

SPECIAL SEVENTEENTH DIVISION

[CA-G.R. CV NO. 99425, June 20, 2014]

**IN RE: EX-PARTE PETITION FOR ISSUANCE OF WRIT OF
POSSESSION UNDER ACT 3135 AS AMENDED**

**BANCO DE ORO-EPCI, INC., PETITIONER-APPELLEE, VS.
PANGASINAN HOPE MERCANTILE CORP., REPRESENTED BY
WILFRED D. LEE, RESPONDENT-APPELLANT.**

D E C I S I O N

BATO, JR., J.:

This is an appeal from the Decision^[1] dated December 29, 2011 of the Regional Trial Court of Dagupan City, Branch 44 in SPL. PROC. No. 2008-0015-D which granted petitioner-appellee Banco De Oro – EPCI's [BDO-EPCI] Ex-Parte Petition for Writ of Possession.

Respondent-appellant Pangasinan Hope Mercantile Corp. [PHMC] filed its Appellee's Brief.^[2] Subsequently, BDO-EPCI filed its Manifestation with Motion for Immediate Execution and Implementation of Writ of Possession.^[3] PHMC filed its Comment and Reply Brief.^[4]

On August 15, 2013, this Court issued a Resolution^[5] granting BDO-EPCI's Motion for Immediate Execution and Implementation of Writ of Possession and declaring the instant case submitted for decision. PHMC sought the reconsideration thereof via the Motion for Reconsideration with Motion to Hold the Immediate Implementation/Execution of the Writ of Possession in Abeyance.^[6] BDO-EPCI filed a Manifestation^[7] stating that the parties have already agreed to amicably settle the case through a Compromise Agreement dated September 27, 2013 and that PHMC's motion for reconsideration has been rendered moot and academic. The pertinent portions of the notarized Compromise Agreement read:

"COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement made and executed by and between:

PANGASINAN HOPE MERCANTILE CORP., a domestic corporation duly organized and existing under and by virtue of Philippine laws, with office address at J. Rizal Street, Poblacion, Mangaldan, Pangasinan, represented herein by WILFRED T. LEE, and hereinafter referred to as 'PHMC';

BDO UNIBANK, INC. (formerly known as Equitable PCI Bank/Equitable Banking Corporation), a universal bank duly organized and existing under and by virtue of Philippine laws, with office address at the BDO Corporate Towers, 7899 Makati Avenue corner H.V. Dela Costa Street, Makati City, Metro Manila, represented herein by its Senior Vice President MELANIE S. BELEN and First Vice President, GERTRUDES J. LUMAIN, and hereinafter referred to as the 'BANK'

Witnesseth that:

WHEREAS, PHMC was previously granted by the BANK BDO a term loan of P8,000,000.00 duly covered and secured by a Real Estate Mortgage executed by PHMC in April 1997 over its properties in Poblacion, Mangaldan, Pangasinan then covered by Transfer Certificates of Title Nos. 213370 and 220794 of the Registry of Deeds of Pangasinan ('Subject Properties');

WHEREAS, upon PHMC's default in the payment of said loan, the Bank instituted an extrajudicial foreclosure of the aforementioned mortgage resulting in the public auction of the Subject Properties with the BANK emerging as the highest bidder and in the subsequent consolidation of ownership thereof in October 2004 in favor of the BANK under Transfer Certificates of Title Nos. 282670 and 282671;

WHEREAS, PHMC thereafter, or sometime in November 2004, filed with (sic) Regional Trial Court of Dagupan City, Pangasinan a Complaint for Injunction With Damages, Preliminary Injunction and Temporary Restraining Order, docketed as Civil Case No. 2004-0399-D pending before Branch 42 of said Court;

WHEREAS, the BANK subsequently filed a Petition for Writ of Possession against PHMC, docketed as Spec. Proc. No. 2008-0176-D, which was granted by Branch 44 of the same Court and is now pending appeal before the Court of Appeals and docketed therein as CA-G.R. CV No. 99425;

WHEREAS, the parties hereto have agreed to amicably settle the aforementioned cases and enter into this Compromise whereby PHMC will buy back (sic) the BANK the Subject Properties, based on the terms and conditions herein set forth.

NOW THEREFORE, for and in consideration of the above-mentioned premises, and by these presents, the parties have agreed, as they hereby agree, as follows:

1. PHMC shall buy the Subject Properties from the BANK and pay the latter the total purchase price of PESOS: TWELVE MILLION (P12,000,000.00) payable in installments covered by postdated checks, to wit:

1.1. Downpayment of PESOS: TWO MILLION (P2,000,000.00) payable upon signing of this Agreement;

1.2. The balance of PESOS: TEN MILLION (P10,000,000.00) payable in installments for FIVE (5) years with fixed interest

rate of 8% per annum in accordance with the Installment Schedule attached to and forming an integral part of this Agreement as Annex 'A' hereafter.

1.3 PHMC shall submit to the BANK the corresponding postdated checks for the installments set forth in said Annex 'A' upon signing of this Agreement.

2. After the execution of this Compromise Agreement, the parties shall immediately file with the RTC-Dagupan City, Branch 42 in connection with Civil Case No. 2004-0399-D and the Court of Appeals in connection with CA-G.R. CV No. 99425 the appropriate motion for approval of this Agreement and rendition of judgment based thereon.

3. PHMC confirms the lawful and absolute ownership of the BANK over the Subject Properties. Thus, the parties agree that, by virtue of this Agreement, Civil Case No. 2004-0399-D before Branch 42 of RTC of Dagupan City, Pangasinan against both the BANK and co-defendant Alberto R. Ubando be accordingly dismissed.

4. Upon receipt by BDO from the Petitioner of the stipulated purchase price of TWELVE MILLION PESOS (P12,000,000.00) and the rendition by the RTC of Dagupan City, Pangasinan, Branch 42 in Civil Case No. 2004-0399-D and by the Court of Appeals in CA-G.R. CV No. 99425 of their respective judgments approving this Agreement, the BANK shall issue in favor of PHMC the corresponding Deed of Absolute Sale covering the Subject Properties.

5. PHMC irrevocably waives any and all claims, demands, and causes of action of whatever kind and nature, which they have raised against the BANK and its co-defendant (Alberto R. Ubando) in Civil Case No. 2004-0399-D and CA-G.R. CV No. 99425, or any of its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors and consultants. The Parties further acknowledge that should they hereafter discover facts different from or in addition to, those which they believed to be true with respect to any or all of any claims, liabilities, causes of action, damages, cause or demands herein released, they (sic) parties hereby agree that the release, waiver and quitclaim herein set forth shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts that may have already accrued or yet to accrue.

6. In the event that PHMC fails and/or refuses to comply with its obligation to pay the purchase price or with any other obligation/s under this Agreement, the BANK shall have the right to cancel the sale of the Subject Properties and be placed in possession thereof. Moreover, any payments made by PHMC pursuant to this Agreement shall be forfeited in favor of the BANK, as and by way of penalties, rental and liquidated damages. Finally, PHMC and any and all persons claiming rights under it shall peacefully vacate the Subject Properties without need of demand and voluntarily turn-over possession of the Subject Properties to the BANK and if they fail or refuse to do so, the BANK shall be entitled to the