

**## Title:**

Cua Lai Chu, Claro G. Castro, and Juanita Castro vs. Hon. Hilario L. Laqui, RTC Branch 218, Quezon City, and Philippine Bank of Communication - G.R. No. 17066, Decision Date: September 13, 2011

**## Facts:**

In November 1994, petitioners Cua Lai Chu, Claro G. Castro, and Juanita Castro obtained a loan of P3,200,000 from the Philippine Bank of Communication (PBCom) and secured it with a Deed of Real Estate Mortgage over the property of Claro and Juanita Castro, covered by Transfer Certificate of Title (TCT) No. 22990. In August 1997, the loan was increased by P1,800,000, bringing the total to P5,000,000 through an Amendment to the Deed of Real Estate Mortgage.

Upon the petitioners' failure to fully settle the loan, PBCom initiated the extrajudicial foreclosure of the real estate mortgage. Alarmed by the notice of extrajudicial foreclosure, petitioners filed a petition with prayer for a temporary restraining order (TRO) to annul the foreclosure, which was granted by the trial court of Quezon City (docketed as Q-02-46184). However, the TRO was subsequently lifted, and the foreclosure sale was rescheduled to May 29, 2002. PBCom emerged as the highest bidder, and a certificate of sale was executed in its favor on June 4, 2002, later annotated on June 7, 2002, on TCT No. 22990.

After the one-year redemption period lapsed without redemption, PBCom filed an affidavit of consolidation on June 7, 2003, leading to the issuance of TCT No. 251835 in PBCom's name. PBCom then applied for a writ of possession on August 18, 2004, which the trial court granted, allowing PBCom to present evidence *ex parte* after declaring the petitioners in default. The trial court denied petitioners' notice of appeal.

Petitioners challenged the rulings in the Court of Appeals via certiorari, which was dismissed on procedural grounds for not indicating the updated PTR Number, and on substantive grounds, reaffirming that the writ of possession is an *ex parte* proceeding.

**## Issues:**

1. Whether the petitioners were denied due process when they were declared in default despite filing their opposition to PBCom's application for a writ of possession.
2. Whether the issuance of a writ of possession was proper during the pendency of a case questioning the validity of the extrajudicial foreclosure sale.
3. Whether petitioners' claim of forum shopping had merit.

**## Court's Decision:**

The Supreme Court dismissed the petition, affirming the Court of Appeals' Resolutions:

**### Issue 1: Denial of Due Process**

The Court held that the application for a writ of possession in an extrajudicial foreclosure is an ex parte motion. It held that no due process rights were violated as the writ is issued as a matter of course once the legal requirements are satisfied. Petitioners cannot oppose or appeal the issuance of the writ in such a proceeding; their remedy lies under Section 8 of Act No. 3135 to petition for the setting aside of the sale and cancellation of the writ of possession within 30 days after the purchaser is given possession.

**### Issue 2: Issuance of Writ During Pendency of Nullification Case**

The Court ruled that the purchaser at an extrajudicial foreclosure sale gains the right to possess the property even if the validity of the foreclosure is under scrutiny. This derives from Section 7 of Act No. 3135, which provides the right to request possession with an indemnity bond during the redemption period and absolutely after the period lapses. Since PBCom had already consolidated ownership and obtained a Certificate of Title, it had an incontrovertible right to possession.

**### Issue 3: Forum Shopping**

The Court found no merit in the petitioners' claim of forum shopping. The issuance of a writ of possession in an ex parte proceeding does not constitute res judicata. It is not a judgment on the merits and does not preclude other pending actions questioning the validity of the foreclosure.

**## Doctrine:**

1. **\*\*Writ of Possession in Foreclosure\*\***: Under Section 7 of Act No. 3135, the purchaser at an extrajudicial foreclosure sale may request a writ of possession ex parte after consolidation of ownership and after the redemption period lapses.
2. **\*\*Nature of Ex Parte Proceedings\*\***: The issuance of a writ of possession in such proceedings is a ministerial duty of the court upon application and compliance with procedural requirements.
3. **\*\*Effect of Pending Nullification Actions\*\***: The presence of a pending case questioning the foreclosure does not inhibit the issuance of the writ of possession.

**## Class Notes:**

1. **\*\*Foreclosure Law (Act No. 3135 as amended by Act No. 4118)\*\***

- **Section 7**: Entitlement to petition for possession during redemption with bond; absolute right post-redemption.
- **Section 8**: Remedy for debtors within 30 days of being dispossessed.
- Ex parte nature of writ applications: no opposition or appeal rights.
- Ministerial duty to issue writ post consolidation and title issuance.

2. **Due Process in Ex Parte Proceedings**:

- Issuance as a matter of course; hence, no due process violation in foreclosing party not being heard.

3. **Forum Shopping and Res Judicata**:

- Ex parte writs are not final judgments; they do not preclude parallel litigation regarding foreclosure validity.

**## Historical Background:**

The case is rooted in the application of the Philippine foreclosure law (Act No. 3135) governing the procedural aspects of foreclosures through public auction sales, reflecting legislative intent since 1924 to streamline foreclosure processes, clarified and amended through Act No. 4118 in 1933. This streamlined approach aids in protecting lenders' interests while preserving debtors' limited rights during foreclosure under specific statutory compliance.