

**ANTONIO V. ZARAGOZA, PETITIONER AND APPELLANT, VS.
ENRIQUE A. DIAZ AND RUFINA BALITE, OPPOSITORS-APPELLEES.**

G.R. No. L-19462. July 25, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from the Order dated December 6, 1961 of the Court of First Instance of Rizal denying the petition for the issuance of a writ of possession filed by petitioner-appellant.

The facts of the case are as follows:

Appellant Antonio Zaragosa alleges that a Deed of Real Estate Mortgage with special power of sale over a parcel of land covered by TCT No. 32181 was executed in his favor, as mortgagee, by Enríguez Diaz and Rufina Balite, as mortgagors. The transfer certificate of title was surrendered to him for purposes of registration and the mortgage was registered on June 12, 1961 and duly annotated on the title. There having been default in the payment of the obligation secured by the mortgage, appellant, on July 25, 1961, gave written notice to the mortgagors of his intention to extra-judicially foreclose the mortgage. Appropriate notices were published and posted and the mortgagors were furnished copies thereof by registered mail. On August 30, 1961, the real property subject of the mortgage was sold at public auction to the appellant himself who was the highest bidder. The corresponding Sheriff's certificate of sale dated August 30, 1961 was issued in favor of appellant.

Under date of October 17, 1961, appellant filed a verified ex parte petition for the issuance of a writ of possession under the provisions of Act No. 3135, entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages", as amended by Act 4118. The petition alleged substantially the above facts and that he was willing to file a bond in the amount equivalent to the use of the property for a period of twelve (12) months in favor of the mortgagors as required by Section 7 of Act 3135 as amended, and prayed that a writ issue to put petitioner-appellant in possession of the above-mentioned parcel of land. Said section is set forth hereinbelow:

"SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in the form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four Hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ

of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately."

Appellees filed their opposition to the petition, alleging that they are the absolute owners of the property covered by TCT No. 32181; that they did not execute the real estate mortgage, their signatures having been falsified by Carmen Aldaña and one John Doe, for which reason Civil Case No. 5949 entitled "Enrique Diaz and Rufina Balite vs. Antonio Zaragoza" for annulment of said mortgage was then pending trial; and praying that the petition for issuance of writ of possession be denied.

In his reply to the opposition, appellant admitted the pendency of Civil Case No. 5949. He contended, however, that no final decision thereon having been rendered, the mortgage must, for all purposes, be considered valid, and the writ of possession prayed for should issue pursuant to law.

The Assistant City Fiscal of Quezon City also filed an opposition on November 6, 1961 on the grounds that (1) under Section 6 of Act 3135, as amended by Act 4118, the debtor has one year within which to redeem the property and to remain, during the period of redemption, in possession of the property, and (2) under Section 7 of the same law, the issuance of the writ of possession is directed to the sound discretion of the court, which discretion, in this case, should not be exercised toward the granting of the writ prayed for, not only because the debtor has the right to redeem within one year, but also because the validity of the mortgage is being questioned.

On December 6, 1961, the trial court issued the assailed Order denying the petition on the ground that the court has "serious doubts as to the authenticity of the signatures of the oppositors in the Deed of Real Estate Mortgage" and "besides there is pending before this court a civil case for annulment of the mortgage between the same parties wherein the validity of the Deed of Real Estate Mortgage . . . is at issue." Hence, this appeal.

The correct interpretation of Section 7 of Act 3135, as amended, is put in issue by the parties. Appellant contends that, where all the requisites provided in the law had been complied with, the court has no discretion to deny the petition for writ of possession, the duty to issue the same being mandatory. On the other hand, appellees argue that the court may exercise its discretion and, in view of the circumstances obtaining in this case, properly denied the petition.

This Court is of the opinion, and so holds, that this case is now moot and academic. Act 3135 grants to the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage under which it was sold, the right to redeem the property sold on foreclosure within a period of one (1) year from and after the date of the sale (Section 6). Within the same one-year period of redemption, the purchaser may petition the court to give him possession of the property purchased by him, furnishing bond in an amount equivalent to the use of the property for a period of twelve (12) months (Section 7). Needless to say, such one-year period has long expired, the sale having been made on August 30, 1961. Petitioner, therefore, has no more right, under the specific provision of law invoked by him, to the writ of possession prayed for.

WHEREFORE, in view of the foregoing, the instant appeal is hereby dismissed for being moot and academic.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

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