VIOLA CAHILIG AND ANTONIO G. SIÑEL, JR., PETITIONERS, VS. HON. EUSTAQUIO G. TERENCIO, REGIONAL TRIAL COURT OF KALIBO, ALDAN, BRANCH 8; THE PROVINCIAL SHERIFF, KALIBO, AKLAN; AND...

G.R. No. 164470. November 28, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

In this petition for review on certiorari with a prayer for the issuance of a writ of preliminary mandatory injunction under Rule 45 of the 1997 Rules of Civil Procedure, the Court is urged to annul and set aside the Decision[1] dated July 23, 2003 as well as the Resolution[2] dated July 9, 2004 both issued by the Court of Appeals in CA-G.R. SP No. 76475, entitled, "Viola Cahilig and Antonio G. Sinei, Jr. v. Hon. Eustaquio G. Terencio, Mercantile Credit Resources Corporation and the Provincial Sheriff', Kaltbo, Aldan." The July 23, 2003 Decision dismissed for lack of merit the petition for certiorari filed by petitioners assailing the issuance of an alias writ of possession via an Order[3] dated December 20, 2002 by the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8 in SP. Proc. No. 6923, entitled "In The Matter For Ex-Parte Issuance Of Writ Of Possession Covering Lot 402-Part, Being A Portion Of Lot 402, NR-06-000001 (And Its Improvements Thereon) Malay Cadastre, Covered By ARP/TD No. 93-003-1674 (PIN-038-12-003-13-014), Pursuant To Section 7 Of Act No. 3135." The July 9, 2004 Resolution, on the other hand, denied petitioners' motion for reconsideration.

The facts of this case, as outlined in the Decision dated July 23, 2003 of the Court of Appeals, follow:

> It appears that on April 14, 1997 and September 17, 1997, Soterania G. Siñel executed deeds of real estate mortgage covering a portion of Lot 402, consisting of 2,882 square meters, located at Barangay Balabag, Malay, Aklan, in favor of Moneytrend Lending Corporation, as security for two promissory notes.
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> On March 31, 1999, Moneytrend Lending Corporation assigned the promissory notes and deeds of real estate mortgage to private respondent Mercantile Credit Resources Corporation.
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> In view of the non-payment of the loans, private respondent caused the extrajudicial foreclosure of the mortgages. It then acquired the mortgaged property as the highest bidder. A certificate of sale was subsequently issued in favor of private respondent. Soterania Sinel failed to redeem the property within the prescribed period and a final deed of sale was issued by the Sheriff on March 19, 2001 in favor of private respondent.
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> On May 2, 2001, private respondent filed with the Regional Trial Court, Branch 8, Kalibo, Aklan an ex-parte motion for the issuance of a writ of possession over the subject property. In an Order dated June 29, 2001, respondent Judge granted the motion and directed the Sheriff to place private respondent in possession of the subject properly, ruling thus:
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> "Jhett Tolentino, Corporate Secretary of the petitioner, testified that from the time the mortgage was constituted and thereafter assigned to the petitioner, it was the mortgagor who remained in possession of the

> mortgaged property. Lately, when he inspected the property after it was foreclosed, it was Viola Cahilig. the daughter of Soterania G. Siñel, the previous owner, who was in possession of the same.
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> In the light of the foregoing, petitioner would want now that a writ of possession be issued in its favor citing the provisions of Sec. 7 of R.A. 3135.
>
> After a careful assessment of the evidence, the Court is convinced that the petitioner has substantiated all its allegations in the petition that entitles the petitioner to the issuance of the, writ.
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> In IFC v. Nerta (19 SCRA 181) it was held that in Extrajudicial Foreclosure of Real Estate Mortgage, the possession of the property sold may be given to the purchaser by the sheriff after the period of redemption had expired unless a third person is actually holding the property adverse to the mortgagor. An ordinary action for the recovery of possession is not necessary.
>
> From the evidence, it was shown that the property sought to be possessed by the petitioner by virtue of this petition is not in the possession of any third person. The present possessor is the immediate successor-in-interest of the mortgagor."

A motion for reconsideration was filed by petitioner Viola Cahilig, for herself and in behalf of the heirs of Soterania Siñel, alleging that private respondent is guilty of forum shopping in view of the pendency of the appeal in Civil Case No. 6247 involving the same parties and subject matter. The motion for reconsideration was denied in an Order dated October 18,2001.

The writ of possession was implemented by Sheriff Victor B. Beluso on January 21, 2002 by serving a notice to vacate on petitioner Viola Cahilig, who manifested that she could turn over only her 1/6 share over the property as the other shares do not belong to her. On March 1 1, 2002, the Sheriff received a third party claimant's affidavit executed by petitioner Antonio Siñel, Jr., who claimed that he and his siblings bought the property from their mother, Soterania Siñel, on March 2, 1993, attaching thereto copies of the deeds of sale in their favor.

On November 25, 2002, private respondent filed a motion for the issuance of an alias writ, of possession. Said motion was opposed by petitioners Viola Cahilig and Antonio G. Siñel, Jr. alleging that they and their siblings have been the owners of the property since 1993, that is, before the mortgage was constituted. In an Order dated December 20, 2002, respondent Judge granted the motion for the issuance of an alias writ of possession and directed the Sheriff to implement the same, with police assistance if necessary.

Petitioners' motion for reconsideration, motion for inhibition and motion to quash the alias writ of possession were denied in an Order dated March 21, 2003, although private respondent was ordered to post an indemnity bond in the amount of P100,000.00 to answer for whatever damages petitioners may suffer in the event that they would be able to vindicate their claim in the civil cases they filed against private respondent. An indemnity supersedeas bond was then filed by private respondent and approved by respondent Judge.[4]

On March 28, 2003, petitioners instituted a special civil action for certiorari alleging grave abuse of discretion on the part of respondent Judge Eustaqio G. Terencio for not quashing the alias writ of possession in view of their third-party claim and irregularities in the mortgage transactions as the loans were allegedly not obtained by Soterania Siñel but by petitioner Viola Cahilig and Shirley Candolila. Petitioners prayed for the issuance of a restraining order to enjoin the implementation of the alias writ of possession.[5]

This was followed by the filing of a Supplemental Petition for Certiorari with Preliminary Injunction with Leave of Court[6] on April 11, 2003 and a Second Supplemental Petition for Certiorari with Prayer for Preliminary Mandatory Injunction with Leave of Court and Motion for Contempt of Court[7] on April 22, 2003, The latter pleading alleged that respondent Provincial Sheriff, accompanied by private respondent's counsel and escorted by

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police officers, forcibly ejected petitioner Viola Cahilig from the subject property, injured the latter, and destroyed the structures located therein.

In its July 23, 2003 Decision, the Court of Appeals pointed out that the principal issue to be resolved in the case being appealed by the petitioners is whether or not petitioners are third parties holding the subject property adversely to the judgment debtor which was the late Soterania Siñel. The Court of Appeals ruled in the negative and dismissed the petition for certiorari for lack of merit.

A motion for reconsideration was filed by petitioners but this was denied by the Court of Appeals in its July 9, 2004 Resolution.

Hence, petitioners take this appeal wherein they put forth the following issues for consideration:

> I
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT NULLIFYING THE ALIAS WRIT OF POSSESSION ISSUED BY THE TRIAL COURT CONSIDERING THAT PETITIONERS, BEFORE THEIR FORCIBLE EVICTION, HAVE ACTUALLY POSSESSED THE SUBJECT PROPERTY AS THIRD [PARTIES]" ADVERSE TO THE MORTGAGOR, SOTERANIA SIÑEL, AS EVIDENCED BY THE THIRD PARTY CLAIM AND THE NOTARIZED DEEDS OF SALE.
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> II
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> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE DEEDS OF SALE EXECUTED BY THE PETITIONERS1 MOTHER, SOTERANIA SIÑEL, IN THEIR FAVOR AND THEIR SIBLINGS ARE FICTITIOUS AND WERE ONLY PREPARED TO THWART THE IMPLEMENTATION OF THE WRIT OF POSSESSION, MERELY RELYING ALONE ON THE ALLEGED ADMISSION OF PETITIONERS IN THEIR SUPPLEMENTAL PETITION FOR CERTIORARI THAT THEY HAVE INHERITED THE SUBJECT PROPERTY FROM THEIR DECEASED MOTHER, BUT OVERLOOKING THE CONSISTENT AND INSISTENT CLAIM OF PETITIONERS THAT THE ONE-SIXTH (1/6) PORTIONS OF THE PROPERTY WERE SOLD TO PETITIONERS AND THE SIBLINGS FOR A VALUABLE CONSIDERATION, AND CONSIDERING THAT SAID DOCUMENTS, BEING NOTARIZED, ARE ENTITLED TO THE PRESUMPTION OF REGULARITY AND ENTITLED TO BE GIVEN WEIGHT AND PROBATIVE VALUE.
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> III
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> THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE MISAPPREHENSION OF FACTS AND GROSSLY
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> MISSAPRECIATED THE EVIDENCE IN GRANTING THE ISSUANCE OF AN ALIAS WRIT OF POSSESSION DESPITE FATAL DEFECTS OF THE EXTRAJUDICIAL FORECLOSURE PROCEEDINGS AND IN CONSIDERING AS OF NO MOMENT THE PENDENCY OF THE APPEALED CASES BEFORE THE COURT OF APPEALS FOR ANNULMENT AND/OR DECLARATION OF THE NULLITY OF THE DEEDS OF REAL ESTATE MORTGAGE AND FORECLOSURE PROCEEDINGS, INCLUDING THE CRIMINAL CASE FOR ESTAFA, AND THAT THE ISSUANCE OF THE WRIT OF POSSESSION TO A PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE SALE IS MERELY A MINISTERIAL FUNCTION OF THE COURT AND MAY NOT BE STAYED BY A PENDING ACTION FOR ANNULMENT OF MORTGAGE OR THE FORECLOSURE ITSELF.
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> IV
>
> THE DECISION OF THE HONORABLE COURT OF APPEALS DISREGARDED AND/OR FAILED TO RESOLVE THE VITAL ISSUES RAISED BY PETITIONERS IN THEIR SECOND SUPPLEMENTAL

> PETITION AND THE MOTION FOR CONTEMPT CONCERNING THE FORCIBLE EJECTMENT OF PETITIONER VIOLA CAH1LIG FROM THE SUBJECT PROPERTY, INJURING HER AND DESTROYING THE STRUCTURES BELONGING TO HER AND OTHER OCCUPANTS ERECTED ON THE SUBJECT PROPERTY.[8]

On the other hand, private respondent, in its Memorandum, presented the following issues For resolution:

> - Whether or not the Petition had complied with the mandatory requirement of execution of non-forum shopping certification by petitioners.
>
> - Whether or not petitioner Viola Cahilig is a third-party claimant to the subject property adverse to the judgment debtor Soterania Siñel.
>
> - Whether or not petitioner Viola Cahilig is bound by the Alias Writ of Possession, as she was bound by the original Writ of Possession.
>
> - Whether or not the case at bar challenging the issuance and the implementation of the Alias Writ of Possession can continue to survive after the issues on the validity of the mortgage and of the foreclosure proceedings of the subject property had already been decided and rendered res judicata in favor of respondent Mercantile Credit

Resources Corporation and of its predecessor-in-interest.

The petition is without merit.

In fine, the focal issue of this case is whether or not the issuance of the writ of possession over the property subject of the foreclosure of the real estate mortgage is proper.

We previously held in Villanueva v. Cherdan Lending Investor, Corporation[11] that:

> A writ of possession is an order of the court commanding (he sheriff to place a person in possession of a real or personal property. It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.[12]

The aforementioned provision of law, Section 7 of Act 3135 as amended, in turn, states:

> 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 tinder 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.

Moreover, in Asia United Bank v. Goodland Company, Inc., we pointed out that:

> It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.[14] (Emphasis supplied.)

In the case at bar, there is no dispute that private respondent caused the extrajudicial foreclosure of the real estate mortgage pursuant to Section 7 of Act 3135, as amended by Act 4118, over the property at issue after Soterania Siñel defaulted on her loan payments when they became due under the promissory notes she had executed. It is likewise undisputed that private respondent purchased the same property at the extrajudicial foreclosure sale and, as a result thereof, a certificate of sale was issued in its favor. Following Soterania Siñel's failure to redeem the property within the prescribed period, a final deed of sale was issued by the Sheriff in the name of private respondent.

Given this factual premise, private respondent acted well within its legal rights when it petitioned the trial court ex parte for the issuance of a writ of possession which the trial court eventually granted. We note, too, that the trial court issued the alias writ of possession only after giving due consideration to petitioners' motion for reconsideration and, subsequently, to their supposed third-party claim wherein petitioners allege that they and their other siblings had already bought the subject property from their mother, the now deceased Soterania Siñel, prior to the constitution of the mortgage and that they were, in actual possession of the land in dispute.

It is on the strength of this third-party claim that petitioners doggedly oppose the trial court's issuance of the said writ of possession arguing that under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages under Section 6 of Act 3135, as amended by Act 4118,[15] the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor, to wit:

> Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. - If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in ail cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (Emphasis supplied.)

In a number of cases, we have held that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.[16]

However, unlike in those cases, the third-party claim in the instant case was not presented at the onset of litigation. In fact, it was not the original theory propounded by petitioners when they filed a motion for reconsideration of the Order dated June 29, 2001 issued by the trial court which first granted the writ of

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possession in private respondent's favor. More importantly, the judicial admissions made by petitioners in their motion were wholly incompatible with their belated claim that they are actually vendees of Soterania Sinel's property.

Judicial admissions are discussed in Section 4, Rule 129 of the Rules of Court which states that:

> Sec. 4. Judicial Admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In Maagad v. Maagad,[18] we explained:

> It is well-settled that a judicial admission conclusively binds the party making it. He cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made.[19]

In the case at bar, petitioners admitted in their Urgent Motion for Reconsideration[20] dated July 23, 2001 that they opposed the issuance of the writ of possession over the subject property because of the pendency of Civil Case No. 6247 filed before the RTC of Kalibo, Aklan, Branch 6. In the said civil case, petitioners, along with their other siblings, sought the annulment of the real estate mortgage and the foreclosure proceedings affecting the subject property in their capacity as heirs of the now deceased Soterania Siñel and not as vendees to an alleged sale of the land in dispute. It must be stressed that petitioners raised for the first time their theory that they are third parties (vendees) holding the property adversely to the mortgagor only in their Opposition to the Motion for Issuance of Alias Writ of Possession, after the trial court had already issued the first order granting a writ of possession to private respondent and after the above-mentioned Urgent Motion for Reconsideration (of the original order issuing a writ of possession) had been denied.

In light of this written admission in their pleading, petitioners cannot be allowed to subsequently claim in the same proceedings that they oppose the issuance of the writ of possession because they already owned the subject property prior to the constitution of the mortgage without first showing that the contradictory admission was made through palpable mistake or that no such admission was made. This petitioners failed to do and, worse, they offer no explanation as to why they failed to adduce evidence of the purported sale of the property in their favor at the earliest opportunity. As a consequence thereof, they must be bound by their original admission that they are merely successors in interest of the mortgagor, rather than adverse claimants.

Moreover, it is not disputed that the subject property is unregistered land and is covered by a tax declaration in the name of Soterania Siñel when the same was mortgaged by her in 1997 in favor of private respondent's predecessor-in-interest, Moneytrend Lending Corporation. As correctly pointed out by the Court of Appeals, Section 113 of Presidential Decree No. 1529 or the Property Registration Decree is applicable and the same provides that "(n)o deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies, x x x."

In the present case, petitioners failed to adduce evidence showing that the deeds of sale in their favor were recorded in the office of the Register of Deeds or that they were annotated on the tax declaration of Soterania Siñel in order to affect the subject property insofar as third persons are concerned, specially private respondent and its predecessor-in-interest. Petitioners likewise failed to prove that private respondent and its predecessor-in-interest had actual or constructive knowledge of the alleged safe of the subject property in their

favor prior to the filing of the third-party claim. Lastly, petitioners did not dispute the testimony of private respondent's

Corporate Secretary, Jhett Tolentino, who stated that it was Soterania Sine! who was in possession of the subject property when the mortgage was constituted, which was later assigned to private respondent, and that it was only after the subject property was foreclosed that the same was possessed by petitioner Viola Cahilig. Thus, in light of the foregoing, the alleged sale of the land in dispute, even if true, does not bind private respondent.

All in all, we find that the Court of Appeals committed no reversible error when it affirmed the trial court's issuance of a writ of possession in the present case, despite the pendency of civil proceedings to annul the mortgage and the foreclosure sale and in light of petitioners' own failure to prove (a) their status as third parties to the mortgage, and (b) notice to the mortgagee of the supposed sale of the subject property in their favor. As discussed above, these actions on the part of the lower courts were in keeping with prevailing jurisprudence.

WHEREFORE, premises considered, the petition is DENIED. The assailed Decision dated July 23, 2003 as well as the Resolution dated July 9, 2004 of the Court of Appeals in CA-G.R. SP No, 76475 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

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[1] Rollo, pp. 42-52; penned by Associate Justice Marina L. Buzon with Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza (now a member of this Court), concurring.

[2] Id. at 54-55.

[3] Id. at 83-84.

[4] Id. at 43-45.

[5] Id. at 116-126.

[6] Id. at 127-156.

[7] id. at 157-183.

[8] Id. at 18-20.

[9] Id. at 562-683.

[10] Id. at 597-598.

[11] G.R. No. 177881, October 13, 2010, 633 SCRA 173.

[12] Id. at 180.

[13] G.R. No. 188051, November 22, 2010, 635 SCRA 637.

[14] Id. at 646.

[15] In all cases in which an extrajudicial sale is made under the special power hereinbefore referred 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 properly subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any lime within the term of one year from and after the date of the sale; and such redemption shall be

governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of The Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

[16] Villunueva v. Cherdan Lending Investors Corporation, supra note 11; Bank of the Philippine Islands v. kot, G.R. No. 16806), October 12, 2009, 603 SCRA 322, 332; Development Bank of the Philippines v. Prime Neighborhood Association, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 594; Dayot v. Shell Chemical Company (Phils.), Inc., G.R. No. 156542, January 26, 2007, 525 SCRA 535, 548; Philippine National Bank v. Court of Appeals, 424 Phil. 757, 770 (2002).

[17] Rollo, pp. 60-62.

[18] G.R. No. 171762, June 5, 2009, 588 SCRA 649.

[19] Id. at 659.

[20] Rollo, pp. 662-676. It is stated in the motion itself that petitioner Viola Cahilig filed the same for herself and on behalf of the heirs of Soterania Siñel, including co-petitioner Antonio Siñel, Jr.

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