

**METROPOLITAN BANK & TRUST CO., PETITIONER, VS. EDGARDO C. SANTOS, RESPONDENT.***G.R. No. 170906. November 27, 2009*

Ponente: DEL CASTILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170906/>**DEL CASTILLO, J.:**

A petition for the issuance of a writ of possession is ex parte, non-adversarial, and summary in nature because the only issue involved is the purchaser's right to possession. In fact, Section 7 of Act 3135 (1924)[1] expressly provides that it is the ministerial duty of the cadastral court to issue a writ of possession in favor of the purchaser even during the redemption period, unless the case falls under the exceptions provided by law[2] and jurisprudence.[3] As a rule, mere inadequacy or surplus in the purchase price does not affect the purchaser's entitlement to a writ of possession. In case there is a surplus, the mortgagor is entitled to receive the same from the purchaser. The failure or refusal of the mortgagee-purchaser to return the surplus does not affect the validity of the sale but gives the mortgagor a cause of action against the mortgagee-purchaser.

This Petition for Review[4] on Certiorari, under Rule 45 of the Rules of Court, seeks to set aside the September 12, 2005 Decision[5] of the Court of Appeals (CA) in CA-G.R. CV No. 72240, insofar as it ordered petitioner to pay respondent the excess of the bid price in the amount of P488,289.35 with legal interest from January 27, 2000 until it is fully paid. Likewise assailed is the CA's December 12, 2005 Resolution[6] denying petitioner's Motion for Partial Reconsideration.[7]

**Factual antecedents**

On March 6, 1998, respondent Lamb Construction Consortium Corporation obtained a P5.5 million loan from petitioner Metropolitan Bank & Trust Co., subject to 18% interest per annum.[8] To secure the loan, respondent executed a Real Estate Mortgage[9] in favor of petitioner involving six parcels of land covered by Transfer Certificates of Title Nos. 101233,[10] 101234,[11] 101235,[12] 101236,[13] 101238,[14] and 101248.[15]

Respondent failed to pay the loan upon maturity hence petitioner filed a petition for the extra-judicial foreclosure of the said properties. During the auction sale held on January 27, 2000, petitioner emerged as the highest bidder with the bid amount of P6,669,765.75 and was accordingly issued a Certificate of Sale.

**Proceedings before the Regional Trial Court**

On June 23, 2000 and during the period of redemption, petitioner filed a verified petition for issuance of a writ of possession. Petitioner alleged that notwithstanding its demands, respondent refused and failed to turn over actual possession of the foreclosed properties. The case was docketed as LRC Case No. 00-0096 and raffled to Branch 257 of the Regional Trial Court (RTC) of Parañaque City. While the petition was pending with the trial court, respondent redeemed the property covered by Transfer Certificate of Title No. 101234.[16]

On May 25, 2001, the RTC rendered a Decision[17] denying petitioner's application for the issuance of a writ of possession because it failed to deposit the surplus proceeds from the foreclosure sale. It ruled that:

While the outstanding obligation of the corporation as of August 25, 1999 is P5,251,705.67 (Exh. C), the property was sold at public auction for P6,669,756.75 on January 27, 2000. Under the law, the buyer of the property is obligated to pay the contract price of P6,669,756.75 less the obligation of P5,251,705.67. Hence, the purchaser of the property should still pay the auctioneer the amount of P1,418,060.08. x x x

Metropolitan Bank and Trust Co. has obligation to pay the amount of P1,418,060.08, which is the difference of the purchase price to the outstanding obligation. Since the outstanding obligation as of August 25, 1999 was only P5,251,705.67 while the purchase price is P6,669,756.75, the highest bidder of the property is still obligated to pay the price difference of P1,418,060.08. The amount should be deposited at the Office of the Clerk of Court in trust for the mortgagor.

WHEREFORE, for failure of petitioner to deposit the amount of P1,418,060.08 to the Clerk of Court in trust for [the] mortgagor, the petition for writ of possession is DENIED.

SO ORDERED.[18]

Petitioner moved for reconsideration but the same was denied in an Order dated July 18, 2001.[19]

#### Proceedings before the Court of Appeals

The CA ruled that petitioner is entitled to a writ of possession, the issuance of which is ministerial upon the court.[20] At the same time, the appellate court ruled that petitioner is also obliged to return the excess of the bid price over the outstanding obligation, since the application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation. It then found imperative that an assessment of the total outstanding debt be made in order to resolve whether there was any surplus proceeds which must be returned to respondent. Thus, based on its computation, the appellate court held that petitioner must deliver to respondent the surplus proceeds of P488,289.35.[21]

The CA disposed of the case in this wise:

WHEREFORE, the foregoing considered, the appeal is GRANTED and the assailed Decision REVERSED and SET ASIDE. Let [a] writ of possession issue against respondent.

Accordingly, petitioner is ordered to pay respondent, through the notary public, the excess of its bid price in the sum of P488,289.35 with legal interest from 27 January 2000 until it is paid, which amount represents the balance of the obligation as well as interest and penalty charges at the time of foreclosure sale.

SO ORDERED.[22]

Dissatisfied, petitioner filed a Motion for Partial Reconsideration[23] which was denied by the CA in its December 12, 2005 Resolution.[24]

#### Issues

Hence, the instant recourse, where petitioner interposes that:

THE COURT A QUO HAS DEPARTED FROM THE USUAL COURSE OF PROCEEDING OR SANCTIONED SUCH DEPARTURE BY THE LOWER COURT IN THAT THE PROCEEDINGS IN A PETITION FOR ISSUANCE OF WRIT OF POSSESSION FILED IN ACCORDANCE WITH ACT NO. 3135, AS AMENDED DOES NOT REQUIRE THE PRESENTATION OF EVIDENCE INSOFAR AS THE EXCESS, IF ANY, OF THE PURCHASE PRICE IS CONCERNED, NOR IS IT AN ISSUE IN THE SAME CASE.

THE COURT A QUO HAS DECIDED A QUESTION IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HON. SUPREME COURT WHEN IT OVERLOOKED

THE FACT THAT NO OTHER MATTER MAY BE PASSED UPON BY THE LOWER COURT EXCEPT TO HAVE THE WRIT OF POSSESSION ISSUED AND IMPLEMENTED.[25]

In essence, petitioner argues that in a petition for the issuance of a writ of possession, it is improper for the RTC and the CA to rule upon the surplus or excess of the purchase price because the only issue that must be resolved is the purchaser's entitlement to the writ. According to petitioner, if there is any surplus or excess, the remedy of the respondent is to file an independent action for collection of surplus.

#### Our Ruling

The petition is meritorious.

As a general rule, the issuance of a writ of possession is ministerial. Nevertheless, in *Sulit v. Court of Appeals*, we withheld the issuance of the writ considering the peculiar circumstances prevailing in said case.

In *Sulit v. Court of Appeals*,[26] we withheld the issuance of a writ of possession because the mortgagee failed to deliver the surplus from the proceeds of the foreclosure sale which is equivalent to approximately 40% of the total mortgage debt. *Sulit* was considered as an exception to the general rule that it is ministerial upon the court to issue a writ of possession even during the period of redemption. We explained that equitable considerations prevailing in said case demand that a writ of possession should not issue. Thus:

The governing law thus explicitly authorizes the purchaser in a foreclosure sale to apply 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. 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.

No discretion appears to be left to the court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8, and it cannot 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. Such recourse is available to a mortgagee, who effects the extrajudicial foreclosure of the mortgage, even before the expiration of the period of redemption provided by law and the Rules of Court.

The rule is, however, not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, 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."

Thus, in the case of *Barican, et al. vs. Intermediate Appellate Court, et al.*, this Court took into account the circumstances that long before the mortgagee bank had sold the disputed property to the respondent therein, it was no longer the judgment debtor who was in possession but the petitioner spouses who had assumed the mortgage, and that there was a pending civil case involving the rights of third parties. Hence, it was ruled therein that under the circumstances, the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial.

Now, in forced sales low prices are generally offered and the mere inadequacy of the price obtained at the sheriff's sale, unless shocking to the conscience, has been held insufficient to set aside a sale. This is because no disadvantage is caused to the mortgagor. On the contrary, a mortgagor stands to gain with a reduced price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price becomes immaterial since the judgment debtor may reacquire the property or sell his right to redeem, and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale.

However, also by way of an exception, in *Cometa, et al. vs. Intermediate Appellate Court, et al.* where the properties in question were found to have been sold at an unusually lower price than their true value, that is, properties worth at least P500,000.00 were sold for only P57,396.85, this Court, taking into consideration the factual milieu obtaining therein as well as the peculiar circumstances attendant thereto, decided to withhold the issuance of the writ of possession on the ground that it could work injustice because the petitioner might not be entitled to the same.

The case at bar is quite the reverse, in the sense that instead of an inadequacy in price, there is due in favor of private respondent, as mortgagor, a surplus from the proceeds of the sale equivalent to approximately 40% of the total mortgage debt, which excess is indisputably a substantial amount. Nevertheless, it is our considered opinion, and we so hold, that equitable considerations demand that a writ of possession should also not issue in this case.

Rule 68 of the Rules of Court provides:

Sec. 4. Disposition of proceeds of sale. - The money realized from the sale of mortgaged property under the regulations hereinbefore prescribed shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off such mortgage or other incumbrances, the same shall be paid to the junior incumbrancers in the order of their priority, to be ascertained by the court, or if there be no such incumbrancers or there be a balance or residue after payment of such incumbrancers, then to the mortgagor or his agent, or to the person entitled to it.

The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dation; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund, and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption.

Commenting on the theory that a mortgagee, when he sells under a power, cannot be considered otherwise than as a trustee, the vice-chancellor in *Robertson vs. Norris* (1 Giff. 421) observed: "That expression is to be understood in this sense: that with the power being given to enable him to recover the mortgage money, the court requires that he shall exercise the power of sale in a provident way, with a due regard to the rights and interests of the mortgagor in the surplus money to be produced by the sale.

The general rule that mere inadequacy of price is not sufficient to set aside a foreclosure sale is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption. The same thing cannot be said where the amount of the bid is in excess of the total mortgage debt. The reason is that in case the mortgagor decides to exercise his right of redemption. Section 30 of Rule 39 provides that the redemption price should be equivalent to the amount of the purchase price, plus one percent monthly interest up to the time of the redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate.

Applying this provision to the present case would be highly iniquitous if the amount required for redemption is based on P7,000,000.00, because that would mean exacting payment at a price unjustifiably higher than the real amount of the mortgage obligation. We need not elucidate on the obvious. Simply put, such a construction will undeniably be prejudicial to the substantive rights of private respondent and it could even effectively prevent her from exercising the right of redemption.[27]

In the subsequent case of *Saguan v. Philippine Bank of Communications*,[28] however, we clarified that the exception made in *Sulit* does not apply when the period to redeem has already expired or when ownership over the property has already been consolidated in favor of the mortgagee-purchaser. In other words, even if the mortgagee-purchaser fails to return the surplus, a writ of possession must still be issued. In the instant case, the

period to redeem has already lapsed. Thus, following the ruling in *Saguan*, the issuance of a writ of possession in favor of the petitioner is in order.

The failure of the mortgagee to deliver the surplus proceeds does not affect the validity of the foreclosure sale. It gives rise to a cause of action for the mortgagee to file an action to collect the surplus proceeds.

Relatedly, we held in *Sulit* that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus.[29]

In the instant case, the cadastral court is without jurisdiction to order petitioner to deliver to respondent the surplus or excess of the purchase price. The only issue in a petition for the issuance of a writ of possession is the purchaser's entitlement to possession. No documentary or testimonial evidence is even required for the issuance of the writ as long as the verified petition states the facts sufficient to entitle the purchaser to the relief requested.[30] As held in *Saguan*, when the mortgagee-purchaser fails to return the surplus, the remedy of a mortgagor "lies in a separate civil action for collection of a sum of money", thus:

However, petitioners' remedy lies in a separate civil action for collection of a sum of money. We have previously held that where the mortgagee retains more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus. In the same case, both parties can establish their respective rights and obligations to one another, after a proper liquidation of the expenses of the foreclosure sale, and other interests and claims chargeable to the purchase price of the foreclosed property. The court can then determine the proper application of compensation with respect to respondent's claim on petitioners' remaining unsecured obligations. In this regard, respondent is not precluded from itself filing a case to collect on petitioners' remaining debt.[31]

An action to collect the surplus proceeds is improper where there is a pending action for the nullification of the foreclosure proceedings.

However, unlike in the case of *Saguan* where the mortgagors did not challenge the validity of the foreclosure but only demanded the return of the surplus, respondent in this case sought to set aside the foreclosure sale. In fact, a Complaint for Nullification of Foreclosure Proceedings and Damages was filed before the RTC of Parañaque docketed as Civil Case No. 00-0513 and raffled to Branch 194.[32] The filing of a separate case for the collection of surplus by respondent would therefore be improper while the annulment case is still pending.

It bears stressing that the collection of surplus is inconsistent with the annulment of foreclosure because in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made.[33] It is only after the dismissal of complaint for annulment or when the foreclosure sale is declared valid that the mortgagor may recover the surplus in an action specifically brought for that purpose.[34] However, to avoid multiplicity of suits, the better recourse is for the mortgagor to file a case for annulment of foreclosure with an alternative cause of action for the return of the surplus, if any.[35]

A similar recourse was done by respondent. In its complaint for nullification of foreclosure proceedings and damages pending before Branch 194 of the RTC of Parañaque City, it alleged, among others, that "the payments made by the [respondent] on the interest and principal were misapplied and therefore a re-computation is necessary to determine the amount of the obligation." [36] Consequently, there is no need for respondent to file a separate case for collection of surplus in case the court affirms the validity of the foreclosure sale. Once the foreclosure is declared valid and a re-computation of the total amount of obligation is made, the court in the same case may order petitioner to return the surplus, if any, pursuant to the legal maxim, *Nemo cum alterius detrimento locupletari potest* -- no person shall be allowed to enrich himself unjustly at the expense of others.

WHEREFORE, the petition is hereby GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 72240 dated September 12, 2005 is MODIFIED by deleting the portion ordering petitioner to pay respondent, through the notary public, the excess of its bid price in the sum of P488,289.35 with legal interest from January 27, 2000 until it is paid.

**SO ORDERED.**

Carpio[\*], (Chairperson), Leonardo-De Castro[\*\*], Brion, and Abad., JJ., concur.

---

[\*]Per Special Order No. 775 dated November 3, 2009.

[\*\*] Additional member per Special Order No. 776 dated November 3, 2009.

[1] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages, Section 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered 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.

[2] Rules of Court, Rule 39, Section 33, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135.

[3] See *Cometa v. Intermediate Appellate Court*, 235 Phil. 569 (1987); *Sulit v. Court of Appeals*, 335 Phil. 914 (1997).

[4] Rollo, pp. 3-26.

[5] Id. at 27-35; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas-Peralta.

[6] Id. at 36-37.

[7] Id. at 98-107.

[8] Id. at 42.

[9] Id. at 43.

[10] Id. at 44-45.

[11] Id. at 46-47.

[12] Id. at 48-49.

[13] Id. at 50-51.

[14] Id. at 52-53.

[15] Id. at 54-55.

[16] Id. at 9.

[17] Id. at 38- 40.

[18] Id. at 39-40.

[19] Id. at 41.

[20] Id. at 30.

[21] Id. at 33.

[22] Id. at 34.

[23] Supra note 7.

[24] Supra note 6.

[25] Id. at 13.

[26] Supra at note 3.

[27] Id. at 924-928.

[28] G.R. No. 159882, November 23, 2007, 538 SCRA 390.

[29] Supra note 3 at 931.

[30] Spouses Santiago v. Merchants Rural Bank of Talavera, Inc., 493 Phil. 862, 870 (2005).

[31] Supra note 28 at 401-402.

[32] Rollo, pp. 108-114, 120.

[33] Sulit v. Court of Appeals, supra note 3.

[34] See Kleinman v. Neubert, 172 N.W. 315 (1999).

[35] Rules of Court, Rule 8, Sec. 2. See Keramik Industries, Inc. v. Hon. Guerrero, 158 Phil. 915, 918 (1974) and LCK Industries Inc. v. Planters Development Bank, G.R. No. 170606, November 23, 2007, 538 SCRA 634.

[36] Rollo, p. 110.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.