

**TEODORO DARZEN, MAMERTO DARZEN, JR., NESTOR DARZEN,  
BENILDA DARZEN-SANTOS, AND ELENITA DARZEN-VERGEL,  
PETITIONERS, VS. V. R. GONZALES CREDIT ENTERPRISES, INC.,  
REPRESENTED BY IT...**

*G.R. No. 199747. April 03, 2013*

Ponente: REYES, J.

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**REYES, J.:**

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114265 dated July 20, 2011, denying herein petitioners' petition for certiorari and prohibition which sought to annul and set aside the Orders dated March 16, 2010[3] and May 4, 2010[4] of the Regional Trial Court (RTC) of the City of Malolos, Bulacan, Branch 81, in P-826-2009, entitled, "In Re: Ex-Parte Petition for Issuance of a Writ of Possession, V.R. Gonzalez Credit Enterprises, Inc., as represented by its President Veronica Gonzalez, Petitioner, Teodoro Darzen, et al., Oppositors."

**Antecedent Facts**

The spouses Mamerto Darzen (Mamerto) and Flora De Guzman (Flora) were married on February 2, 1947, and they begot seven (7) children, namely: Teodoro, Mamerto, Jr., Nestor, Benilda, and Elenita (the petitioners), and their brothers Arturo and Manuel. Mamerto died on September 18, 1986, leaving behind an estate consisting of three titled parcels of land located in Baliuag, Bulacan and covered by Transfer Certificate of Title (TCT) No. RT-19565 (T-41394), TCT No. RT-19566 (T-11678), and TCT No. RT-19564 (T-193099), all under the name "Mamerto Darzen married to Flora de Guzman."

According to the petitioners, sometime in 1990 their late brother Manuel borrowed money from Veronica Gonzales (Gonzales), president of V.R. Gonzales Credit Enterprises, Inc. (respondent company). Manuel sought their consent in constituting a mortgage over the above properties of their father, but the petitioners refused. Manuel then caused the execution of an Extra-Judicial Settlement of Estate with Waiver by forging the signatures of the petitioners and their mother Flora. In the said instrument, the petitioners and their siblings were said to have waived their shares in their father's estate in favor of their mother, thus making Flora the sole owner of the three lots.[5] Meanwhile, fire had razed part of the Office of the Register of Deeds of Bulacan and destroyed the titles to the said parcels. After the reconstitution of the titles on April 7, 1992,[6] new titles were issued in the name of "Flora de Guzman, Filipino, of legal age, widow," to wit:

(1) TCT No. T-19267, which is a transfer from TCT No. RT-19565 (T-41394), containing an area of 512 square meters, located in Barangay Sabang, Baliuag, Bulacan;

(2) TCT No. T-19268, which is a transfer from TCT No. RT-19566 (T-116789), covering an area of 478.4 sq m, located at P. Angeles St., Baliuag, Bulacan; and

(3) TCT No. T-19269, which is a transfer from TCT No. RT-19564 (T-193099), covering an area of 580 sq m, located in Baliuag, Bulacan.[7]

Petitioners further claim that on the day that the above new titles were issued, they caused the annotation thereon of their hereditary claim in their father's estate.[8] On December 4, 2000, Flora died.

Sometime in January 2007, Gonzales appeared and, claiming that the petitioners' late mother Flora had mortgaged the above properties to respondent company in 1995, demanded payment from the petitioners of several loans allegedly taken out by Flora, as follows:[9]

(i)

P3,000,000.00, borrowed by Flora on January 30, 1995 secured by a mortgage contract over TCT No. T-19269;

(ii)

P3,500,000.00, taken out on July 12, 1995 by Flora upon a mortgage over TCT No. T-19267;

(iii)

P500,000.00, also borrowed on July 12, 1995 by Flora secured by a mortgage over TCT No. T-19268;

On February 16, 2007, the petitioners were able to verify from the Register of Deeds of Bulacan that the above properties had indeed been mortgaged to respondent company in 1995, but they now say that they "immediately noted that the purported signatures of their mother on the three (3) mortgage contracts were actually forgeries, and that the mortgage contracts did not state when the supposed loan obligations would become due and demandable." [10] They maintain that their mother did not contract the loans, and they point to their brothers Manuel and Arturo, whose signatures appear as witnesses on the mortgage documents, as guilty of forging her signatures and of receiving the proceeds of the loans. The petitioners also disclaim any knowledge of the loans, or of their consent thereto, either before or after.

The respondent company extrajudicially foreclosed on the mortgage over the aforesaid lots sometime in 2007, but meanwhile, on June 8, 2007, the petitioners filed Civil Case No. 333-M-2007 [11] with the RTC-Branch 78, for "Annulment of Mortgage, Extra-Judicial Foreclosure, Auction Sale, Certificate of Sale, and Damages," seeking to void the real estate mortgages, the extrajudicial foreclosure and the auction sale of the lots. Named defendants were respondent company and their brothers Manuel and Arturo.

After posting and publication of the notice of sheriff's sale dated October 20, 2008, the three properties were sold at auction held on November 18, 2008 for a total price of P8,000,000, with the respondent company as the highest bidder. A certificate of sale was issued by Ex-Officio Sheriff Emmanuel Ortega on November 20, 2008, duly annotated on the titles on November 28, 2008. [12]

The one-year period to redeem lapsed. Respondent company executed an affidavit of consolidation of ownership. On December 8, 2009, it filed an ex parte petition for issuance of a writ of possession in the RTC-Branch 81 docketed as P-826-2009. [13] In its Order [14] dated December 17, 2009, the court set the petition for hearing on February 26, 2010. Meanwhile, on February 25, 2010, the petitioners were able to file an Opposition [15] to the petition, praying for the outright denial thereof on the ground of forum shopping because the respondent company did not disclose the pendency of Civil Case No. 333-M-2007 in its certification against forum-shopping. On March 10, 2010, V.R. Gonzales filed a Comment to the Opposition, [16] to which the petitioners filed a Reply [17] on March 23, 2010.

In its Order[18] dated March 16, 2010, the RTC-Branch 81 denied the petitioners' opposition and ruled that the respondent company was not guilty of forum shopping. Citing *Sps. Ong v. CA*,[19] it held that the issuance of the writ of possession was a mere ministerial function of the court, and was summary in nature.[20] Not being a judgment on the merits, *litis pendencia* or *res judicata* would not set in to bar the filing of Civil Case No. 333-M-2007.

Petitioners' motion for reconsideration was denied in the court's Order[21] dated May 4, 2010.

On June 2, 2010, the petitioners filed a petition for certiorari[22] in the CA docketed as CA-G.R. SP No. 114265, whose decision therein, dated July 20, 2011, is now the subject of this Petition.

Meanwhile, on February 28, 2011, the RTC-Branch 81 granted the writ of possession sought by the respondent company in P-826-2009. The notice to vacate was issued on April 26, 2011 against the petitioners.

In a related development, on August 10, 2010, the RTC-Branch 78 dismissed the complaint in Civil Case No. 333-M-2007, holding that the mortgage contracts executed by Flora in favor of the respondent company over TCT Nos. T-19267, T-19268, and T-19269 are valid, and declaring valid the extrajudicial foreclosure and auction sale of the said properties. The decision is now pending appeal in the CA, docketed as CA-G.R. CV No. 96251.

#### Petition for Certiorari in the CA

In CA-G.R. SP No. 114265,[23] the petitioners reiterated their arguments: (1) that due to identity of parties and cause of action, the respondent company committed forum shopping for failing to disclose the pendency of Civil Case No. 333-M-2007; (2) that due to the pendency of Civil Case No. 333-M-2007, the RTC-Branch 81 has no jurisdiction over the *ex parte* petition for writ of possession, since the question of possession was already laid before the RTC-Branch 78; and (3) that the issue of validity of the mortgage contracts executed by Flora and the foreclosure of the mortgages are material to the issue of possession.

On April 25, 2011, the CA denied petitioners' urgent motion for writ of preliminary injunction and/or Temporary Restraining Order.

On July 20, 2011, the CA rendered its now assailed decision denying the petition in CA-G.R. SP No. 114265, ruling that respondent company was not guilty of forum shopping since the *ex parte* petition for writ of possession it filed in P-826-2009 is not an initiatory pleading as to require that a certification of non-forum shopping be attached thereto; that the issuance of the writ of possession is merely a ministerial function of the court *a quo*, the possession being incidental to the transfer of title to the new owner; that the issuance of the writ is summary in nature and is not a judgment on the merits.

The CA further explained that the *ex parte* writ of possession is for the sole benefit of the new owner, without need of notice to or consent by any party who might be adversely affected. Thus, notwithstanding the pendency of a suit to annul the real estate mortgage and the extrajudicial foreclosure and auction sale, the purchaser is entitled to a writ of possession, without prejudice to the outcome in the annulment case, which can proceed without encroaching on the jurisdiction of the court resolving the *ex parte* petition for writ of possession.

#### Petition for Review in the Supreme Court

On December 12, 2011, the CA denied the petitioners' Motion for Reconsideration from its above decision.[24] Hence, this petition for review.

The petitioners now contend that the CA erred in failing to take into account the fact that they, against whom the writ of possession issued by the RTC in P-826-2009 was directed, are adverse claimants who are third parties and strangers to the real estate mortgages executed by their mother. They cite *Villanueva v. Cherdan Lending*

Investors Corporation,[25] where it was reiterated that the issuance of a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial where the property is in the possession of a third party who holds the property under a claim adverse to that of the debtor/mortgagor.[26]

The petitioners maintain that they knew nothing about the mortgage contracts, whose validity is now the subject of their appeal in CA-G.R. CV No. 96251. They further claim that their signatures in the Extrajudicial Settlement of Estate with Waiver, which they supposedly executed in favor of their mother Flora, were forged. As co-heirs and co-owners with their mother of the subject lots, they have a claim directly adverse to hers, and therefore, also directly adverse to her successor-in-interest, the respondent company. Consequently, the duty of the RTC to issue the writ of possession to respondent company ceases to be ministerial.

#### Our Ruling

We dismiss the petition.

The long-settled rule in extrajudicial foreclosure of real estate mortgage is that after consolidation of ownership of the foreclosed property, it is the ministerial duty of the court to issue, as a matter of right, an ex parte writ of possession to the buyer.

The established rule is that the purchaser in an extrajudicial foreclosure sale becomes the absolute owner of the property if no redemption is made within one (1) year from the registration of the certificate of sale by those who are entitled to redeem.[27] Possession being a recognized essential attribute of ownership,[28] after consolidation of title the purchaser may demand possession as a matter of right.[29] Under Section 7 of Act No. 3135, as amended by Act No. 4118, the issuance of the writ is merely a ministerial function of the RTC, which the new owner may obtain through an ex parte motion.[30] Section 7 of Act No. 3135 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 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 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.

The possession may be granted to the buyer either (a) within the one-year redemption period, upon the filing by the purchaser of a bond, or (b) after the lapse of the redemption period, without need of a bond.[31] As explained in *Spouses Arquiza v. CA*: [32]

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an ex

parte motion for the issuance of the writ of possession would suffice, and no bond is required.[33] (Citations omitted and underscoring ours)

We repeated the above rule in *Asia United Bank v. Goodland Company, Inc.*,[34] in this wise:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an ex parte petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an ex parte proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.[35] (Citations omitted)

Moreover, we made it clear in the recent case of *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,[36] that not even a pending action for annulment of mortgage or foreclosure sale will stay the issuance of the writ of possession:

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[37] (Citations omitted)

Nonetheless, the ministerial duty of the court to issue an ex parte writ of possession ceases once it appears that there is a third party in possession of the property, who is a stranger to the mortgage and who claims a right adverse to that of the debtor/ mortgagor.

Section 33, Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, unless a third party is actually holding the property adversely to the judgment obligor:

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; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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.

The application of the above Section has been extended to extrajudicial foreclosure sales pursuant to Section 6 of Act No. 3135, to wit:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, 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 sale; and such redemption shall be governed by the provisions of section 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.

Thus emboldened by Section 33 of Rule 39, the petitioners have persisted in making the point that they are strangers to the mortgage contracts executed by their mother over their father's lots, which they claim to co-own with her, an interest adverse to that of the respondent company. In Villanueva,[38] they found support for their contention:

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an ex parte motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, 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. Section 33 provides:

x x x x

The same issue had been raised in *Bank of the Philippine Islands v. Icot*, *Development Bank of the Philippines v. Prime Neighborhood Association*, *Dayot v. Shell Chemical Company (Phils.), Inc.*, and *Philippine National Bank v. Court of Appeals*, and we uniformly held that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter. In this case, petitioner opposed the issuance of the writ of possession on the ground that he is in actual possession of the mortgaged property under a claim of ownership. He explained that his title to the property was cancelled by virtue of a falsified deed of donation executed in favor of spouses Peñaredondo. Because of this falsification, he filed civil and criminal cases against spouses Peñaredondo to nullify the deed of donation and to punish the party responsible for the falsified document. Petitioner's claim that he is in actual possession of the property is not challenged, and he has come to court asserting an ownership right adverse to that of the mortgagors, the spouses Peñaredondo.[39] (Citations omitted)

But in *China Banking Corporation v. Lozada*,[40] the Supreme Court clarified that it is not enough that the property be possessed by a third party, but the same must also be held by the third party adversely to the debtor/mortgagor:

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. 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.[41] (Citation omitted and emphasis ours)

The Court then discussed the meaning of “third party who is actually holding the property adversely to the judgment obligor,”[42] thus:

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. The co-owner, agricultural tenant, and usufructuary 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. x x x.[43] (Citations omitted)

Thus, it was held in *BPI Family Savings Bank, Inc.* that to be error for the court to issue an ex parte writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party claimant in actual possession has raised, in an opposition to the writ or in a motion to quash the same, the matter of his actual possession upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, accordingly to *Unchuan v. CA*,[44] is for the trial court to order a hearing to determine the nature of the adverse possession:[45]

Note, however, that a third party not privy to the debtor is protected by the law. He may be ejected from the premises only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process. “Where a parcel of land levied on execution is occupied by a party other than the judgment debtor, the proper procedure is for the court to order a hearing to determine the nature of said adverse possession.”[46] (Citations omitted)

We find no proof that the petitioners are adverse third-party claimants entitled to be retained in possession.

The RTC’s chief consideration for granting to the respondent company a writ of possession was that the assailed mortgages purportedly executed by Flora in 1995 were constituted on properties covered by certificates of title issued solely in her name.

It will be noted that it was only in June 2007, after respondent company had threatened them with extrajudicial foreclosure and eviction, or after 12 years had passed, that the petitioners brought an action to annul the real estate mortgages, and meanwhile, Flora had obtained several loans totaling P7.5 million from the respondent company in 1995. It took petitioners even longer, 15 years, to assail the validity of the alleged Extrajudicial Settlement of Estate with Waiver, which gave Flora sole title to the subject lots under the new titles issued to her in April 1992.

Realizing that their claim of forgery of their mother’s signature in the mortgage contracts was tenuous after the RTC-Branch 78 dismissed Civil Case No. 333-M-2007, the petitioners now claim that an earlier instrument, an Extrajudicial Settlement of Estate with Waiver, was falsified by their brothers Manuel and Arturo who forged their signatures. Yet, why the said instrument named neither Manuel nor Arturo but their mother Flora as the sole beneficiary of the heirs’ waiver, the petitioners did not explain. Thus, through the said instrument, on April 7, 1992, TCT No. RT-19565 (T-41394), TCT No. RT-19566 (T-11678), and TCT No. RT-19564 (T-193099), all under the name of “Mamerto Darcen married to Flora de Guzman,” were cancelled and replaced with TCT Nos. T-19267, T-19268, and T-19269, respectively, now in the name solely of “Flora de Guzman, Filipino, of legal age, widow.”

Considering that the petitioners are now stridently asserting that their signatures in the aforesaid Extrajudicial

Settlement of Estate with Waiver had been forged, it is inexplicable why they failed to attach a copy thereof either to their Opposition to the ex parte petition for writ of possession, or to this petition. All that they could say about this “oversight” is that they “were never able to insist on the presentation of the said document because they were never parties in the case for writ of possession. Besides, the case for writ of possession is summary and non-adversarial.”[47]

But this is a lie and an obvious subterfuge, for the fact is that the RTC set a hearing on February 26, 2010 to hear out the petitioners on the nature of their claimed adverse possession. They appeared with their lawyer, and had an opportunity to lay out the complete facts and present whatever pertinent documents were in their possession. They did no such thing, and only affirmed the contents of their Opposition, wherein they chiefly asserted their defense of lack of jurisdiction of the RTC-Branch 81 and forum shopping.

Not only did petitioners not sue to annul the extrajudicial settlement, but on the very day, April 7, 1992, that the new titles were issued to Flora, an inscription appears in the said titles announcing that one-half (½) of the lots would be bound for the next two years to possible claims by other heirs or unknown creditors against the estate of Mamerto, pursuant to Section 4 of Rule 74 of the Rules of Court. All three titles bear this same inscription,[48] which the petitioners admit that they themselves had caused to be annotated on their mother’s titles,[49] in the following words:

Entry No. 7550 – The ½ portion of the land described herein is subject to the provision of Sec. 4, Rule 74 of the Rules with respect to the inheritance left by the deceased Mamerto Darcen.

Date of instrument – March 7, 1992

Date of inscription – April 7, 1992 at 9:35 a.m.[50]

All the above leave little doubt that the petitioners had always known about, and had consented to, the extrajudicial settlement of the estate of their father Mamerto, as well as waiver by them of their shares therein in favor of their mother Flora. For this very reason, they cannot now be permitted to interpose an adverse claim in the subject mortgaged lots and defeat the writ of possession issued to the respondent company.

The petitioners were accorded an opportunity to be heard on the nature of their claimed adverse possession, conformably with the time-honored principle of due process.

On December 17, 2009, the RTC-Branch 81 set for hearing on February 26, 2010 the petition for writ of possession in P-826-2009.[51] On February 25, 2010, the petitioners were able to file their Opposition[52] to the said petition, wherein they asserted that they are co-owners of the properties, being heirs of the deceased Mamerto; that they filed a case, Civil Case No. 333-M-2007, to annul the mortgages over the three lots on account of forgery; and that the extrajudicial foreclosure sale of the lots was invalid. They, thus, prayed for outright denial of the writ on the ground of forum shopping, because respondent company did not disclose the pendency of Civil Case No. 333-M-2007 in its certification against forum shopping.

At the hearing on February 26, 2010, the petitioners appeared with their counsel, Atty. Enrique dela Cruz, Jr. They did not however present any documents, and only affirmed their Opposition already in the records.[53] On March 11, 2010, respondent company filed its comment to petitioners’ Opposition.[54] On March 23, 2010, the petitioners filed their reply.[55]

In its Order dated March 16, 2010, the RTC-Branch 81 held that respondent company was not guilty of forum shopping, citing *Sagarbarria v. Philippine Business Bank*,[56] as follows:

[A]ct No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.

Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession without prejudice, of course, to the eventual outcome of the pending annulment case.[57] (Underscoring ours)

On April 8, 2010, petitioners filed their Motion for Reconsideration[58] from the denial of their opposition, but it was denied on May 4, 2010.

Even granting that the petitioners should be allowed to retain possession, the petition has been rendered moot and academic by the issuance and satisfaction of the writ of possession issued in P-826-2009.

As the petitioners have themselves admitted in their Petition,[59] the RTC-Branch 81, issued a Writ of Possession[60] dated April 18, 2011, and on October 4, 2011 they were physically evicted from the disputed lots by the Sheriff, and the respondent company was placed in possession thereof, per the Sheriff's report dated October 4, 2011.[61] With the writ of possession having been served and fully satisfied, the instant petition has ceased to present a justiciable controversy for this Court to resolve, and a declaration thereon would be of no practical use or value,[62] in view of the pendency in the CA of the petitioners' appeal from the decision in Civil Case No. 333-M-2007 on the question of the ownership of the subject mortgaged lots, and thus of the rightful possession thereover. As we have reiterated in *Madriaga, Jr. v. China Banking Corporation*: [63]

Judicial power presupposes actual controversies, the very antithesis of mootness. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement. Courts generally decline jurisdiction on the ground of mootness – save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review, which are not extant in this case.[64] (Citations omitted)

What is now left for the petitioners to do is to await the resolution of their appeal in Civil Case No. 333-M-2007. Their restoration to possession may then be sought therein as an incident or relief, if justified.

WHEREFORE, premises considered, the Petition for Review on Certiorari is DENIED.

### **SO ORDERED.**

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

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[1] Rollo, pp. 9-29.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring; *id.* at 32-39.

[3] Rendered by Judge Herminia V. Pasamba; *id.* at 130-131.

- [4] Id. at 140.
- [5] Id. at 12.
- [6] Id. at 13.
- [7] Id. at 60-65.
- [8] Id. at 12-13.
- [9] Id. at 68-75.
- [10] Id. at 112.
- [11] Id. at 42-50.
- [12] Id. at 93-100.
- [13] Id. at 88-91.
- [14] Id. at 101-102.
- [15] Id. at 103-108.
- [16] Id. at 179-181.
- [17] Id. at 182-184.
- [18] Id. at 130-131.
- [19] 388 Phil. 857 (2000).
- [20] Id. at 867.
- [21] Rollo, p. 140.
- [22] Id. at 141-157.
- [23] Id. at 141-157.
- [24] Id. at 41.
- [25] G.R. No. 177881, October 13, 2010, 633 SCRA 173.
- [26] Id. at 181.
- [27] Act No. 3135, Section 6.
- [28] See New Civil Code, Book II, Title II, Articles 428-430.
- [29] Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768-769.
- [30] Metropolitan Bank & Trust Company v. Santos, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 234. (Citations omitted)
- [31] Idolor v. Court of Appeals, 490 Phil. 808, 813 (2005).
- [32] 498 Phil. 793 (2005).
- [33] Id. at 804.

- [34] G.R. No. 188051, November 22, 2010, 635 SCRA 637.
- [35] Id. at 646-647.
- [36] G.R. No. 176019, January 12, 2011, 639 SCRA 405.
- [37] Id. at 418.
- [38] Supra note 26.
- [39] Id. at 180-182.
- [40] G.R. No. 164919, July 4, 2008, 557 SCRA 177.
- [41] Supra note 41, at 198.
- [42] Supra note 37, at 417-418.
- [43] Supra note 41, at 202-204.
- [44] 244 Phil. 733 (1988).
- [45] Supra note 37, at 416.
- [46] Id. at 738.
- [47] Rollo, p. 13.
- [48] Id. at 61, 63, 65.
- [49] Id. at 13.
- [50] Id.
- [51] Id. at 101-102.
- [52] Id. at 103-108.
- [53] Id. at 177-178.
- [54] Id. at 179-181.
- [55] Id. at 182-184.
- [56] G.R. No. 178330, July 23, 2009, 593 SCRA 645.
- [57] Id. at 654, citing *Fernandez v. Espinosa*, G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149-150; rollo, pp. 130-131 .
- [58] Rollo, pp. 132-138.
- [59] Id. at 18.
- [60] Id. at 234-236.
- [61] Id. at 237.
- [62] See *Madriaga, Jr. v. China Banking Corporation*, G.R. No. 192377, July 25, 2012, citing *Sps. de Vera v. Hon. Agloro*, 489 Phil. 185 (2005).

[63] G.R. No. 192377, July 25, 2012.

[64] Id.

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