

### Title: China Banking Corporation vs. Spouses Tobias L. Lozada and Erlina P. Lozada

### Facts:

In June 1995, Spouses Lozada entered a Contract to Sell with Primetown Property Group, Inc. (PPGI) for a condominium unit. December of the same year, PPGI mortgaged 51 units, including the Lozadas' unit, to China Banking Corporation (CBC) to secure loans amounting to P37,000,000.00. Following PPGI's failure to settle its debts, CBC initiated an extrajudicial foreclosure of the mortgage, and, as the highest bidder in the auction, acquired the properties. By April 2000, CBC consolidated ownership of the properties not redeemed, including the Lozadas' unit. Despite attempts to settle, conflicts arose regarding the balance payment for the unit, prompting CBC to petition for a Writ of Possession, which the Regional Trial Court (RTC) granted ex parte.

### Issues:

1. Whether the RTC can grant a writ of possession ex parte.
2. If the nature of the Lozadas' possession of the unit qualifies them to impede the ex parte issuance of the writ of possession.
3. The validity and applicability of the real estate mortgage in relation to Presidential Decree No. 957.
4. Whether the Court of Appeals erred in annulling the writ of possession issued by the RTC.

### Court's Decision:

The Supreme Court ruled in favor of CBC, reinstating the RTC's decision to grant the writ of possession ex parte. It emphasized that issuance of a writ of possession is a ministerial function of the court following the consolidation of the auctioned property's title in favor of the purchaser. The Court determined that the Lozadas' possession was not adverse to PPGI but derived from their contract to sell, making them successors-in-interest. Thus, the general rule on ex parte issuance of a writ of possession applied. The Court also noted it was premature for the Court of Appeals to judge compliance with Presidential Decree No. 957 as the matter was sub judice before the HLURB.

### Doctrine:

The issuance of writ of possession is a ministerial duty of the court following the consolidation of ownership in the foreclosure sale buyer's favor, applicable ex parte unless the property is held adversely by a third party with a title or right.

### Class Notes:

1. A writ of possession's issuance is ministerial after foreclosure and consolidation of the title.
2. A "contract to sell" does not transfer ownership until full payment; thus, rights derived from it do not constitute adverse possession against the mortgagor/developer.
3. The procedure for challenging a foreclosure or asserting a third-party claim does not include opposing the issuance of a writ of possession but may involve separate processes or actions.
4. Presidential Decree No. 957's requirement for developer-mortgage compliance, including notifying buyers and allowing direct payments to mortgagees, aims to protect condominium unit or subdivision lot buyers.

### Historical Background:

The conflict highlights common disputes in property transactions involving buyers, developers, and financing banks, especially when the developer defaults on loan obligations secured by mortgaged properties. The case underscores the legal protections for buyers against the implications of developers' financial failures under Philippine law.