# GLORIA R. MOTOS AND MARTIN MOTOS, PETITIONERS, VS. REAL BANK (A THRIFT BANK), INC., RESPONDENT.

*G.R. No. 171386. July 17, 2009*

Ponente: QUISUMBING, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-171386/

**QUISUMBING, J.:**

This appeal seeks to set aside the Decision[1] dated May 16, 2005 of the Court of Appeals in CA-G.R. SP No. 85064. The Court of Appeals had affirmed the Decision [2] dated January 29, 2002 and the Order[3] dated March 15, 2004 but set aside the Orders dated May 5, 2004[4] and June 22, 2004[5] of the Regional Trial Court (RTC) of Quezon City, Branch 222 in LRC No. Q15302 (02).

The antecedent facts of the case are as follows:

Spouses Martin and Gloria Motos (spouses Motos) acquired several loans from Real Bank in the total amount of P4,000,000. To secure the obligation, they mortgaged to the bank a land covered by Transfer Certificate of Title (TCT) No. 116759[6] on April 4, 1997.

When the spouses failed to pay the loans, Real Bank extrajudicially foreclosed the mortgage in accordance with Act No. 3135,[7] as amended by Act No. 4118.[8] The bank emerged as the highest bidder. Consequently, the sheriff issued a Certificate of Sale[9] dated December 2, 1998 which the spouses filed with the Registry of Deeds on April 14, 1999.

After the one-year redemption period had lapsed, the bank filed an affidavit of consolidation with the Registry of Deeds of Quezon City. The new TCT No. N-220068 was issued in the name of Real Bank. Thereafter, the bank filed an Ex Parte Petition[10] for the issuance of a writ of possession, which was docketed as LRC No. Q15302 (02) and raffled to Branch 222 of the Quezon City RTC.

On January 29, 2002, the RTC promulgated a Decision which granted the petition, thus:

> WHEREFORE, premises considered the instant petition is hereby GRANTED. Accordingly, let a Writ of Possession issue in favor of petitioner and the Sheriff IV of this branch or his duly authorized deputy is directed to place petitioner in possession of the subject property covered by TCT No. N-220068 of the Registry of Deeds of Quezon City.
>
> SO ORDERED.[11]

Subsequently, Sheriff Neri G. Loy served a copy of the Writ of Possession[12] dated September 12, 2003 and a notice to vacate on the spouses Motos. The latter, however, refused to comply, and instead, filed a Motion to Quash Writ of Possession[13] on the ground that they were not heard on the petition. The RTC denied the motion in an Order dated March 15, 2004. The spouses filed a Notice of Appeal[14] from said order which was, however, denied due course through another Order dated May 5, 2004. Their Motion for Reconsideration[15] was similarly denied in an Order dated June 22, 2004.

On July 8, 2004, the sheriff served a third notice to vacate[16] on the spouses Motos. This prompted them to file a petition for certiorari[17] under Rule 65 of the Rules of Court with the Court of Appeals.

In a Decision dated May 16, 2005, the Court of Appeals granted the petition in part. The fallo of its decision reads:

> WHEREFORE, the instant petition is PARTLY GRANTED. The assailed Decision dated 29 January 2003 and the Order dated 15 March 2004 are AFFIRMED while the Orders dated 05 May 2004 and 22 June 2004 are SET ASIDE. Respondent Judge is hereby directed to give due course to petitioners' Notice of Appeal filed on April 15, 2004.
>
> SO ORDERED.[18]

The appellate court explained that it is the ministerial duty of the RTC to issue the writ of possession prayed for by Real Bank since it had consolidated title to the subject property in its name. Nevertheless, the Court of Appeals upheld the spouses' right to appeal the denial of their motion to quash the writ, citing Section 8[19] of Act No. 3135.

Both parties moved for reconsideration but were denied by Resolution[20] dated January 23, 2006.

Before us, the spouses Motos filed the instant petition which raises the sole issue:

> WHETHER OR NOT PENDING APPEAL WHICH WAS GIVEN DUE COURSE, THE WRIT OF POSSESSION ISSUED BY THE COURT A QUO CAN BE ENFORCED.[21]

To fully resolve the foregoing issue, we find two questions needing a close review: (1) whether a writ of possession may be issued ex parte; and (2) whether an order denying a motion to quash writ of possession is appealable.

Petitioners argue that the judgment of the Court of Appeals is futile insofar as it sustained their right to appeal but upheld the issuance of the writ of possession by the RTC. They contend mainly that the trial court's grant of the writ is void for lack of notice of hearing. Owing to this, petitioners argue, that they were left with no recourse but to move for the quashal of the writ.

Respondent simply counters that petitioners erred in bringing the case to this Court on a petition for certiorari. While the petition was captioned as a petition for certiorari, respondent points out that petitioners neither impleaded the Court of Appeals nor alleged grave abuse of discretion against it. Respondent also faults the RTC for acting on the motion to quash writ of possession filed by petitioners because said motion was not the proper petition contemplated by law.

The instant petition lacks merit.

Although denominated as a petition for certiorari under Rule 65 of the Rules of Court, a reading of the petition readily shows that the issue posed and the arguments presented by petitioners are those cognizable under a petition for review on certiorari. Thus, we shall proceed to treat the instant petition as one for review on certiorari under Rule 45 of the Rules of Court.

The first question we shall tackle concerns the propriety of the trial court's issuance of the writ of possession over the contested property in favor of respondent Real Bank. Thereafter, we shall discuss the appealability of the order denying the motion to quash the writ of possession.

A writ of possession is an order by which the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under any of the following instances: (1) land registration proceedings under


Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Section 17 of Act No. 496;[22] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118.[23] The third instance obtains in the instant case.

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended by Act No. 4118. 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, 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 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 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.)[24]

A petition for the issuance of a writ of possession under Section 7 of Act No. 3135, as amended, is not an ordinary civil action by which one party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It is in the nature of an ex parte motion, taken or granted at the instance and for the benefit of one party, without need of notice to or consent by any party who might be adversely affected.[25]

Moreover, during the period of redemption, it is ministerial upon the court to issue a writ of possession in favor of the purchaser of the mortgaged realty. The law requires only that the proper motion be filed, the bond approved, and no third person is involved.[26] No discretion is left to the court. Any question regarding the regularity and validity of the sale (and consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8.[27] Indeed, such question should not 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.[28]

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. In like manner, the mere filing of an ex parte motion for the issuance of the writ of possession would suffice and a bond is no longer necessary. This is because possession has become the absolute right of the purchaser as the confirmed owner.[29]

It is indisputable from the foregoing discussion that the RTC did not commit grave abuse of discretion in issuing the writ of possession to respondent. In the same vein, the Court of Appeals did not err in upholding the writ. When the spouses Motos failed to redeem the foreclosed land, respondent bank, as the purchaser at the foreclosure sale, became the absolute owner thereof. Therefore, once respondent filed the Ex Parte Petition for the issuance of a writ of possession, it became ministerial upon the RTC to issue the writ in its favor. By its nature, an ex parte petition for the issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended.[30] As such, petitioners were neither entitled to a copy of the petition nor to a notice of hearing thereon. Any objection they may have had on the validity of the sale and the writ issued pursuant thereto

should have been threshed out in a subsequent proceeding under Section 8 of Act No. 3135:

> SEC. 8. Setting aside of sale and writ of possession. - 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, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six; and if it finds the complaint of the debtor justified, it shall dispense in his favor of all or part of the bond furnished by their person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and Ninety-Six; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis supplied.)

Under the law, the mortgagor may file a petition to set aside the sale and writ of possession before the RTC. In case the lower court denies the petition, the mortgagor may appeal in accordance with Section 14[31] of Act No. 496, also known as The Land Registration Act. Even then, the order of possession shall continue in effect during the pendency of the appeal.

Here, petitioners moved to quash the writ of possession issued by the RTC. When the court denied the motion to quash, petitioners appealed the denial. However, the court a quo did not give due course to the notice of appeal. Petitioners sought reconsideration which the trial court, likewise, denied. The spouses Motos next elevated the case to the Court of Appeals on certiorari. Much to their relief, the appellate court reversed the Orders dated May 5, 2004 and June 22, 2004 of the RTC. The appellate court, however, sustained the writ of possession issued by the court a quo, prompting petitioners to further appeal to us.

Certainly, even as we had sustained the appellate court in upholding the writ of possession, we cannot take a similar stance as regards its order directing the RTC to give due course to petitioners' appeal. It bears stressing that petitioners erroneously substituted a motion to quash writ of possession for the remedy provided by law - a petition to set aside sale and writ of possession. Resultantly, the Order dated May 5, 2004 denying said motion did not settle the issue on the validity of the sale, and is at best, interlocutory.

An interlocutory order is one which does not dispose of the case completely but leaves something to be decided upon.[32] Under Section 1(c),[33] Rule 41 of the Rules, no appeal may be taken from an interlocutory order. Hence, the Court of Appeals committed reversible error in ordering the RTC to give due course to petitioners' appeal.

Prescinding from the foregoing discussion, we address the sole issue which petitioners have raised in this appeal. Petitioners inquire whether the writ of possession issued by the RTC may be enforced "pending appeal which was given due course."[34] In reality, however, the notice of appeal which the Court of Appeals directed the RTC to give due course to is petitioners' appeal from the denial of their motion to quash the writ of possession - an interlocutory order; hence, unappealable. Nonetheless, even assuming that petitioners followed the orderly procedure and had successfully appealed a judgment upholding the sale and issuance of the writ of possession, we must stress that Section 8 of Act No. 3135 is clear that the order of possession shall continue in effect during the pendency of the appeal.

WHEREFORE, the petition is DENIED. The Decision dated May 16, 2005 of the Court of Appeals in CA-G.R. SP No. 85064 is AFFIRMED WITH MODIFICATION in that the Orders dated May 5, 2004 and June 22, 2004 of the Regional Trial Court of Quezon City, Branch 222 in LRC No. Q15302 (02) are REINSTATED. Costs against petitioners.

**SO ORDERED.**

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,** and Brion, JJ., concur.

---

[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 17-26. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino concurring.

[2] Id. at 70. Penned by Judge Rogelio M. Pizarro.

[3] Id. at 79.

[4] Id. at 82.

[5] Id. at 87.

[6] Id. at 57.

[7] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES. Also known as the "Extrajudicial Foreclosure of Mortgage," approved on March 6, 1924.

[8] 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," approved on December 7, 1933.

[9] Rollo, p. 62.

[10] Id. at 44-48.

[11] Id. at 70.

[12] Id. at 71-72.

[13] Id. at 73-78.

[14] Id. at 80.

[15] Id. at 83-86.

[16] Id. at 88.

[17] Id. at 33-43.

[18] Id. at 25-26.

[19] SEC. 8. Setting aside of sale and writ of possession. - 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, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six; and if it finds the complaint of the debtor justified, it


*Bar review courses, mock exams and a study planner that keeps you on pace - batas.org*

shall dispense in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and Ninety-Six; but the order of possession shall continue in effect during the pendency of the appeal.

[20] Rollo, pp. 27-32.

[21] Id. at 11.

[22] THE LAND REGISTRATION ACT, approved on November 6, 1902.

[23] Fernandez v. Espinoza, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 144-145.

[24] China Banking Corporation v. Lozada, G.R. No. 164919, July 4, 2008, 557 SCRA 177, 193-194.

[25] Metropolitan Bank and Trust Company v. Bance, G.R. No. 167280, April 30, 2008, 553 SCRA 507, 515-516.

[26] Metropolitan Bank and Trust Company v. Tan, G.R. No. 159934, June 26, 2008, 555 SCRA 502, 512.

[27] Supra note 19.

[28] China Banking Corporation v. Lozada, supra at 195.

[29] Fernandez v. Espinoza, supra at 149.

[30] Metropolitan Bank and Trust Company v. Bance, supra at 520.

[31] SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, judgment of a Court of First Instance might be reviewed, ... except as otherwise provided in this section: Provided, however, That no certificates of title shall be issued by the Court of Land Registration until after the expiration of the period for perfecting a bill of exceptions for filing: And provided, further, That the Court of Land Registration may grant a new trial in any case that has not passed to the Supreme Court, in the manner and under the circumstances provided in Sections 145, 146 and 147 of Act No. 190; And, Provided, also, That the certificates of judgment to be issued by the Supreme Court, in cases passing to it from the Court of Land Registration, shall be certified to the clerk of the last-named court as well as the copies of the opinion of the Supreme Court; And provided, also, That in the bill of exceptions to be printed, no testimony or exhibits shall be printed except such limited portions thereof as are necessary to enable the Supreme Court to understand the points of law reserved. The original testimony and exhibits shall be transmitted to the Supreme Court: And provided, further, That the period within which the litigating parties must file their appeals and bills of exceptions against the final judgment in land registration cases shall be thirty days, counting from the date on which the party received a copy of the decision. (Amended by Sec. 4, Act No. 1108; Sec. 26[a] and [b], Act No. 2347.)

[32] City of Naga v. Asuncion, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541.

[33] SECTION 1. Subject of appeal. -- An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;
x x x x
(c) An interlocutory order;
x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

[34] Supra note 21.


*Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org*

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.