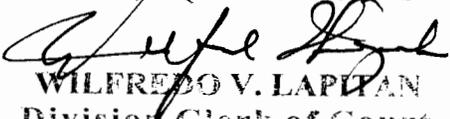




Republic of the Philippines  
 Supreme Court  
 Manila

CERTIFIED TRUE COPY  
  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division  
 DEC 03 2015

**THIRD DIVISION**

**ST. RAPHAEL MONTESSORI  
 SCHOOL, INC., represented by  
 TERESITA G. BADIOLA,**  
 Petitioner,

**G.R. No. 184076**

**Present:**

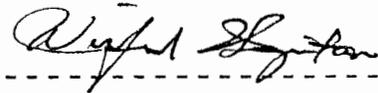
VELASCO, JR., *J.*, Chairperson,  
 PERALTA,  
 VILLARAMA, JR.,  
 REYES, and  
 JARDELEZA, *JJ.*

- versus -

**BANK OF THE PHILIPPINE  
 ISLANDS,**  
 Respondent.

**Promulgated:**

October 21, 2015



x ----- x

**DECISION**

**PERALTA, J.:**

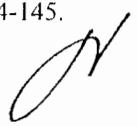
This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Decision<sup>1</sup> dated April 25, 2008 and Resolution dated July 16, 2008,<sup>2</sup> respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 101507.

The facts are as follows:

Spouses Rolando and Josefina Andaya (*Sps. Andaya*) are the President and Vice-President, respectively, of St. Raphael Montessori, Inc. (*St.*

<sup>1</sup> Penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court), with Associate Justices Arcangelita Romilla-Lontok and Ricardo R. Rosario, concurring; *rollo*, pp. 134-145.

<sup>2</sup> *Id.* at 166.



*Raphael*). From 1994 to 1998, the Spouses Andaya obtained a loan for themselves and on behalf of St. Raphael, from the Far East Bank and Trust company, now Bank of Philippine Islands (*BPI*). As security for the loan, they executed real estate mortgages<sup>3</sup> over a parcel of land covered by Transfer Certificate of Title (*TCT*) No. T-45006.<sup>4</sup> They, however, defaulted on their obligation and thus, *BPI* extrajudicially foreclosed the mortgaged property.

A Certificate of Sale<sup>5</sup> was then issued and annotated at the back of *TCT* No. 45006. When the mortgagors failed to redeem the subject property, *BPI* executed an Affidavit of Consolidation<sup>6</sup> and *TCT* No. T-175740<sup>7</sup> was issued in its name. On March 15, 2005, upon petition by *BPI*, the court *a quo* issued a Writ of Possession<sup>8</sup> ordering the sheriff to place the subject property and all its improvements thereon, in possession of the same.

The Spouses Andaya asked for deferment of the implementation of the writ of possession and executed for themselves and on behalf of St. Raphael an Undertaking wherein they: (i) acknowledged *BPI*'s ownership of the property; (ii) promised to vacate the premises and remove all movables from the same on or before September 23, 2005; (iii) promised to voluntarily and peacefully surrender the property in favor of the rightful owner *BPI* without the necessity of any demand on or before September 23, 2005; and (iv) pledged not to take advantage of the accommodation extended to them to secure any remedy from the courts.<sup>9</sup> *BPI*, thus, deferred the implementation of the writ to September 23, 2005 and upon the lapse thereof even extended for another 60 days or until November 23, 2005 the implementation of the writ.

The Spouses Andaya, however, failed to vacate the subject property. Despite *BPI*'s reminder of their commitment to surrender possession of the property without further need of demand, the Spouses Andaya refused to turn over its possession. They claimed that *BPI* no longer had a right to possess the property because the writ of possession had already been implemented. St. Raphael further filed a Motion to Quash Writ of Possession alleging that it was not a party to the real estate mortgages executed by Spouses Andaya. An Affidavit of Third-Party Claim<sup>10</sup> was also filed wherein Teresita Badiola, Attorney-in-Fact of St. Raphael claimed that the latter's building, while standing on the subject property, was not included in the real estate mortgages. It further claimed that the construction

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<sup>3</sup> *Id.* at 62-89.

<sup>4</sup> *Id.* at 34-36.

<sup>5</sup> *Id.* at 37.

<sup>6</sup> *Id.* at 38-39.

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

<sup>8</sup> *Id.* at 45-46.

<sup>9</sup> *CA rollo*, p. 55.

<sup>10</sup> *Rollo*, pp. 93-94.

of the building was made possible by virtue of a Lease to Own Agreement that was executed prior to the execution of the real estate mortgages.

On February 6, 2007, BPI sent a letter to the sheriff of the court *a quo* requesting for the implementation of the writ of possession that was earlier deferred. On April 11, 2007, the sheriff served a Notice to Vacate on all occupants of the subject property. On April 19, 2007, BPI was already able to post security guards in the premises.

St. Raphael then filed a motion to cite in contempt the sheriff and BPI on the ground that their actions would prejudice the pending motion to quash. St. Raphael also claimed that the writ of possession could no longer be enforced since it had already been implemented in 2005, thus, it seek to be restored in possession of the premises.

The court *a quo* issued an Order<sup>11</sup> dated June 5, 2007 dismissing the motion to cite in contempt for failing to comply with Section 4, Rule 71 of the Rules of Court. However, the court *a quo* also ordered BPI to withdraw its security guards from the subject property and instructed the sheriff to restore to St. Raphael the physical possession thereof. The court *a quo* deemed it prudent to maintain the *status quo* condition of the subject property prior to the April 19, 2007 incident.

On June 8, 2007, the officers of St. Raphael, with the assistance of the barangay captain and policemen, attempted to recover possession of the subject property. However, they were driven away by BPI's security guards upon failure to present a final order from the court *a quo*. St. Raphael, therefore, filed an Urgent *Ex-Parte* Motion for Immediate Implementation of the June 5, 2007 Order.

On June 12, 2007, BPI filed a Partial Motion for Reconsideration arguing that the court *a quo* is confined to resolving the issue in the Motion to Cite in Contempt, that is, whether or not the implementation of the writ of possession constitutes a contemptuous act. It argued that under the circumstances, the court *a quo* is in no position to determine the issue of who should be in possession of the subject property.

On June 13, 2007, the court *a quo* granted St. Raphael's Motion for Immediate Implementation of the June 5, 2007 Order and denied BPI's Partial Motion for Reconsideration. It ruled that a temporary restraining order or writ of preliminary injunction was not needed to prevent the sheriff and BPI from implementing the writ of possession because the motion to

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<sup>11</sup> CA rollo, pp. 149-152.

quash the writ of possession was still pending resolution. It also held that St. Raphael was a third-party claimant and that BPI cannot be placed in possession of the mortgaged property pending proceedings that assail the issuance of the writ of possession.

On June 25, 2007, the court *a quo* appointed a special sheriff who implemented the *status quo* order. Consequently, St. Raphael was placed in possession of the subject property. Likewise, the court *a quo*, in an Order<sup>12</sup> dated July 30, 2007 granted St. Raphael's Motion to Quash Writ of Possession. The dispositive portion reads:

WHEREFORE, the Motion to Quash Writ of Possession filed by St. Raphael Montessori School, Inc., Third-Party Claimant/Oppositor dated June 6, 2006 is GRANTED.

2. The writ of possession dated March 15, 2005 implemented by Sheriff Franconello S. Lintao on April 19, 2007 is null and void;

3. The order of this court dated December 27, 2004 is modified to read as follows:

Let the writ of possession be issued directing the Deputy Sheriff of this Court to install the petitioner in actual possession of real properties owned by Sps. Rolando and Josefina Andaya which have been the subject of the mortgage, with the exception of the building standing on Lot 1362-D owned by the third party claimant St. Raphael Montessori.

SO ORDERED.<sup>13</sup>

Aggrieved, BPI filed a petition for *certiorari* before the Court of Appeals alleging grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Order dated July 30, 2007.

On April 25, 2008, in its disputed decision, the Court of Appeals reversed the court *a quo*. the dispositive portion of which reads:

**WHEREFORE**, the Order dated July 30, 2007 is **REVERSED**. The Motion to Quash Writ of Possession of St. Raphael Montessori, Inc. is **DENIED** and the Writ of Possession dated March 15, 2005 is declared valid and enforceable, thus entitling the Bank of the Philippine Islands to possession of the subject property, including the building occupied by St. Raphael Montessori, Inc.

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<sup>12</sup> *Id.* at 110-114.

<sup>13</sup> *Id.* at 114.

**SO ORDERED.**<sup>14</sup>

Thus, the instant petition for review on *certiorari* under Rule 45 of the Rules of Court raising the lone issue of: *Whether a writ of possession that was issued ex-parte as a result of the foreclosure of the mortgages executed by the Spouses Andaya on the subject property can be enforced and utilized by BPI to oust St. Raphael from the physical possession of its school buildings built on the same subject property.*

We rule in the affirmative.

Jurisprudence is replete with cases holding that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.<sup>15</sup> Once title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at anytime. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.<sup>16</sup>

The right to the issuance of a writ of possession is outlined in Sections 6 and 7 of Act 3135, as amended by Act 4118, to wit:

Sec. 6. In all cases in which an extrajudicial sale is made x x x, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Sec 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

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<sup>14</sup> *Id.* at 145. (Emphases in the original)

<sup>15</sup> *Nagtalon v. United Coconut Planters Bank*, G.R. No. 172504, July 31, 2013, 702 SCRA 615, 626.

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

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.

Upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. No bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. 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 scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.

In *China Banking Corporation v. Spouses Lozada*,<sup>17</sup> we reiterated:

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. **Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.**<sup>18</sup>

Thus, as in the instant case, after the consolidation of ownership, and the issuance of Transfer Certificate of Title no. T-175740 in favor of purchaser, BPI, the latter's right to possession not only finds support in Section 7 of Act 3135, but also on its right to possession as an incident of ownership.<sup>19</sup>

If the court has the ministerial power to issue a writ of possession even during the redemption period, then with more reason should the court issue the writ of possession after the expiration of the redemption period, as

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<sup>17</sup> 579 Phil. 454 (2008).

<sup>18</sup> *China Banking Corporation v. Spouses Lozada*, *supra*, at 472-473, citing *F. David Enterprises v. Insular Bank of Asia and America*, 269 Phil. 551, 557-558 (1990).

<sup>19</sup> *Espinoza, et al. v. United Overseas Bank Philippines*, 660 Phil. 368, 371 (2011).

the purchaser has already acquired an absolute right to possession on the basis of his ownership of the property. The right to possess a property follows ownership.<sup>20</sup>

It should likewise be emphasized that the purchaser's right to request for the issuance of the writ of possession of the land never prescribes. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession thereof.<sup>21</sup>

As to petitioner's argument that they were not a party to the real estate mortgage nor its claim that the mortgage does not include the building allegedly owned by St. Raphael Montessori, the same has no leg to stand on. When the principal property is mortgaged, the mortgage shall include all natural or civil fruits and improvements found thereon when the secured obligation becomes due as provided in Article 2127<sup>22</sup> of the Civil Code. Consequently, in case of non-payment of the secured debt, foreclosure proceedings shall cover not only the hypothecated property but all its accessions and accessories as well.<sup>23</sup>

Thus, improvements constructed by the mortgagor on the subject lot covered by the real estate mortgage contract with the mortgagee bank are included in the foreclosure proceedings instituted by the latter.<sup>24</sup> While this rule is not without qualifications, the instant case does not fall under its exceptions. 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 judgment obligor. St. Raphael could not be considered as an adverse claimant in the absence of proof showing any adverse title or claim of ownership on the subject lot.

Indeed, the claim of St. Raphael that it is the owner of the building standing on the subject land cannot be given weight in the absence of any evidence proving such ownership. It is also noteworthy to mention that in St. Raphael's Articles of Incorporation with S.E.C. Registration No. ANO92-03954, the Spouses Andaya appeared to be the original incorporators and trustees of St. Raphael, the same parties who mortgaged the subject lot to BPI. St. Raphael insists that it is the owner of the building, however, neither

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<sup>20</sup> *Supra* note 4.

<sup>21</sup> *Spouses Edralin v. Philippine Veterans Bank*, 660 Phil. 368, 371 (2011).

<sup>22</sup> Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or passes into the hands of a third person.

<sup>23</sup> *Philippine National Bank v. Spouses Maranon*, G.R. No. 189316, July 1, 2013, 700 SCRA 297, 309.

<sup>24</sup> *Spouses Paderes v. Court of Appeals*, 502 Phil. 76, 95 (2005).

the Spouses Andaya and St. Raphael failed to convince that they are separate entities and that the Spouses Andaya did not act in behalf of St. Raphael.

Likewise, assuming that there was indeed a valid lease agreement, the law requires that it must be noted as an encumbrance in T-45006, which covers the property mortgaged by St. Raphael and the Spouses Andaya to BPI. The failure to comply with this requisite annotation of the lease resulted in BPI's lack of knowledge as to the existence of the said lease contract.<sup>25</sup>

Moreover, the appellate court's ratiocination on St. Raphael's alleged lack of knowledge of the constituted real estate mortgage is noteworthy, to wit:

The ruling of the court *a quo* that St. Raphael was a mere stranger to the case between the Spouses Andaya and BPI and that it entered into possession of the property before the suit began is not supported by evidence on record. On the contrary, the record before us reveals that St. Raphael is a party to the mortgage agreement since the real estate mortgages show that it obtained credit accommodations from BPI through the spouses Josefina and Rolando Andaya who are its president and vice-president, respectively. The fact that a mortgage was executed in favor of St. Raphael is likewise annotated at the back of TCT No. T-45006. Moreover, the undertaking executed by the Spouses Andaya reveals that they affixed their respective signatures therein in their capacity as President and Vice-President of St. Raphael. These clearly show that St. Raphael is privy to the dealings between the Spouses Andaya and BPI and thus belie that it is a mere stranger to the case.<sup>26</sup>

Finally, the real estate mortgage agreement entered into by BPI and the Spouses Andaya is the law between them. Suffice it to say that *in all of the real mortgage agreements*<sup>27</sup> executed by BPI and the Spouses Andaya in favor of St. Raphael, it was clearly and commonly stipulated that the parties intend to include the improvements or buildings erected or to be erected in the subject lot, to wit:

x x x the MORTGAGOR does hereby transfer and convey by way of mortgage unto to MORTGAGEE, its successors or assigns, the parcel of land which are described in the list inserted on the back of this document and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner free from lien and encumbrances. x x x<sup>28</sup>

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<sup>25</sup> *Rollo*, pp. 144-145.

<sup>26</sup> *Id.* at 143.

<sup>27</sup> *Supra* note 4.

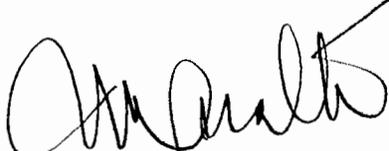
<sup>28</sup> *Id.* at 66.

It is a cardinal rule in the interpretation of a contract that if its terms are clear and leave no doubt on the intention of the contracting parties, the literal meaning of its stipulation shall control.<sup>29</sup> In the absence of proof that the parties intended otherwise, we will not delve to interpret the terms of the contract which are unequivocal as to the intention of the parties.

On a final note, it must be stressed that when certain actuations of judges cast doubts as to their motives, the Court deems it imperative to remind judges of their respective duties of impartiality. The court *a quo*'s judgment, which not only granted petitioner's Motion to Quash and Third-Party Claim but went as far as installing petitioner in actual possession of the subject properties in sheer disregard of established legal pronouncements and on obvious baseless grounds, raise serious suspicions on the court *a quo*'s intentions. Let this, therefore, serve as a stern reminder that lower court judges are, at all times, dutybound to render just, correct and impartial decisions in a manner free of any suspicion as to his fairness, impartiality or integrity.

**WHEREFORE**, all premises considered, the instant petition is **DENIED** for lack of merit. Accordingly, the Decision dated April 25, 2008 and the Resolution dated July 16, 2008 of the Court of Appeals in CA-G.R. SP No. 101507 are **AFFIRMED *in toto***.

**SO ORDERED.**

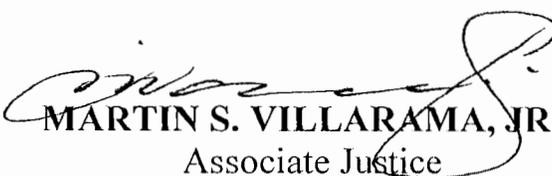


**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

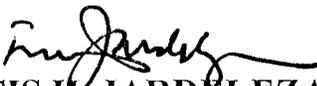


**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

<sup>29</sup> *Abella v. Court of Appeals*, 327 Phil. 270, 275 (1996).

  
**FRANCIS H. JARDELEZA**  
 Associate Justice

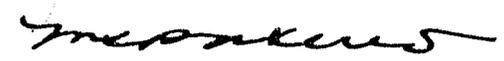
**ATTESTATION**

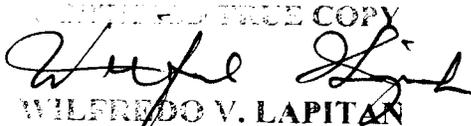
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**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, 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

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 Division Clerk of Court  
 Third Division  
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