

**SPOUSES RODRIGO PADERES AND SONIA PADERES, PETITIONERS,
VS. THE HON. COURT OF APPEALS, HON. CARLOTA P. VALENZUELA,
IN HER CAPACITY AS THE LIQUIDATOR OF BANCO FILIPINO
SAVINGS AN...**

G.R. No. 147074. July 15, 2005

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-147074/>

CARPIO MORALES, J.:

By their Petition for review on certiorari under Rule 45 of the Rules of Court, petitioners spouses Rodrigo and Sonia Paderes and spouses Isabelo and Juana Bergado seek the reversal of the September 20, 2000 Decision[3] and February 16, 2001 Resolution of the Court of Appeals, which dismissed their original Petition and denied their Motion for Reconsideration, respectively.

On September 14, 1982, Manila International Construction Corporation (MICC) executed a real estate mortgage[4] over 21 registered parcels of land including the improvements thereon in favor of Banco Filipino Savings and Mortgage Bank (Banco Filipino) in order to secure a loan of P1,885,000.00. The mortgage was registered with the Registry of Deeds of Pasay City and annotated on the corresponding transfer certificates of title (TCTs) covering the properties on December 17, 1982.[5]

The 21 mortgaged properties included two lots, one with an area of 264 square meters, and the other with an area of 263, both located in the then Municipality of Parañaque (now Parañaque City) covered by TCT Nos. 61062[6] and 61078,[7] respectively.

Subsequently or in August 1983, MICC sold the lot[8] covered by TCT No. 61078, together with the house[9] thereon, to the petitioners in the first case, the Paderes spouses. And on January 9, 1984, MICC sold the house[10] built on the lot covered by TCT No. 61062 to the petitioners in the second case, the Bergado spouses. Neither sale was registered, however.[11]

On January 25, 1985, for failure of MICC to settle its obligations, Banco Filipino filed a verified Petition[12] for the extrajudicial foreclosure of MICC's mortgage. At the auction sale of the foreclosed properties on March 25, 1985, Banco Filipino submitted a bid of P3,092,547.82 and was declared the highest bidder. A Certificate of Sale[13] was issued in its favor which was registered with the Registry of Deeds and annotated on the corresponding TCTs covering the mortgaged properties on July 29, 1985.

No redemption of the foreclosed mortgage having been made within the reglementary period, Carlota P. Valenzuela, the then Liquidator of Banco Filipino, filed on October 16, 1987 an ex parte Petition[14] for the issuance of a Writ of Possession of the foreclosed properties with the Regional Trial Court (RTC) of Makati. After hearing, the Petition was granted by Order dated September 8, 1988[15] of Branch 59 of the RTC.

On November 7, 1996, copies of the Writ of Possession dated November 5, 1996, together with a notice addressed to MICC "and/or All persons claiming rights under them" to voluntarily vacate the premises within 7 days from

receipt thereof, were served on petitioners.[16]

Instead of vacating the two lots, however, petitioners filed separate petitions before the Court of Appeals, docketed as C.A. G.R. Numbers 42470 and 42471 which were later consolidated,[17] assailing the validity of the Writ of Possession.

On September 20, 2000, the Court of Appeals promulgated its questioned Decision[18] dismissing the consolidated petitions for lack of merit and upholding the validity of the Writ of Possession.

Petitioners' Motion for Reconsideration of the appellate court's decision having been denied by Resolution of February 16, 2001, they jointly come before this Court arguing that: (1) having purchased their respective properties in good faith from MICC, they are third parties whose right thereto are superior to that of Banco Filipino; (2) they are still entitled to redeem the properties and in fact a binding agreement between them and the bank had been reached; (3) their respective houses should not have been included in the auction sale of the mortgaged properties; (4) on the contrary, as builders in good faith, they are entitled to the benefits of Article 448 of the Civil Code; and (5) the writ of possession issued by the RTC in 1996 had already lost its validity and efficacy.

The petition must be denied.

In extra-judicial foreclosures of real estate mortgages, the issuance of a writ of possession, which is an order commanding the sheriff to place a person in possession of the foreclosed property,[19] is governed by Section 7 of Act No. 3135 (an act to regulate the sale of property under special powers inserted in or annexed to real estate mortgages), as amended:

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 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 the 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.

That petitioners purchased their properties from MICC in good faith is of no moment. The purchases took place after MICC's mortgage to Banco Filipino had been registered in accordance with Article 2125[20] of the Civil Code and the provisions of P.D. 1529 (property registry decree).[21] As such, under Articles 1312[22] and 2126[23] of the Civil Code, a real right or lien in favor of Banco Filipino had already been established, subsisting over the properties until the discharge of the principal obligation, whoever the possessor(s) of the land might be.

In rejecting a similar argument, this Court, in *Philippine National Bank v. Mallorca*,[24] ratiocinated:

1. Appellant's stand is that her undivided interest consisting of 20,000 square meters of the mortgaged lot, remained unaffected by the foreclosure and subsequent sale to PNB, and she "neither secured nor contracted a loan" with said bank. What PNB foreclosed, she maintains, "was that portion belonging to Ruperta Lavilles only," not the part belonging to her.

Appellant's position clashes with precepts well-entrenched in law. By Article 2126 of the Civil Code, a "mortgage directly and immediately subjects the property on which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." Sale or transfer cannot affect or release the mortgage. A purchaser is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the creditor "in order that he, under the terms of the contract, may recover the amount of his credit therefrom." For, a recorded real estate mortgage is a right in rem, a lien on the property whoever its owner may be. Because the personality of the owner is disregarded; the mortgage subsists notwithstanding changes of ownership; the last transferee is just as much of a debtor as the first one; and this, independent of whether the transferee knows or not the person of the mortgagee. So it is, that a mortgage lien is inseparable from the property mortgaged. All subsequent purchasers thereof must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee. For, the mortgage, until discharge, follows the property.[25] (Emphasis and underscoring supplied; italics in the original; citations omitted)

And in *Roxas v. Buan*[26] this Court held:

Contending that petitioner Roxas is a party actually holding the property adversely to the debtor, Arcadio Valentin, petitioners argue that under the provisions of Act No. 3135 they cannot be ordered to vacate the property. Hence, the question of whether, under the circumstances, petitioner Roxas indeed is a party actually holding the property adversely to Valentin.

It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of P100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes. Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption [Rule 39, Sec. 29 (a) of the Revised Rules of Court; *Magno v. Viola*, 61 Phil. 80 (1934); *Rosete v. Prov. Sheriff of Zambales*, 95 Phil. 560 (1954).] Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin.

Thus, in *Belleza v. Zandaga* [98 Phil. 702 (1956)], the Court held that where the purchaser in an execution sale has already received the definitive deed of sale, he becomes the owner of the property bought and, as absolute owner, he is entitled to its possession and cannot be excluded therefrom by one who merely claims to be a "successor-in-interest of the judgment debtor," unless it is adjudged that the alleged successor has a better right to the property than the purchaser at the execution sale. Stated differently, the purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. The rule was reiterated in *Guevara v. Ramos* [G.R. No. L-24358, March 31, 1971, 38 SCRA 194].

The rule in *Belleza*, although relating to the possession of property sold in execution sales under what is now Sec. 35, Rule 39 of the Revised Rules of Court, is also applicable to the possession of property sold at extrajudicial foreclosure sales pursuant to Sec. 6 of Act No. 3135 [see *IFC Service Leasing and Acceptance Corp. v. Nera*, supra]. Thus, as petitioner Roxas is not a party holding the property adversely to Valentin, being the latter's successor-in-interest, there was no bar to the respondent trial court's issuance of a writ of possession upon private respondent Buan's application.

It does not matter that petitioner Roxas was not specifically named in the writ of possession, as he merely stepped into the shoes of Valentin, being the latter's successor-in-interest. On the other hand, petitioner de Guia was occupying the house as Roxas' alleged tenant [Rollo, p. 24]. Moreover, respondent court's decision granting private respondent Buan's petition for the issuance of a writ of possession ordered the Provincial

Sheriff of Zambales or any of his deputies to remove Valentin "or any person claiming interest under him" from the property [Rollo, p. 16]. Undeniably, petitioners fell under this category.[27] (Emphasis supplied)

As transferees of mortgagor MICC, petitioners merely stepped into its shoes and are necessarily bound to acknowledge and respect the mortgage it had earlier executed in favor of Banco Filipino.

As for petitioners' argument that they are still entitled to redeem the foreclosed properties, it must be rejected too.

The debtor in extra-judicial foreclosures under Act No. 3135, or his successor-in-interest, has, one year from the date of registration of the Certificate of Sale with the Registry of Deeds, a right to redeem the foreclosed mortgage,[28] hence, petitioners, as MICC's successors-in-interest, had one year from the registration of the Certificate of Sale on July 29, 1985 or until July 29, 1986 for the purpose.

Petitioners, however, failed to do so. Ownership of the subject properties was thus consolidated in favor of Banco Filipino,[29] and TCT Nos. 112352 (in lieu of TCT No. 61078) and 112353 (in lieu of TCT No. 61062) were issued in its name.

As this Court held in *F. David Enterprises v. Insular Bank of Asia and America*:[30]

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[31] (Emphasis supplied)

Petitioners assert, however, that a binding agreement for the repurchase of the subject properties was reached with Banco Filipino as, so they claim, reflected in the following exchange of communications:

October 17, 1996

Mrs. Luz B. Dacasin
Asst. Vice-President
Real Estate Dept.
Banco Filipino Savings and Mortgage Bank
101 Paseo De Roxas cro. [sic] Dela Rosa Sts.
Makati City

Dear Madam:

I am writing to you, on behalf of spouses Sonia and Rodrigo Paderes re: TCT No. 61078 formerly owned by Manila International Construction Corporation (MICC for short) now TCT No. 112352, registered in the name of Banco Filipino Savings and Mortgage Bank in July 30, 1996 at the Register of Deeds of Parañaque, Metro Manila. Incidentally, the property is denominated as Block 48, Lot 5 located at Leon Florentino St., BF Executive, Parañaque, Metro Manila.

The background facts of TCT No. 61078 are as follows:

In August 1983, the MICC executed a Deed of Absolute Sale of that lot covered by TCT No. 61078 in favor of spouses Sonia and Rodrigo Paderes which was acknowledged before a Notary Public on October 1, 1983. The value of the lot was P115,720.00. In the same year, the parties executed an addendum to the said deed of

absolute sale which covered a house valued at P242,874.45. The net package price of the house and lot was fixed at P329,405.75. From this amount, the spouses Sonia and Rodrigo Paderes paid MICC inclusive of equity the amount of P125,437.35 leaving a balance of P212,985.60. The spouses moved in the house in November 1983.

Unknown to the spouses, MICC mortgaged TCT No. 61078 in favor of Banco Filipino Savings and Mortgage Bank for P1,885.00 duly inscribed in TCT No. 112352 on December 12, 1982. It was foreclosed by the bank for P3,092,547.82 pursuant to the certificate of sale executed by the sheriff as inscribed on TCT No. 112352 [should be TCT No. 61078] on July 29, 1985 . . .

Then came the news that Banco Filipino Savings and Mortgage Bank was under conservatorship by the Board of Liquidators. On the other hand, MICC became bankrupt and closed shop. The spouses were [sic] nowhere to go to then at the time to get the title of the property they purchased from MICC.

Until, the spouses received a letter dated April 6, 1987 from the Board of Liquidators via Alberto Reyes, Deputy Liquidator, informing the spouses that the property they purchased from MICC was already foreclosed by the bank. The spouses answered the letter and disclaimed any knowledge of the foreclosure. In their answer to the said letter, they emphasized that their unpaid balance with MICC was P188,985.60.

We are addressing your goodself [sic] to inform the bank that the spouses Sonia and Rodrigo Paderes are exercising their right of redemption as subrogees of the defunct MICC under special laws.

From reliable information, the bank had already made appraisal of the property and from that end, may we be informed [at] the soonest possible time the value of the property to enable the spouses to prepare for such eventuality. And, upon receipt of the said appraisal value we shall immediately inform you [of] our position on the matter.

Thank you very much.

Very truly yours,

[SGD.]

LUCIANO D. VALENCIA

Counsel for Spouses Paderes

JPA Subdivision, City of Muntinlupa[32]

x x x (Emphasis supplied).

October 25, 1996

Mr. Luciano D. Valencia

Counsel for Sps. Paderes

JPA Subdivision, Muntinlupa

Dear Sir:

This is with regard to your letter dated October 17, 1996 concerning the property formerly owned by Manila International Construction Corporation (MICC) foreclosed by the Bank.

Please inform Sps. Rodrigo and Sonia Paderes to come to the bank to discuss said foreclosed property directly with the bank.

Thank you.

Very truly yours,

[SGD.]

LUZ B. DACASIN

Assistant Vice-President

Real Estate Department[33]

x x x (Emphasis supplied; italics in the original).

November 4, 1996

Mrs. Luz B. Dacasin

Asst. Vice-President

Real Estate Dept., Banco Filipino

Makati City

Dear Madam:

Thank you very much for your letter dated October 25, 1996, which was received on October 31, 1996, the contents of which had been duly noted. Pursuant thereto I advised my clients - spouses Rodrigo and Sonia Paderes to see [you].

With your indulgence, I also advised my other clients - spouses Isabelo and Juana Herminia Bergado to go along with the spouses Paderes, who are similarly situated with spouses Paderes property.

Incidentally, on October 28, 1996, I also wrote your goodself another letter at the behest of spouses Isabelo and Juana Herminia Bergado whose property is equally footed with spouses Paderes.

It is hoped that, out of that conference per your invitation my clients above-named be informed formally the total amounts due the bank as a consequence of the right of redemption extended to them. Of course, whatever appraised value arrived at by the bank on the properties subject of redemption the same shall not be construed as my clients' committed liability.

Thank you very much.

Very truly yours,

[SGD.]

LUCIANO D. VALENCIA

Counsel for Spouses Paderes

JPA Subdivision, City of Muntinlupa[34]

x x x (Emphasis supplied).

November 8, 1996

Mrs. Luz B. Dacasin

Asst. Vice-President

Real Estate Department

Banco Filipino Savings & Mortgage Bank

Makati City

Re: Lot 18, Block 48 Gamboa St.

BF Homes, Parañaque, MM (264 SQ.M.)

Occupied by Sps. Isabelo Bergado &

Juana Herminia Bergado

Lot 5, Block 48, L. Florentino St.

BF Homes, Parañaque, MM (263 SQ.M.)
Occupied by Sps. Rodrigo Paderes &
Sonia Paderes

Dear Madam Asst. Vice-President:

Pursuant to our conference this morning November 8, 1996, regarding our desire to redeem the properties above-captioned, which your good office accommodated, and per your advi[c]e, we submit the following facts taken out and our proposals:

1. Regarding the lot, you mentioned that, the cost per square meter was P7,500.00. To this price we are no-committal for the said price is high. Although, we are still to have the amount re-negotiated.
2. We appreciate very much your having excluded the house built in the said lot for purposes of fixing the redemption price.
3. Your advi[c]e to subject the properties (house and lot) to a real-estate mortgage with the bank so that the amount to be loaned will be used as payment of the properties to be redeemed is accepted, and we are committed to it.

Thank you very much

Very truly yours,

[SGD.]
SPS. SONIA &
RODRIGO PADERES

[SGD.]
SPS. ISABELO &
JUANA HERMINIA BERGADO[35]

(Emphasis supplied).

Petitioners' assertion does not pass muster.

Under Article 1318 of the Civil Code, there are three essential requisites which must concur in order to give rise to a binding contract: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. "Consent" is further defined in Article 1319 of the Code as follows:

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (Emphasis supplied)

By "offer" is meant a unilateral proposition which one party makes to the other for the celebration of the contract. There is an "offer" in the context of Article 1319 only if the contract can come into existence by the mere acceptance of the offeree, without any further act on the part of the offeror. Hence, the "offer" must be definite, complete and intentional.[36]

With regard to the "acceptance," a learned authority notes that:

To produce a contract, the acceptance must not qualify the terms of the offer. There is no acceptance sufficient to produce consent, when a condition in the offer is removed, or a pure offer is accepted with a condition, or when a term is established, or changed, in the acceptance, or when a simple obligation is converted by the acceptance into an alternative one; in other words, when something is desired which is not exactly what is proposed in the offer. It is necessary that the acceptance be unequivocal and unconditional, and the acceptance and the proposition shall be without any variation whatsoever; and any modification or variation from the terms of the offer annuls the latter and frees the offeror.[37] (Emphasis supplied)

A reading of the above-quoted correspondence reveals the absence of both a definite offer and an absolute acceptance of any definite offer by any of the parties.

The letters dated October 17, 1996 and November 4, 1996, signed by petitioners' counsel, while ostensibly proposing to redeem the foreclosed properties and requesting Banco Filipino to suggest a price for their repurchase, made it clear that any proposal by the bank would be subject to further action on the part of petitioners.

The letter dated October 25, 1996 signed by Luz Dacasin, Assistant Vice-President of Banco Filipino, merely invited petitioners to engage in further negotiations and does not contain a recognition of petitioners' claimed right of redemption or a definite offer to sell the subject properties back to them.

Petitioners emphasize that in item no. 3 of their letter dated November 8, 1996 they committed to "subject the properties (house and lot) to a real-estate mortgage with the bank so that the amount to be loaned will be used as payment of the properties to be redeemed." It is clear from item no. 1 of the same letter, however, that petitioners did not accept Banco Filipino's valuation of the properties at P7,500.00 per square meter and intended to "have the amount [renegotiated]."

Moreover, while purporting to be a memorandum of the matters taken up in the conference between petitioners and Banco Filipino Vice-President Dacasin, petitioners' letter of November 8, 1996 does not contain the concurrence of Ms. Dacasin or any other authorized agent of Banco Filipino. Where the alleged contract document was signed by only one party and the record shows that the other party did not execute or sign the same, there is no perfected contract.[38]

The Court of Appeals, therefore, committed no error in concluding that "nothing concrete came out of the meeting" between petitioners and Banco Filipino.

Respecting petitioners' claim that their houses should have been excluded from the auction sale of the mortgaged properties, it does not lie. The provision of Article 448[39] of the Civil Code, cited by petitioners, which pertain to those who, in good faith, mistakenly build, plant or sow on the land of another, has no application to the case at bar.

Here, the record clearly shows that petitioners purchased their respective houses from MICC, as evidenced by the Addendum to Deed of Sale dated October 1, 1983 and the Deed of Absolute Sale dated January 9, 1984.

Being improvements on the subject properties constructed by mortgagor MICC, there is no question that they were also covered by MICC's real estate mortgage following the terms of its contract with Banco Filipino and Article 2127 of the Civil Code:

Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the

possession of the mortgagor, or it passes into the hands of a third person. (Underscoring supplied).

The early case of *Cu Unjieng e Hijos v. Mabalacat Sugar Co.*[40] is illustrative. In that case, this Court held:

. . . (1) That a mortgage constituted on a sugar central includes not only the land on which it is built but also the buildings, machinery, and accessories installed at the time the mortgage was constituted as well as all the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof (*Bischoff vs. Pomar and Compañia General de Tabacos*, 12 Phil. 690); (2) that the notice announcing the sale at public auction of all the properties of a sugar central extends to the machinery and accessories acquired and installed in its mill after the constitution of the mortgage; (3) that the court, that has ordered the placing of the mortgaged properties in the hands of a receiver in a foreclosure suit, has jurisdiction to order the sale at public auction of the said mortgaged properties even before the termination of the receivership; and (4) that the fact that the price at which the mortgaged properties were sold at public auction is inadequate, is not in itself sufficient to justify the annulment of the sale.[41] (Emphasis supplied)

Petitioners finally proffer that the issuance, on Banco Filipino's mere motion, of the Writ of Possession on November 5, 1996, more than 8 years since the promulgation of the RTC Order granting its petition on September 8, 1988, violated Section 6, Rule 39 of the Rules of Court, viz:

Sec. 6. Execution by motion or by independent action.—A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Hence, petitioners argue, the writ of possession had lost its validity and efficacy and should therefore be declared null and void.

Petitioners' ultimate argument fails too. In *Rodil vs. Benedicto*,[42] this Court categorically held that the right of the applicant or a subsequent purchaser to request for the issuance of a writ of possession of the land never prescribes:

The respondents claim that the petition for the issuance of a writ of possession was filed out of time, the said petition having been filed more than five years after the issuance of the final decree of registration. In support of their contention, the respondents cite the case of *Soroñgon vs. Makalintal* [80 Phil. 259 (1948)], wherein the following was stated:

"It is the law and well settled doctrine in this jurisdiction that a writ of possession must be issued within the same period of time in which a judgment in ordinary civil actions may be summarily executed (section 17, Act 496, as amended), upon the petition of the registered owner or his successors in interest and against all parties who claim a right to or interest in the land registered prior to the registration proceeding."

The better rule, however, is that enunciated in the case of *Manlapas and Tolentino vs. Lorente* [48 Phil. 298 (1925)], which has not yet been abandoned, that the right of the applicant or a subsequent purchaser to ask for the issuance of a writ of possession of the land never prescribes. . .

x x x

In a later case [*Sta. Ana v. Menla*, 111 Phil. 947 (1961)], the Court also ruled that the provision in the Rules of Court to the effect that judgment may be enforced within five years by motion, and after five years but within ten years by an action (Section 6, Rule 39) refers to civil actions and is not applicable to special proceedings, such as land registration cases. The Court said:

"The second assignment of error is as follows:

"That the lower court erred in ordering that the decision rendered in this land registration case on November 28, 1931 or twenty six years ago, has not yet become final and unenforceable.

We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment or decision. Authority for this theory is the provision in the Rules of Court to the effect that judgment may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39). This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person or a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.[43] (Emphasis and underscoring supplied)

Petitioners have not supplied any cogent reason for this Court to deviate from the foregoing ruling.

The established doctrine that the issuance of a writ of possession is a ministerial function whereby the issuing court exercises neither discretion nor judgment bears reiterating. The writ issues as a matter of course upon the filing of the proper motion and, if filed before the lapse of the redemption period, the approval of the corresponding bond.[44]

Petitioners, however, are not without remedy. As reflected in the challenged Court of Appeals decision, under Section 8[45] of Act No. 3135, as amended, petitioners, as successors-in-interest of mortgagor MICC, have 30 days from the time Banco Filipino is given possession of the subject properties to question the validity of the auction sale under any of the two grounds therein stated by filing a petition to set aside the same and cancel the writ of possession.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

Panganiban, J., No part. Former counsel of a party.

[1] The present petition (jointly filed by petitioners), which was assigned two docket numbers, involves an Appeal by Certiorari under Rule 45 of the Rules of Court. Consequently, the Court of Appeals, which rendered the Decision under review, should not have been impleaded, even as a nominal party, following Section 4, Rule 45 of the Rules of Court.

[2] In its Comment in the proceedings a quo, Banco Filipino Savings & Mortgage Bank stated that it "has resumed its normal banking operation and is no longer under the liquidation of Carlota P. Valenzuela." Thus, said bank should have been indicated as the respondent in the caption in lieu of its former liquidator. Indeed, petitioners identify Banco Filipino Savings & Mortgage Bank as the "private respondent" in the body of their Petition.

[3] CA Rollo at 139-144.

[4] CA Rollo Vol. I at 50-60.

[5] Id. at 63-106.

[6] Rollo at 52-53.

[7] Id. at 50-51.

[8] Id. at 29-32.

[9] CA Rollo Vol. I at 135.

[10] Rollo at 33.

[11] Id. at 10.

[12] CA Rollo Vol. I at 107-110.

[13] Id. at 111-118.

[14] Id. at 119-124.

[15] Id. at 166-167.

[16] Id. at 12-14; CA Rollo Vol. II at 11-13.

[17] By Resolutions of January 15, 1997 and January 21, 1997.

[18] Rollo at 22-27.

[19] A.G. Development Corp. v. Court of Appeals, 281 SCRA 155, 159 (1997).

[20] Art. 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

[21] The pertinent provisions of P.D. 1529 read:

Sec. 54. Dealings less than ownership, how registered. - No new certificate shall be entered or issued pursuant to any instrument which does not divest the ownership or title from the owner or from the transferee of the registered owners. All interests in registered land less than ownership shall be registered by filing with the Register of Deeds the instrument which creates or transfers or claims such interests and by a brief memorandum thereof made by the Register of Deeds upon the certificate of title, and signed by him. A similar memorandum shall also be made on the owner's duplicate. The cancellation or extinguishment of such interests shall be registered in the same manner.

x x x

Sec. 60. Mortgage or lease of registered land. - Mortgages and leases shall be registered in the manner provided in Section 54 of this Decree. The owner of registered land may mortgage or lease it by executing the deed in a form sufficient in law. Such deed of mortgage or lease and all instruments which assign, extend, discharge or otherwise deal with the mortgage or lease shall be registered, and shall take effect upon the title only from time of registration.

x x x

[22] Art. 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws.

[23] Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

[24] 21 SCRA 694 (1967).

[25] Id. at 697-698; vide *Asuncion v. Evangelista*, 316 SCRA 848, 874 (1999).

[26] 167 SCRA 43 (1988).

[27] Id. at 49-51.

[28] *Sta. Ignacia Rural Bank v. Court of Appeals*, 230 SCRA 513, 519 (1994) citing: *Belisario v. Intermediate Appellate Court*, 165 SCRA 101, 106-107 (1988); *Philippine National Bank v. Court of Appeals*, 94 SCRA 357, 371 (1979).

[29] Rollo at dorsal portions of pages 51 and 53.

[30] 191 SCRA 516 (1990).

[31] Id. at 523; vide *Vda. de Zaballero v. Court of Appeals*, 229 SCRA 810, 814 (1994); *Chailease Finance Corp. v. Ma*, 409 SCRA 250, 253-254 (2003).

[32] Rollo at 36-37.

[33] Id. at 38.

[34] Id. at 39.

[35] Id. at 40.

[36] IV A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 448 (1991 ed.).

[37] Id. at 450 citing 8 *Manresa* 651, *Great Pacific Life Association v. Court of Appeals*, 89 SCRA 543 (1979); and *Beaumont v. Prieto*, 41 Phil. 670 (1916); *Batañgan v. Cojuangco*, 78 Phil. 481 (1947); *Cronico v. J.M. Tuason & Co., Inc.*, 78 SCRA 331 (1977); *Weldon Construction v. Court of Appeals*, 154 SCRA 618 (1987).

[38] *Guardino v. Encarnacion*, 29 SCRA 326, 331 (1969); *Rikar v. Ople*, 155 SCRA 85, 94 (1987).

[39] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[40] 58 Phil. 439 (1933).

[41] Id. at 445; vide *Cea v. Villanueva*, 18 Phil. 538, 541 (1911); *Castro Jr. v. Court of Appeals*, 250 SCRA 661,

665-666 (1995).

[42] 95 SCRA 137 (1980).

[43] Id. at 142-144.

[44] Chailease Finance Corp. v. Ma, *supra* at 253.

[45] Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered four hundred and ninety-six [now Section 108 of P.D. No. 1529] and if it finds the complaint of the debtor justified, it shall dispose in his favor all or part of the bond furnished by the person who obtained the possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six [now Section 33 of P.D. No. 1529]; but the order of possession shall continue in effect during the pendency of the appeal.

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.