

**DONNA C. NAGTALON, PETITIONER, VS. UNITED COCONUT PLANTERS BANK, RESPONDENT.***G.R. No. 172504. July 31, 2013*

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-172504/>**BRION, J.:**

Before the Court is the petition for review on certiorari,[1] filed by Donna C. Nagtalon (petitioner), assailing the decision[2] dated September 23, 2005 and the resolution[3] dated April 21, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 82631. The CA reversed and set aside the orders[4] dated November 3, 2003 and December 19, 2003 of the Regional Trial Court (RTC), Kalibo, Aklan, Branch 5, in CAD Case No. 2895.

**The Factual Antecedents**

Roman Nagtalon and the petitioner (Spouses Nagtalon) entered into a credit accommodation agreement (credit agreement) with respondent United Coconut Planters Bank. In order to secure the credit agreement, Spouses Nagtalon, together with the Spouses Vicente and Rosita Lao, executed deeds of real estate mortgage over several properties in Kalibo, Aklan. After the Spouses Nagtalon failed to abide and comply with the terms and conditions of the credit agreement and the mortgage, the respondent filed with the Ex-Officio Provincial Sheriff a verified petition[5] for extrajudicial foreclosure of the mortgage, pursuant to Act 3135, as amended.[6]

The mortgaged properties were consequently foreclosed and sold at public auction for the sum of P3,215,880.30 to the respondent which emerged as the sole and highest bidder. After the issuance of the sheriff's certificate of sale, the respondent caused the entry of the sale in the records of the Registry of Deeds of Kalibo, Aklan and its annotation on the transfer certificates of titles (TCTs) on January 6, 1999.[7] With the lapse of the one year redemption period and the petitioner's failure to exercise her right to redeem the foreclosed properties, the respondent consolidated the ownership over the properties, resulting in the cancellation of the titles in the name of the petitioner and the issuance of TCTs in the name of the respondent, to wit: (a) TCT No. T-29470; (b) TCT No. T-29472; (c) TCT No. T-29471; (d) TCT No. T-29469; (e) TCT No. T-29474; (f) TCT No. T-29475; and (g) TCT No. T-29473.[8] The new TCTs were registered with the Register of Deeds of Kalibo, Aklan on April 28, 2000.[9]

On April 30, 2003, the respondent filed an ex parte petition for the issuance of a writ of possession with the RTC, docketed as CAD Case No. 2895. In the petition, the respondent alleged that it had been issued the corresponding TCTs to the properties it purchased, and has the right to acquire the possession of the subject properties as the current registered owner of these properties.

The petitioner opposed the petition, citing mainly the pendency of Civil Case No. 6602[10] (for declaration of nullity of foreclosure, fixing of true indebtedness, redemption, damages and injunction with temporary restraining order) still pending with the RTC. In this civil case, the petitioner challenged the alleged nullity of the provisions in the credit agreement, particularly the rate of interest in the promissory notes. She also sought the nullification of the foreclosure and the sale that followed. To the petitioner, the issuance of a writ of possession was no longer

a ministerial duty on the part of the court in view of the pendency of the case.

#### The RTC Ruling

On November 3, 2003, the RTC issued an order,[11] holding in abeyance the issuance of the writ of possession of the properties covered by TCT Nos. T-29470, T-29472, T-29471, T-29469 and T-29474 on the ground of prematurity. The RTC ruled that due to the pendency of Civil Case No. 6602 — where the issue on nullity of the credit agreement and foreclosure have yet to be resolved — the obligation of the court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage property ceases to be ministerial.

The respondent filed a motion for reconsideration, but the RTC denied the motion, citing equitable grounds and substantial justice as reasons.[12]

The respondent then filed a petition for certiorari[13] with the CA.

#### The CA Ruling

In its September 23, 2005 decision,[14] the CA reversed and set aside the RTC orders, noting that while it is the ministerial duty of the court to issue a writ of possession after the lapse of the one-year period of redemption, the rule admits of exceptions and the present case at bar was not one of them.

The CA held that equitable and peculiar circumstances must first be shown to exist before the issuance of a writ of possession may be deferred. The CA then ruled that the petitioner failed to prove that these equitable circumstances are present in this case, citing for this purpose the ruling in *Vaca v. Court of Appeals*. [15] Based on the *Vaca* ruling, the CA ordered the RTC to issue the corresponding writ of possession.

#### The Petition

The petitioner submits that the CA erred in its findings; the equitable circumstances present in the case fully justified the RTC's order[16] to hold in abeyance the issuance of the writ of possession. The petitioner contends that the RTC found *prima facie* merit in the allegations in Civil Case No. 6602 that the foreclosure and the mortgage were void. The petitioner adds that the CA's reliance on the *Vaca* case, in support of its decision, is misplaced because no peculiar circumstances were present in this cited case which are applicable to the present case.

The petitioner lastly maintains that the CA decision violated her constitutional right to due process of law, as it deprived her of the possession of her properties without the opportunity of hearing.

#### The Case for the Respondent

The respondent essentially echoes the pronouncement of this Court in the *Vaca* case that the CA adopted and maintains that: (1) the pendency of a civil case challenging the validity of the mortgage cannot bar the issuance of the writ of possession because such issuance is a ministerial act; (2) the peculiar and equitable circumstances, which would justify an exception to the rule, are not present in the present case; and (3) contrary to the allegation of the petitioner, it is the respondent who was deprived of possession of the properties due to the petitioner's persistent efforts to frustrate the respondent's claim.

#### The Issue

The case presents to us the issue of whether the pendency of a civil case challenging the validity of the credit agreement, the promissory notes and the mortgage can bar the issuance of a writ of possession after the foreclosure and sale of the mortgaged properties and the lapse of the one-year redemption period.

#### Our Ruling

We see no merit in the petition, and rule that the CA did not commit any reversible error in the assailed decision.

The issuance of a writ of possession is a ministerial function of the court

The issue this Court is mainly called upon to resolve is far from novel; jurisprudence is replete with cases holding that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.

We have long recognized the rule that once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at anytime. Its right to possession has then ripened into the right of a confirmed absolute owner[17] and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.[18] The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.

The right to the issuance of a writ of possession is outlined in Sections 6 and 7 of Act 3135, as amended by Act 4118, to wit:

Sec. 6. In all cases in which an extrajudicial sale is made x x x, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

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 and underscore ours]

In *Spouses Ruben and Violeta Sagun v. Philippine Bank of Communications and Court of Appeals*, [19] the Court laid down the established rule on the issuance of a writ of possession, pursuant to Act 3135, as amended. The Court said that a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.

During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an ex parte motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.

On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper ex parte motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property.[20] The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the

absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This second scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.[21]

The correctness of the issuance of the writ in the second scenario is strengthened by the fact that after the consolidation of ownership and issuance of titles to the purchaser, the latter's right to possession not only finds support in Section 7 of Act 3135, but also on its right to possession as an incident of ownership.[22] The Court, in *Espinoza v. United Overseas Bank Philippines*,[23] noted that the basis of the right to possession is the purchaser's ownership of the property.

Moreover, if the court has the ministerial power to issue a writ of possession even during the redemption period, upon proper motion and posting of the required bond, as clearly provided by Section 7 of Act 3135, then with more reason should the court issue the writ of possession after the expiration of the redemption period, as the purchaser has already acquired an absolute right to possession on the basis of his ownership of the property.[24] The right to possess a property follows ownership.[25]

Based on these rulings, we find it clear that the law directs in express terms that the court issue a writ of possession without delay to the purchaser after the latter has consolidated ownership and has been issued a new TCT over the property. The law then does not provide any room for discretion as the issuance has become a mere ministerial function of the court.

The petitioner resists the above views with the argument that the nullity of the loan documents due to the unilateral fixing of the interest and her failure to receive the proceeds of the loan, among others, are peculiar circumstances that would necessitate the deferment of the issuance of the writ of possession. These are the same arguments the petitioner propounded in the civil case she filed to question the nullity of the foreclosure.

We do not find the argument convincing.  
Pendency of a civil case questioning the  
mortgage and foreclosure not a bar to  
the issuance of a writ of execution

The petitioner's submitted arguments on the presence of peculiar and equitable circumstances are of no moment. These peculiar circumstances are nothing but mere allegations raised by the petitioner in support of her complaint for annulment of mortgage and foreclosure. We have ruled in the past that any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of execution/writ of possession.[26]

In the case of *Spouses Montano T. Tolosa and Merlinda Tolosa v. United Coconut Planters Bank*,[27] a case closely similar to the present petition, the Court explained that a pending action for annulment of mortgage or foreclosure (where the nullity of the loan documents and mortgage had been alleged) does not stay the issuance of a writ of possession. It reiterated the well-established rule that as a ministerial function of the court, the judge need not look into the validity of the mortgage or the manner of its foreclosure, as these are the questions that should be properly decided by a court of competent jurisdiction in the pending case filed before it. It added that questions on the regularity and the validity of the mortgage and foreclosure cannot be invoked as justification for opposing the issuance of a writ of possession in favor of the new owner.

In the cited case, the petitioner, in opposition to the respondent's ex parte application for a writ of possession, likewise pointed to the prima facie merit of the allegations in her complaint for annulment of mortgage, foreclosure and sale. She alleged that the apparent nullity of the mortgage obligation and the sale of the properties

justify, at the very least, the deferment of the issuance of the writ of possession.

We pointedly ruled in this cited case that no reason existed to depart from our previous pronouncements. That the issuance of a writ of possession remains a ministerial duty of the court until the issues raised in the civil case for annulment of mortgage and/or foreclosure are decided by a court of competent jurisdiction[28] has long been settled. While conceding that the general rule on the ministerial duty of the courts to issue a writ of possession is not without exceptions, the Court was quick to add that the Tolosa case[29] does not fall under the exceptions.

Exceptions to the rule that issuance of a writ of possession is a ministerial function

A review of the Court's ruling in the Tolosa case would reveal a discussion of the few jurisprudential exceptions worth reiterating.

(1) Gross inadequacy of purchase price

In *Cometa v. Intermediate Appellate Court*[30] which involved an execution sale, the court took exception to the general rule in view of the unusually lower price (P57,396.85 in contrast to its true value of P500,000.00) for which the subject property was sold at public auction. The Court perceived that injustice could result in issuing a writ of possession under the given factual scenario and upheld the deferment of the issuance of the writ.

(2) Third party claiming right adverse to debtor/mortgagor

In *Barican v. Intermediate Appellate Court*,[31] consistent with Section 35, Rule 39 of the Rules of Court, the Court held that 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 when a third-party in possession of the property claims a right adverse to that of the debtor-mortgagor. In this case, there was a pending civil suit involving the rights of third parties who claimed ownership over the disputed property. The Court found the circumstances to be peculiar, necessitating an exception to the general rule. It thus ruled that where such third party claim and possession exist, the trial court should conduct a hearing to determine the nature of the adverse possession.

(3) Failure to pay the surplus proceeds of the sale to mortgagor

We also deemed it proper to defer the issuance of a writ in *Sulit v. Court of Appeals*[32] in light of the given facts, particularly the mortgagee's failure to return to the mortgagor the surplus from the proceeds of the sale (equivalent to an excess of approximately 40% of the total mortgage debt). We ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair and iniquitous for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt.

We stress that the petitioner's present case is not analogous to any of the above-mentioned exceptions. The facts are not only different from those cited above; the alleged peculiar circumstances pertain to the validity of the mortgage, a matter that may be determined by a competent court after the issuance of the writ of possession.[33]

In these lights, we hold that the CA correctly ruled that the present case does not present peculiar circumstances that would merit an exception from the well-entrenched rule on the issuance of the writ.

Petitioner was accorded due process

The petitioner lastly argues that the issuance of a writ of possession, despite its "prima-facie meritorious claim of nullity of loan and mortgage,"[34] constitutes a violation of her constitutional right to due process of law.

The petitioner's contention is unmeritorious. We note that the ex parte petition for the issuance of a writ of

possession under Sections 6 and 7 of Act 3135 is not, strictly speaking, a “judicial process.” As discussed in *Idolor v. Court of appeals*,<sup>[35]</sup> it is not an ordinary suit by which one party “sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.”<sup>[36]</sup> Being *ex parte*, it is a non-litigious proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard.

That the petitioner would or could be denied due process if the writ of possession would be issued before she is given the opportunity to be heard on her *prima facie* defense of nullity of the loan and mortgage is clearly out of the question. The law does not require that the writ of possession be granted only after the issues raised in a civil case on nullity of the loan and mortgage are resolved and decided with finality. To do so would completely defeat the purpose of an *ex parte* petition under Sections 6 and 7 of Act 3135 that, by its nature, should be summary; we stress that it would render nugatory the right given to a purchaser to acquire possession of the property after the expiration of the redemption period.

At any rate, the petitioner is not left without a remedy as the same law provides the mortgagor the right to petition for the nullification of the sale and the cancellation of the writ of possession under Section 8 of Act. No. 3135, which remedy the petitioner was aware of. In her petition for review, she averred that “[t]he said Act 3135 x x x does not however prohibit or negate the filing of a separate civil case for the nullification of loan indebtedness x x x or x x x mortgage contract[.]”<sup>[37]</sup> Thus, she cannot claim that she has been denied of due process merely on the basis of the *ex parte* nature of the respondent’s petition.

WHEREFORE, all premises considered, the instant petition is DENIED for lack of merit. Accordingly, the decision dated September 23, 2005 and the resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP No. 82631 are AFIRMED in toto.

### **SO ORDERED.**

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

---

[1] Under Rule 45 of the Rules of Court; rollo, pp. 3-14.

[2] *Id.* at 17-23; penned by Associate Justice Vicente L. Yap, and concurred in by Associate Justices Arsenio J. Magpale and Enrico A. Lanzas.

[3] *Id.* at 25-26.

[4] *Id.* at 53 and 54; penned by Judge Elmo F. Del Rosario.

[5] *Id.* at 48.

[6] Act No. 3135 – An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

[7] Rollo, p. 41.

[8] *Id.* at 49.

[9] *Id.* at 42.

[10] *Id.* at 29.

[11] *Supra* note 4.

[12] Ibid.

[13] Rollo, pp. 55-69. Filed under Rule 65 of the Rules of Court.

[14] Supra note 2.

[15] G.R. No. 109672, July 14, 1994, 234 SCRA 146.

[16] Supra note 4.

[17] Spouses Saguan v. Philippine Bank of Communications, 563 Phil. 696, 706 (2007).

[18] Spouses Espiridion v. Court of Appeals, 523 Phil. 664, 668 (2006).

[19] Supra note 17, at 706-707.

[20] Sps. Yulienco v. Court of Appeals, 441 Phil. 397, 406 (2002).

[21] IFC Service Leasing and Acceptance Corporation v. Nera, No. L-21720, January 30, 1967, 19 SCRA 181, 184.

[22] CIVIL CODE, Article 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[23] G.R. No. 175380, March 22, 2010, 616 SCRA 353, 367.

[24] IFC Service Leasing and Acceptance Corporation v. Nera, supra note 21, at 185.

[25] Edralin v. Philippine Veterans Bank, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 76.

[26] Spouses Espiridion v. Court of Appeals, supra note 18 at 668.

[27] G.R. No. 183058, April 3, 2013.

[28] Ibid.

[29] Ibid.

[30] 235 Phil. 569 (1987).

[31] 245 Phil. 316, 320-321 (1988).

[32] 335 Phil. 914 (1997).

[33] Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[34] Rollo, p. 14.

[35] Idolor v. Court of Appeals, G.R. No. 161028, January 31, 2005, 450 SCRA 396, 404-405.

[36] Parents-Teachers Association (PTA) of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co., G.R. No. 176518, March 2, 2010, 614 SCRA 41, 56.

[37] Rollo, p. 13.

**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.