



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BANK OF THE PHILIPPINE ISLANDS, G.R. No. 171172

Petitioner,

-versus-

SPOUSES JOHNSON & EVELYN CO & JUPITER REAL ESTATE VENTURES, INC.,

Respondents.

SPOUSES JOHNSON & EVELYN CO represented by their heir **JOBELLE CO,** G.R. No. 200061

Petitioners, Present:

-versus-

CARPIO, * J.,
VELASCO, JR., J., *Chairperson,*
PERALTA,
REYES,
JARDELEZA, JJ.

BANK OF THE PHILIPPINE ISLANDS (as successor-in-interest of FAR EAST BANK AND TRUST COMPANY),

Respondent. Promulgated:

November 9, 2015

[Signature]

X ----- X

* Per raffle dated November 4, 2015.

[Handwritten mark]

DECISION**JARDELEZA, J.:**

Before this Court are two consolidated petitions for review on *certiorari*. In G.R. No. 171172, the Bank of the Philippine Islands (“BPI”) assails the orders of the Regional Trial Court (RTC) of Parañaque City, Branch 196 in LRC Case No. 03-0063 dated December 15, 2005¹ and January 13, 2006;² whereas in G.R. No. 200061, the Spouses Johnson and Evelyn Co (“Spouses Co”) question the Decision³ of the Court of Appeals (CA) in CA-G.R. CV No. 86986 dated June 27, 2011, and its Resolution⁴ dated January 9, 2012.

The Antecedents

On November 13, 1997, Jupiter Real Estate Ventures, Inc. (“Jupiter”) and Spouses Co obtained a loan from Far East Bank and Trust Company (“FEBTC”) in the amount of ₱9,434,200.00.⁵ As security for the loan, Jupiter and Spouses Co mortgaged in favor of FEBTC eight parcels of land including their improvements covered by Transfer Certificates of Title (TCT) Nos. 94204, 94205, 94206, 94207, 94208, 94209, (91437) 39728, and (91438) 39729.⁶

Meanwhile, BPI and FEBTC merged, with BPI as the surviving corporation.⁷

Jupiter and Spouses Co defaulted on the payment of the loan. BPI, as successor-in-interest of FEBTC, foreclosed the real estate mortgage pursuant to Act No. 3135, as amended.⁸ An auction sale was held on July 12, 2000 where the mortgaged properties were sold to BPI as the highest bidder for ₱3,567,000.00. The Certificate of Sale was registered and annotated at the back of the certificates of title on August 22, 2000.⁹ After the expiration of the period of redemption, BPI consolidated its ownership over the real properties, and new titles were issued in its name.¹⁰

¹ *Rollo* (G.R. No. 171172), p. 23.

² *Id.* at 24.

³ Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Magdangal M. De Leon and Socorro B. Inting, *rollo* (G.R. No. 200061), pp. 41-49.

⁴ *Id.* at 52-53.

⁵ *Id.* at 41.

⁶ *Id.* at 41-42.

⁷ *Rollo* (G.R. No. 171172), p. 30.

⁸ An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

⁹ *Rollo* (G.R. No. 171172), p. 32.

¹⁰ *Id.*, Transfer Certificates of Title Nos. 150405, 150406, 150407, 150408, 150409, 150410, 150411 and 150412.

On August 7, 2002, Spouses Co and Jupiter filed a complaint for the nullification of foreclosure proceedings and damages before the Regional Trial Court of Parañaque City, Branch 257 (“RTC Br. 257”), docketed as Civil Case No. 02-0331.¹¹

On April 29, 2003, BPI filed a petition for the issuance of a writ of possession before the Regional Trial Court of Parañaque City, Branch 196 (“RTC Br. 196”), docketed as LRC Case No. 03-0063.¹²

On June 12, 2003, Spouses Co and Jupiter moved for the consolidation of LRC Case No. 03-0063 with Civil Case No. 02-0331.¹³ In an Order¹⁴ dated August 7, 2003, the RTC Br. 196 denied the motion, to wit:

Given the distinctiveness of the causes of action available to the parties herein a proceeding for issuance for a writ of possession can be maintained independently in relation to an action for annulment of document, without prejudice to the outcome of the latter. [Ong vs. Court of Appeals, 333 SCRA 189 (2000); Vaca vs. Court of Appeals, 234 SCRA 146 (1994); de Jacob vs. Court of Appeals, 184 SCRA 294 (1990)].

WHEREFORE, premises considered, the motion for consolidation dated June 9, 2002 is hereby DENIED for lack of merit.

SO ORDERED.

The motion for reconsideration of Spouses Co and Jupiter was also denied.¹⁵

On September 22, 2003, Jupiter filed a petition for corporate rehabilitation¹⁶ dated September 9, 2003 with the RTC of Pasay City Br. 231 (“RTC Br. 231”) docketed as RTC SEC No. 03-0006-CFM. On October 6, 2003, Spouses Co and Jupiter moved for the suspension of the proceedings before the RTC Br. 196.¹⁷ They alleged that on September 24, 2003, the RTC Br. 231 issued a Stay Order after Jupiter filed its petition for rehabilitation and among the properties covered were those subject of the real estate mortgage. Spouses Co and Jupiter alleged that because of the Stay Order, the writ of possession may not be issued.¹⁸ Spouses Co, however,

¹¹ *Rollo* (G.R. No. 200061), pp. 55-60.

¹² *Rollo* (G.R. No. 171172), pp. 30-33.

¹³ *Rollo* (G.R. No. 200061), p. 42.

¹⁴ *Id.* at 65-66.

¹⁵ *Id.* at 43; RTC records, Vol. 1, p. 184.

¹⁶ *In the Matter of: Petition for the Declaration of State of Suspension of Payments with Approval of Proposed Rehabilitation Plan*, RTC records, Vol. 1, pp. 188-199.

¹⁷ Motion to Suspend Proceedings Including Implementation of the Writ of Possession, *rollo* (G.R. No. 171172), pp. 91-95.

¹⁸ *Id.* at 91-92.

admitted in their pleadings that the Stay Order was later lifted.¹⁹ In an Order dated March 30, 2004, the RTC Br. 196 denied the *Motion to Suspend Proceedings*.²⁰

In an Order²¹ dated September 30, 2005, the RTC Br. 196 issued a writ of possession in favor of BPI. However, the order was mistakenly addressed to spouses Trinidad P. Salazar and Ranulfo M. Salazar and not to Spouses Co.²² Thus, BPI filed a motion to amend the order,²³ which was granted.²⁴ In an Amended Order²⁵ dated December 8, 2005, the RTC Br. 196 held:

WHEREFORE, premises considered, the Petition dated March 10, 2003 is hereby GRANTED, and, let a Writ of Possession be issued in favor of petitioner, Bank of the Philippine Islands, which writ, be made effective upon respondent, respondent Spouses Johnson A. Co & Evelyn Sy-Co, their assigns, heirs and any person deriving any interest from the latter, over the properties identified as Lot Nos. 1 to 8 of Block 3 of the subd. plan (LRC) Psd-1643, being a portion of Lot 5-A (LRC) Psd-187700, LRC Record No. 54982, situated in Barrio Ibayo, Municipality of Parañaque and covered by Transfer Certificates of Title Nos. TCT Nos. 150405 to 150412 issued by the Register of Deeds of Pasay City.

SO ORDERED. (Underscoring in the original)

On October 21, 2005, Spouses Co and Jupiter filed a notice of appeal of the Order dated September 30, 2005.²⁶ In its comment, BPI argued that the order of the trial court granting a writ of possession is merely interlocutory from which no appeal is taken.²⁷ Spouses Co and Jupiter countered that based on the case of *Samson v. Rivera*,²⁸ the remedy from an order granting a writ of possession is an ordinary appeal.²⁹

In an Order dated December 15, 2005, the RTC Br. 196 granted the notice of appeal of Spouses Co and Jupiter and ordered the elevation of the records of the case to the CA.³⁰

¹⁹ *Rollo* (G.R. No. 200061), p. 25.

²⁰ RTC records, Vol. 1, pp. 224-225.

²¹ *Rollo* (G.R. No. 200061), pp. 67-72.

²² *Id.* at 72.

²³ RTC records, Vol. 1, pp. 594-599.

²⁴ *Id.* at 589.

²⁵ *Rollo* (G.R. No. 171172), pp. 124-129.

²⁶ *Id.* at 60-61.

²⁷ Comment/Opposition to the Notice of Appeal, *id.* at 64-66.

²⁸ G.R. No. 154355, May 20, 2004, 428 SCRA 759, 769-771.

²⁹ Reply to Comment/Opposition to the Notice of Appeal, *rollo* (G.R. No. 171172), pp. 67, 69.

³⁰ *Id.* at 23.

BPI filed a motion for reconsideration to set aside the Order dated December 15, 2005, but the RTC Br. 196 denied the motion for lack of merit in an Order dated January 13, 2006.³¹ The trial court held:

Considering an appeal is a substantive right of a party herein to undertake an appellate proceeding, petitioner's insistence on the nature of a writ of possession granted in its favor cannot override the substantive right of an oppositors-mortgagors to appeal.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration dated January 3, 2006 is denied for lack of merit.

Let the records of this case be elevated immediately to the appellate court.

SO ORDERED.

On March 10, 2006, BPI filed a petition for review on *certiorari* under Rule 45 with this Court to set aside the Orders of the RTC Br. 196 dated December 15, 2006 and January 13, 2006.³² BPI alleged that Spouses Co and Jupiter cannot appeal the order granting the writ of possession because the same is not appealable, the proceedings being merely *ex parte* from which no appeal may be taken. BPI also alleged that as registered owner of the properties subject of the foreclosure, it has the right to the immediate possession of the property and its right to immediate possession is impaired by the grant of the appeal.

On the other hand, Spouses Co and Jupiter maintained that the proper remedy is an ordinary appeal, instead of a petition for *certiorari*, because there is no grave abuse of discretion when the court issues a writ of possession.³³ They added that the possession of a third party in a writ of possession is an exemption to the ministerial and non-judicial proceedings in a petition for writ of possession.³⁴

Meanwhile, the CA rendered a Decision³⁵ on June 27, 2011 denying the appeal of Spouses Co and Jupiter filed on October 21, 2005, and affirming the Amended Order dated December 8, 2005. The CA held that the RTC Br. 196 acted with sound discretion when it denied appellants' motion for consolidation.³⁶ It further held that when the ownership over the properties was consolidated and new certificates of title were issued in BPI's name, the possession of the real properties became an absolute right of BPI as confirmed owner. Thus, BPI was entitled to the writ of possession as a

³¹ *Id.* at 24.

³² *Id.* at 8-18.

³³ Explanation and Comment dated November 3, 2006, *id.* at 86.

³⁴ *Id.* at 87.

³⁵ *Rollo* (G.R. No. 200061), pp. 41-49.

³⁶ *Id.* at 45.

matter of right.³⁷ Finally, the CA denied the appeal because the issue of consolidation had become moot and academic with the RTC Br. 196's issuance of an order granting the writ of possession in favor of BPI.³⁸

In a Resolution dated January 9, 2012, the CA denied the motion for reconsideration of Spouses Co and Jupiter.³⁹ Only Spouses Co filed a *Petition for Review on Certiorari with Motion to Consolidate this Petition* (G.R. No. 200061) with G.R. No. 171172 dated February 8, 2012.⁴⁰ Spouses Co alleged that the cases of *Philippine Savings Bank v. Mañalac, Jr.*,⁴¹ *Bank of Commerce v. Perlas-Bernabe*,⁴² *Sulit v. Court of Appeals*,⁴³ and *Barican v. Intermediate Appellate Court*⁴⁴ should apply and the CA should have considered the peculiar circumstances of the case.⁴⁵ They claimed that there was then a petition for corporate rehabilitation pending with another court that issued a stay order.⁴⁶ Thus, the foreclosure was null and void.⁴⁷ Spouses Co further alleged that Act No. 3135 violates the Constitution since the law gives unbridled license to the court and purchaser to deprive the owner of the property without the opportunity to be heard.⁴⁸

On February 29, 2012, we issued a Resolution⁴⁹ consolidating G.R. No. 200061 with G.R. No. 171172 since they involve similar parties and raise interrelated issues that arose from the same set of facts.

In its *Comment/Opposition*,⁵⁰ BPI alleged that the petition for rehabilitation is not a ground to consolidate the writ of possession case and the annulment of mortgage case, as to justify the suspension of the writ of possession's implementation. Further, the petition for rehabilitation was filed later than the petition for writ of possession. BPI also claimed that the rulings in *Bank of Commerce* and *Sulit* do not apply to this case.

On February 5, 2014, BPI manifested⁵¹ that the properties are still in the possession of Spouses Co and the writ of possession is necessary to deliver their possession to BPI.

³⁷ *Id.* at 46.

³⁸ *Id.* at 48.

³⁹ *Id.* at 52-53.

⁴⁰ *Id.* at 11-37.

⁴¹ G.R. No. 145441, April 26, 2005, 457 SCRA 203.

⁴² G.R. No. 172393, October 20, 2010, 634 SCRA 107.

⁴³ G.R. No. 119247, February 17, 1997, 268 SCRA 441.

⁴⁴ G.R. No. L-79906, June 20, 1988, 162 SCRA 358.

⁴⁵ *Rollo* (G.R. No. 200061), pp. 24-28.

⁴⁶ *Id.* at 28.

⁴⁷ *Id.* at 25.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.* at 141.

⁵⁰ *Rollo* (G.R. No. 171172), pp. 168-171.

⁵¹ Compliance, *id.* at 174-175.

The Issues

The issues for resolution are:

1. Whether the writ of possession was validly issued;
2. Whether the RTC Br. 196 erred in giving due course to the *Notice of Appeal* of Spouses Co and Jupiter from its Order dated September 30, 2005 and Amended Order dated December 8, 2005 granting the writ of possession in favor of BPI;
3. Whether or not Act No. 3135, as amended, violates the Constitution; and
4. Whether the CA erred in denying the consolidation of LRC Case No. 03-0063 with Civil Case No. 02-0331.

Our Ruling

Validity of the Issuance of the Writ of Possession

Under Section 7⁵² of Act No. 3135, as amended by Act No. 4118, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period. Upon the purchaser's filing of an *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor. But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.⁵³

Upon expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. This right to possession is based on the purchaser's ownership of the property.⁵⁴ In like manner, the mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice and the filing of a bond is no longer necessary. This is because possession has become the absolute right of the purchaser as the confirmed owner.⁵⁵

⁵² Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion x x x 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.

⁵³ *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, G.R. No. 168672, August 9, 2010, 627 SCRA 125, 135, citing *Top Art Shirt Manufacturing, Inc. v. Metropolitan Bank and Trust Co.*, G.R. No. 184005, August 4, 2009, 595 SCRA 323, 335.

⁵⁴ *Id.*, citing *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 765.

⁵⁵ *Fernandez v. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136.

Spouses Co and Jupiter do not deny that they failed to redeem the properties mortgaged within the redemption period. Consequently, ownership over the properties was consolidated in the name of BPI and new titles were issued in its name. Thus, as the new registered owner, BPI is even more entitled to the possession of the properties and has the unmistakable right to file an *ex parte* motion for the issuance of a writ of possession.

Spouses Co insist that the petition for issuance of a writ of possession should have been denied because of the pendency of the petition for nullification of the foreclosure sale, and the petition for rehabilitation, and the stay order. We are not persuaded.

The mere pendency of a petition for corporate rehabilitation and the issuance of a stay order do not and cannot enjoin the courts from the enforcement of claims; neither does it make the case unique and peculiar. In *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*,⁵⁶ we reiterated the rule in *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*⁵⁷ that a stay order or the suspension of the enforcement of all claims against the corporation shall commence only from the time the rehabilitation receiver is appointed and a stay order is issued.

In *Town and Country Enterprises, Inc. v. Quisumbing, Jr.*,⁵⁸ which presents the same set of facts with this case, we held:

Considering that Metrobank acquired ownership over the mortgaged properties upon the expiration of the redemption period on 6 February 2002, TCEI is also out on a limb in invoking the Stay Order issued by the Rehabilitation Court on 8 October 2002 and the approval of its rehabilitation plan on 29 March 2004. An essential function of corporate rehabilitation is, admittedly, the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver. The Stay Order issued by the Rehabilitation Court in SEC Case No. 023-02 cannot, however, apply to the mortgage obligations owing to Metrobank which had already been enforced even before TCEI's filing of its petition for corporate rehabilitation on 1 October 2002.

In *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, the Court upheld the validity of the writ of possession procured by the creditor despite the subsequent issuance of a stay order in the rehabilitation proceedings instituted by the debtor. In said case, Equitable PCI Bank (*Equitable*) foreclosed on 30 June 2003 the mortgage executed in its favor by DNG Realty and

⁵⁶ *Equitable PCI Bank, Inc. v. DNG Realty and Development Corporation*, supra at 140.

⁵⁷ G.R. No. 165001, January 31, 2007, 513 SCRA 601, 607.

⁵⁸ G.R. Nos. 173610 and 174132, October 1, 2012, 682 SCRA 128.

Development Corporation (DNG) and was declared the highest bidder at the 4 September 2003 public auction of the property. On 21 October 2003, DNG also instituted a petition for corporate rehabilitation which resulted in the issuance of a Stay Order on 27 October 2003. Having caused the recording of the Certificate of Sale on 3 December 2003, on the other hand, Equitable executed an affidavit of consolidation of its ownership which served as basis for the issuance of a new title in its favor on 10 December 2003. Equitable subsequently filed an action for the issuance of a writ of possession on 17 March 2004 which was eventually granted on 6 September 2004. In affirming the validity of the certificate of sale, certificate of title and writ of possession issued in favor of Equitable, the Court ruled as follows:

In RCBC, we upheld the extrajudicial foreclosure sale of the mortgage properties of BF Homes wherein RCBC emerged as the highest bidder as it was done before the appointment of the management committee. Noteworthy to mention was the fact that the issuance of the certificate of sale in RCBC's favor, the consolidation of title, and the issuance of the new titles in RCBC's name had also been upheld notwithstanding that the same were all done after the management committee had already been appointed and there was already a suspension of claims. Thus, applying *RCBC v. IAC* in this case, since the foreclosure of respondent DNG's mortgage and the issuance of the certificate of sale in petitioner EPCIB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, *after the redemption period expired without respondent redeeming the foreclosed property, petitioner becomes the absolute owner of the property and it was within its right to ask for the consolidation of title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property.*⁵⁹ (Citations omitted) (Emphasis in the original)

In this case, the auction sale on July 12, 2000, the registration and annotation of the certificate of sale on August 22, 2000 and the issuance of new titles in favor of BPI in 2001,⁶⁰ as well as the petition for issuance of the writ of possession were all completed before the filing of the petition for rehabilitation and the issuance of the stay order in September 2003. Thus, after the redemption period expired without respondent redeeming the foreclosed property, BPI became the absolute owner of the property and it

⁵⁹ *Town and Country Enterprises, Inc. v. Quisumbing, Jr.*, supra at 140-142.
⁶⁰ RTC records, Vol. 3, pp. 883-898.

was within its right to move for the consolidation of title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property.⁶¹

Remedy to assail an order granting a writ of possession

We find no merit in BPI's argument that the order of the RTC Br. 196 granting a writ of possession is merely interlocutory from which no appeal may be taken.

In *Mallari v. Banco Filipino Savings and Mortgage Bank*,⁶² we ruled that it is the ministerial duty of the trial court to issue a writ of possession in favor of the purchaser who has already consolidated its title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court *has no discretion* on this matter. Hence, any assertion of discretion in connection with such issuance is misplaced, and a petition for *certiorari* is not a proper remedy.⁶³ The order for the issuance of a writ of possession being final, it is a proper subject for appeal.

We clarify, however, that this remedy of appeal is different from the remedy provided in Section 8 of Act No. 3135, as amended by Act No. 4118.⁶⁴ An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal while those of jurisdiction are reviewable by *certiorari*.⁶⁵ In *680 Home Appliances, Inc. v. Court of Appeals*,⁶⁶ we explained that Act No. 3135 finds no application after the lapse of the redemption period, and the remedy of a debtor to contest the possession of the property is a separate action, and not the appeal provided for in Section 8 of the Act. We explained:

⁶¹ See *Equitable PCI Bank v. DNG Realty and Development Corporation*, supra note 54, at 144-145.

⁶² G.R. No. 157660, August 29, 2008, 563 SCRA 664.

⁶³ *Id.* at 670-671 citing *Espiridion v. Court of Appeals*, G.R. No. 146933, June 8, 2006, 490 SCRA 273; See also *Fortaleza v. Lapitan*, G.R. No. 178288, August 15, 2012, 678 SCRA 469.

⁶⁴ Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

⁶⁵ *Samson v. Rivera*, supra note 28.

⁶⁶ G.R. No. 206599, September 29, 2014, 737 SCRA 127.

In a number of cases, the Court declared that Section 8 of Act No. 3135 is the available remedy to set aside a writ of possession, without considering whether the writ involved in each of these cases was issued during or after the lapse of the redemption period. Upon reevaluation, we find it necessary to make a distinction and clarify when the remedy under Section 8 of Act No. 3135 may be availed of.

x x x

Act No. 3135 governs only the manner of the sale and redemption of the mortgaged real property in an extrajudicial foreclosure; proceedings beyond these, *i.e.*, upon the lapse of the redemption period and the consolidation of the purchaser's title, are no longer within its scope. x x x

As pointed out, the remedy provided under Section 8 of Act No. 3135 to the debtor becomes available only after the purchaser acquires *actual* possession of the property. This is required because until then the debtor, as the owner of the property, does not lose his right to possess.

However, **upon the lapse of the redemption period without the debtor exercising his right of redemption and the purchaser consolidates his title, it becomes unnecessary to require the purchaser to assume actual possession thereof before the debtor may contest it.** Possession of the land becomes an absolute right of the purchaser, as this is merely an incident of his ownership. In fact, the issuance of the writ of possession at this point becomes ministerial for the court. The debtor contesting the purchaser's possession may no longer avail of the remedy under Section 8 of Act No. 3135, but should pursue a separate action *e.g.*, action for recovery of ownership, for annulment of mortgage and/or annulment of foreclosure. FSAMI's consolidation of ownership therefore makes the remedy under Section 8 of Act No. 3135 unavailable for 680 Home. 680 Home cannot assail the writ of possession by filing a petition in LRC No. M-5444.⁶⁷ (Citations omitted) (Emphasis in the original)

Constitutionality of Act No. 3135, as amended

Spouses Co alleged that the *ex parte* nature of the proceedings under Section 7 of Act No. 3135 violates the due process clause of the Constitution. In *Rayo v. Metropolitan Bank and Trust Company*, we already ruled that the issuance of the writ of possession in extrajudicial foreclosure proceedings does not violate the mortgagor's right to constitutional due process, thus:

⁶⁷ *Id.* at 138-143.

First, there was no violation of petitioner's right to constitutional due process. In a long line of cases, we have consistently ruled that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property under Section 7 of Act No. 3135, as amended is a ministerial duty of the court. The purchaser of the foreclosed property, upon *ex parte* application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period and with more reason, after the expiration of the redemption period.

An *ex parte* petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated in Article 433 of the Civil Code. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong." It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended, and is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property.

x x x

Now, petitioner is challenging the constitutionality of Section 7 of Act No. 3135, as amended. He avers that Section 7 violates the due process clause because, by the mere filing of an *ex parte* motion in the proper cadastral court, the purchaser in a foreclosure sale is allowed to obtain possession of the foreclosed property during the redemption period.

The Court of Appeals ruled that petitioners attempt to challenge the constitutionality of Section 7 of Act No. 3135, as amended, constitutes a collateral attack that is not allowed. We fully agree with the appellate court's ruling. For reasons of public policy, the constitutionality of a law cannot be attacked collaterally.⁶⁸ (Emphasis and citations omitted)

⁶⁸

G.R. No. 165142, December 10, 2007, 539 SCRA 571, 579-582.

On the propriety of consolidation

Spouses Co claim that based on our rulings in *Philippine Savings Bank v. Mañalac, Jr.*,⁶⁹ *Bank of Commerce v. Perlas-Bernabe*,⁷⁰ *Sulit v. Court of Appeals*,⁷¹ and *Barican v. Intermediate Appellate Court*,⁷² the proceedings for the issuance of a writ of possession should have been consolidated with their action for annulment of the foreclosure proceedings, and that the issuance of the writ of possession should be withheld.

They alleged the existence of “unique and peculiar set of facts”⁷³ that call for the application of the cited cases. We disagree.

In *Philippine Savings Bank*, we upheld the consolidation of a petition for the issuance of a writ of possession with an ordinary civil action in order to achieve a more expeditious resolution of the cases. However, in the more recent case of *Espinoza v. United Overseas Bank Phils.*,⁷⁴ we held that the consolidation of a petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper when title to the litigated property had already been consolidated in the name of the mortgagee-purchaser, as in the case of BPI. “Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership.”⁷⁵

In *Bank of Commerce*, we ordered the consolidation of a receivership case with the petition for *certiorari* after a finding that the *certiorari* petition therein is only a pending incident in the receivership case, and that the outcome of the *certiorari* proceeding will have a bearing on the receivership case. In this case, the issuance of the writ of possession is not a pending incident to the action for nullity of foreclosure.

In *Barican*, we held that the obligation of a court to issue a writ of possession ceases to be ministerial if there is a third party holding the property adversely to the judgment debtor.⁷⁶ In this case, there is no third party holding the property adversely to the judgment debtor.

In *Sulit*, we withheld the issuance of a writ of possession in favor of the mortgagee or purchaser in an extrajudicial foreclosure sale for failure of the mortgagee to pay a substantial amount of the surplus proceeds of the sale to the mortgagor. In this case, the issue of payment of the foreclosure proceeds was never raised. In fact, BPI already consolidated title and

⁶⁹ Supra note 41.

⁷⁰ Supra note 42.

⁷¹ Supra note 43.

⁷² Supra note 44.

⁷³ *Rollo* (G. R. 200061), p. 24.

⁷⁴ G.R. No. 175380, March 22, 2010, 616 SCRA 353.

⁷⁵ *Id.* at 361.

⁷⁶ See also *Fortaleza v. Lapitan*, supra note 63, at 481.

ownership of the subject properties and new titles issued in its name after the expiration of the redemption period.

In view of the foregoing, both petitions must fail.

WHEREFORE, the petitions are **DENIED** for lack of merit. The orders of the RTC Br. 196 dated December 15, 2005 and January 13, 2006 assailed in G.R. No. 171172, as well as the Decision of the Court of Appeals (CA) dated June 27, 2011 and its Resolution dated January 9, 2012 assailed in G.R. No. 200061 are hereby **AFFIRMED**. The sheriff of the RTC Br. 196 is ordered to **PROCEED** with the implementation of the writ of possession without prejudice to the outcome of Civil Case No. 02-0331.

SO ORDERED.

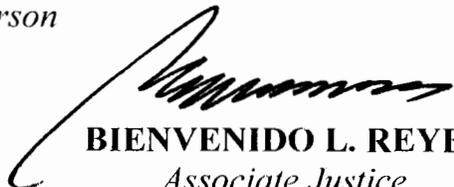

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice

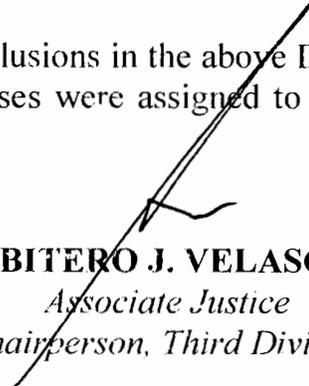

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

ATTESTATION

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


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice