

SPOUSES WILFREDO AND DOMINICA ROSARIO, PETITIONERS, VS. GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENT.

G.R. No. 200991. March 18, 2021

Ponente: ZALAMEDA, J.

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ZALAMEDA, J.:

A home is not just property; it is a sanctuary, a realized dream. If for justifiable causes it must be seized, courts must ensure that the same is in accordance with law and upon observance of the requisites of due process.

The Case

Before this Court is a petition for review on certiorari[1] assailing the Decision[2] dated 28 July 2011 and Resolution[3] dated 20 February 2012 of the Court of Appeals (CA), in CA-G.R. SP No. 110231. The CA reversed the Resolution[4] dated 07 April 2008 of Branch 85, Regional Trial Court (RTC) of Quezon City in LRC Case No. Q-22034.

Antecedents

New San Jose Builders Inc. (NSJBI) and the Government Service Insurance System (respondent) entered into a Loan Agreement[5] on 10 December 1997. NSJBI borrowed an amount of Php 600 million to finance the completion of two (2) housing projects, and to purchase a lot for construction of more housing projects. As security for the loan, NSJBI mortgaged three (3) parcels of land with existing improvements: 365 lots with existing low-cost houses at Mary Homes, Bacoor, Cavite, 102 condominium units at St. John Condominium at Scout Rallos, Quezon City (mortgaged properties), and rights over 240 condominium units in GSIS Metro Homes.

Under the loan agreement, NSJBI shall not alienate sell, dispose of, mortgage, or in any manner encumber the mortgaged properties or any portion thereof without the prior consent of the respondent. However, the parties also agreed that NSJBI may continue to sell the mortgaged properties subject to the condition that the net proceeds from the sales should be exclusively used in the recoupment of the loan. The parties further stipulated that in case of non-compliance with the conditions and stipulations agreed upon, respondent may immediately foreclose the mortgage, either judicially or extrajudicially, in accordance with the applicable provisions of law.

The mortgage was annotated on the Transfer Certificates of Title (TCTs) and Condominium Certificates of Title (CCTs) of the mortgaged properties on 10 December 1997. Among those mortgaged pursuant to the Loan Agreement was Unit 205 in St. John Condominium at Scout Rallos, Quezon City (Unit 205), allegedly sold by NSJBI to the Spouses Wilfredo and Dominica Rosario (petitioners).

NSJBI defaulted in the payment of the loan. On 31 March 2003, respondent applied for extrajudicial foreclosure of the mortgaged properties. Subsequently, an auction sale was conducted on 17 June 2003, where respondent was the highest bidder.

Upon failure of NSJBI to exercise its right of redemption, the titles/ownership of the property were consolidated

and the Register of Deeds cancelled the corresponding TCTs and CTCs in favor of respondent. Claiming that NSJBI continued in possession of the said foreclosed properties, respondent demanded NSJBI to vacate the foreclosed properties but to no avail. Hence, on 23 August 2006, respondent filed a petition for issuance of a writ of possession against NSJBI and all occupants of the foreclosed properties before the RTC.

NSBJI and its buyers, petitioners, Atty. Donardo S. Donato, Marcelino Delos Reyes and Carlitos Escueta, filed their pleadings-in-intervention. Respondent filed separate motions to expunge the pleadings-in-intervention.

On 07 April 2008, the RTC issued a Resolution, resolving to: 1) grant the motions for intervention, including that of petitioners; 2) treat the motion for leave to take judicial notice of Marcelino Delos Reyes as a motion to intervene and grant the same; and 3) grant respondent's application for a writ of possession as against NSJBI but only as to unsold condominium units and lots that are not in possession of third-party buyers. It also denied respondent's motion for partial reconsideration in a Resolution dated 11 June 2009.

Aggrieved, respondent filed a petition for certiorari before the CA.

Ruling of the CA

On 28 July 2011, the CA granted respondent's petition and reversed the RTC resolutions dated 07 April 2008 and 11 June 2009 of the RTC. It found that the RTC committed grave abuse of discretion in granting petitioner's motion for intervention in ex-parte proceeding for the issuance of a writ of possession.

The CA also ruled that the RTC erred in restraining the implementation of the writ of possession against petitioners since they are not third parties who are in adverse possession of the foreclosed property. It explained that the proper remedy for petitioners is to seek annulment of the mortgage or foreclosure before the Housing and Land Use Regulatory Board (HLURB) for non-compliance with Section 18[6] of Presidential Decree (PD) No. 957. Hence, this petition.

Petitioners argue that they should be allowed to intervene since they are third-party possessors of the foreclosed property who were not impleaded in respondent's ex-parte application.[7] They contend that they should be considered as co-owners of the property instead of NSJBI's transferee or successor-in-interest.[8] They also allege that their possession should be deemed adverse to respondent given that the mortgage agreement between it and NSJBI was entered into without authority from the HLURB in violation of Section 18 of PD 957.[9]

Issue

This Court is tasked to determine whether the CA erred in ruling that the RTC committed grave abuse of discretion for allowing petitioners to intervene in respondent's ex-parte application for a writ of possession, and exempting from its implementation Unit 205 possessed by petitioners.

Ruling of the Court

The petition is meritorious.

The right to possess a foreclosed property after the redemption period is subject to the rights of third-party possessors

As a general rule, the highest bidder in the foreclosure sale becomes the absolute owner of the foreclosed property after the lapse of the redemption period and no redemption is made.[10] As owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, including the right to possess the

same, or *jus possidendi*.^[11] After consolidation of the ownership and transfer of TCT in the purchaser's name, a writ of possession will issue as a matter of course even without the necessity of a bond.^[12]

As an exception, the ministerial duty of the court to issue an *ex-parte* writ of possession ceases when there are third-parties who are actually holding the mortgaged property adversely to the judgment debtor. Sec. 33 of Rule 39, made applicable to extrajudicial foreclosure of real estate mortgages by Sec. 6 Act No. 3135, provides:

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;

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. (Emphasis supplied).

Jurisprudence teaches that when there are third-party possessors of the property, the RTC should instead conduct a hearing to determine the nature of the adverse possession. However, for this exception to apply, it is not enough that the property is in the possession of a third party, it must also be held by the third party adversely to the judgment debtor or mortgagor.

In the early case of *de Ortega v. Natividad*,^[13] this Court explained the concept of a third-party adverse possessor and why a writ of possession cannot issue against such party. In that case, this Court affirmed the RTC's denial of the application for issuance of a writ of possession against supposed co-heirs of the mortgagor who were in actual possession of the mortgaged property even prior to the foreclosure suit. This Court explained that a writ of possession can only cause the eviction of parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders. It cannot be issued against a party in possession who was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was commenced. This is because "the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession." This Court acknowledged that an application for writ of possession is a summary proceeding over which the court cannot decide on questions of the property's title and ownership. The same *ratione* was applied in *Angeles v. Intermediate Appellate Court*^[14] and *Heirs of Nicolas v. Metropolitan Bank and Trust Co.*^[15]

Meanwhile, in *Bank of the Philippine Islands v. Icot*,^[16] this Court ruled that the writ of possession cannot be invoked against the heirs of the original owner of the property whose share therein have been erroneously sold to the judgment debtor.

Supposed owners whose titles were divested through forgeries or simulated conveyances may also be considered as third parties to *ex-parte* proceedings for applications of possessory writs involving their properties. In the recent case of *Sy v. China Banking Corp.*,^[17] this Court recalled the writ of possession issued by the RTC evicting the owners-occupants of the foreclosed property based on the finding that they were fraudulently deprived of their share thereon through simulated and forged conveyances. This Court, likewise, reminded the mortgagee bank of its obligation to be more vigilant in its transactions involving registered lands. In *Development Bank of the Phils. v. Prime Neighborhood Association*,^[18] this Court also affirmed the recall of a writ of possession based on the plea of third parties who were allegedly transferees of the true owner of the foreclosed property. In that case, it was claimed that the judgment mortgagor's supposed right to the property was hinged on a spurious title.

In *Dayot v. Shell Chemical Co. (Phils.), Inc.*,^[19] this Court upheld the right of the occupant of the foreclosed property who claimed they acquired the property from a party other than the judgment mortgagor. In that case, the Court ruled that the conflicting claims of ownership over the same property cannot be settled in an ex-parte proceeding for the issuance of a writ of possession.^[20]

In the aforesaid cases, the Court deemed that the third-party's possession should be respected as it raises a disputable presumption of ownership, and under Article 433 of the Civil Code, a person who contests such disputable presumption must resort to judicial processes for the recovery of the property.^[21] However, for purposes of resolving the propriety of issuing a writ of possession, the trial court must conduct a summary hearing to determine the nature of the possession of third-party claimants.^[22] For it may be that the actual possessor is privy to any of the parties to the action, or his bona-fide possession may be disputed, or where such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. The trial court shall then deny or accede to the enforcement of a writ of possession as the finding shall warrant.^[23]

Incidentally, jurisprudence has often cited examples of parties against whom a writ of possession cannot issue. A co-owner, tenant, or usufructuary who is in actual possession cannot be evicted through an ex-parte application for a possessory writ. These parties are considered to possess the property based on their own right, and not merely as a transferee or successor of the mortgagor.

Co-owners cannot be evicted through a summary possessory writ from a co-owned property because in a co-ownership "each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract because until the division is effected, such share is not concretely determined". During the period of co-ownership, a co-owner's possession of his share is linked to the possession of the other co-owners.^[24] Each of the co-owners merely own an abstract or ideal portion of the entire property.^[25]

Meanwhile, usufructuaries are also protected from a writ of possession because during the subsistence of the usufruct, the owner parts with his right to possess and enjoy the property in favor of the usufructuary, while only retaining the *jus disponendi* or the power to alienate the same.^[26] Under Article 603^[27] of the Civil Code, sale of the property is not one of the causes of termination of the usufruct.

Finally, agricultural tenants of non-rice and corn crops are also considered as third-parties who possess the land adversely to the judgment debtor, and thus cannot be summarily ousted from the property through a writ of possession.^[28] This is because of the express provision of P.D. No. 1038, viz.:

SECTION 1. The tenure of the tenant-tillers in private agricultural lands devoted to crops other than rice and/or corn, including but not limited to those primarily planted to abaca, banana, coconut, coffee, mango, durian and other permanent trees, shall be secured and no tenant--tiller shall be removed, ejected, ousted or excluded from his farmholding unless for causes provided by law and directed by a final decision or order of the court. (Emphasis ours)

PD No. 1038 was enacted to fortify the security of tenure of tenant--tillers who were being unlawfully ousted in their lands,^[29] and reinforce earlier laws providing for security of tenure for agricultural tenants. Security of tenure is a legal concession to agricultural lessees, which they value as life itself, as deprivation of their landholdings is tantamount to deprivation of their only means of livelihood. The exercise of the right of ownership, then, yields to the exercise of the rights of an agricultural tenant.^[30]

As will be discussed, this Court finds that individuals who buy condominium units or subdivision lots from developers are also entitled to the same treatment. Thus, writs of possession issued upon the application of mortgagee banks or financial institutions should exclude units or lots actually occupied by individual buyers.

Condominium and subdivision buyers are parties protected by law against compromising mortgages that would deprive them of their hard-earned property

We underscore that condominium and subdivision lot buyers are protected by PD No. 957 or the Subdivision and Condominium Buyers' Protective Decree. Such legislative intention is clearly expressed in its preamble, viz.:

WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value; xxx

In the context of financing subdivision and condominium development projects, PD No. 957 recognizes the disparity between the resources of banks and financial institutions as against individual property buyers. In past cases, this Court has characterized PD No. 957 as an instrument of social justice meant to protect small lot and condominium unit buyers as against gigantic financial institutions who developers normally deal with.[31] As eloquently stated by this Court in *Philippine National Bank v. Office of the President*:[32]

Protection must be afforded small homeowners who toil and save if only to purchase on installment a tiny home lot they can call their own. The consuming dream of every Filipino is to be able to buy a lot, no matter how small, so that he may somehow build a house. It has, however, been seen of late that these honest, hard-living individuals are taken advantage of, with the delivery of titles delayed, the subdivision facilities, including the most essential such as water installations not completed, or worse yet, as in the instant case, after almost completing the payments for the property and after constructing a house, the buyer is suddenly confronted by the stark reality, contrived or otherwise, in which another person would now appear to be owner.

xxx xxx xxx

"We cannot over emphasize the fact that the BANK cannot barefacedly argue that simply because the title or titles offered as security were clean of any encumbrance or lien, that it was thereby relieved of taking any other step to verify the over-reaching implications should the subdivision be auctioned on foreclosure. The BANK could not have closed its eyes that it was dealing over a subdivision where there were already houses constructed. Did it not enter the mind of the responsible officers of the BANK that there may even be subdivision residents who have almost completed their installment payments?"

Verily, while these large financial institutions have access to information and resources allowing them to protect themselves from loans with developers, individual property buyers are normally powerless to discover and prevent encumbrances involving the property being sold to them. Thus, this Court has held that the lofty aspirations of P.D. No. 957 should be read in every provision of the statute, in every contract that undermines its objects, in every transaction which threatens its fruition.[33]

Applying the policy behind PD No. 957, this Court, in *Philippine National Bank v. Dee*,[34] ruled that mortgagee banks are bound to respect the contract to sell between the developer and the condominium unit buyer, despite the provisions of Act No. 3135, viz:

Nevertheless, despite the apparent validity of the mortgage between the petitioner and PEPI, the former is still bound to respect the transactions between respondents PEPI and Dee. The petitioner was well aware that the properties mortgaged by PEPI were also the subject of existing contracts to sell with other buyers. While it may be that the petitioner is protected by Act No. 3135, as amended, it cannot claim any superior right as against the installment buyers. This is because the contract between the respondents is protected by P.D. No. 957, a social justice measure enacted primarily to protect innocent lot buyers. Thus, in *Luzon Development Bank v. Enriquez*, the Court reiterated the rule that a bank dealing with a property that is already subject of a contract to sell and is protected by the provisions of P.D. No. 957, is bound by the contract to sell. (Emphasis ours)

In the past, the Court has likewise upheld the rights of individual buyers to possess their properties if it is established that the mortgagee-bank had knowledge of their conveyance to third-party buyers.

In *Barican v. Intermediate Appellate Court*,^[35] this Court denied DBP's application for writ of possession, and upheld the right of Spouses Barican, the possessors of the property. This Court reasoned that DBP had knowledge of the sale with assumption of mortgage between the judgment debtor and Spouses Barican, and even received payments from them updating the loan. In addition, the Court found that the judgment debtor was never in possession of the property, and that there was a pending civil case between the DBP and Spouses Barican concerning ownership to the foreclosed property. The Court ruled that under the circumstances, the issuance of a writ of possession is no longer ministerial on the part of the trial court.

This Court employed the same ratiocination in *Philippine National Bank v. Court of Appeals*.^[36] In that case, the Court refused to enforce the writ of possession against a subdivision lot buyer whose property had been mortgaged by the developers. It explained that since the mortgagee-bank knew that the mortgaged property was occupied by persons other than the mortgagor, it could not eject them therefrom through a summary proceeding such as an application for a writ of possession. Further, it ruled that a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor must be given an opportunity to be heard on his claim in a proceeding of this nature. The possessor cannot be summarily dispossessed on the strength of a mere ex-parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process. This Court also noted that unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of Act No. 3135 is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.^[37]

In a similar way, herein respondent should not be allowed to summarily divest petitioners of their possession of Unit 205. The protection afforded to a subdivision lot buyer under PD No. 957 should not be defeated, particularly by someone who is not a mortgagee in good faith.^[38] In this case, respondent knew that the mortgaged properties form part of a condominium project, which are within the purview of PD No. 957. It was aware that the loaned amounts were to be used for the development of NSJBI's various projects.^[39] This is clear from Sec. 6.2 of the Loan Agreement where respondent consented to the sale of the condominiums subject to the condition that the net proceeds from the sale be exclusively used in the recoupment of the loan, viz:

Section 6.2 That during the lifetime of this mortgage, the BORROWER-MORTGAGOR shall not alienate, sell, dispose of, mortgage, or in any manner, encumber the mortgaged properties, or any portion thereof without the prior written consent of the LENDER-MORTGAGEE. However, the BORROWER-MORTGAGOR may continue to sell the 366 housing units, the 102 condominium units and its right on the 240 condominium units subject to the condition that the net proceeds from the sales should be exclusively used in recoupment of the loan. Should the BORROWER-MORTGAGOR violate this provision, it agrees and obligates itself to pay the LENDER-MORTGAGEE liquidated damages in an amount equivalent to 10% of the total loss, which amount shall automatically be added to the principal of the loan covered by the

Mortgage, without the need of executing another contract and the LENDER-MORTGAGEE may declare the entire amount due and demandable.[40] (Emphasis ours)

Under the circumstances, respondent knew the possibility and assumed the risk that some of the condominium units would eventually be sold to individual buyers. Hence, it cannot now claim that it was unaware of the individual buyers' rights, nor should it be allowed to bypass the same, through a summary application for a writ of possession without according them the opportunity to be heard. The RTC thus correctly allowed petitioners and the other condominium unit buyers to intervene, and be excluded from the issuance of the writ of possession. Respondent's supposed superior right over occupied condominium units should instead be determined in a full-blown proceeding where all the parties' claims are ventilated and scrutinized by the courts.

The ruling in *Chinabank v. Lozada* should be modified

Verily, transferees or successors of the judgment debtor or mortgagors have generally not been considered as third-party possessors. Their interest in the mortgaged property have not been treated as independent or adverse to the judgment mortgagor since their claim on the property merely stems from the latter.

In *China Banking Corp. (CBC) v. Spouses Lozada*,^[41] this Court ruled that condominium buyers who derive their right from the developers are not third parties who possess the foreclosed property adversely from the mortgagor. This Court explained that the rights of a condominium buyer are not the same as a co-owner, agricultural tenant, and usufructuary who possess the property in their own right. They are merely transferees or successors-in-interest of the developer-mortgagor. Thus, this Court ruled that it was mandatory and ministerial for the trial court to grant the ex-parte petition and order the issuance of a writ of possession in the latter's favor over the foreclosed property.

Applying the principle enunciated by this Court in *China Banking Corp. (CBC) v. Spouses Lozada*, this Court has later on explained, in various cases, who may be considered as transferees or successors-in-interest of the judgment debtor. These parties cannot claim that they possess an adverse interest from the mortgagor as to be excluded from a subsequent application for a writ of possession.

In *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*,^[42] this Court declared that a person who buys the property after it was mortgaged does not qualify as a third-party whose possession is exempt from the reach of a consequent foreclosure and issuance of a writ of possession. On the other hand, the Court, in *Spouses Marquez v. Spouses Alindog*,^[43] disqualified a prior buyer of the judgment debtor from the legal protection given to third-party possessors of a foreclosed property since his interest is not adverse and is hinged on the right of the judgment debtor.

The Court has likewise ruled that the heirs of the judgment debtor are bound to respect the mortgage, foreclosure and eventual issuance of a writ of possession in favor of the mortgagee. As heirs, they merely stepped into the shoes of the mortgagor and are, thus, compelled not only to acknowledge but, more importantly, to respect the mortgage he had earlier executed in favor of the mortgagee. They cannot effectively assert that their right of possession is adverse nor independent from what they have inherited.^[44]

Similarly, a corporation, who is a beneficiary and is represented by the individual mortgagors, is not considered a third-party adverse possessor of the property.^[45]

Meanwhile, in *Cabling v. Lumapas*,^[46] this Court explained that when the judgment debtor executes a deed of conditional sale involving the subject property prior to the mortgage or foreclosure, the buyer is not a third party

whose possession is entitled to protection against summary writs consequent to foreclosure. Similarly, the interest of third-party possessor who claims a right in the foreclosed property based on a contract to sell was deemed inchoate and therefore cannot be a basis to defeat the right of a winning purchaser to secure a writ of possession.[47]

Likewise, this Court has decided that a writ of possession secured by the mortgagee is binding on the supposed donee mortis causa of the judgment debtor. In *Bascara v. Javier*,[48] this Court considered the donee a mere transferee or successor-in-interest who merely stepped into the shoes of the judgment debtor.

Obviously, a condominium unit or subdivision lot buyer can be classified as a transferee or successor-in-interest since they derive their title to the unit or lot from the developer. Upon the execution of contract to sell or a deed of sale, the unit or lot buyers merely step into the shoes of the developer. Thus, their possession is subject to conveyances made by the developer involving the property.

However, guided by the provisions and policy behind PD 957, this Court deems it proper to modify the rule disqualifying all transferees or successors of the judgment debtor from being considered as third-party adverse possessors. Individual buyers of condominium units or subdivision lots, while having privity with developer-mortgagors, should be excluded from the issuance or implementation of a writ of possession if they are actually occupying the unit or lot.

As clearly demonstrated by this case, these small property buyers would suffer deleterious consequences if they continue to be treated as ordinary transferees or successors-in-interest of property developers. Arguably, while subdivision lot buyers may seek protection under Section 18 of PD No. 957 and pursue the annulment of the mortgage between the developer and the financial institution entered without the prior written approval of the HLURB, they may in the meantime be deprived of the possession of their property or residence should a financial institution foreclose a mortgage thereon. Certainly, such a scenario is anathema to the policy behind PD No. 957. Individual subdivision and condominium buyers are legally entitled to protection from being summarily ejected from their homes through processes that they may completely be unaware of and have no control over.

Thus, in keeping with the avowed purpose of PD No. 957, the rule should now be that the issuance of a writ of possession ceases to be ministerial if a condominium unit or subdivision lot buyer intervenes to protect their rights against a mortgagee bank or financial institution. The court must order a hearing to determine the nature and source of the buyer's supposed right to the foreclosed property. Should the judge be satisfied that the oppositors to the issuance of the writ are bona fide condominium or subdivision buyers who are in actual possession of the property, the writ should thus be issued excluding the aforesaid buyers from its implementation. It should, however, be clarified that exclusion of such buyers is without prejudice to the outcome of cases concerning the validity of the mortgage between the developer and the mortgagee financial institution or bank under Section 18 of PD No. 957.

WHEREFORE, the petition is hereby GRANTED. The Decision dated 28 July 2011 and Resolution dated 20 February 2012 of the Court of Appeals, in CA-G.R. SP No. 110231 are hereby REVERSED and SET ASIDE. The Resolution dated 07 April 2008 of Branch 85, Regional Trial Court of Quezon City in LRC Case No. Q-22034 is REINSTATED. The writ of possession should exclude units possessed by petitioners and third--party buyers.

SO ORDERED.

Peralta, C. J., Carandang, and Gaerlan, JJ., concur.

Caguioa, J., Please See Concurring Opinion.

[1] Rollo, pp. 10-21.

[2] Id., at 25-37; penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Edwin D. Sorongon, concurring.

[3] Id., at 40-42.

[4] Id., at 90-92.

[5] Id., at 74-84.

[6] Section 18. Mortgages. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto;

[7] Id. at 15.

[8] Id. at 15-19.

[9] Id. at 19-20.

[10] Spouses Fortaleza v. Spouses Lapitan, G.R. No. 178288, 15 August 2012, 692 Phil. 596 (2012) [Per J. Del Castillo].

[11] Spouses Gallent v. Velasquez, G.R. No. 203949 & 205071, 06 April 2016, 784 Phil. 44 (2016) [Per J. Reyes].

[12] Bank of the Philippine Islands v. Spouses Co, G.R. Nos. 171172 & 200061, 09 November 2015, 772 Phil. 291 (2015) [Per J. Jardeleza].

[13] G.R. No. 47714, 14 March 1941, 71 Phil. 340 [Per J. Laurel].

[14] G.R. No. 75009, 29 September 1989, 258 Phil. 746 [Per J. Medialdea].

[15] G.R. No. 137548, 03 September 2007, 558 Phil. 649 [Per J. Sandoval-Gutierrez].

[16] G.R. No. 168061, 12 October 2009, 618 Phil. 320 [Per J. Carpio].

[17] G.R. No. 213736, 17 June 2020, [Per J. Carandang]; See also Villanueva v. Cherdan Lending Investors Corp., G.R. No. 177881, 13 October 2010, 647 Phil. 494 [Per J. Nachura]; Capital Credit Dimension, Inc. v. Chua, G.R. No. 157213, 28 April 2004, 472 Phil. 250 [Per J. Reyes].

[18] G.R. Nos. 175728 & 178914, 08 May 2009, 605 Phil. 660 [Per J. Tinga].

[19] G.R. No. 156542, 26 June 2007, 552 Phil. 602, [Per J. Austria-Martinez]; See also Royal Savings Bank v. Asia, G.R. No. 183658, 10 April 2013, 708 Phil. 485 [Per J. Sereno].

[20] See also Sio Tiat King v. Lim, G.R. No. 185407, 22 June 2015, 761 Phil. 173 [Per J. Reyes].

[21] Sio Tiat King v. Lim, G.R. No. 185407, 22 June 2015, 761 Phil. 173 [Per J. Reyes].

[22] *Unchuan v. Court of Appeals*, G.R. No. 78775, 31 May 1988, 244 Phil. 733 [Per J. Cortes].

[23] *Omaña v. Gatulayao*, G.R. No. 47969, 22 July 1941, 73 Phil. 66 [Per J. Moran].

[24] *Gatchalian v. Arlegui*, G.R. No. L-35615, L-41360, 17 February 1977, 166 Phil. 236 [Per J. Aquino].

[25] See *Carvajal v. Court of Appeals*, G.R. No. L-44426, 25 February 1982 [Per J. Teehankee].

[26] *Moralidad v. Spouses Pernes*, G.R. No. 152809, 03 August 2006, 529 Phil. 523 [Per J. Garcia].

[27] Art. 603. Usufruct is extinguished:

- (1) By the death of the usufructuary, unless a contrary intention clearly appears;
- (2) By the expiration of the period for which it was constituted, or by the fulfillment of any resolutive condition provided in the title creating the usufruct;
- (3) By merger of the usufruct and ownership in the same person;
- (4) By renunciation of the usufructuary;
- (5) By the total loss of the thing in usufruct;
- (6) By the termination of the right of the person constituting the usufruct;
- (7) By prescription.

[28] See *Clapano v. Gapultos*, G.R. No. L-51574-77, 30 September 1984, 217 Phil. 409 [Per J. Melencio-Herrera].

[29] The *whereas* clause of PD No. 1038 provides:

WHEREAS, I have received disturbing reports that owners of private agricultural lands, landholders, agricultural lessors, legal possessors, civil law lessees, usufructuaries, or those acting for and in their behalf planted to crops other than rice and/or corn, including but not limited to those primarily planted to abaca, banana, coconut, coffee, citrus, durian and other similar permanent trees, are harassing or ejecting or removing or ousting or excluding the tenant-tillers from their farmholdings in spite of the fact that existing laws, particularly Republic Acts Nos. 1199, as amended, and 3844, as amended, protect the security of tenure of these tenant-tillers;

[30] *Heirs of Soriano v. Court of Appeals*, G.R. No. 128177, 15 August 2001, 415 Phil. 299 [Per J. Ynares-Santiago].

[31] *Philippine National Bank v. Office of the President*, G.R. No. 104528, 18 January 1996, 322 Phil. 6 [Per J. Panganiban]; *Far East Bank & Trust Co. v. Marquez*, G.R. No. 147964, 20 January 2004, 465 Phil. 276 [Per J. Panganiban].

[32] Citing *Breta and Hamor vs. Lao, et al.*, CA G.R. No. 58728-R, 11 November 1981 [Per J. Melo]; G.R. No. 104528, 18 January 1996, 322 Phil. 6 [Per J. Panganiban].

[33] *Luzon Development Bank v. Enriquez*, G.R. Nos. 168646 & 168666, 12 January 2011, 654 Phil. 315-339 [Per J. Del Castillo].

[34] G.R. No. 182128, 19 February 2014, 727 Phil. 473 [Per J. Reyes].

[35] G.R. No. 79906, 20 June 1988, 245 Phil. 316 [Per J. Gutierrez].

[36] G.R. No. 135219, 17 January 2002, 424 Phil. 757 [Per J. Ynares-Santiago].

[37] See *Philippine National Bank v. Court of Appeals*, G.R. No. 135219, 17 January 2002, 424 Phil. 757 [Per J. Ynares-Santiago].

[38] Luzon Development Bank v. Enriquez, G.R. Nos. 168646 & 168666, 12 January 2011, 654 Phil. 315 [Per J. Del Castillo].

[39] See Luzon Development Bank v. Enriquez, G.R. Nos. 168646 & 168666, 12 January 2011, 654 Phil. 315 [Per J. Del Castillo].

[40] Rollo, p. 77.

[41] G.R. No. 164919, 04 July 4, 2008, 579 Phil. 454 [Per J. Chico-Nazario].

[42] G.R. No. 200667, 11 March 2013, 706 Phil. 106 [Per J. Perlas-Bernabe]; See also BPI Family Savings Bank v. Golden Power Diesel Sales Center, Inc., G.R. No. 176019, 12 January 2011, 654 Phil. 382 [Per J. Carpio].

[43] G.R. No. 184045, 22 January 2014, 725 Phil. 237 [Per J. Perlas-Bernabe]; See also Cahilig v. Terencio, G.R. No. 164470, 28 November 2011, 677 Phil. 277 [Per J. Leonardo de Castro]; Madriaga, Jr. v. China Banking Corp., G.R. No. 192377, 25 July 2012, 691 Phil. 770 [Per J. Reyes].

[44] See Spouses Gatuslao v. Yanson, G.R. No. 191540, 21 January 2015, 751 Phil. 188 (2015) [Per J. Del Castillo]; Heirs of Peñaflor v. Heirs of Dela Cruz, G.R. No. 197797, 09 August 2017, 816 Phil. 324 [Per J. Perlas-Bernabe].

[45] See St. Raphael Montessori School, Inc. v. Bank of the Philippine Islands, G.R. No. 184076, 21 October 2015, 772 Phil. 79 [Per J. Peralta].

[46] G.R. No. 196950, 18 June 2014, 736 Phil. 582 [Per J. Brion].

[47] See AQA Global Construction, Inc. v. Planters Development Bank, G.R. Nos. 211649 & 211742, 12 August 2015, 766 Phil. 519 [Per J. Perlas-Bernabe].

[48] G.R. No. 188069, 17 June 2015, 760 Phil. 766 [Per J. Peralta].

CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia's finding that petitioners' intervention in the ex parte possessory writ proceeding is merited as an exception to the ministerial nature of the issuance of a writ of possession under Section 33, Rule 39 of the Rules of Court (Rules). The ponencia characterizes individuals who purchase condominium units or subdivision lots from developers such as petitioners in this case as similarly situated with co-owners, usufructuaries and agricultural tenants, who are considered third-party possessors who possess the property subject of the writ adversely to the judgment obligor.[1]

I agree with the ponencia's characterization of petitioners as adverse third-party possessors. In particular, it addresses the concern that is central to this controversy, as that which pertains to the unfairness attending herein petitioners' situation, specifically the lack of notice to them that the condominium unit in their possession, Unit 205, was already foreclosed and sold at an auction, with the Government Service Insurance System (GSIS) as the sole bidder. As applied to the facts of the instant case, it is observable that even with petitioners' resort to the Housing and Land Use Regulatory Board (HLURB) for an annulment of the mortgage and foreclosure of the property in their possession, such resort would still not afford them with an adequate and timely remedy against a dispossession unless they are allowed to intervene in the possessory writ proceeding.

This is the factual scenario that is precisely what Republic Act No. (R.A) 6552[2] or the "Realty Installment Buyer Act" (Maceda Law) contemplates. Concurringly, I submit that Section 18 of Presidential Decree No. (P.D.) 957[3] or the "Subdivision and Condominium Buyers' Protective Decree" and the related and analogous provisions in the Maceda Law should be the proper guideposts which the Court is called upon to follow towards a reasonably anchored conclusion that allows petitioners, and those similarly situated, to intervene in the possessory writ ex parte proceeding, as an exception under Section 33, Rule 39 of the Rules.

I expound.

I agree with the ponencia and Associate Justice Rosmari D. Carandang's consistent observations that a resort to Section 18 of P.D. 957 is the remedial route for herein petitioners. However, this resort to the HLURB, while proper in theorem, will not prevent the inequitable dispossession of the third-person buyers/possessors such as petitioners in this case, unless they are allowed to intervene in the proceeding for the issuance of a writ of possession over the property in their possession.

Section 18 of P.D. 957 provides:

SECTION 18. Mortgages. - No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto[.]

To be sure, the above provision addresses the inherent concern that petitioners here, as buyers in a contract to sell with New San Jose Builders, Inc. (NSJBI), should have been informed of the mortgage involving Unit 205. More specifically, Section 18 of P.D. 957 addresses what would otherwise have been an unfair situation on the part of the buyers, when it provides that buyers must be notified before the release of the loan, and that said buyers must be given the option to pay directly to the mortgagee the installments for the loan which is secured by the property in their possession. Section 18 provides for this requirement of notice and option to pay directly to the mortgagee, in order to enable buyers such as herein petitioners to obtain title over the lot and avoid a situation wherein the mortgagee consolidates ownership over properties in the possession of third-person buyers/possessors.

On this score, Section 34(g) of the Implementing Rules and Regulations of the Department of Human Settlements and Urban Development Act[4] in relation to Section 16(a)(7) of R.A. 11201[5] provides that the said action to annul a mortgage in violation of Section 18 of P.D. 957 may be filed with HLURB's Regional Adjudicators:

SECTION 34. Jurisdiction of Regional Adjudicators. - The Regional Adjudicators shall exercise original and exclusive jurisdiction to hear and decide cases involving the following:

34.1 x x x.

x x x x

(g)

Actions to annul mortgages executed in violation of Section 18 of [P.D.] 957 filed by a subdivision lot or condominium unit buyer against the project owner and/or developer and the mortgagee;

x x x x.

In addition, HLURB Resolution No. 980 Series of 2019 on its Revised Rules of Procedure (Revised Rules) correspondingly provides under Section 2(g) thereof that said Revised Rules cover the clearance for mortgage as provided in Section 18 of P.D. 957:

Section 2. Coverage. - This Rules shall be applicable to the following disputes or controversies:

x x x x

(g)

Suits filed in opposition to an application for certificate of registration and license to sell, development permit for condominium projects, clearance to mortgage, and, when issued by the Regional Field Office of HLURB in appropriate cases, locational clearances, zoning certifications or permits, including suits for the revocation or cancellation thereof[.]

x x x x. (Emphasis supplied)

Under the foregoing Revised Rules, third-person buyers/possessors may file a verified complaint[6] for annulment of a mortgage which did not comply with Section 18 of P.D. 957 with the Regional Field Office which has jurisdiction over the area where the project is located,[7] in order to enforce their right or otherwise prevent or redress a wrong.[8]

However, as earlier intimated, even with the above remedy availed of, unless petitioners are allowed to intervene in the possessory writ proceeding, still nothing remains in the way of the foreclosing mortgagee or highest auction bidder in obtaining a writ of possession as a ministerial result of non-redemption, and ultimately ousting the third-person buyers/possessors of the foreclosed properties.

Verily, petitioners' situation is not entirely unique. The 2013 case of Philippine Bank of Communications v. Pridisons Realty Corporation[9] (PBCOM) illustrates how the aggrieved third-person buyers/possessors therein availed of the proper remedy when the mortgage which covered the property in their possession violated Section 18 of P.D. 957. PBCOM similarly involved a condo unit which was mortgaged by the developer in favor of PBCOM in order to secure the former's loan. When the developer defaulted, PBCOM foreclosed the mortgaged properties, and the buyers thereof filed an action for specific performance with damages with the HLURB. In turn, the HLURB issued a preliminary injunction over the public auction of the foreclosed properties in view of the buyers' action before it.

The petitioners' situation, therefore, is precisely the above situation that triggers the protective substantive rights provided by the Maceda Law and P.D. 957.

The Maceda Law primarily deals with the rights of real estate investors or real estate buyers paying in installments. As a clear expression of its purpose of protecting installment buyers against oppressive conditions that negate their right over properties purchased in installments, Section 3 thereof provides:

SECTION 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract

and its extensions, if any.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

The protected substantive right of installment buyers of condominium units and subdivision lots is further illustrated in the case of *Orbe v. Filinvest Land, Inc.*,^[10] where the Court expounded on the intent of the Maceda Law, viz.:

Republic Act No. 6552, the Realty Installment Buyer Act or more popularly referred to as the Maceda Law, named after its author, the late Sen. Ernesto Maceda, was adopted with the purpose of "protect[ing] buyers of real estate on installment payments against onerous and oppressive conditions." It "delineat[es] the rights and remedies of [x x x] buyers and protect[s] them from one-sided and pernicious contract stipulations":

Its declared public policy is to protect buyers of real estate on installment basis against onerous and oppressive conditions. The law seeks to address the acute housing shortage problem in our country that has prompted thousands of middle and lower class buyers of houses, lots and condominium units to enter into all sorts of contracts with private housing developers involving installment schemes. Lot buyers, mostly low income earners eager to acquire a lot upon which to build their homes, readily affix their signatures on these contracts, without an opportunity to question the onerous provisions therein as the contract is offered to them on a "take it or leave it" basis. Most of these contracts of adhesion, drawn exclusively by the developers, entrap innocent buyers by requiring cash deposits for reservation agreements which oftentimes include, in fine print, onerous default clauses where all the installment payments made will be forfeited upon failure to pay any installment due even if the buyers had made payments for several years. Real estate developers thus enjoy an unnecessary advantage over lot buyers who[m] they often exploit with iniquitous results. They get to forfeit all the installment payments of defaulting buyers and resell the same lot to another buyer with the same exigent conditions. To help especially the low income lot buyers, the legislature enacted R.A. No. 6552 delineating the rights and remedies of lot buyers and protect[ing] them from one-sided and pernicious contract stipulations.

Having been adopted with the explicit objective of protecting buyers against what it recognizes to be disadvantageous and onerous conditions, the Maceda Law's provisions must be liberally construed in favor of buyers. Within the bounds of reason, fairness, and justice, doubts in its interpretation must be resolved in a manner that will afford buyers the fullest extent of its benefits.^[11]

Four years after the Maceda Law came P.D. 957 which, for its part, likewise directed every intendment towards the protection of innocent lot buyers from scheming developers or onerous arrangements. The case of *Metropolitan Bank and Trust Company v. SLGT Holdings, Inc.*,^[12] enlightens in this respect:

As it were, [P.D.] 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices. Its preambulatory clauses say so and the Court need not belabor the matter presently. Section 18, *supra*, of the decree directly addresses the problem of fraud and other manipulative practices perpetrated against buyers when the lot or unit they have contracted to acquire, and which they religiously paid for, is mortgaged without their knowledge, let alone their consent. The avowed purpose of [P.D.] 957 compels, as the OP correctly stated, the reading of Section 18 as prohibitory and acts committed contrary to it are void. Any less stringent construal would only accord unscrupulous developers and their financiers unbridled discretion to follow or not to follow [P.D.] 957 and thus defeat the very lofty purpose of that decree. It thus

stands to reason that a mortgage contract executed in breach of Section 18 of the decree is null and void.[13]

In the same vein, the Court in *Philippine National Bank v. Office of the President*[14] expounded on the rationale behind P.D. 957, as a tool to protect condominium unit and/or subdivision lot buyers against developers and mortgaging banks, to wit:

x x x [T]he unmistakable intent of the law [is] to protect innocent lot buyers from scheming subdivision developers. As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law - as an instrument of social justice - must favor the weak. Indeed, the petitioner bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual "due diligence" checking and ascertaining x x x the actual status, condition, utilization and occupancy of the property offered as collateral. x x x On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them. It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed "unscrupulous subdivision and condominium sellers." [15]

Proceeding from the foregoing, if in the Maceda Law, a buyer who defaults after a threshold of installment payments (i.e., at least two years) is given the right to pay the unpaid balance free of additional interests within a grace period equivalent to one month for every year of installment to be exercised every five years, as well as the right to be refunded the cash surrender value of the payments on the property equivalent to 50% of the total payments made in case of cancellation of the contract by a notarial act, then much more latitude should be rightly afforded a buyer on installment such as petitioners in this case, who have not been shown to have defaulted, but instead have been proven to have had possession of Unit 205 since 1998, and had been religiously paying installments for their purchase thereof.

Stated differently, if the defaulting buyers are afforded significant elbow room to ensure that they are given every opportunity to retain the property they are paying installments for, it is even more reasonably conceivable that a requirement of proper and effective notice to non-defaulting buyers/possessors such as herein petitioners is but a meager condition on the part of the mortgagor (i.e., NSJBI) and mortgagee (i.e., GSIS), when viewed in accordance with the overarching protective animus behind the Maceda Law and P.D. 957.

The Maceda Law and P.D. 957, thus, clearly grant installment buyers such as petitioners in this case substantive rights which are positively assertible against the developer/seller and other parties, including mortgagees of the latter.

Undoubtedly, this characterization is also consistent with the operative definition of "adverse" in the context of adverse possession under Section 33, Rule 39 of the Rules, which primarily means a possession that is in the possessor's own right, such that the third-party possessor may pursue a cause of action against the judgment debtor in order to preserve his possession over the property in dispute. The logic behind the nature of "adverse" possession in this conceptual context dovetails with the Court's elucidation of the same in the case of *Gallent, Sr. v. Velasquez*: [16]

In *China Banking Corporation v. Spouses Lozada*, it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse 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.

Specifically, the Court held that to be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor.[17]

Given the foregoing, since herein petitioners' possession of Unit 205 in this case affords them under the Maceda Law and P.D. 957 with substantive rights which are clearly assertible against the developer/seller and other parties, including mortgagees of the developer/seller, in order that they may be preserved in their possession of the same, such a nuanced statutory configuration effectively sets them apart from the operatively constrained "transferee" of the debtor or mortgagor, in that as opposed to mere transferees who obtain no better right to the property than that which the mortgagor had, petitioners here are granted specific protective substantive rights in order that they may not be expediently ousted from the property they possess by the mere fact that they purchased and are paying for the same in installments.

In fine, by reason of these protective statutory rights under the Maceda Law and P.D. 957, the buyers such as herein petitioners have been accorded third-party status, which they can assert against both the developer-seller mortgagor and the mortgagee. Thus, the sole exception under Section 33, Rule 39 of the Rules squarely applies in the instant case.

It is additionally observed that the GSIS as the mortgagee in this case may not feign unintended disregard or lack of awareness of whether or not the requirement of notice under Section 18 of P.D. 957 was complied with, and instead insist that it may proceed with taking possession of the mortgaged properties which were sold by NSJBI to innocent buyers. On the contrary, GSIS as the creditor in this case would have known precisely whether the buyers including petitioners were notified of said mortgage, since Section 18 of P.D. 957 requires such notice before the loan applied for by the developer may be released.

In this light, notwithstanding the fact that herein petitioners had already instituted a case before the HLURB which is presently pending with the Office of the President, and pursuant to a fair disposition of the instant case, I fully join the ponencia's determination that petitioners should be allowed to intervene in the otherwise ex parte proceeding for the possessory writ, as these substantive laws governing sales of condominium units bring petitioners squarely within the contemplation of adverse third-person party possessors under Section 33, Rule 39 of the Rules.

This is only consistent with the Court's repeated exhortation that the procedural rules cannot be used to defeat the ends of justice, or upend substantive rights.[18] Towards this end, I therefore fully agree with the ponencia's conclusion, thus:

Thus, in keeping with the avowed purpose of [P.D.] 957, the rule should now be that the issuance of a writ of possession ceases to be ministerial if a condominium or subdivision lot buyer intervenes to protect [his/her] rights against a mortgagee bank or financial institution. The court must order a hearing to determine the nature and source of the buyer's supposed right to the foreclosed property. Should the judge be satisfied that the oppositors to the issuance of the writ are bona fide condominium or subdivision buyers, the writ should thus be issued excluding the aforesaid buyers from its implementation. It should, however, be clarified that exclusion of such buyers is without prejudice to the outcome of cases concerning the validity of mortgage between the developer and the mortgagee financial institution or bank under Section 18 of [P.D.] 957.

Finally, it is submitted that a disposition otherwise would result in a remedial gap that effectively circumvents the singular objective of both the Maceda Law and P.D. 957. For in the final analysis, carving out this route would

genuinely afford the most just and equitable remedy for petitioners in this case, who otherwise and despite resort to an action before the HLURB, must still fear an impending eviction by reason of a writ of possession which was issued as an ultimate consequence of a defaulted loan they had no hand in taking out or satisfying.

For these reasons, I vote to GRANT the petition.

[1] Ponencia, pp. 4-7.

[2] AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, August 26, 1972.

[3] REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, July 12, 1976.

[4] Entitled, "THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 11201, OTHERWISE KNOWN AS THE DEPARTMENT OF HUMAN SETTLEMENTS AND URBAN DEVELOPMENT ACT" issued by the Housing and Urban Development Coordinating Council and the Housing and Land Use Regulatory Board on July 19, 2019.

[5] AN ACT CREATING THE DEPARTMENT OF HUMAN SETTLEMENTS AND URBAN DEVELOPMENT, DEFINING ITS MANDATE, POWERS AND FUNCTIONS AND APPROPRIATING FUNDS THEREFOR, February 14, 2019.

[6] In accordance with Rule 5 of the Revised Rules.

[7] Sec. 7 of Revised Rules provides:

Section 7. Venue. - All complaints or actions shall be filed in the Regional Field Office which has jurisdiction over the area where the project involved is located or, in cases of homeowners suits, in the Regional Field Office where the homeowners association is registered.

[8] Id. Sec. 5 provides:

Section 5. Actions and Proceedings. - An action or proceedings means any suit filed with HLURB by which one party sues another for the enforcement or protection of a right or for the prevention or redress of a wrong.

[9] G.R. No. 155113, January 9, 2013, 688 SCRA 200.

[10] G.R. No. 208185, September 6, 2017, 893 SCRA 72.

[11] Id. at 89-90 citing *Active Realty & Development Corporation v. Daroya*, 431 Phil. 753 (2002). Emphasis supplied.

[12] G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

[13] Id. at 526. Emphasis supplied.

[14] G.R. No. 104528, January 18, 1996, 252 SCRA 9.

[15] Id. at 10-11. Emphasis supplied.

[16] G.R. No. 203949, April 6, 2016, 788 SCRA 518.

[17] Id. at 535-536 citing *China Banking Corporation v. Spouses Lozada*, 579 Phil. 454 (2008).

[18] Fajardo, Jr. v. Freedom To Build, Inc., G.R. No. 134692, December 8, 2000, 347 SCRA 474, 478.

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