

CHINA BANKING CORPORATION, PETITIONER, VS. SPOUSES OSCAR AND LOLITA ORDINARIO, RESPONDENTS.

G.R. No. 121943. March 24, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-121943/>

SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari of the Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 40953 dated March 20, 1995 and September 6, 1995, respectively.[1]

Records show that, on various dates, petitioner China Banking Corporation granted three (3) loans in the total sum of P27,353,000.00 to TransAmerican Sales and Exposition, Inc. (TransAmerican) owned and controlled by spouses Jesus and Lorelie Garcia. The loans were secured by real estate mortgages constituted by Jesus Garcia (with the consent of his wife) on his forty-five (45) parcels of land covered by TCT Nos. 7289 to 7291, 7613 to 7615, 7617, 7618, and 7621 to 7657, all of the Registry of Deeds of Quezon City. The contracts of mortgage were all registered in the same Registry.

For failure of TransAmerican to pay its loans, petitioner bank foreclosed extrajudicially the three real estate mortgages. On August 27, 1990, the mortgaged properties were sold at public auction for P38,004,205.01 to petitioner bank, being the highest bidder. On September 3, 1990, the Certificate of Sale was registered in the Registry of Deeds of Quezon City.

On October 4, 1990, petitioner bank filed with the Regional Trial Court (RTC) of Quezon City, Branch 90, an ex parte verified petition for issuance of a writ of possession, docketed as LRC Case No. Q-4534(90).

On April 10, 1991, the trial court issued an order granting the petition and placing petitioner bank in possession of the 45 parcels of land, thus:

“ACCORDINGLY, upon posting by the petitioner China Banking Corporation of the requisite bond in the amount of P792,000.00, let a writ of possession be issued commanding the placing in possession of said petitioner over those parcels of land covered by Transfer Certificate of Title Nos. 7289, 7290, 7291, 7613, 7614, 7615, 7617, 7618, 7621, 7622, 7623, 7624, 7625, 7626, 7627, 7628, 7629, 7630, 7631, 7632, 7633, 7634, 7635, 7636, 7637, 7638, 7639, 7640, 7641, 7642, 7643, 7644, 7645, 7646, 7647, 7648, 7649, 7650, 7651, 7652, 7653, 7654, 7655, 7656, and 7657, all of the Registry of Deeds of Quezon City, together with all the improvements thereon, ejecting therefrom Jesus V. Garcia and all persons claiming right under him.”

On July 19, 1991, petitioner posted the required surety bond which was approved by the RTC.

On August 16, 1991, spouses Oscar and Lolita Ordinario, herein respondents, filed a motion for reconsideration praying that the parcel of land with its improvement covered by TCT No. 7637 be excluded from the above order. They alleged, among others, that they are indispensable parties in the case, claiming that in November 1989, they purchased the land covered by TCT No. 7637 on which was constructed their townhouse; that the petition for a writ of possession does not bind them for lack of notice; that petitioner bank should have filed an action for

recovery of possession, not an ex-parte petition for a writ of possession since there are parties in actual possession of the lots involved; that they filed with the Housing and Land Use Regulatory Board (HLURB) a complaint for the delivery of title and damages against petitioner bank, Jesus Garcia and TransAmerican; and that the mortgage foreclosure cannot prevail over their superior right as legitimate buyers of the area covered by TCT No. 7637.

On August 23, 1991, petitioner bank filed its opposition to respondents' motion for reconsideration. It alleged that the trial court, acting as a land registration court with limited jurisdiction, cannot pass upon the merits of respondents' motion; that respondents should have filed a separate action; that the assailed order dated April 10, 1991 directing the issuance of a writ of possession had become final; and that the proceedings, being in rem, bind herein respondents.

On September 21, 1992, the trial court issued an order denying respondents' motion for reconsideration.

On appeal by respondents, the Court of Appeals rendered the assailed Decision dated March 20, 1995, the dispositive portion of which reads:

“WHEREFORE, the appealed order dated September 21, 1992 of the lower court in LRC Case No. Q-4534 is SET ASIDE, and a new judgment is issued by the Court granting movants-appellants' motion for reconsideration to the effect of excluding from the lower court's orders dated April 10, 1991 and September 21, 1992, movants-appellants' property covered by Transfer Certificate of Title No. 7637 as the same property should not have been covered by the writ of possession issued in the said orders of the lower court.”

Petitioner bank moved for a reconsideration but it was denied by the Appellate Court in a Resolution dated September 6, 1995.

Hence, the instant recourse, petitioner raising the following assignments of error :

“First. Respondent Court gravely erred in setting aside the order dated September 21, 1992 in LRC Case No. Q-4534 which granted the petition ex-parte for a writ of possession of the forty-five parcels of land to include the property covered by Transfer Certificate of Title No. 7637.

“Second. Respondent Court committed a grave error when it failed to consider that the third party referred to in the case of PNB vs. Adil, 118 SCRA 110, is a third party actually holding the property adversely to the owner.

“Third. Respondent Court committed a grave error when it failed to consider that the April 10, 1991 order is already final and executory, hence, can no longer be disturbed.”

Under Section 7 of Act No. 3135, the purchaser in a foreclosure sale is entitled to possession of the property.[2] Thus the writ prayed for by petitioner granting it possession has to be issued as a matter of course.[3] This Court has consistently ruled that it is a ministerial duty of the trial court to grant such writ of possession.[4] No discretion is left for the trial court. Any question regarding the cancellation of the writ or in respect of the validity and regularity of the public sale should be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.[5] Consequently, respondents' motion for reconsideration of the trial court's order dated April 10, 1991 granting the writ of possession must be denied being bereft of merit.

Section 7 of Act No. 3135, as amended,[6] provides:

“Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now RTC) 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 xxx, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified xxx, 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.” (underscoring supplied).

The above provision is not without exception. Under Section 33, Rule 39 of the 1997 Rules of Civil Procedure, as amended, the possession of the foreclosed property may be awarded to the purchaser or highest bidder “unless a third party is actually holding the property adversely to the judgment debtor.”[7] Assuming arguendo that respondent spouses are adverse third parties, as they so averred, Section 16 of the same Rule reserves to them the remedies of (1) *terceria* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor and (2) an independent “separate action” to vindicate their claim of ownership and/or possession over the foreclosed property.[8] Section 16 of Rule 39 provides:

“Sec. 16. Proceedings where property claimed by third person. – If 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 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.

“The officer shall not be liable for damages for the taking or keeping of the property, to any third party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim. xxx.”

Under the above Rule, a third-party claimant or a stranger to the foreclosure suit, like respondents herein, can opt to file a remedy known as *terceria* against the sheriff or officer effecting the writ by serving on him an affidavit of his title and a copy thereof upon the judgment creditor. By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent “separate action,” the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a “separate action” is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other. Availment of the *terceria* is not a condition sine qua non to the institution of a “separate action.”[9]

Thus, respondents’ resort to a motion for reconsideration is obviously a procedural misstep.

We thus hold that the Court of Appeals committed palpable error when it granted respondent’s motion for reconsideration and set aside the orders dated April 10, 1991 and September 21, 1992 of the RTC in LRC Case No. Q-4534 (90), thus excluding the land covered by TCT No. 7637 from the coverage of the writ of possession issued in favor of petitioner bank.

WHEREFORE, the instant petition is GRANTED. The appealed Decision and Resolution of the Court of Appeals

dated March 20, 1995 and September 6, 1995 in CA-G.R. CV No. 40953 are REVERSED and SET ASIDE. The orders of the RTC, Branch 90, Quezon City, in LRC Case No. Q-4534 (90) directing the issuance of a writ of possession in favor of petitioner bank are AFFIRMED.

Costs against respondents.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona and Carpio-Morales, JJ., concur.

[1] Penned by Justice Lourdes K. Tayao-Jaguros (ret.) and concurred in by then Presiding Justice Jesus M. Elbinias (ret.) and Justice B. A. Adefuin-De La Cruz.

[2] Suico Industrial Corporation vs. Court of Appeals, 301 SCRA 212 (1999).

[3] Marcelo Steel Corporation vs. Court of Appeals, 54 SCRA 89 (1973).

[4] Suico Industrial Corporation vs. Court of Appeals, *supra*, citing Sulit vs. Court of Appeals, 268 SCRA 441 (1997) and A.G. Development Corporation vs. Court of Appeals, 281 SCRA 155 (1997).

[5] Sulit vs. Court of Appeals, *supra*.

[6] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.

[7] Sulit vs. Court of Appeals, *supra*, citing Roxas vs. Buan, 167 SCRA 43 (1988).

[8] Naguit vs. Court of Appeals, 347 SCRA 60 (2000), citing Sy vs. Discaya, 181 SCRA 378 (1990).

[9] Naguit vs. Court of Appeals, *supra*; Sy vs. Discaya, *supra*.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.