

**CUA LAI CHU, CLARO G. CASTRO, AND JUANITA CASTRO,  
PETITIONERS, VS. HON. HILARIO L. LAQUI, PRESIDING JUDGE,  
REGIONAL TRIAL COURT, BRANCH 218, QUEZON CITY AND  
PHILIPPINE BANK OF C...**

*G.R. No. 169190. February 11, 2010*

Ponente: CARPIO, J.

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**CARPIO, J.:**

The Case

This is a petition for review[1] of the 29 April 2005 and 4 August 2005 Resolutions[2] of the Court of Appeals in CA-G.R. SP No. 88963. In its 29 April 2005 Resolution, the Court of Appeals dismissed the petition for certiorari[3] of petitioner spouses Claro G. Castro and Juanita Castro and petitioner Cua Lai Chu (petitioners). In its 4 August 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

The Facts

In November 1994, petitioners obtained a loan in the amount of P3,200,000 from private respondent Philippine Bank of Communication. To secure the loan, petitioners executed in favor of private respondent a Deed of Real Estate Mortgage[4] over the property of petitioner spouses covered by Transfer Certificate of Title No. 22990. In August 1997, petitioners executed an Amendment to the Deed of Real Estate Mortgage[5] increasing the amount of the loan by P1,800,000, bringing the total loan amount to P5,000,000.

For failure of petitioners to pay the full amount of the outstanding loan upon demand,[6] private respondent applied for the extrajudicial foreclosure of the real estate mortgage.[7] Upon receipt of a notice[8] of the extrajudicial foreclosure sale, petitioners filed a petition to annul the extrajudicial foreclosure sale with a prayer for temporary restraining order (TRO). The petition for annulment was filed in the Regional Trial Court of Quezon City and docketed as Q-02-46184.[9]

The extrajudicial foreclosure sale did not push through as originally scheduled because the trial court granted petitioners' prayer for TRO. The trial court subsequently lifted the TRO and reset the extrajudicial foreclosure sale on 29 May 2002. At the foreclosure sale, private respondent emerged as the highest bidder. A certificate of sale[10] was executed on 4 June 2002 in favor of private respondent. On 7 June 2002, the certificate of sale was annotated as Entry No. 1855[11] on TCT No. 22990 covering the foreclosed property.

After the lapse of the one-year redemption period, private respondent filed in the Registry of Deeds of Quezon City an affidavit of consolidation to consolidate its ownership and title to the foreclosed property. Forthwith, on 8 July 2003, the Register of Deeds cancelled TCT No. 22990 and issued in its stead TCT No. 251835[12] in the name of private respondent.

On 18 August 2004, private respondent applied for the issuance of a writ of possession of the foreclosed property.[13] Petitioners filed an opposition.[14] The trial court granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence ex parte. The trial court denied petitioners' notice of appeal.

Undeterred, petitioners filed in the Court of Appeals a petition for certiorari. The appellate court dismissed the petition. It also denied petitioners' motion for reconsideration.

#### The Orders of the Trial Court

The 8 October 2004 Order[15] granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence ex parte. The 6 January 2005 Order[16] denied petitioners' motion for reconsideration of the prior order. The 24 February 2005 Order[17] denied petitioners' notice of appeal.

#### The Ruling of the Court of Appeals

The Court of Appeals dismissed on both procedural and substantive grounds the petition for certiorari filed by petitioners. The appellate court noted that the counsel for petitioners failed to indicate in the petition the updated PTR Number, a ground for outright dismissal of the petition under Bar Matter No. 1132. Ruling on the merits, the appellate court held that a proceeding for the issuance of a writ of possession is ex parte in nature. As such, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. The appellate court also ruled that there was no violation of the rule against forum shopping since the application for the issuance of a writ of possession is not affected by a pending case questioning the validity of the extrajudicial foreclosure sale.

#### The Issue

Petitioners raise the question of whether the writ of possession was properly issued despite the pendency of a case questioning the validity of the extrajudicial foreclosure sale and despite the fact that petitioners were declared in default in the proceeding for the issuance of a writ of possession.

#### The Court's Ruling

The petition has no merit.

Petitioners contend they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to private respondent's application for the issuance of a writ of possession. Further, petitioners point out that the issuance of a writ of possession will deprive them not only of the use and possession of their property, but also of its ownership. Petitioners cite *Bustos v. Court of Appeals*[18] and *Vda. De Legaspi v. Avendaño*[19] in asserting that physical possession of the property should not be disturbed pending the final determination of the more substantial issue of ownership. Petitioners also allege forum shopping on the ground that the application for the issuance of a writ of possession was filed during the pendency of a case questioning the validity of the extrajudicial foreclosure sale.

Private respondent, on the other hand, maintains that the application for the issuance of a writ of possession in a foreclosure proceeding is ex parte in nature. Hence, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. Private respondent argues that the issuance of a writ of possession may not be stayed by a pending case questioning the validity of the extrajudicial foreclosure sale. It contends that the former has no bearing on the latter; hence, there is no violation of the rule against forum shopping. Private

respondent asserts that there is no judicial determination involved in the issuance of a writ of possession; thus, the same cannot be the subject of an appeal.

At the outset, we must point out that the authorities relied upon by petitioners are not in point and have no application here. In *Bustos v. Court of Appeals*,<sup>[20]</sup> the Court simply ruled that the issue of possession was intertwined with the issue of ownership in the consolidated cases of unlawful detainer and *accion reivindicatoria*. In *Vda. De Legaspi v. Avendaño*,<sup>[21]</sup> the Court merely stated that in a case of unlawful detainer, physical possession should not be disturbed pending the resolution of the issue of ownership. Neither case involved the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage.

*Banco Filipino Savings and Mortgage Bank v. Pardo*<sup>[22]</sup> squarely ruled on the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage. This case involved a real estate mortgage as security for a loan obtained from a bank. Upon the mortgagor's default, the bank extrajudicially foreclosed the mortgage. At the auction sale, the bank was the highest bidder. A certificate of sale was duly issued and registered. The bank then applied for the issuance of a writ of possession, which the lower court dismissed. The Court reversed the lower court and held that the purchaser at the auction sale was entitled to a writ of possession pending the lapse of the redemption period upon a simple motion and upon the posting of a bond.

In *Navarra v. Court of Appeals*,<sup>[23]</sup> the purchaser at an extrajudicial foreclosure sale applied for a writ of possession after the lapse of the one-year redemption period. The Court ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year redemption period provided the purchaser files an indemnity bond. After the lapse of the said period with no redemption having been made, that right becomes absolute and may be demanded by the purchaser even without the posting of a bond. Possession may then be obtained under a writ which may be applied for *ex parte* pursuant to Section 7 of Act No. 3135,<sup>[24]</sup> as amended by Act No. 4118,<sup>[25]</sup> thus:

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion x x x 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)

In the present case, the certificate of sale of the foreclosed property was annotated on TCT No. 22990 on 7 June 2002. The redemption period thus lapsed on 7 June 2003, one year from the registration of the sale.<sup>[26]</sup> When private respondent applied for the issuance of a writ of possession on 18 August 2004, the redemption period had long lapsed. Since the foreclosed property was not redeemed within one year from the registration of the extrajudicial foreclosure sale, private respondent had acquired an absolute right, as purchaser, to the writ of possession. It had become the ministerial duty of the lower court to issue the writ of possession upon mere motion pursuant to Section 7 of Act No. 3135, as amended.

Moreover, once ownership has been consolidated, the issuance of the writ of possession becomes a ministerial duty of the court, upon proper application and proof of title.<sup>[27]</sup> In the present case, when private respondent applied for the issuance of a writ of possession, it presented a new transfer certificate of title issued in its name dated 8 July 2003. The right of private respondent to the possession of the property was thus founded on its right of ownership. As the purchaser of the property at the foreclosure sale, in whose name title over the property was already issued, the right of private respondent over the property had become absolute, vesting in it the corollary

right of possession.

Petitioners are wrong in insisting that they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to the issuance of a writ of possession. The application for the issuance of a writ of possession is in the form of an ex parte motion. It issues as a matter of course once the requirements are fulfilled. No discretion is left to the court.[28]

Petitioners cannot oppose or appeal the court's order granting the writ of possession in an ex parte proceeding. The remedy of petitioners is to have the sale set aside and the writ of possession cancelled in accordance with Section 8 of Act No. 3135, as amended, to wit:

SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof. x x x

Any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135, as amended. Such question should not be raised as a justification for opposing the issuance of a writ of possession since under Act No. 3135, as amended, the proceeding for this is ex parte.

Further, the right to possession of a purchaser at an extrajudicial foreclosure sale is not affected by a pending case questioning the validity of the foreclosure proceeding. The latter is not a bar to the former. Even pending such latter proceeding, the purchaser at a foreclosure sale is entitled to the possession of the foreclosed property.[29]

Lastly, we rule that petitioners' claim of forum shopping has no basis. Under Act No. 3135, as amended, a writ of possession is issued ex parte as a matter of course upon compliance with the requirements. It is not a judgment on the merits that can amount to res judicata, one of the essential elements in forum shopping.[30]

The Court of Appeals correctly dismissed the petition for certiorari filed by petitioners for lack of merit.

WHEREFORE, we DENY the petition for review. We AFFIRM the 29 April 2005 and 4 August 2005 Resolutions of the Court of Appeals in CA-G.R. SP No. 88963.

**SO ORDERED.**

Brion, Del Castillo, Abad, and Perez, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 37-41, 43-44. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe, concurring.

[3] Under Rule 65 of the Rules of Court.

[4] Rollo, pp. 45-49.

[5] Id. at 50-51.

[6] Id. at 52.

[7] CA rollo, pp. 29-31.

[8] Rollo, p. 56.

[9] Id. at 57-65.

[10] CA rollo, p. 44.

[11] Id. at 49.

[12] Id. at 50.

[13] Id. at 17-20.

[14] Rollo, pp. 72-75.

[15] CA rollo, p. 69.

[16] Id. at 74-75.

[17] Id. at 79-80.

[18] 403 Phil. 21 (2001).

[19] 169 Phil. 138 (1977).

[20] Supra.

[21] Supra.

[22] 235 Phil. 487 (1987).

[23] G.R. No. 86237, 17 December 1991, 204 SCRA 850.

[24] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES. Effective 6 March 1924.

[25] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES." Effective 7 December 1933.

[26] Rosario v. Tayug Rural Bank, Inc., 131 Phil. 324 (1968).

[27] Chailease Finance Corporation v. Spouses Ma, 456 Phil. 498 (2003).

[28] De Gracia v. San Jose, 94 Phil. 623 (1954).

[29] PNB v. Sanao Marketing Corporation, G.R. No. 153951, 29 August 2005.

[30] Cruz v. Caraos, G.R. No. 138208, 23 April 2007, 521 SCRA 510.

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