

## CONCEPCION R. ANCHETA, PETITIONER, VS. METROPOLITAN BANK & TRUST COMPANY, INC. AND COURT OF APPEALS, RESPONDENTS.

*G.R. NO. 163410. September 16, 2005*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-163410/>

---

### CALLEJO, SR., J.:

This is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 78744, as well as its Resolution[2] denying the motion for reconsideration thereof.

#### The Antecedents

On March 7, 2001, the Metropolitan Bank and Trust Company, Inc. (Metrobank) filed a petition with the Regional Trial Court (RTC) for the issuance of a writ of possession over seven (7) parcels of land located in the City of Manila, covered by Transfer Certificates of Title (TCT) Nos. 249617 to 249623.

In its petition, Metrobank alleged that the Maglalang Construction and Development Corporation (Maglalang Corporation, for brevity) submitted a Real Estate Mortgage executed by Ariel N. Reyes (as attorney-in-fact of the registered owners of the property), to secure the payment of its loans in the aggregate amount of P86,915,385.31. The mortgaged properties were located in Manila and covered by TCT Nos. 229431 to 229437. Upon the corporation's failure to pay their loan accounts, Metrobank filed on October 3, 1997 a petition for extrajudicial foreclosure of the real estate mortgage. On November 26, 1997, the property was sold at a public auction, with Metrobank as the highest bidder for P83,575,590.69. On September 7, 1998, the ex-officio sheriff executed a Certificate of Sale[3] over the property in favor of Metrobank, and the mortgagors failed to redeem the property within the period therefor. Accordingly, Metrobank executed an Affidavit of Consolidation of Ownership[4] on September 20, 2000. On September 25, 2000, TCT Nos. 229431 to 229437 were cancelled, and on the basis of a certificate of sale executed by the ex-officio sheriff, the Register of Deeds issued TCT Nos. 249617 to 249623 in favor of and under the name of Metrobank. Thus, in a Letter[5] dated January 31, 2001, Metrobank demanded that the mortgagors vacate the property within 10 days therefrom, otherwise, it would be impelled to file a petition for a writ of possession in the RTC of Manila. The mortgagors refused to vacate the property.

The petition for the issuance of a writ of possession was docketed as LRC No. N-133, LRC No. N-36, LRC No. N-9938 and raffled to Branch 4 of the court. It contained a Verification with Certificate of Non-Forum Shopping executed by Atty. Ramon S. Miranda, the Legal Officer of Metrobank's Legal Division.[6]

During the hearing of the petition, Metrobank adduced testimonial and documentary evidence in support of its petition.

On July 27, 2001, the RTC issued an Order granting the petition, the dispositive portion of which reads:

WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of this Branch to place the herein petitioner in actual physical possession of the foreclosed properties situated in the District of Sta.

Cruz, City of Manila, and covered by Transfer Certificates of Title Nos. 229431, 229432, 229433, 229434, 229435, 229436 and 229437 (now Transfer Certificates of Title Nos. 249617, 249618, 249619, 249620, 249621, 249622 and 249623) and to eject therefrom respondent Maglalang Construction & Development Corporation, its agents and such other persons claiming rights under it.[7]

On November 8, 2001, the RTC issued a Writ of Possession directing the Sheriff of the RTC of Manila to place Metrobank in possession of the property described therein.[8] The Sheriff complied with the order and placed Metrobank in possession of the property.

On March 1, 2002, Concepcion R. Ancheta, one of the mortgagors under the Real Estate Mortgage executed in favor of Metrobank, filed an "Urgent Motion for Intervention" in LRC No. N-133, praying that in the interest of substantial justice, fair play and equity, she be allowed to intervene, and that her opposition-in-intervention appended thereto be admitted.

In her opposition, Ancheta alleged that she was one of the co-owners of the property. On April 17, 1998, she and some of her co-owners, Dr. Ambrocio M. Reyes, Lorenzo M. Reyes, Jr. and Julita Reyes Maylad, filed a Complaint[9] for the nullification of the real estate mortgage executed in favor of Metrobank with the RTC of Manila, docketed as Civil Case No. 98-88370 and raffled to Branch 32 of the court, impleading Godofredo Cruz and Rodrigo Maglalang, through their attorney-in-fact, Ariel N. Reyes; as well as the extrajudicial foreclosure and the sale of the subject property at public auction. After due proceedings, the court rendered a summary judgment on November 17, 1999 in their favor, declaring null and void the real estate mortgage, the extrajudicial foreclosure of the said mortgage and the sale of the property at public auction.[10] Ancheta further alleged that the defendants therein appealed the decision to the CA, docketed as CA-G.R. CV No. 69922, and that the appeal was still pending thereat. Ancheta posited that until the appealed decision was set aside, any petition for a writ of possession would have no factual and legal basis, and as such, prayed that the writ of possession already issued by the RTC be set aside.

Metrobank opposed the intervention on the ground that it had become moot and academic because the court had already granted its petition for a writ of possession. Metrobank averred that under Section 2, Rule 19 of the 1997 Revised Rules of Civil Procedure, intervention is proscribed after the trial court has issued its judgment.[11]

In its rejoinder, Metrobank alleged that intervention is proscribed in a petition for a writ of possession under Section 7 of Act No. 3135, as amended, because as provided therein, the proceeding is ex-parte in nature. Moreover, a petition for a writ of possession can legally and properly proceed independently and regardless of the pendency of a complaint for annulment of the real estate mortgage, the extrajudicial foreclosure thereof and the sale of the subject property. Besides, Metrobank averred that, under Section 8 of Act No. 3135, as amended by Act No. 4118, the mortgagor may file a petition in the trial court which issued the writ of possession to set aside the sale within 30 days after the purchaser-mortgagee was given possession of the property.

Ancheta filed a motion to strike-out Metrobank's opposition to the intervention, claiming that Atty. Miranda had no authority to execute the verification and certificate of non-forum shopping embodied in its petition for a writ of possession; hence, the petition for a writ of possession must be expunged from the records.

On January 17, 2003, the RTC issued an Order[12] denying the motion for intervention. The RTC ruled that such motion was filed long after its order granting the petition for a writ of possession had been issued. It held that the petition for a writ of possession under Act No. 3135, as amended, is by nature, ex parte, that is, the judicial proceedings was brought for the benefit of one party only and without notice to, or consent of, any other person adversely affected. The court also ruled that it was not barred from taking cognizance of or granting the petition for a writ of possession, notwithstanding the pendency of CA-G.R. CV No. 69922 before the appellate court. The

RTC, thereafter, ruled that Ancheta's motion to strike-out the petition on the ground that the certification against forum shopping was defective was without merit. Ancheta filed a motion for reconsideration of the order, which the court denied.[13]

Ancheta, the movant-in-intervention, forthwith filed a petition for certiorari and Prohibition with the CA, alleging that the order of the court denying her motion to intervene was issued with grave abuse of discretion amounting to excess or lack of jurisdiction.

On November 24, 2003, the CA rendered judgment dismissing the petition, on the ground that the proceedings in a petition for writ of possession is summary in nature, it being ex parte. Furthermore, the matter of whether or not the petition is defective may be dealt with in a proceeding as outlined in Section 8 of Act No. 3135. It further held that Metrobank had already consolidated its title over the property and had become its registered owner.[14] The CA also ruled that Atty. Miranda was authorized to execute the certificate of non-forum shopping, and, likewise, denied Ancheta's motion for reconsideration.

Ancheta, now the petitioner, filed the instant petition for review on certiorari against Metrobank, assailing the decision of the CA. She insists that the certificate of non-forum shopping incorporated in the petition for a writ of possession filed by respondent Metrobank is defective because Atty. Miranda, the Legal Officer who signed the certification, had no authority to do so. She posits that the board resolution authorizing Atty. Miranda to file the petition was approved only on July 9, 2003, long after the petition for a writ of possession was filed, and as such, did not cure the defect. The petitioner argues that although a petition for a writ of possession is ex parte in nature, such rule would apply only if the purchaser at public auction is an innocent purchaser for value; a purchaser in bad faith (such as the respondent) is not entitled to the protection under Act No. 3135. The petitioner insists that in view of the decision of Branch 32 in Civil Case No. 98-88370 and the pendency of Metrobank's appeal in CA-G.R. CV No. 69922, the RTC was barred from issuing a writ of possession. The petitioner posits that by granting the petition for the writ of possession, the RTC thereby interfered with and disregarded the summary judgment rendered by Branch 32 of the RTC, a violation of the doctrine of judicial non-interference.

The petition has no merit.

Central to the first issue is Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides:

SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

A certificate of non-forum shopping is required only in complaints or other initiatory pleadings, and a petition for a writ of possession under Section 7 of Act No. 3135 is not a complaint or an initiatory pleading. Indeed, this

Court in *Spouses Arquiza v. Court of Appeals*,<sup>[15]</sup> held that:

... The certification against forum shopping is required only in a complaint or other initiatory pleading. The ex parte petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case in which the motion is filed. A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy. An application for a writ of possession is a mere incident in the registration proceeding. Hence, although it was denominated as a "petition," it was in substance merely a motion. Thus, the CA correctly made the following observations:

Such petition for the issuance of a writ of possession is filed in the form of an ex parte motion, inter alia, in the registration or cadastral proceedings if the property is registered. Apropos, as an incident or consequence of the original registration or cadastral proceedings, the motion or petition for the issuance of a writ of possession, not being an initiatory pleading, dispels the requirement of a forum shopping certification. Axiomatic is that the petitioner need not file a certification of non-forum shopping since his claims are not initiatory in character (*Ponciano vs. Parentela, Jr.*, 331 SCRA 605 [2000]).

The second issue raised by the petitioner is not novel. In *GSIS v. Court of Appeals*,<sup>[16]</sup> this Court discussed the inappropriateness of intervening in a summary proceeding under Section 7 of Act No. 3135:

The proceedings in which respondent Knecht sought to intervene is an ex parte proceeding pursuant to Sec. 7 of Act No. 3135, and, as pointed out by petitioner, is a "judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested (*Stella vs. Mosele*, 19 N.E., 2d 433, 435, 299 III App. 53; *Imbrought v. Parker*, 83 N.E. 2d 42, 43, 336 III App. 124; *City Nat. Bank & Trust Co. v. Aavis Hotel Corporation*, 280 III App. 247), x x x or a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard" (*Restatement, Torts*, S 674, p. 365, *Rollo*).

On the other hand, Rule 12, Sec. 2 of the Revised Rules of Court on Intervention provides:

SEC. 2. Intervention.— Any person may, before or during a trial be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof (*italics supplied*).

Intervention is defined as "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings" (33 C.J., 477, cited in *Eulalio Garcia, et al. vs. Sinforoso David, et al.*, 67 Phil. 279, at p. 282).

Action, under Rule 2, Sec. 1, is defined as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong.

From the aforesaid definitions, it is clear that intervention contemplates a suit, and is therefore exercisable during a trial and, as pointed out by petitioner is one which envisions the introduction of evidence by the parties, leading to the rendition of the decision in the case (p. 363, *Rollo*). Very clearly, this concept is not that contemplated by

Sec. 7 of Act No. 3135, whereby, under settled jurisprudence, the Judge has to order the immediate issuance of a writ of possession 1) upon the filing of the proper motion and 2) the approval of the corresponding bond. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership. A trial which entails delay is obviously out of the question.

The fact that the RTC of Manila, Branch 32, has rendered a decision in Civil Case No. 98-88370 did not proscribe the RTC, Branch 4, from taking cognizance of and granting the petition for a writ of possession filed by respondent Metrobank. Contrary to the petitioner's contention, the doctrine of judicial stability, which states that a branch of a Regional Trial Court of a province or city should not and cannot interfere with the orders or other judgments in cases pending in other branches of the RTC in that city or province,[17] is not applicable in this case. The reason for this is that, the power to open, modify, or vacate a judgment is not only possessed by, but is restricted to the court in which the judgment was rendered.[18]

In taking cognizance of the petition for a writ of possession and granting the same, the RTC did not interfere with the appeal in CA-G.R. CV No. 69922, nor did it modify or vacate the decision in Civil Case No. 98-88370. The only issue therein was whether Metrobank, the registered owner of the subject property, was entitled to the possession thereof. The RTC's order granting the petition and directing the Sheriff to place the respondent in possession of the property, conformably with the writ of possession it had issued earlier, were mere incidents to the transfer of the title over the property to the respondent. The RTC did not delve into, much less resolve, the issue of the validity or invalidity of the real estate mortgage executed in favor of the respondent, the extrajudicial foreclosure of the real estate mortgage, and the sale at public auction of the subject property. Such issues were raised in Civil Case No. 98-88370 and, thereafter, in CA-G.R. CV No. 69922, which issues have yet to be resolved with finality in the said appeal. Thus, the respondent was entitled to the possession of the property, subject, however, to the final outcome of the case on appeal. Indeed, this Court ruled in *Ong v. Court of Appeals*[19] that:

As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case. Hence, an injunction to prohibit the issuance of writ of possession is entirely out of place.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit.

**SO ORDERED.**

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

---

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale, concurring; Rollo, pp. 135-141.

[2] Rollo, pp. 22-23; Rollo, pp. 155-156.

[3] Rollo, pp. 41-44.

[4] Id. at 218.

[5] Records, p. 45.

[6] Id. at 5.

[7] Id. at 98.

[8] Records, p. 102.

[9] Id. at 241.

[10] Id. at 255-267.

[11] Records, pp. 121-123.

[12] Records, pp. 144-147.

[13] Id. at 165-166.

[14] CA Rollo, pp. 384-390.

[15] G.R. No. 160479, 8 June 2005.

[16] G.R. No. 42278, 20 January 1989, 169 SCRA 244.

[17] Paper Industries Corporation of the Philippines v. Intermediate Appellate Court, G.R. No. L-71365, 18 June 1987, 151 SCRA 161.

[18] Ngo Bun Tiong v. Sayo, G.R. No. L-45825, 30 June 1988, 163 SCRA 237.

[19] G.R. No. 121494, 8 June 2000, 333 SCRA 189 (2000).

**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.