



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated September 29, 2021, which reads as follows:*

**“G.R. No. 251355 (The Real Bank [A Thrift Bank], Inc. Petitioner, v. Filomeno Uaje III, for himself and on behalf of his co-owners-siblings Ma. Inez, Filomeno, Jr., and Crystal, all surnamed Uaje, Respondents.)** – This Petition for Review (Petition)<sup>1</sup> seeks the reversal of the Decision<sup>2</sup> dated 11 June 2019 and Resolution<sup>3</sup> dated 15 January 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 157760, reversing the orders issued by Branch 93 of the Regional Trial Court (RTC), Quezon City, in LRC Case No. R-QZN-15-10378-LR. The RTC ordered: (1) the issuance of a writ of possession in Favor of petitioner The Real Bank (TRB); (2) the immediate eviction of private respondents Filomeno Uaje III and his co-owners-siblings Ma. Inez, Filomeno, Jr., and Crystal, all surnamed Uaje (collectively, private respondents) from the property; and (3) the denial of private respondents' Motion for Reconsideration (MR).<sup>4</sup>

**Antecedents**

The present controversy stemmed from an *ex parte* application for issuance of a writ of possession filed by TRB as purchaser in an extrajudicial foreclosure sale of a property covered by TCT No. 004-20111006979 under Laroza's name.<sup>5</sup> According to TRB, a certain Maribel Laroza (Laroza) mortgaged<sup>6</sup> the subject property to it to secure a Php8,000,000.00 loan.<sup>7</sup> She defaulted in her payments which led to the foreclosure of the property.<sup>8</sup>

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<sup>1</sup> *Rollo*, pp. 3-15.

<sup>2</sup> *Id.* at 20-32; Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Sesinando E. Villon and Germano Francisco D. Legaspi of the Seventh (7<sup>th</sup>) Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 34-38; Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Pedro B. Corales and Germano Francisco D. Legaspi of the Seventh (7<sup>th</sup>) Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 20-21.

<sup>5</sup> *Id.* at 45-47.

<sup>6</sup> *Id.* at 41-44.

<sup>7</sup> *Id.* at 39-40.

<sup>8</sup> *Id.* at 48-54.

When the property was auctioned, TRB submitted the highest bid<sup>9</sup> and, on 15 January 2013, was declared the winning bidder.<sup>10</sup>

On 31 July 2015, Laroza's TCT was cancelled and TCT No. 004-2015009218 was issued in TRB's name.<sup>11</sup> TRB thereafter filed a Petition for the Issuance of a Writ of Possession<sup>12</sup> which the Branch 90 of the RTC, Quezon City, under Judge Reynaldo Daway (Judge Daway), granted on 02 February 2017.<sup>13</sup> Accordingly, on 17 May 2017, a writ of possession was issued directing the Sheriff to deliver possession of the subject property to TRB.<sup>14</sup>

Private respondents filed on 09 June 2017 an Omnibus Motion (Motions for Intervention and Reconsideration of Order dated 17 May 2017 and to Set Aside Writ of Possession).<sup>15</sup> They claimed that: (1) they were the registered owners of the subject property under TCT No. N-142258; (2) Laroza, through fraudulent means, caused the cancellation and transfer of the title over the property to her name; (3) she thereafter used her spurious title over the property to secure a loan with TRB. Upon discovery of Laroza's fraud, private respondents immediately filed an action against Laroza and TRB for annulment of title, real estate mortgage and foreclosure, among others. This case, docketed as Civil Case No. Q-13-72752 and raffled to Branch 90 of the RTC, Quezon City, was annotated on Laroza's (and carried over to TRB's) TCTs.<sup>16</sup>

In an Order<sup>17</sup> dated 25 September 2017, Judge Daway granted private respondents' Omnibus Motion. The writ of possession issued in TRB's favor was recalled and private respondents were allowed to continue their possession of the property "until after the foresaid pending Civil Case No. Q-13-72752 has been resolved with finality and/or until further orders from this Court."<sup>18</sup>

On TRB's motion, Judge Daway inhibited and the case was raffled to Branch 93 of the RTC, Quezon City under Judge Arthur O. Malabaguio. In an Order<sup>19</sup> dated 08 June 2018, Judge Malabaguio granted TRB's motion for reconsideration and redirected the issuance of a writ of possession in the latter's favor, on the ground that intervention was not proper in view of the

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<sup>9</sup> *Id.* at 55.

<sup>10</sup> *Id.* at 60.

<sup>11</sup> *Id.* at 62-65.

<sup>12</sup> *Id.* at 66-73.

<sup>13</sup> *Id.* at 74-76.

<sup>14</sup> *Id.* at 77-79.

<sup>15</sup> *Id.* at 81-91.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 96-100.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 102-106.

summary and *ex parte* nature of the proceedings.<sup>20</sup>

In denying private respondents' subsequent motion for reconsideration of its Order dated 08 June 2018, Judge Malabaguio held that: (1) the issuance of a writ of possession follows *as a matter of course* upon judicial determination and finding that the verified *ex parte* petition had been sufficiently substantiated; (2) the pendency of the civil case questioning the mortgage and foreclosure is not a bar to the issuance of a WRIT OF POSSESSION; (3) private respondents failed to show proof that their case falls under any of the exceptions to the rule that the issuance of a writ of possession is ministerial on the part of the court; and (4) considering that a Decision had already been rendered directing the issuance of a writ of possession in TRB's favor, intervention is no longer proper.<sup>21</sup>

Aggrieved, private respondents filed a *petition for certiorari* before the CA.

The CA, in its challenged Decision dated 11 June 2019, **granted** private respondents' petition and set aside the Orders issued by Judge Malabaguio.<sup>22</sup> It found that while the issuance of a writ of possession in favor of a purchaser in a public auction is a ministerial function of the trial court under Act No. 3135, this rule does not apply when a third party is actually holding the property in a capacity adverse to the judgment obligor.<sup>23</sup> According to the CA, private respondents are third parties not privy to the mortgage and subsequent foreclosure of the property, and in actual possession of the same under a claim of ownership independent of, and adverse to, Laroza (and, by way of extension, TRB). It thus reinstated the Order dated 25 September 2017 issued by Judge Daway and recalled the writ of possession in TRB's favor.

On 15 January 2020, the CA denied TRB's subsequent motion for reconsideration.<sup>24</sup> Hence, this Petition.<sup>25</sup>

### Issues

In its Petition, TRB maintains that the CA gravely erred in: (1) failing to accord full respect to their (TRB and Laroza's) TCTs; (2) not holding that it is the trial court's ministerial duty to issue a writ of possession in its favor; (3) not dismissing the petition filed by private respondents despite being filed more than a year after the Decision of Branch 90 of the RTC, Quezon

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 107-114.

<sup>22</sup> *Id.* at 20-32; Emphasis supplied.

<sup>23</sup> *Id.* at 27.

<sup>24</sup> *Id.* at 34-38.

<sup>25</sup> *Id.* at 3-15.

City had become final and executory; and (4) not holding that the correct remedy from the RTC's orders was by way of an ordinary appeal, and not through a special civil action for certiorari.

### Ruling of the Court

*We DENY* the Petition.

The Court will now settle first the procedural matter. Indeed, an order granting a petition for a writ of possession is a final order from which an appeal, not a special civil action for *certiorari*, would be the proper and viable remedy.<sup>26</sup> In *Mallari v. Banco Filipino Savings & Mortgage Bank*,<sup>27</sup> however, this Court acknowledged that *certiorari* may be allowed to prosper notwithstanding the availability of an appeal in certain exceptional cases, such as: (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority." Moreover, We held in *China Banking Corp. v. Members of the Board of Trustees*<sup>28</sup> that while *certiorari* as a remedy may not be used as a substitute for an appeal, especially for a lost appeal, this rule should not be strictly enforced if the petition is genuinely meritorious.<sup>29</sup>

In this case, *We* find that, for reasons to be explained hereunder, the challenged RTC Orders were issued in blatant disregard of applicable rules and jurisprudence and thus were correctly set aside by the CA.

After the consolidation of titles in the buyer's name, entitlement to a writ of possession *generally* becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. **However, where a third party is claiming the property adversely to that of the judgment debtor or mortgagor, and where such third party is a stranger to the foreclosure proceedings, the obligation of the court to issue an *ex parte* writ of possession ceases to be ministerial.**<sup>30</sup> In such cases, the trial court must conduct a hearing to determine the nature of said possession, i.e., whether the third party is in

<sup>26</sup> *Mandy Commodities Co., Inc. v. The International Commercial Bank of China*, 609 Phil. 355, 366 (2009), G.R. No. 166734, 03 July 2009, [Per J. Peralta], citing *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, 04 April 2007, 520 SCRA 564, 591 [Per J. Callejo, Sr.].

<sup>27</sup> 585 Phil. 657 (2008), G.R. No. 157660, 29 August 2008 [Per J. Austria-Martinez].

<sup>28</sup> 366 Phil. 913 (1999), G.R. No. 131787, 19 May 1999 [Per J. Gonzaga-Reyes].

<sup>29</sup> See *Bank of the Philippine Islands v. Icot*, 618 Phil. 320, 330 (2009), G.R. No. 168061, 12 October 2009 [Per J. Carpio].

<sup>30</sup> See *Sy v. China Banking Corp.*, G.R. No. 213736, 17 June 2020 [Third Division, Per J. Carandang]; Emphasis supplied.

possession of the subject property under a claim adverse to that of the judgment debtor,<sup>31</sup> and thereafter deny or accede to the issuance/enforcement of the writ of possession as the findings shall warrant.<sup>32</sup>

As it happened, the trial court, under Judge Daway, initially considered private respondents' claims as set forth in their Omnibus Motion and recalled the writ of possession previously issued. Judge Daway gave credence to the evidence showing that private respondents have been occupying the subject property as their residence and place of business since the 1970s. He noted as well the pendency of Civil Case No. Q-13-72752 (for the annulment of title, real estate mortgage and foreclosure sale) then pending before another branch of the court. On TRB's motion, however, Judge Daway inhibited and the case was re-raffled to RTC-Branch 93.

On 08 June 2018, the trial court, this time under Judge Malabaguio, granted TRB's motion for reconsideration on the ground that the proceeding was summary in nature and that its duty to issue the writ in TRB's favor is ministerial. Citing *China Banking Corporation v. Spouses Ordinario (Ordinario)*,<sup>33</sup> the trial court maintained that "the issuance of a writ of possession follows *as a matter of course* upon judicial determination and finding that the verified *ex parte* petition has been substantiated by the documentary evidences [sic] and oral testimony adduced by the petitioner."<sup>34</sup> Although it recognized that the case of a third party claiming a right adverse to the debtor/mortgagor is an established exception to the rule of ministerial issuance of a writ of possession, the trial court nevertheless held that private respondents' actual occupation and possession of the subject property is not sufficient to prove that they are claiming a right adverse to judgment debtor/mortgagor Laroza.<sup>35</sup> The court *a quo* further held that intervention would not be proper given the summary nature of the proceedings and the fact that the RTC had already previously rendered judgment in TRB's favor.

***We agree with the CA that it was grievous error for the trial court to insist on its ministerial function to issue the writ applied for, despite evidence already on record showing that a third party in actual possession of the subject property was claiming a right adverse to that of the judgment debtor/mortgagor Laroza:***

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<sup>31</sup> *Hernandez v. Ocampo*, 792 Phil. 854, 870 (2016), G.R. No. 181268, 15 August 2016 [Per J. Jardeleza], citing *Okabe v. Saturnino*, G.R. No. 196040, 26 August 2014, 733 SCRA 652, 666 [Per J. Peralta].

<sup>32</sup> See *Spouses Wilfredo and Rosario v. Government Service Insurance System*, G.R. No. 200991, 18 March 2021 [Per J. Zalameda], citing *De Ortega v. Natividad*, 71 Phil. 340 (1941), G.R. No. L-47714, 14 March 1941 [Per J. Laurel]; *Heirs of Peñasflor v. Heirs of Dela Cruz*, 816 Phil. 324, 354 (2017), G.R. No. 197797, 09 August 2017 [Per J. Perlas-Bernabe].

<sup>33</sup> 447 Phil. 557 (2003), G.R. No. 121943, 24 March 2003 [Per J. Sandoval-Gutierrez].

<sup>34</sup> *Rollo*, p. 111; Italics supplied.

<sup>35</sup> *Id.* at 113.

First, private respondents are registered owners and actual possessors of the subject property under TCT No. N-142258.<sup>36</sup> Second, private respondents are not parties to the loan and mortgage contracts between Laroza and TRB.<sup>37</sup> Upon discovery of Laroza's fraudulent acts, they immediately filed a civil action against Laroza and TRB. private respondents's adverse claim to the property was annotated on Laroza's title over the property (under Entry Nos. 2013001412) as early as 16 January 2013,<sup>38</sup> while the *Notice of Lis Pendens* is noted therein under Entry No. 2013010408 dated 23 April 2013.<sup>39</sup> Both annotations were already existing (and, in fact, carried over to TRB's TCT No.004-2015009218) when the *ex parte* application for the issuance of a writ of possession was filed in 2015. Given the foregoing, the trial court seriously erred in issuing the writ pursuant to its alleged "ministerial" duty.

Although the trial court correctly noted that this Court in *Ordinario* did uphold the issuance of a writ of possession over the claims of an alleged third party in actual possession of a property subject of the writ and even identified remedies under the Rules of Court which the third party-possessor can take in such case, a careful review of applicable jurisprudence would immediately show that the clear weight of authority since *Ordinario* was decided in 2003 has since shifted towards the protection of third-party adverse possessors, including owners whose titles were divested through forgeries or simulated conveyances.<sup>40</sup> The right of possession by a purchaser in an extrajudicial foreclosure of real property is recognized only as against the judgment debtor and his successor-in-interest, but not as against persons whose right of possession is adverse to the latter.<sup>41</sup> A third party adversely possessing the foreclosed property cannot be dispossessed by a mere *ex parte* possessory writ in favor of the purchaser. Doing so would be tantamount to a summary ejectment of the third party — in violation of the latter's right to due process.<sup>42</sup> As explained by the Court in the recent case of *Spouses Rosario v. Government Service Insurance System*:<sup>43</sup>

xxx a writ of possession can only cause the eviction of

<sup>36</sup> *Id.* at 83.

<sup>37</sup> *Id.* at 39-44.

<sup>38</sup> *Id.* at 64.

<sup>39</sup> *Id.* at 65.

<sup>40</sup> *Capital Credit Dimension, Inc. v. Chua*, 472 Phil. 250 (2004), G.R. No. 157213, 28 April 2004 [Per J. Puno]; *Dayot v. Shell Chemical Co. (Phils.), Inc.*, 552 Phil. 602 (2007), G.R. No. 156542, 26 June 2007 [Per J. Austria-Martinez]; *Development Bank of the Phils. v. Prime Neighborhood Association*, 605 Phil. 660 (2009), G.R. Nos. 175728 & 178914, 08 May 2009 [Per J. Tinga]; *Bank of the Philippine Islands v. Icot*, *supra* note 29; *Villanueva v. Cherdan Lending Investors Corp.*, 647 Phil. 494 (2010), G.R. No. 177881, 13 October 2010 [Per J. Nachura]; *Spouses Aldover v. Court of Appeals*, 718 Phil. 205 (2013), G.R. No. 167174, 23 September 2013 [Per J. Del Castillo]; *Okabe v. Saturnino*, *supra* note 31.; *Spouses Reyes v. Spouses Chung*, 818 Phil. 225 (2017), G.R. No. 228112, 13 September 2017 [Per J. Velasco]; *Sy v. China Banking Corp.*, *supra* note 30.

<sup>41</sup> *Bank of the Philippine Islands v. Icot*, *supra* at 331, citing *Roxas v. Buan*, 249 Phil. 41, 48 (1988), G.R. No. L-53798, 08 November 1988 [Per J. Cortes].

<sup>42</sup> *Sy v. China Banking Corp.*, *supra* note 30, citing *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 770 (2002), G.R. No. 135219, 17 January 2002 [Per J. Ynares-Santiago].

<sup>43</sup> *Supra* note 32.

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. xxx <sup>44</sup> (Emphasis supplied)

Finally, the trial court, citing *Nagtalon v. UCPB*<sup>45</sup> and *Spouses Tolosa v. United Coconut Planters Bank*,<sup>46</sup> held that "the pendency of a civil case questioning the mortgage and foreclosure is not a bar to the issuance of a writ of possession."<sup>47</sup> It must be stressed, however, that in both *Nagtalon* and *Tolosa*, the issuance of the writ of possession was opposed by the judgment debtor/mortgagor themselves. In contrast with the case now before us, private respondents were established to be third-party possessors of the property with interests independent of and/or adverse to that of Laroza, the judgment debtor/mortgager. The rulings in *Nagtalon* and *Tolosa* cannot therefore be applied to private respondents

In sum, the CA was correct when it ruled that TRB's right to the issuance of a writ of possession cannot be invoked against private respondents.<sup>48</sup> The latter's possession is legally presumed to be pursuant to a just title,<sup>49</sup> without prejudice to the ultimate outcome of Civil Case No. Q-13-72752, which will resolve issues (between private respondents, Laroza and TRB) relating to the ownership and title over the subject property.

**WHEREFORE**, the Petition is **DENIED**. The assailed Decision dated 11 June 2019 and Resolution dated 15 January 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 157760 are hereby **AFFIRMED**.

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<sup>44</sup> *Supra*.

<sup>45</sup> 715 Phil. 595 (2013), G.R. No. 172504, 31 July 2013 [Per J. Brion].

<sup>46</sup> 708 Phil. 134 (2013), G.R. No. 183058, 03 April 2013 [Per J. Perez].

<sup>47</sup> *Rollo*, p. 112.

<sup>48</sup> *Id.* at 27-30.

<sup>49</sup> *Bank of the Philippine Islands v. Icot*, *supra* note 29 at 332.

**SO ORDERED.”** (Leonen, *J.*, on official leave. Dimaampao, *J.*, designated additional Member of the Third Division per Special Order No. 2839 dated 16 September 2021, effective on even date, until further orders.)

By authority of the Court:

*Mis-DCB-H*  
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*Division Clerk of Court*  
501  
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[LRC Case No. R-QZN-15-10378]

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