "Creala 36." Seacraft filed a third-party claim with respect to the vessels contending that they belong to it and not to La Pierre.⁷⁴ In denying the third-party claim of Seacraft, the Court reminded that a party to the action has no business filing a third-party claim over the property involved in the action and which he himself claims to belong to him.⁷⁵


The same principle is applicable to the case at bar. Lourdes, *et al.* are not the stranger or third party contemplated by the rule. Truth be told, they have the standing and the opportunity at any time to ask the court for relief against any alleged errors, excesses, or irregularities of the sheriff. It is incongruous to seek relief from a sheriff which the court itself could as easily and expeditiously grant.⁷⁶

WHEREFORE, the consolidated petitions are **DISMISSED** for lack of merit.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

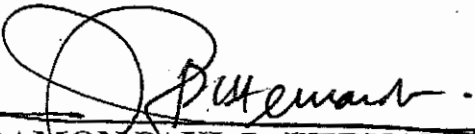
WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

⁷⁴ *Id.* at 884-886.

⁷⁵ *Id.* at 899.

⁷⁶ *Id.*


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEF LOPEZ
Associate Justice

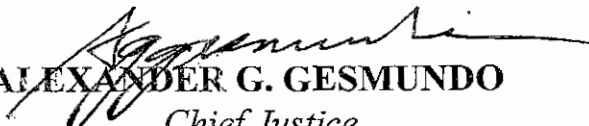
ATTESTATION

I attest 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.


MARVIC M.V.F. LEONEN
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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

