

CHINA BANKING CORPORATION, PETITIONER, VS. SPOUSES TOBIAS L. LOZADA AND ERLINA P. LOZADA, RESPONDENTS.*G.R. No. 164919. July 04, 2008*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-164919/>**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Revised Rules of Court filed by petitioner China Banking Corporation (CBC) seeking the reversal and setting aside of the Decision[2] dated 25 March 2004 and Resolution[3] dated 10 August 2004 of the Court of Appeals in CA-G.R. SP No. 67399. The assailed Decision of the appellate court annulled and set aside: (1) the Order[4] dated 31 August 2001 of the Regional Trial Court (RTC), Branch 65, Makati City, in L.R.C. Case No. M-4184, granting the ex parte petition of CBC for a writ of possession over the condominium unit covered by Condominium Certificate of Title (CCT) No. 69096; (2) the Writ of Possession[5] dated 3 September 2001 issued by the RTC Branch Clerk of Court commanding the Sheriff to place CBC in possession of the said condominium unit and eject all its present occupants; and (3) the Notices to Vacate[6] dated 17 October 2001 and 22 October 2001 of the Sheriff addressed, respectively, to Primetown Property Group, Inc. (PPGI) and respondent spouses Tobias L. Lozada and Erlina P. Lozada (spouses Lozada), directing them to vacate the said property within five days from receipt of the notices.

There is hardly any dispute as to the antecedent facts of the instant Petition.

On 25 June 1995, the spouses Lozada entered into a Contract to Sell[7] with PPGI. PPGI, the developer of Makati Prime City Condominium Townhomes Project (Project), agreed to sell to the spouses Lozada Unit No. 402 of Cluster 1 of the Project, a two-bedroom residential unit with an area of 42.90 square meters, covered by CCT No. 34898, for the total price of P1,444,014.04, payable as follows:

30% Downpayment (including the Residential Fee)

P 402,803.92 - Payable in 15 months, beginning 2 October 1995

70% Balance P 1,010,809.83 - Payable upon completion or turn-over of the unit

About six months later, or on 7 December 1995, PPGI, represented by its President Kenneth T. Yap and Treasurer Gilbert Y. Yap, and with Mortgage Clearance[8] from the Housing and Land Use Regulatory Board (HLURB), executed two Deeds of Real Estate Mortgage[9] in favor of CBC to secure the credit facilities granted by CBC to PPGI in the combined maximum amount of P37,000,000.00. The real estate mortgages covered 51 units of the Project, including Unit No. 402.

PPGI availed itself of the said credit facilities and incurred a total principal obligation of P29,067,708.10 to CBC. When PPGI failed to pay its indebtedness despite repeated demands, CBC filed with the Clerk of Court and Ex Officio Sheriff of the Makati City RTC a Petition for Extrajudicial Foreclosure[10] of the real estate mortgages on 31 July 1998. The Petition was docketed as Foreclosure No. 98-098. A Notice of Sheriff's Sale[11] was issued on 7 August 1998 setting the public auction of the foreclosed properties on 11 September 1998 at 10:00 a.m. The

said Notice was published in Metro Profile on 11, 18 and 25 August 1998.[12] The public auction sale took place as scheduled at which CBC was the highest bidder, offering the amount of P30,000,000.00 for the foreclosed properties. The Certificate of Sale[13] of the foreclosed properties was subsequently issued in favor of CBC on 15 October 1998.

On 25 April 2000, CBC Chief Executive Officer Peter S. Dee executed an Affidavit of Consolidation[14] stating that 21 of the 51 foreclosed properties had been either "released by take-out by certain buyers" or partially redeemed; the period for redemption of the remaining foreclosed properties (which included Unit No. 402) had already expired without having been redeemed; the titles to the remaining foreclosed properties had already been consolidated in the name of CBC; and for said reason, the Registry of Deeds of Makati City was requested to issue the corresponding CCTs in the name of CBC. Pursuant to the Affidavit of Consolidation, the Registry of Deeds of Makati City cancelled CCT No. 34898, covering Unit No. 402, and registered in the name of PPGI, and issued in its place CCT No. 69096[15] in the name of CBC on 12 May 2000.

It appears that a few months prior to the foreclosure of the real estate mortgages, PPGI, through its Senior Manager Salvador G. Prieto, Jr., sent a letter[16] dated 30 March 1998 to respondent Erlina P. Lozada (Erlina) in the following tenor:

Dear Ms. Lozada:

This refers to your purchase of Unit 402, Cluster 1 of Makati Prime City, a project of Primetown Property Group, Inc. ("PPGI"), the development of which has been partially financed by China Banking Corporation.

We refer to Section 18 of Presidential Decree No. 957, otherwise known as "The Subdivision and Condominium Buyer's Protective Decree". Section 18 states:

SECTION 18. Mortgages. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

In view of the foregoing, we hereby direct your goodself to remit all payments under your Contract to Sell directly to China Banking Corporation at its Greenhills Branch located at Padilla Arcade, Greenhills, M.M. effective April 1, 1998. Attached is your Statement of Account for your guidance.

This payment arrangement shall in no way cause any amendment of the other terms and conditions, nor the cancellation of the Contract to Sell you have executed with PPGI.

Very truly yours,

(Signed)

Salvador G. Prieto, Jr.

Sr. Manager

Credit and Collection Department

There is nothing on record to show any immediate action taken by the spouses Lozada on the afore-quoted letter. But a year following the public auction sale of the foreclosed properties held on 11 September 1998, Erlina executed a Notice of Adverse Claim[17] dated 13 September 1999 as regards Unit No. 402, which she registered

with the Registry of Deeds of Makati City.[18] Said Notice of Adverse Claim was subsequently annotated on CCT No. 69096 when it was issued in the name of CBC.

Erlina next sent a letter dated 1 December 1999[19] to both PPGI and CBC, laying down her position pertaining to Unit No. 402, to wit:

- I have been ready, willing, and able since August 25, 1998 to pay the balance under my contract and I have tendered payment as early as then.
- My liability is limited to the amount stated thereunder plus reasonable expenses for the transfer of title; no other liability such as for interests, penalties, charges or any other imposition is recognized. The VAT is a liability of the seller and I have never consented to accept this burden.
- On delivery of my full payment, I have a right to demand reasonable assurance that title could be transferred to me immediately and so to require that the muniments of title and evidence of all tax payments by seller (necessary for registration) be delivered to me.

In the same letter, she advised that she was tendering payment by opening an escrow account with CBC in the amount of P1,010,809.83, representing the 70% balance of the purchase price of Unit No. 402 per the Contract to Sell with PPGI. Not long thereafter, Erlina sent another letter[20] dated 3 December 1999 to PPGI and CBC stating that she was unable to open an escrow account as no one had advised her on how to go about it. Instead, she opened a special account with the following details:

Account Name

:

Erlina P. Lozada

Account No.

:

103-630621-4

Bank

:

Chinabank Makati Head Office

Amount

:

P1,010,809.83

She reiterated that the amount represented the balance of the purchase price for Unit No. 402 under the Contract to Sell, and shall be available to the party who shall establish the lawful right to the payment and deliver the muniments of title and other documents necessary for the transfer of the same.

In reply, CBC sent Erlina a letter[21] dated 8 December 1999, telling her that the consideration for Unit No. 402 was P1,100,788.29; thus, the amount she was tendering was insufficient. CBC also informed her that all taxes including documentary stamp tax, capital gains tax, transfer tax, and all other expenses for the transfer of title to her name shall be for her exclusive account.

In another letter dated 15 May 2001 to Erlina, CBC notified her that it had already consolidated its title and ownership over Unit No. 402 which she presently occupied, and requested her to vacate and surrender the said property, including the appurtenant keys, to its duly authorized representative within 15 days from receipt of the letter.

Following the 15 May 2001 letter of CBC to Erlina, a conference was held and more letters were exchanged between the parties,[22] but, apparently, no agreement was reached.

On 27 July 2001, CBC filed an Ex Parte Petition for Issuance of a Writ of Possession[23] with the Makati City RTC, docketed as Land Registration Commission (L.R.C.) Case No. M-4184. CBC prayed to the court a quo for the following:

WHEREFORE, it is most respectfully prayed of this Honorable Court that the corresponding Writ of Possession be issued ex parte by the Honorable Court in favor of petitioner [CBC] and against Erlinda [sic] Lozada and/or all persons claiming rights under her name, over the condominium unit covered by CCT No. 69096 (formerly CCT No. 34898), of the Registry of Deeds for the City of Makati, with all the improvements existing thereon.

On the other hand, on 7 August 2001, the spouses Lozada instituted a Complaint[24] with the HLURB, docketed as HLURB Case No. REM-0080701-11582, with the following prayer:

WHEREFORE, [herein respondents spouses Lozada] pray of this Honorable Board to order the annulment of mortgage, foreclosure, sale, consolidation of ownership between CBC and [PPGI] insofar as they pertain to [spouses Lozada] and to order the respondent Register of Deeds of Makati City to cancel Condominium Certificate of Title No. 69096. It is likewise prayed that a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued to prevent [herein petitioner] CBC from taking possession of the unit in question.

[Spouses Lozada] pray for such other relief and remedies that are just and equitable under the premises.

L.R.C. Case No. M-4184 and HLURB Case No. REM-0080701-11582 proceeded simultaneously, although it is principally the former which concerns this Court in the present Petition.

The Makati City RTC, finding that the prayer for issuance of a writ of possession of CBC in L.R.C. Case No. M-4184 needed to be substantiated by evidence, initially set the hearing on 15 August 2001 at 10:00 a.m.[25] However, on motion of CBC, the Makati City RTC issued an Order[26] dated 15 August 2001 canceling the hearing for that day and transferring the same to 31 August 2001 at 10:00 a.m. The same Order expressly directed that Erlina be notified, but the records do not show that said notice was actually sent and received by her.

The hearing on 31 August 2001 pushed through, even without the presence of the spouses Lozada, during which the CBC presented and marked its documentary evidence.

On 31 August 2001, the Makati City RTC issued an Order[27] granting the Ex Parte Petition of CBC, and decreeing that:

Finding the petition to be duly substantiated by the evidence presented and pursuant to the provisions of section 7 of Act 3135 as amended by Act 4118, let a writ of possession issue in favor of the petitioner China Banking Corporation.

In accordance with the foregoing Order, the RTC Branch Clerk of Court issued the Writ of Possession[28] dated 3 September 2001 commanding the Sheriff to place CBC in possession of Unit No. 402 and eject all its present occupants. The Sheriff, in turn, issued the Notices to Vacate[29] dated 17 October 2001 and 22 October 2001 addressed to PPGI and the spouses Lozada, respectively, directing them to vacate the said property within five

days from receipt of the notices.

When the Sheriff went to Unit No. 402 on 30 October 2001, he failed to enforce the Writ of Possession because the main door of the said property was padlocked,[30] prompting CBC to file with the Makati City RTC an Urgent Ex Parte Motion to Break Open[31] the door to Unit No. 402 and place CBC in possession thereof.

While the afore-mentioned events were unfolding in L.R.C. Case No. M-4184, the spouses Lozada were seeking recourse elsewhere.

They were able to secure an Order[32] dated 25 October 2001 in HLURB Case No. REM-0080701-11582 directing the parties therein to maintain status quo awaiting the resolution of the Application for a Writ of Preliminary Injunction of the spouses Lozada.

Four days later, on 29 October 2001, the spouses Lozada filed with the Court of Appeals their Petition for Certiorari and Prohibition, with Application for Writ of Preliminary Injunction/Temporary Restraining Order[33] against the Makati City RTC, Sheriff, CBC, and PPGI, docketed as CA-G.R. SP No. 67399, which was anchored on the following grounds:

- Respondent Presiding Judge deprived your [herein respondents spouses Lozada] of due process of law and their day in court, when he unjustifiably failed to order the service of notice on [spouses Lozada] of the ex-parte petition of [herein petitioner] CBC;
- The respondent Judge, contrary to law and existing jurisprudence, issued arbitrarily, without jurisdiction and in excess of jurisdiction, the Writ of Possession to the irreparable damage and [prejudice] of [spouses Lozada];
- The respondent Judge in grave abuse of discretion, without jurisdiction and in excess of jurisdiction, without giving [spouses Lozada] the opportunity to fully ventilate their possession over the condominium unit purchased by them, he capriciously, arbitrarily and unjustifiably issued the questioned Writ of Possession intended to eject the [spouses Lozada] from the condominium unit that they purchased;
- The respondent Presiding Judge committed a grave abuse of discretion, amounting to lack or excess of jurisdiction, when he issued the Order of August 31, 2001 granting the Writ of Possession sought by [petitioner] CBC that will certainly interfere with the authority of [the] HLURB being exercised in HLURB Case No. REM-008070-11582.

On 30 October 2001, the Court of Appeals issued a Resolution[34] granting in favor of the spouses Lozada a temporary restraining order enjoining the Sheriff and the other respondents therein from enforcing the Writ of Possession and Notices to Vacate. The spouses Lozada, however, were directed to file an injunctive bond in the amount of P200,000.00.

The Court of Appeals rendered its assailed Decision[35] on 25 March 2004 ruling in favor of the spouses Lozada. According to the appellate court, the issuance of the Writ of Possession was not mandatory and ministerial on the part of the Makati City RTC, and the court a quo should have afforded the spouses Lozada a hearing, considering that (1) Unit No. 402 was no longer in the possession of the original debtor/mortgagor PPGI, but was already being enjoyed by the spouses Lozada; (2) the Makati City RTC was aware that Unit No. 402 was already in the possession of the spouses Lozada because it was so stated in the ex parte petition of CBC, as well as the Notice of Adverse Claim annotated on CCT No. 69096 presented by CBC as evidence before the trial court; (3) the spouses Lozada, under Section 18 of Presidential Decree No. 957, had the right to continue paying for Unit No. 402 to CBC, the purchaser thereof at the foreclosure sale, still in accordance with the tenor of the Contract to Sell; and (4) the spouses Lozada had a perfect cause of action for the annulment of the mortgage constituted by PPGI in favor of CBC since PPGI failed to comply with the requirement in *Union Bank of the Philippines v. Housing and*

Land Use Regulatory Board,[36] to notify the installment buyer of the condominium unit of the mortgage constituted thereon. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, there being grave abuse of discretion on the part of the court a quo in issuing the herein assailed Order, the instant Petition is GRANTED. Accordingly, the August 31, 2001 Order, the Writ of Possession and the Notice to Vacate are hereby ANNULLED and SET ASIDE.[37]

In its Resolution[38] dated 10 August 2004, the Court of Appeals denied the Motion for Reconsideration of CBC, maintaining that the possession of the spouses Lozada of Unit No. 402 constituted an effective obstacle barring the Makati City RTC from issuing a writ to place CBC in possession of the same. The appellate court reiterated that there was grave abuse of discretion on the part of the Makati City RTC when it included Unit No. 402 within the coverage of the writ of possession, notwithstanding the fact that said unit was in possession of the spouses Lozada under a legitimate claim of ownership on the strength of a Contract to Sell executed in their favor by PPGI.

Comes now CBC before this Court via the present Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court with the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT TOOK COGNIZANCE OF THE PETITION, STOPPED THE IMPLEMENTATION OF THE WRIT OF POSSESSION AND EVENTUALLY HAD IT ANNULLED AND SET ASIDE.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENTS WERE HOLDING THE SUBJECT PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR THUS THE ISSUANCE OF THE WRIT OF POSSESSION WAS IMPROPER AND UNWARRANTED, WHICH IS IN DIRECT COLLISION (SIC) WITH APPLICABLE JURISPRUDENCE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THE FACTUALITY THAT RESPONDENTS WERE SUBSEQUENTLY INFORMED OF THE MORTGAGE WITH AN ADVISE OF PAYMENT OF INSTALLMENTS TO HEREIN PETITIONERS [sic], BUT WHICH RESPONDENTS IGNORED, HENCE THEY MADE [sic] THEMSELVES BEYOND THE MANTLE OF PROTECTION UNDER P.D. 957.[39]

Sorting through the allegations and arguments presented by the parties, the Court ascertains that the pivotal issue for its consideration is, given the circumstances in the present case, whether the writ of possession may be granted and issued by the Makati City RTC ex parte or without notice to other parties.[40]

The Court answers in the affirmative.

Procedural due process

At the outset, this Court establishes that the issue herein is one involving procedural due process. Procedural due process refers to the method or manner by which the law is enforced.[41] It consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. True to the mandate of the due process clause, the basic rights of notice and hearing pervade not only in criminal and civil proceedings, but in administrative proceedings as well. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests; and upon notice, they may claim the right to appear therein, present their side and refute the position of the opposing parties.[42]

At the crux of the opposition of the spouses Lozada to the ex parte issuance by the Makati City RTC of the writ of possession in favor of CBC was that it supposedly deprived them of the opportunity to defend their title and right to possess; or simply, that it denied them due process.

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135,[43] as amended. The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended, which provides:

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 or an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Emphasis supplied.)

The Court expounded on the application of the foregoing provision in *De Gracia v. San Jose*,[44] thus:

As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is ex parte. (Emphasis supplied.)

Strictly, Section 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the ex parte petition and posting of the appropriate bond, the RTC[45] shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

In *IFC Service Leasing and Acceptance Corporation v. Nera*,[46] the Court reasoned that if under Section 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the ex parte application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser. Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale after the redemption period has expired without redemption having been made.

The Court recognizes the rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made, to wit:

It is settled that upon receipt of the definitive deed in an execution sale, legal title over the property sold is perfected (33 C. J. S. 554). And this court has also [said] and that the land bought by him and described in the deed deemed (sic) within the period allowed for that purpose, its ownership becomes consolidated in the purchaser, and the latter, as absolute owner is entitled to its possession and to receive the rents and fruits thereof. (Powell v. Philippine National Bank, 54 Phil., 54, 63.) x x x.[47]

It is thus 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.[48]

The purchaser, therefore, in the public auction sale of a foreclosed property is entitled to a writ of possession; and upon an ex parte petition of the purchaser, it is ministerial upon the RTC to issue such writ of possession in favor of the purchaser. However, while this is the general rule, as in all general rules, there is an exception. The exception and its basis were summarized by the Court in Roxas v. Buan,[49] thus:

In the extrajudicial foreclosure of real estate mortgages, possession of the property may be awarded to the purchaser at the foreclosure sale during the pendency of the period of redemption under the terms provided in Sec. 6 of Act 3135, as amended (An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages), or after the lapse of the redemption period, without need of a separate and independent action [IFC Service Leasing and Acceptance Corp. v. Nera, G.R. No. L-21720, January 30, 1967, 19 SCRA 181]. This is founded on his right of ownership over the property which he purchased at the auction sale and his consequent right to be placed in possession thereof.

This rule is, however, not without exception. Under Sec. 35, Rule 39 of the Revised Rules of Court, which was made applicable to the extrajudicial foreclosure of real estate mortgages by Sec. 6 Act No. 3135, the possession of the mortgaged property may be awarded to a purchaser in extrajudicial foreclosures unless a third party is actually holding the property adversely to the judgment debtor. (Clapano v. Gapultos, G.R. Nos. 51574-77, September 30, 1984, 132 SCRA 429, 434; Philippine National Bank v. Adil, G.R. No. 52823, November 2, 1982, 118 SCRA 110; IFC Service Leasing and Acceptance Corp. v. Nera, supra.) As explained by the Court in IFC Service Leasing and Acceptance Corp. v. Nera, supra:

x x x The applicable provision of Act No. 3135 is Section 6 which provides that, in cases in which an extrajudicial sale is made, 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. Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29-31 and Section 35 of Rule 39 of the Revised Rules of Court. Section 35 of the Revised Rules of Court expressly states that If no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property x x x. The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a party is actually holding the property adversely to the judgment debtor, [Id. at 184-185; Emphasis in the original.]

After further revision of the Rules of Court, Section 35 of Rule 39 referred to above is now Section 33 of Rule 39, which reads:

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; x x x.

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.)

Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.[50] Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done ex parte. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.

General rule v. exception

While CBC invokes the general rule in the Petition at bar, the spouses Lozada assert the exception.

The spouses Lozada aver that they are holding Unit No. 402 adversely to the debtor/mortgagor PPGI, and that their possession is sufficient obstacle to the ex parte issuance of a writ of possession in favor of CBC. CBC, however, counters that the spouses Lozada are mere successors-in-interest of PPGI who only stepped into the latter's shoes and may not claim the defense of possession by third persons.

It is thus incumbent upon this Court to scrutinize the nature of the spouses Lozada's possession of Unit No. 402.

The spouses Lozada acquired possession of Unit No. 402 pursuant to the Contract to Sell executed in their favor by PPGI. According to the Contract to Sell, PPGI shall deliver Unit No. 402 to the spouses Lozada upon the completion thereof, and the spouses Lozada, in turn, shall already be bound at that point to pay the 70% balance of the purchase price for the said property. The records do not establish the date when the spouses Lozada actually entered into possession of Unit No. 402. However, it is undisputed that they were already in possession thereof at the time CBC filed its Ex Parte Petition for the Issuance of a Writ of Possession with the Makati City RTC on July 2001.

Given the foregoing, it is apparent that the spouses Lozada's possession of Unit No. 402 cannot be considered adverse to that of PPGI. Their right to possess the said property was derived from PPGI under the terms of the Contract to Sell executed by the latter in their favor. It was because PPGI contractually agreed to deliver Unit No. 402 to them even prior to the transfer of ownership and title over the same that they came into its possession. They cannot assert that said right of possession is adverse or contrary to that of PPGI when they have no independent right of possession other than what they acquired from PPGI. The spouses Lozada can be more appropriately considered the transferee of or successor to the right of possession of PPGI over Unit No. 402.

Again relevant herein is the Court's ruling in *Roxas v. Buan*,[51] which involved factual circumstances akin to the instant Petition. Valentin executed a Deed of Real Estate Mortgage over a house and lot in favor of Buan to secure a loan granted by the latter to the former. When Valentin failed to pay his loan when it matured, Buan caused the extrajudicial foreclosure of the real estate mortgage and was the winning bidder at the auction sale of the foreclosed property. Upon the expiration of the period for redemption without Valentin redeeming the foreclosed property, a Final Bill of Sale was issued by the Sheriff in Buan's favor. Buan then filed a petition for the issuance of a writ of possession, which, being uncontested, was granted by the trial court. However, the Sheriff was unable to execute the writ of possession because the foreclosed property was occupied by Roxas and the spouses De

Guia. Roxas allegedly bought the foreclosed property from Valentin and leased the same to the spouses De Guia. Roxas and the spouses De Guia argued that the writ of possession was ineffective as against them, being third parties. They also insisted that Buan should file an independent action to recover the property, otherwise, their right to due process of law would be violated since they were not given their day in court to prove their adverse claim.

In the said case, the character of Roxas' possession was directly put in issue. The Court determined that Roxas was the successor-in-interest of the mortgagor Valentin, and not a third party holding the property adversely to the latter. The Court ratiocinated as follows:

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.

x x x x

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.[52]

In contrast, *China Banking Corporation v. Spouses Ordinario*,^[53] cited by the spouses Lozada, finds no application to the present Petition.

In said case, CBC granted loans to the company TransAmerican which executed real estate mortgages to secure the same. When TransAmerican failed to pay its loans, CBC foreclosed the real estate mortgages. At the public auction sale, CBC was the highest bidder for the foreclosed properties. During the period of redemption, CBC filed with the Quezon City RTC an ex parte petition for the issuance of a writ of possession, which was granted by the trial court upon the posting of a surety bond by CBC. The spouses Ordinario filed a motion for reconsideration with the Quezon City RTC claiming to have bought one of the foreclosed properties on which they built their townhouse; and praying for the exclusion of said property from the writ of possession, since they did not receive notice of CBC's petition.

In its Decision, the Court did not directly resolve the nature of the possession of the foreclosed property by the spouses Ordinario. The Court merely presented therein the remedies available to the spouses Ordinario, assuming *arguendo* that they were adverse third parties, namely: (1) a *terceria* to determine whether the Sheriff had 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. Since the spouses Ordinario did not avail themselves of either remedy and, instead, filed a motion for reconsideration before the Quezon City RTC, which granted CBC's ex parte petition for issuance of a writ of possession, the Court affirmed the trial court's denial of their motion for reconsideration.

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary.[54] The co-owner,[55] agricultural tenant,[56] and usufructuary[57] possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. The spouses Lozada cannot claim that their right of possession over Unit No. 402 is analogous to any of these.

It is true that in the case presently before this Court, PPGI executed in favor of the spouses Lozada the Contract to Sell covering Unit No. 402 before it constituted in favor of CBC the real estate mortgages on 51 Project units including Unit No. 402. Nonetheless, it must be emphasized that what PPGI executed in favor of the spouses Lozada was a Contract to Sell,[58] a mere promise to sell,[59] which, at the moment of its execution, did not yet transfer possession, much less, title to Unit No. 402 from PPGI to the spouses Lozada. When PPGI constituted the real estate mortgage on Unit No. 402 in favor of CBC six months later, possession of and title to the property still resided in PPGI. And when PPGI subsequently ceded possession of Unit No. 402, upon its completion, to the spouses Lozada, such right was already burdened by the terms and conditions of the mortgage constituted thereon. By merely stepping into the shoes of PPGI, the spouses Lozada's right of possession to Unit No. 402 cannot be less or more than PPGI's.

For the same reasons, Presidential Decree No. 957[60] cannot totally prevent the owner or developer from mortgaging the subdivision lot or condominium unit when the title thereto still resides in the owner or developer awaiting the full payment of the purchase price by the installment buyer. However, to protect the installment buyer of the subdivision lot or condominium unit under a Contract to Sell, Presidential Decree No. 957 imposed the following conditions on the right of the owner or developer to mortgage a subdivision lot or condominium unit:

Section 18. Mortgages. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

The spouses Lozada persistently allege herein that PPGI did not comply with the foregoing requirements; thus, the mortgage it constituted on Unit No. 402 was null and void. This Court, though, will not rule on the matter, for it is not significant to the case at hand. It bears to stress that the issue herein is purely procedural, on whether the Makati City RTC can issue the writ of possession in favor of CBC ex parte, the resolution of which hinges on the nature of the spouses Lozada's possession of Unit No. 402, whether it is adverse to or as successor of PPGI. The Court already made a determination that the spouses Lozada possessed Unit No. 402 as the successors or transferees of PPGI. The annulment of the real estate mortgage will have no bearing on this Court's determination, for it will not change the nature of the spouses Lozada's possession as to make it adverse to that of PPGI. Still, the spouses Lozada only acquired the right of possession of PPGI over Unit No. 402; hence, their possession can never be adverse or contrary to that of PPGI. Moreover, the issue of whether the real estate mortgages constituted

by PPGI in favor of CBC are valid or void is squarely raised by the spouses Lozada before the HLURB in HLURB Case No. REM-0080701-11582.

The spouses Lozada, having succeeded PPGI in the possession of Unit No. 402, cannot be considered a third party holding the said property adversely to PPGI, the defaulting debtor/mortgagor. Resultantly, the general rule, and not the exception, applies to the instant Petition. It was the mandatory and ministerial duty of the Makati City RTC to grant the ex parte petition of CBC and order the issuance of a writ of possession in the latter's favor over Unit No. 402. It was likewise mandatory and ministerial for the Clerk of Court to comply with the Makati City RTC order by issuing the writ of possession, and for the Sheriff to implement the writ by first issuing a notice to vacate to the occupants of Unit No. 402. As this Court ruled in *St. Dominic Corp. v. The Intermediate Appellate Court*[61] :

The right of the respondent to the possession of the property is clearly unassailable. It is founded on the right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, the petitioner's rights over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in affecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat v. Ongwico* (63 Phil., 746), the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the sheriff's inescapable duty to place him in such possession. (*Philippine National Bank v. Adil*, 118 SCRA 110).

Writ of certiorari

In consideration of the foregoing discussion, it is evident that the Court of Appeals erred in finding that the Makati City RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered ex parte the issuance of a writ of possession in favor of CBC.

The grounds for the issuance of a writ of certiorari are described below:

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. Without jurisdiction means that the court acted with absolute want of jurisdiction. There is excess of jurisdiction where the court has jurisdiction but has transcended the same or acted without any statutory authority. (*Leung Ben vs. O'Brien*, 38 Phil., 182; *Salvador Campos y Cia vs. Del Rosario*, 41 Phil., 45.) Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 38 Off. Gaz., 830), or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (*Tavera-Luna, Inc. vs. Nable*, 38 Off. Gaz., 62.)[62]

Since there is sufficient legal basis for the Makati City RTC to issue its Order dated 31 August 2001 granting the ex parte petition of CBC and ordering the issuance in the latter's favor of a writ of possession over Unit No. 402, it could not be said that the trial court acted in grave abuse of discretion warranting the issuance of a writ of certiorari to annul its said Order. Accordingly, no grave abuse of discretion can also be attributed to the RTC Branch Clerk of Court and Sheriff who issued, respectively, the Writ of Possession dated 3 September 2001 and the Notices to Vacate dated 17 October 2001 and 22 October 2001, since they were only acting in accordance with and in execution of a valid order of the Makati City RTC.

HLURB Case No. REM-0080701-11582

The spouses Lozada already filed a complaint with the HLURB, docketed as HLURB Case No. REM-0080701-11582, praying for the annulment of real estate mortgage, foreclosure, public auction sale, and

consolidation of title, and the cancellation of CCT, chiefly grounded on the argument that the real estate mortgage on Unit No. 402 constituted by PPGI in favor of CBC did not comply with Section 18 of Presidential Decree No. 957. The spouses Lozada instituted said case before the HLURB invoking the jurisdiction of the Board over the following cases, enumerated under Presidential Decree No. 1344[63]:

Sec. 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority [now the HLURB] shall have exclusive jurisdiction to hear and decide cases of the following nature:

A. Unsound real estate business practices;

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

It is but proper for this Court to refrain from making any pronouncements that may predetermine the issues raised in HLURB Case No. REM-0080701-11582. Under the doctrine of primary administrative jurisdiction, in which jurisdiction is vested in an administrative body, no resort to the courts may be made before such administrative body shall have acted upon the matter.[64]

Also based on the doctrine of primary jurisdiction, this Court pronounces that the findings of the Court of Appeals in its assailed Decision as regards the non-compliance by PPGI with the requirements for a valid mortgage, as provided in Section 18 of Presidential Decree No. 957 and *Union Bank of the Philippines v. Housing and Land Use Regulatory Board*,[65] were rendered prematurely and in excess of its jurisdiction, considering that the said issue was the one primarily raised before the HLURB in HLURB Case No. REM-0080701-11582; and as the Court previously discussed, it is not even significant for the resolution of the Petition at bar. Therefore, the HLURB, in resolving HLURB Case No. REM-0080701-11582, must not be bound by the said findings of the Court of Appeals, allowing it to freely proceed in making its own determination thereof based on the arguments and evidence presented before it by the parties.

Another point that needs to be addressed is the fact that the HLURB issued in HLURB Case No. REM-0080701-11582 a Status Quo Order[66] dated 25 October 2001. Can the said HLURB Order stay the execution of the writ of possession issued by the Makati City RTC in L.R.C. Case No. M-4184? The Court rules in the negative. Jurisprudence is replete with the rule that no court has the power to interfere by injunction with the issuance or enforcement of a writ of possession issued by another court of concurrent jurisdiction having the power to issue such writ.[67] If such is the rule among courts of concurrent jurisdiction, then the HLURB, an administrative body exercising quasi-judicial powers, would neither have the power to interfere by an injunction, or in this case, a status quo order, with the issuance or enforcement of the writ of possession issued by the Makati City RTC.

WHEREFORE, premises considered, the instant Petition for Review is GRANTED. The Decision dated 25 March 2004 and Resolution dated 10 August 2004 of the Court of Appeals in CA-G.R. SP No. 67399 are REVERSED AND SET ASIDE. The following issuances in L.R.C. Case No. M-4184: (1) the Order[68] dated 31 August 2001 of the Regional Trial Court, Branch 65, Makati City; (2) the Writ of Possession[69] dated 3 September 2001; and (3) the Notices to Vacate[70] dated 17 October 2001 and 22 October 2001, are hereby REINSTATED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 25-52.

[2] Penned by Associate Justice Rosmari D. Carandang with Associate Justices Eugenio S. Labitoria and Mercedes Gozo-Dadole, concurring. Rollo, pp. 53-61.

[3] Rollo, pp. 62-64.

[4] Penned by Judge Salvador S. Abad-Santos. Rollo, p. 98.

[5] Rollo, p. 99.

[6] Records, pp. 90-91.

[7] Rollo, pp. 270-273.

[8] Id. at 132.

[9] Records, pp. 8-27.

[10] Id. at 30-32.

[11] Id. at 33-40.

[12] Id. at 41.

[13] Id. at 42-51.

[14] Id. at 52-56.

[15] Id. at 57.

[16] Rollo, p. 131.

[17] Id. at 279-280.

[18] The Notice of Adverse Claim of the spouses Lozada was subsequently annotated on CCT No. 69096 when it was issued in the name of CBC on 12 May 2000. Records, p. 57.

[19] Rollo, pp. 282-283.

[20] Id. at 284-285.

[21] Id. at 286.

[22] Id. at 288-290.

[23] Records, pp. 1-7.

[24] Rollo, pp. 291-298.

[25] Order dated 27 July 2001, penned by Judge Salvador S. Abad-Santos; records, p. 59.

[26] Id. at 61.

[27] Rollo, p. 98.

[28] Id. at 99.

[29] Records, pp. 90-91.

[30] Id. at 89.

[31] Id. at 92-93.

[32] Penned by Housing and Land Use Arbiter Atty. Rowena C. Balasolla; rollo, p. 340.

[33] CA rollo, pp. 1-14.

[34] Penned by Associate Justice Hilarion L. Aquino with Associate Justices Edgardo P. Cruz and Alicia L. Santos, concurring. CA rollo, pp. 89-92.

[35] Rollo, pp. 53-61.

[36] G.R. No. 95364, 29 June 1992, 210 SCRA 558.

[37] Rollo, p. 60.

[38] Id. at 62-64.

[39] Id. at 32-33.

[40] Where there is no provision made for notice, by publication or otherwise, of the application, or in this case, the petition, then the proceedings, for all intents and purposes, are ex parte. (See *Ramirez v. Gmur*, 42 Phil. 855 [1918].)

[41] *Hon. Corona v. United Harbor Pilots Association of the Philippines*, 347 Phil. 333, 340 (1997).

[42] *Secretary of Justice v. Hon. Lantion*, 379 Phil. 165, 203 (2000).

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

[44] 94 Phil. 623, 625-626 (1954).

[45] In place of the Court of First Instance.

[46] 125 Phil. 595 (1967).

[47] *Belleza v. Zandaga*, 98 Phil. 702, 703 (1956).

[48] *F. David Enterprises v. Insular Bank of Asia and America*, G.R. No. 78714, 21 November 1990, 191 SCRA 516, 523.

[49] G.R. No. L-53798, 8 November 1988, 167 SCRA 43, 48-49.

[50] *Saavedra v. Siari Valley Estates, Inc.*, 106 Phil. 432, 436 (1959).

[51] *Supra* note 49.

[52] Id. at 49-51.

[53] 447 Phil. 557 (2003).

[54] *St. Dominic Corp. v. The Intermediate Appellate Court*, G.R. No. L-70623, 30 June 1987, 151 SCRA 577, 590.

[55] In co-ownership, each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract because until the division is effected, such share is not concretely determined. While there is co-ownership, a co-owner's possession of his share is co-possession which is linked to the possession of the other co-owners. (*Gatchalian v. Judge Arlegui*, 166 Phil. 236, 248 [1977].)

[56] Agricultural tenants are protected by Presidential Decree No. 1038, which provides that no tenant-tiller of private agricultural lands devoted to crops other than rice and/or corn, including but not limited to abaca, banana, coconut, coffee, mongo, durian and other permanent crops shall be removed, ejected, ousted or excluded from his farmholding unless for causes provided by law and directed by a final decision or order of the court. Sale of the land is not included as one of the just causes for removal of tenants. (See *Clapano v. Hon. Gapultos*, 217 Phil. 409, 414-415 [1984].)

[57] Relevant provisions of the Civil Code on usufructuary are reproduced below:

Art. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

Art. 581. The owner of property the usufruct of which is held by another, may alienate it, but he cannot alter its form or substance, or do anything thereon which may be prejudicial to the usufructuary.

Art. 603. Usufruct is extinguished:

- (1) By the death of the usufructuary, unless a contrary intention clearly appears;
- (2) By the expiration of the period for which it was constituted, or by the fulfillment of any resolutive condition provided in the title creating the usufruct;
- (3) By merger of the usufruct and ownership in the same person;
- (4) By renunciation of the usufructuary;
- (5) By the total loss of the thing in usufruct;
- (6) By the termination of the right of the person constituting the usufruct;
- (7) By prescription.

Art. 612. Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.

[58] A contract to sell is one wherein ownership shall be transferred only after the full payment of the installments of the purchase price or the fulfillment of the condition and the execution of a definite or absolute deed of sale. (*Joseph & Sons Enterprises, Inc. v. Court of Appeals*, 227 Phil. 625 [1986].)

[59] *Visayan SawMill Company, Inc. v. Court of Appeals*, G.R. No. 83851, 3 March 1993, 219 SCRA 378, 389.

[60] *Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof*.

[61] *Supra* note 54 at 290.

[62] *Alafriz v. Nable*, 72 Phil. 278, 280 (1941).

[63] *Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of Its Decision under Presidential Decree No. 957*.

[64] Cristobal v. Court of Appeals, 353 Phil. 318, 330 (1998).

[65] Supra note 36 at 564.

[66] Rollo, p. 340.

[67] Penson v. Spouses Maranan, G.R. No. 148630, 20 June 2006, 491 SCRA 396.

[68] Penned by Judge Salvador S. Abad-Santos; rollo, p. 98.

[69] Id. at 99.

[70] Records, pp. 90-91.

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