



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

REYNALDO P. BASCARA,  
Petitioner,

G.R. No. 188069

Present:

PERALTA, <sup>\*</sup> *J., Acting Chairperson,*  
DEL CASTILLO, <sup>\*\*</sup>  
VILLARAMA, JR.  
REYES, and  
JARDELEZA, *JJ.*

- versus -

SHERIFF ROLANDO G. JAVIER  
and EVANGELINE PANGILINAN,  
Respondents.

Promulgated:

June 17, 2015

X-----  
*[Signature]* X

DECISION

PERALTA, *J.:*

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks to reverse and set aside the March 4, 2009 Decision<sup>1</sup> and May 29, 2009 Resolution<sup>2</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 103194, which affirmed the Orders dated January 17, 2008<sup>3</sup> and April 3, 2008,<sup>4</sup> of the Regional Trial Court (*RTC*), Branch 111, Pasay City, in LRC Case No. 06-0036-CFM, denying petitioner's motion to recall the writ of possession and directing respondent sheriff to implement the writ.

\* Per Special Order No. 2059 dated June 17, 2015.

\*\* Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 2060 dated June 17, 2015.

<sup>1</sup> Penned by Associate Justice Arturo G. Tayag, with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario, concurring; *rollo*, pp. 149-165.

<sup>2</sup> *Rollo*, pp. 174-175.

<sup>3</sup> *Id.* at 110-112, 143-145.

<sup>4</sup> *Id.* at 116-117, 146-147.

*[Signature]*

The facts are as follows:

On August 1, 2006, respondent Evangeline C. Pangilinan (*Pangilinan*) filed an *ex parte* petition for the issuance of a writ of possession. The case, docketed as LRC Case No. 06-0036-CFM, was raffled before Regional Trial Court, Branch 111, Pasay City. Essentially, the petition alleged that, on August 13, 2004, Rosalina P. Pardo (*Pardo*) executed in favor of Pangilinan a real estate mortgage (REM) over a parcel of land covered by Transfer Certificate of Title (TCT) No. 135066 as a security for the payment of a loan in the amount of ₱200,000.00; that Pardo failed to comply with the terms and conditions of the promissory note with REM; that upon compliance with the statutory requirements, the mortgaged property was sold at public auction to Pangilinan as the highest bidder; that the one-year redemption period already elapsed without Pardo exercising the right to redeem the subject property; that the title over the lot was consolidated and transferred in the name of Pangilinan as evidenced by TCT No. 147777; and, that Pardo, her agents, and persons claiming rights under her failed and refused to vacate the subject premises despite several demands.<sup>5</sup>

On January 31, 2007, the trial court granted the petition.<sup>6</sup> The Notice to Vacate and Surrender Possession was issued by respondent Sheriff Rolando G. Javier (*Javier*) on April 15 2007 pursuant to the writ of possession issued by the court on March 26, 2007.<sup>7</sup>

Claiming as the true, lawful and absolute owner of the subject property that is in his possession, petitioner filed an Affidavit of Third-Party Claim<sup>8</sup> and a Motion to Recall Writ of Possession<sup>9</sup> on April 23, 2007. The motion alleged as follows:

x x x x

3. On August 1, 2006, or prior to the filing of the above-entitled Petition for Writ of Possession, [Pangilinan] filed with the Regional Trial Court of Pasay City, Branch 108, a Petition for Cancellation of Adverse Claim which annotation was carried over to her title, Transfer Certificate of Title (TCT) No. 147777, from the previous title, TCT No. 135066, in the name of Third-Party Claimant's aunt and benefactor, the late ROSALINA P. PARDO x x x;

4. In response to the said Petition for Cancellation of Adverse Claim, Third-Party Claimant filed an Opposition and Motion to Dismiss x x x;

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<sup>5</sup> *Id.* at 44-46.

<sup>6</sup> *Id.* at 61-63.

<sup>7</sup> *Id.* at 64.

<sup>8</sup> *Id.* at 65-66.

<sup>9</sup> *Id.* at 67-76.

5. The said Opposition and Motion to Dismiss x x x states the following:

- (a) [Third-Party Claimant] is the nephew and ward of the late ROSALINA P. PARDO x x x, who owned a certain parcel of land, with improvements thereon x x x as evidenced by Transfer Certificate of Title (TCT) No. 135066 of the Registry of Deeds of Pasay City x x x;
- (b) During her lifetime, or on **May 15, 1999**, PARDO executed a duly notarized deed of **DONATION MORTIS CAUSA** donating the Subject Property to and in favor of Third-Party Claimant x x x;
- (c) Four years later, or on **May 20, 2003**, PARDO, a widow, **age 78**, died intestate, and without issue x x x;
- (d) PARDO having passed away intestate and without issue and by virtue of the **DONATION MORTIS CAUSA**, Third-Party Claimant became the owner of the Subject Property. He and his family have since taken possession thereof and are residing there up to now;
- (e) To supplement what little and highly irregular, if totally unreliable, income he gets from working part time in a cousin's small business enterprise, Third-Party Claimant leases out portions of the house to boarders, one of them a woman known by the name of EVANGELINE P. CACALDA;
- (f) In the course of time, CACALDA, who represented herself as having the capacity to have the title transferred to Third-Party Claimant's name, was able to gain the complete confidence of the Third-Party Claimant, and he, in all his layman's utter vulnerability, entrusted her not only with the owner's duplicate of **TCT No. 135066** x x x for purposes of transferring the Subject Property to Third-Party Claimant's name but also the amount of **₱135,000.00** (out of the hurried sale of another small property he also inherited from PARDO) to pay what CACALDA made him believe was the amount of taxes and other expenses to be incurred to have the title transferred;
- (g) However, CACALDA never got the transfer done, and, not before long, left the Third-Party Claimant's house where she was boarding, and never showed up ever again;
- (h) Sometime in October 2004, Third-Party Claimant discovered the following Entry No. 2004-5119/T-135066 which was annotated on August 13, 2004 on page 2 of TCT 135066 x x x, which reads:

**ENTRY NO. 2004-5119/T-135066 – REAL ESTATE MORTGAGE WITH SPECIAL POWER TO SELL MORTGAGE (sic) PROPERTY WITHOUT JUDICIAL PROCEEDINGS – In favor of EVANGELINE C.**

*PANGILINAN (Mortgagee) covering the property described herein to guarantee the credit facility or principal loan obligation in the amount of TWO HUNDRED THOUSAND PESOS (₱200,000.00), Philippine Currency, upon terms and conditions set forth in Doc. No. 458; page No. 92; Book No. 41; Series of 2004 acknowledged before Notary Public Jesus B. Bongon for Pasay City.*

- (i) Upon learning about the above-cited annotation on TCT No. 135066 x x x Third-Party Claimant sought the assistance of the Public [Attorney's] Office and filed a complaint for estafa against CACALDA on October 6, 2004 and annotated his Adverse Claim on TCT 135066 x x x per Entry No. 2004-7480/T-135066 dated October 28, 2004;
- (j) In response to the said Petition, Third-Party Claimant x x x filed an *OPPOSITION AND MOTION TO DISMISS* x x x, to which [Pangilinan] filed her *REPLY/COMMENT* where she attached, among other documents, copies of the following:

j.1 *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* allegedly signed by PARDO x x x;

j.2 The purported Community Tax Certificate (CTC) No. CC12003 21039100 issued July 13, 2004 in Pasay City, of alleged PARDO who mortgaged the Subject Property x x x;

j.3 Two photographs taken by the alleged mortgagor-debtor PARDO when she signed the loan documents x x x [.]

6. From all the foregoing, it is crystal clear that:

- a. PARDO, the true and real owner of the Subject Property, **COULD NOT HAVE ENTERED INTO, MUCH LESS SIGNED**, the *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* x x x, as she had been **LONG DEAD** at the time of the execution thereof x x x;
- b. PARDO, the true and real owner of the Subject Property, who was born on December 29, 1924, was **78 years old** at the time she died on May 20, **2003**, as shown in her Death Certificate x x x and in her obituary x x x, and could not have been the PARDO who issued the Community Tax Certificate (CTC) No. CC12003 21039100 issued July 13, 2004 in Pasay City x x x with the birth date "April 25, 1957," which CTC was submitted to, and relied upon by, Defendant PANGILINAN to establish the identity of PARDO[,] the alleged mortgagor-debtor;

- c. The **photographs** x x x taken of the alleged PARDO who mortgaged the Subject Property and who received the proceeds of the mortgage loan of ₱200,000.00 **show CACALDA, the former boarder of [Third-Party Claimant] and swindler par [excellence]**, and CERTAINLY NOT THE LONG DECEASED PARDO, the true and real owner of the Subject Property;
- d. All the signatures, including the thumbmarks, shown on the *Real Estate Mortgage with Special Power to Sell Mortgaged Property Without Judicial Proceedings* x x x are **FAKE, COUNTERFEIT, BOGUS, PHONY AND FORGED**, as they DON'T belong to PARDO, the true and real owner of the Subject Property, who had been LONG DEAD at the time of the execution thereof, but to the impostor CACALDA.

7. The said Petition for Cancellation of Adverse Claim is yet to be resolved by Hon. Ma. Rosario B. Ragasa, Presiding Judge of RTC Branch 108, and here is [Pangilinan] filing yet another petition, this time for Writ of Possession;

8. Third-Party Claimant has already filed a complaint directly attacking the validity of [Pangilinan's] title and praying for, among other things, the annulment of TCT 147777 as having emanated from an illegal source, as well as the reinstatement of the former title, TCT 135066, in the name of PARDO, Third-Party Claimant's deceased aunt, benefactor and donor without all the liens and [encumbrances] caused to be annotated thereon by Petitioner x x x.

9. Third-Party Claimant is the rightful owner of the Subject Property and is entitled to its possession, not [Pangilinan] whose title TCT 147777 emanated from an illegal source and is therefore null and void.<sup>10</sup>

In her Comment/Opposition,<sup>11</sup> Pangilinan relied on *Spouses Arquiza v. Court of Appeals*,<sup>12</sup> *Autocorp Group & Autographics, Inc. v. Court of Appeals*,<sup>13</sup> *Chailease Finance, Corp. v. Spouses Ma*,<sup>14</sup> *Sps. de Vera v. Hon. Agloro*,<sup>15</sup> *PNB v. Sanao Marketing Corp.*,<sup>16</sup> and *Sps. Yulienco v. Court of Appeals*<sup>17</sup> insofar as these cases held that the trial court has the ministerial duty to issue a writ of possession, which cannot be stayed by an injunction or a pending action for annulment of the real estate mortgage or the extra-judicial foreclosure proceedings.

Meanwhile, in April 2007, petitioner filed an action for Annulment of Title and Damages against Pangilinan and Robert H. Guillermo in his

<sup>10</sup> *Id.* at 68-74.

<sup>11</sup> *Id.* at 95-100.

<sup>12</sup> 498 Phil. 793 (2005).

<sup>13</sup> 481 Phil. 298 (2004).

<sup>14</sup> 456 Phil. 498 (2003).

<sup>15</sup> 489 Phil. 185 (2005).

<sup>16</sup> 503 Phil. 260 (2005).

<sup>17</sup> 441 Phil. 397 (2002).

official capacity as the Register of Deeds of Pasay City.<sup>18</sup> It was docketed as Civil Case No. 07-0529-CFM and raffled before the Pasay RTC, Branch 110.

After exchanges of subsequent pleadings<sup>19</sup> in LRC Case No. 06-0036-CF, the trial court eventually ruled in favor of Pangilinan. On January 17, 2008, it denied petitioner's motion to recall the writ of possession and directed respondent Sheriff Javier to implement the same. On April 3, 2008, petitioner's motion for reconsideration<sup>20</sup> was likewise denied.

Petitioner elevated the case to the appellate court. Nevertheless, the CA did not find any evidence that the trial court acted in a capricious and despotic manner or that the questioned Orders were issued by reason of passion, prejudice or personal hostility. It opined that any question regarding the regularity and validity of the extrajudicial foreclosure sale, as well as the consequent cancellation of the writ of possession, is to be determined in a subsequent proceeding, pursuant to Section 8 of Act No. 3135,<sup>21</sup> as amended by Act No. 4118,<sup>22</sup> and that such question should not be raised as a justification for opposing the issuance of the writ since the proceeding is heard *ex parte*.

The motion for reconsideration<sup>23</sup> filed by petitioner was denied; hence, this petition.

We deny.

In extrajudicial foreclosures of real estate mortgages, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, as amended, which provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (Regional Trial Court) of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying

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<sup>18</sup> *Rollo*, pp. 118-132.

<sup>19</sup> Petitioner filed a Reply, while Pangilinan countered with a Rejoinder and Manifestation with Motion to Expunge "Affidavit of Third Party Claim" (*Rollo*, pp. 101-103, 104-107, 110).

<sup>20</sup> *Rollo*, pp. 113-115.

<sup>21</sup> *An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages* (Approved on March 6, 1924).

<sup>22</sup> *An Act To Amend Act Numbered Thirty-One Hundred And Thirty-Five Entitled, "An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To Real Estate Mortgages"* (Approved on December 7, 1933).

<sup>23</sup> *Rollo*, pp. 166-172.

with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Although the above provision clearly pertains to a writ of possession availed of and issued within the redemption period of the foreclosure sale, the same procedure also applies to a situation where a purchaser is seeking possession of the foreclosed property bought at the public auction sale *after* the redemption period has expired without redemption having been made. The only difference is that in the latter case, no bond is required therefor, as held in *China Banking Corporation v. Lozada*, thus:

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. **The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed.** x x x (Emphasis supplied)

Upon the expiration of the period to redeem and no redemption was made, the purchaser, as confirmed owner, has the absolute right to possess the land and the issuance of the writ of possession becomes a ministerial duty of the court upon proper application and proof of title.<sup>24</sup>

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<sup>24</sup> *Gatuslao v. Yanson*, G.R. No. 191540, January 21, 2015. See also; *Cabling v. Lumapas*, G.R. No. 196950, June 18, 2014; *Spouses Marquez v. Spouses Alindog*, G.R. No. 184045, January 22, 2014; *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*, G.R. No. 200667, March 11, 2013, 693 SCRA 110, 114; *Madriaga, Jr. v. China Banking Corporation*, G.R. No. 192377, July 25, 2012, 677 SCRA 560, 571, and *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*, 654 Phil 382, 390-391 (2011).

There is, however, an exception to the rule. Under Section 33, Rule 39 of the Rules of Court,<sup>25</sup> the possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property in a capacity adverse to the judgment obligor. Thus, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial when there is a third party in possession of the property claiming a right adverse to that of the judgment debtor/mortgagor.<sup>26</sup> In such a case, the issuance of the writ of possession ceases to be *ex-parte* and non-adversarial as the trial court must order a hearing to determine the nature of said possession, *i.e.*, whether or not possession of the subject property is under a claim averse to that of the judgment debtor.<sup>27</sup> We repeatedly emphasize though that the exception provided under Section 33 contemplates a situation in which a third party holds the property by adverse title or right *vis-a-vis* the judgment debtor or mortgagor, such as that of a co-owner, agricultural tenant or usufructuary, who possesses the property in his or her own right, and is not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.<sup>28</sup>

In this case, while it is undisputed that petitioner was in possession of the subject property, it cannot be said that his right to possess the same is by virtue of being a co-owner, agricultural tenant or usufructuary; nor is the claim to his right of possession analogous to the foregoing situations. What is clear is that he allegedly acquired the property from Pardo by reason of a donation *mortis causa*. He is, therefore, a transferee or successor-in-interest who merely stepped into the shoes of his aunt. He cannot assert that his right of possession is adverse to that of Pardo as he has no independent right of possession. Consequently, under legal contemplation, he cannot be considered as a "third party who is actually holding the property adversely to the judgment obligor." The trial court had the ministerial duty to issue, as it did issue, the possessory writ in favor of respondent Pangilinan. As it

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<sup>25</sup> Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – x x x

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 ours)

<sup>26</sup> *Gatuslao v. Yanson*, *supra* note 24; *Cabling v. Lumapas*, *supra* note 24; *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*, *supra* note 24; *Madriaga, Jr. v. China Banking Corporation*, *supra* note 24; and *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*, *supra* note 24, at 391.

<sup>27</sup> *Gatuslao v. Yanson*, *supra* note 24; *Okabe v. Saturnino*, G.R. No. 196040, August 26, 2014; and *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*, *supra* note 24, at 391-392.

<sup>28</sup> *China Banking Corp. v. Sps. Lozada*, 579 Phil. 454, 478-480 (2008), citing *St. Dominic Corp. v. Intermediate Appellate Court*, 235 Phil. 582, 596 (1987). See also *Gatuslao v. Yanson*, *supra* note 24; *Cabling v. Lumapas*, *supra* note 24; *Spouses Marquez v. Spouses Alindog*, *supra* note 24; *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*, *supra* note 24, at 114-115; *Madriaga, Jr. v. China Banking Corporation*, *supra* note 24, at 572-573; *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*, *supra* note 26, at 392-393.

appeared, there was no reason for it to order the recall of the writ already issued.

Moreover, it is not amiss to point that the execution of Pardo of donation *mortis causa* in favor of petitioner does not immediately transfer title to the property to the latter. Considering that the alleged donation is one of *mortis causa*, the same partake of the nature of testamentary provision.<sup>29</sup> As such, said deed must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805<sup>30</sup> and 806<sup>31</sup> of the New Civil Code; otherwise, the donation is void and would produce no effect.<sup>32</sup> Unless and until the alleged donation is probated, *i.e.*, proved and allowed in the proper court, no right to the subject property has been transmitted to petitioner.<sup>33</sup>

**WHEREFORE**, the foregoing considered, the instant petition for review on *certiorari* is **DENIED**. The March 4, 2009 Decision and May 29, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 103194, which affirmed the Orders dated January 17, 2008 and April 3, 2008 of the Regional Trial Court, Branch 111, Pasay City, in LRC Case No. 06-0036-CFM, are **AFFIRMED**.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

<sup>29</sup> Article 728 of the New Civil Code provides:

Art. 728. Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession.

<sup>30</sup> ART. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

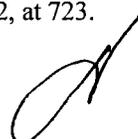
The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

<sup>31</sup> ART. 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with the office of the Clerk of Court.

<sup>32</sup> See *Echavez v. Dozen Construction and Dev't. Corp., et al.*, 647 Phil. 108, 111-112 (2010); *Aluad, et al. v. Aluad*, 590 Phil. 711, 722 (2008); and *Maglasang v. Heirs of Corazon Cabatingan*, 432 Phil. 548, 556-557 (2002).

<sup>33</sup> RULES OF COURT, Rule 75, Section 1. See also *Aluad, et al. v. Aluad, supra* note 32, at 723.



**WE CONCUR:**

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

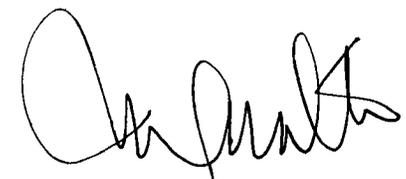
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice