

## TWELFTH DIVISION

[ CA - G.R. CV NO. 70289, August 18, 2006 ]

**MARGARITO U. UNG, PETITIONER-APPELLEE, VS. NATHANIEL AGUILAR, RESPONDENT-APPELLANT.**

### DECISION

**MENDOZA, J.:**

Before Us is an appeal from the December 12, 2000 Order<sup>[1]</sup> of the Regional Trial Court, Branch 22, Naga City, disposing the petition for a writ of possession filed by Margarito U. Ung (*petitioner-appellee*) against Nathaniel Aguilar (*respondent-appellant*) in this wise:

"x x x the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function of the Court. In this regard, the Court neither exercises its official discretion nor judgment (A.G. Development Corporation vs. Court of Appeals, 281 SCRA 155, Consolidated Rural Bank, Inc. vs. Court of Appeals, 301 SCRA 212). Under Section 7 of Act No. 3135 and Section 35 of Rule 39 of the Rules of Court, the purchaser in a foreclosure sale is entitled to the possession of the property (Arcega v. Court of Appeals, 275 SCRA 176).

WHEREFORE, premises considered, the petitioner being entitled to possession as a consequence of an extrajudicial foreclosure of mortgaged property, let, therefore, a writ of possession issue in favor of petitioner, Margarito Ung with respect to the foreclosed property earlier described now covered by TCT No. 38879 in the name of petitioner.

SO ORDERED."<sup>[2]</sup>

As amply summarized by the RTC, the factual milieu of the instant case are as follows:

"It appears that on March 26, 1997, respondent(*-appellant*), Nathaniel Aguilar, obtained a loan in the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) from petitioner(*-appellee*), Margarito Ung. As security for the loan, the former executed a real estate mortgage (Exhs. A, A-1) over the aforementioned property in favor of the latter. On due date, respondent failed to make good his obligation, hence, petitioner foreclosed on the mortgaged property.

A provisional certificate of sale, dated May 7, 1998 (Exh. F), was issued in favor of petitioner being the sole bidder in the auction sale conducted on May 4, 1998. The provisional certificate of sale was registered with the Office of the Register of Deeds of Naga City on April 29, 1999 (Exh. F-1). Thereafter, for failure of the mortgagor to redeem the auctioned

property within the period allowed by law, an Affidavit of Consolidation dated May 5, 2000 (Exh. G), was executed by petitioner. On the basis of the foregoing document, the Register of Deeds of Naga City cancelled TCT No. 30344 (Exh. B) in the name of Nathaniel Aguilar and issued a new Transfer Certificate of Title No. 38879 (Exh. H) in the name of Margarito Ung. The City Assessor, likewise, issued tax declaration No. 96-008.5439 for the subject property in the name of margarito Ung (Exh. I).

In Respondent's Comment, dated October 9, 2000, respondent prayed for the dismissal of the petition or the suspension of the proceedings for the following reasons: a) There is an action pending before RTC Branch 19 involving the same property sought to be possessed with petitioner Ung and respondent Aguilar as defendants, the issue in the latter case being that of ownership of the subject property;

b) The certification on non-forum shopping is false because of the pendency of the case before Branch 19 involving the same property;

c) Respondent is no longer in possession of the property."<sup>[3]</sup>

Not in conformity with the December 12, 2000 Order of the trial court, respondent-appellant now seeks relief from this Court *via* the instant appeal presenting the following---

### **"ASSIGNMENT OF ERRORS**

#### **The Court *a quo* erred:**

- 1. When it proceeded to order that a writ of possession issue in favor of Plaintiff-Appellee Margarito Ung despite the existence of an action pending before RTC Branch 19 in Naga City involving the issue of ownership of the same property sought to be possessed; and**
- 2. When it proceeded to order that a writ of possession issue in favor of Plaintiff-Appellee Margarito Ung despite the fact that Defendant-Appellant is not the one in possession of the property sought to be possessed."**<sup>[4]</sup>

The instant appeal lacks merit.

Jurisprudence uniformly holds that the purchaser in a foreclosure sale is entitled as a matter of right to a writ of possession, after the expiration of the redemption period without the mortgagor exercising the right of redemption, **regardless** of whether or not there is a pending suit for annulment of the mortgage or the foreclosure proceedings.<sup>[5]</sup>

As explicitly stated in the case of *Philippine National Bank v. Sanao Marketing Corporation*: <sup>[6]</sup>

"A writ of possession may be issued under the following instances; (1) in land registration proceedings under Section 17 of Act 496; (2) in a