

## **SPECIAL FOURTH DIVISION**

**[ CA-G.R. CV. NO. 97681, November 27, 2014 ]**

**IN RE: EX-PARTE PETITION FOR THE ISSUANCE OF WRIT OF POSSESSION ON TWO LOTS BOTH SITUATED AT BONUAN GUESET DAGUPAN CITY COVERED AND EMBRACED UNDER TRANSFER CERTIFICATE OF TITLE NOS. 68341 AND 68342 BOTH OF THE REGISTRY OF DEEDS OF DAGUPAN CITY**

**PHILIPPINE NATIONAL BANK, TAYUG BRANCH, TAYUG, PANGASINAN, DULY REPRESENTED BY ITS BUSINESS MANAGER, BENEDICTO FAJARDO, PETITIONER-APPELLEE, VS. RUDY FERNANDEZ AND CRISTETA FERNANDEZ, OPPOSITORS-APPELLANTS,**

### **DECISION**

**SORONGON, J.:**

Before Us is an Appeal<sup>[1]</sup> from the Decision<sup>[2]</sup> dated June 30, 2011 of the Regional Trial Court of Dagupan City, Branch 41 in SP. PROC. Case No. 2004-0067-D.

The facts are undisputed.

An *ex-parte* Petition<sup>[3]</sup> for issuance of a Writ of Possession was filed by PNB (petitioner-appellee) covering two parcels of land situated in Dagupan City, Pangasinan, which are covered by Transfer Certificate of Title No. 68341<sup>[4]</sup> and Transfer Certificate of Title No. 68342<sup>[5]</sup>. Both lots were initially owned and registered in the name of spouses Rudy and Cristeta Fernandez (oppositors-appellants).

On August 19, 1992, oppositors-appellants executed a Real Estate Mortgage<sup>[6]</sup> in favor of petitioner-appellee, as security for a loan they obtained with the latter in the amount of Five Hundred Thousand Pesos (P500,000.00). For their failure to pay the said loan obligation, petitioner-appellee initiated a foreclosure proceeding on the Real Estate Mortgage and sold the subject lots in a public auction. Petitioner-appellee being the highest bidder acquired the properties for One Million Five Hundred Thirty Six Thousand Seven Hundred Eighteen and Seventy-One Centavos (P1,536,718.71), and was issued in its favor the corresponding Certificate of Sale<sup>[7]</sup> dated November 14, 1995. Oppositors-appellants having failed to redeem the property within the one (1) year redemption period, petitioner-appellee consolidated its title and ownership over the properties and was subsequently issued in its favor two (2) certificates of titles (TCT No. 68341 and TCT 68342).

On March 19, 2004, petitioner-appellee filed before the court a *quo* (RTC) a petition for the *ex-parte* issuance of writ of possession on the subject lots. However, the RTC

set the petition for hearing<sup>[8]</sup>, giving the oppositors-appellants the opportunity to appear and be heard. During the hearing that ensued the parties stipulated on the following facts which would be the basis for the judgment of the RTC, as follows: (1) The oppositors spouses Rudy Fernandez and Cristeta Fernandez executed the Real Estate Mortgage in favor of petitioner PNB Tayug Branch; (2) The mortgage was foreclosed by the bank and the foreclosed property was not redeemed by the petitioners within the prescribed one (1) year redemption period; (3) That Ernesto Fernandez, the brother of oppositor Rudy Fernandez, made a proposal with PNB, Tayug to purchase the property in the amount of P3,070,000.00, and that there was payment in the amount of P480,000.00;<sup>[9]</sup> (4) That the proposed purchase price of P3,070,000.00 was not fully paid; (5) That the title of the property is now in the name of the bank.<sup>[10]</sup>

On June 30, 2011, the RTC rendered the now assailed judgment in favor of petitioner-appellee, the dispositive portion of which, states:

**WHEREFORE,** the petition is hereby granted. Let the corresponding writ of possession be issued directing the City Sheriff of RTC, Dagupan City or his duly authorized representative to place the herein petitioner Bank in actual physical possession of the foreclosed properties covered by Transfer Certificate of Title Nos. 68341 and 68342, and to eject therein the mortgagors-Spouses Rudy Fernandez and Cristeta Fernandez, their agents and such other persons claiming under them.

Undaunted, oppositors-appellants via this appeal asks this court for a reversal alleging that —

I – THE HONORABLE LOWER COURT GRAVELY ERRED IN GRANTING THE WRIT OF POSSESSION IN FAVOR OF THE PETITIONER WHEN A SUPERVENING EVENT ENSUED WHEREBY THE APPELLEE BANK ALLOWED ANOTHER PERSON TO PURCHASE THE PROPERTY SUBJECT OF THE INSTANT ACTION WITHOUT THE PRIOR KNOWLEDGE AND CONSENT OF RUDY FERNANDEZ AND CRESTITA (CRISTETA) FERNANDEZ.

II – THE HONORABLE LOWER COURT ALSO GRAVELY ERRED IN NOT APPRECIATING NOVATION TO HAVE CHANGED THE SITUATION OF THE PARTIES AND DERAILED THE ISSUANCE OF WRIT OF POSSESSION AGAINST THE APPELLANTS RUDY FERNANDEZ AND CRESTITA (CRISTETA) FERNANDEZ.

III – THE HONORABLE LOWER COURT LIKEWISE GRAVELY ERRED IN RENDERING JUDGMENT IN FAVOR OF THE APPELLEE PNB TAYUG AND AGAINST THE APPELLANTS.<sup>[11]</sup>

For Us, the foregoing submissions maybe simply restated to the sole issue of whether or not, under the facts obtaining, the writ of possession had been issued by the RTC by virtue of its ministerial duty.

A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property.<sup>[12]</sup> It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.<sup>[13]</sup>

Upon the lapse of the redemption period, as in the present case, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.<sup>[14]</sup> The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature.<sup>[15]</sup> As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.<sup>[16]</sup>

The *ex-parte* and summary nature of a writ of possession, however, admits of an exception in Section 33, Rule 39 of the Rules of Court.<sup>[17]</sup> 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*. But for the exception to apply, the property need not only be possessed by a third-party, but also held by the third-party adversely to the debtor/mortgagor.<sup>[18]</sup>

Here, there is no third party holding the subject property adversely to the judgment debtor. The fact that petitioner-appellee had an agreement to sell the subject properties to another is no longer of the interest of the oppositors-appellants in as much as the period of redemption granted to them by law and as per stipulation agreed upon by them has already long expired. Hence, oppositors-appellants' allegation that neither the petitioner-appellee and the purported buyer Ernesto Fernandez has informed them of the supposed transaction is irrelevant to the petition for writ of possession. In *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,<sup>[19]</sup> the Court discussed the meaning of a "third-party who is actually holding the property adversely to the judgment obligor" –

"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