



Republic of the Philippines
Supreme Court
Manila

Third Division

NEW SAN JOSE BUILDERS, INC., **G.R. No. 200683**

Petitioner,

- versus -

GOVERNMENT SERVICE
INSURANCE SYSTEM,

Respondent.

X ----- X

DONARDO S. DONATO, **G.R. No. 200710**
Petitioner,

- versus -

GOVERNMENT SERVICE
INSURANCE SYSTEM,

Respondent.

X ----- X

CARLITOS L. ESCUETA, **G.R. No. 201546**
Petitioner,

- versus -

GOVERNMENT SERVICE
INSURANCE SYSTEM (GSIS),

Respondent.

X-----X

CARLOS C. ABESAMIS and co-intervenors LUDOVICO LONTOK, ELLEN ANACAY, MA. REGINE QUIBIDO, RAMON MA. G. ACOYMO, MICHAEL CRISOLOGO, VICTORINO P. DATUIN, NEIL ANDREW N. NOCON, MARLYN T. RICAZA, VICENTE S. REYES, EPIFANIO T. HERMOSISIMA, MIMILANIE MABANTA, HYACINTHGAILE TAGUBA, RUEL BAUTISTA, ROBERT MARTIN, JONATHAN EBORA, CHARMAINE CAJAYON, LEONARDO COLL, RUSSEL CATABAY, NOEL P. EBRIEGA, DENLA RIMANDO, EIMAN MELDRIN, PASTORA R. TAPIADOR, CARLO C. DE LEON, MICHELLE SUAREZ-CUNANAN, ELMER HILARIO S. FLORES, JEENA RANI MARQUEZ MANAOIS, ANTONIO SENAN, ELOISA MANLANSING, ESTEFFEN JOSE G. SOMERA, JULIA JANE AGUILAR, ESTRELLA A. LAHBATI, ELIZABETH PILE, LESLEY REYES-LU, EMMANUEL Q. PALO, ROMAN LOPEZ and LOLITA LOPEZ, all members of the ST. JOHN UNIT OWNERS ASSOCIATION, INC., (SJUOAI),

G.R. No. 211512

Present:

LEONEN, *Chairperson*,
CARANDANG,*
ZALAMEDA,*
ROSARIO,* and
LOPEZ, J.,** *JJ.*

Promulgated:

July 28, 2021

MistDCB-H

Petitioners,

* Designated Members of the Third Division per Special Order No. 2836 dated 15 July 2021, effective on even date.

** Designated Additional Member of the Third Division per Special Otrder No. 2834 dated 15 July 2021, effective on even date.

- versus -

**GOVERNMENT SERVICE
INSURANCE SYSTEM, and NEW
SAN JOSE BUILDERS, INC.**

Respondents.

X ----- X

DECISION

ZALAMEDA, J.:

A home is not just a property, it is a sanctuary, a realized dream. If for justifiable causes it must be seized, courts must ensure that the same is in accordance with law and upon observance of due process of law.¹

The Case

Before this Court are consolidated petitions for review on *certiorari*² assailing the Decision³ dated 28 July 2011 and Resolution⁴ dated 20 February 2012 of the Court of Appeals (CA), in CA-G.R. SP No. 110231. The CA affirmed the Resolution⁵ dated 11 June 2009 of Branch 85, Regional Trial Court (RTC) of Quezon City in LRC Case No. Q-22034.

Antecedents

On 10 December 1997, New San Jose Builders Inc. (NSJBI) and the Government Service Insurance System (GSIS) entered into a Loan

¹ *Spouses Rosario v. Government Service Insurance System*, G.R. No. 200991, 18 March 2021 [Per J. Zalameda].

² *Rollo* of G.R. No. 200683, pp. 10-21.

³ Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicedican and Edwin D. Sorongon; *id.* at 37-49.

⁴ *Rollo* of G.R. No. 200683, pp. 50-52.

⁵ *Id.* at 133-135.

Agreement⁶ where the former borrowed from the latter Php600 million, with a term of five (5) years, to finance the completion of two (2) housing projects, and to purchase a lot for construction of more housing projects. As security for the loan, NSJBI mortgaged three (3) parcels of land with existing improvements: 365 lots with existing low-cost houses at Mary Homes, Bacoor, Cavite; 102 condominium units at St. John Condominium at Scout Rallos, Quezon City; Waterfun project, also in Quezon City (mortgaged properties); and rights over 240 condominium units in GSIS Metro Homes.

Under the loan agreement, NSJBI shall not alienate sell, dispose of, mortgage, or in any manner encumber the mortgaged properties or any portion thereof without the prior consent of the GSIS. However, the parties also agreed that NSJBI may continue to sell the mortgaged properties subject to the condition that the net proceeds from the sales should be exclusively used in the recoupment of the loan. The parties further stipulated that in case of non-compliance with the conditions and stipulations agreed upon, GSIS may immediately foreclose the mortgage, either judicially or extrajudicially, in accordance with the applicable provisions of law.⁷

The mortgage was annotated on the Transfer Certificates of Title (TCTs) and Condominium Certificates of Title (CCTs) of the mortgaged properties on 10 December 1997.⁸

NSJBI proceeded to enter into contracts to sell the mortgaged properties to various buyers. Among the buyers were petitioners Atty. Donardo Donato (Donato), Carlitos Escueta (Escueta) and Marcelino H. Delos Reyes (Delos Reyes) (collectively, petitioners), along with Spouses Wilfredo and Dominica D. Rosario (Spouses Rosario), who were consequently issued CCTs, and occupied their respective units at St. John Condominium.⁹

NSJBI defaulted in the payment of the loan. On 31 March 2003, GSIS applied for extrajudicial foreclosure of the mortgaged properties. An auction sale was conducted on 17 June 2003, where GSIS was the highest bidder. When NSJBI failed to exercise its right of redemption, the titles/ownership of the property were consolidated and the Register of Deeds cancelled the corresponding TCTs and CCTs in favor of GSIS.¹⁰

GSIS demanded NSJBI to vacate the foreclosed properties but to no

⁶ *Id.* at 74-84.

⁷ *Id.* at 39.

⁸ *Id.*

⁹ *Id.* at 273.

¹⁰ *Id.* at 239-240.

avail. Hence, on 23 August 2006, GSIS filed an *ex-parte* petition for issuance of a writ of possession against NSJBI and all occupants of the foreclosed properties, docketed as LRC Case No.22034 (06) before Branch 85, Regional Trial Court (RTC) of Quezon City.¹¹

On 12 October 2006, NSJBI filed its opposition to the petition on the following grounds: (1) GSIS failed to implead the individual buyers of the mortgaged properties who are parties-in-interest in the petition; (2) GSIS cannot dispossess the buyers of their condominium units by asking for an *ex-parte* issuance of a writ of possession; (3) the issuance of an *ex-parte* writ of possession ceases to be ministerial once there are third-parties who are in possession of the property; and (4) the actual possessors and occupants of the units at St. John Condominium enjoy a legal presumption of just title in their favor pursuant to Article 433 of the Civil Code.¹²

NSBJI and petitioners Donato,¹³ Delos Reyes, and Escueta,¹⁴ filed their respective pleadings-in-intervention, which essentially alleged that they are the owners and occupants of various condominium units at St. John Condominium, and that they were unaware of the loan and mortgage agreement between NSJBI and GSIS. Petitioners also alleged that the condominium buyers have filed a case against NSJBI and GSIS before the Housing and Land Use Regulatory Board (HLURB) on 11 January 2001. GSIS filed separate motions to expunge the pleadings-in-intervention.¹⁵

On 07 April 2008, the RTC issued a Resolution resolving to: (1) grant the motions for intervention of Donato, the Spouses Rosario, and Escueta, only insofar as to establish their acquisition and possession of condominium units at St. John Condominium; (2) treat the motion for leave to take judicial notice of Delos Reyes as a motion to intervene and grant the same; and (3) grant GSIS's application for a writ of possession as against NSJBI but only as to unsold condominium units and lots are concerned that are not in the possession of third-party buyers.¹⁶ It also denied GSIS's motion for partial reconsideration in a Resolution dated 11 June 2009.¹⁷

The RTC explained that intervention is permissible if its purpose is to bring to the court's attention the presence of third parties in actual possession of the property. Applying *De Vera v. Judge Agloro*,¹⁸ the RTC ruled that as to NSJBI, GSIS is clearly entitled to a writ of possession. However, as to the

¹¹ *Id.* at 65-71.

¹² *Id.* at 73-80.

¹³ *Id.* at 81-83.

¹⁴ *Id.* at 93-104.

¹⁵ *Id.* at 17.

¹⁶ *Id.* at 120-132.

¹⁷ *Id.* at 241-243.

¹⁸ 489 Phil. 185 (2005) [Per J. Callejo].



individual buyers, the RTC deemed that it had no jurisdiction to issue a writ of possession evicting them because that would entail resolution of substantive issues beyond the purview of an *ex-parte* proceeding concerning a possessory writ.

Aggrieved, GSIS filed a petition for *certiorari* dated 05 October 2019 before the CA.¹⁹

Ruling of the CA

On 28 July 2011, the CA granted GSIS's petition and reversed the RTC's resolutions dated 07 April 2008 and 11 June 2009. It found that the RTC committed grave abuse of discretion in granting petitioners' motion for intervention in the *ex-parte* proceeding for the issuance of a writ of possession.²⁰

The CA also ruled that the RTC erred in restraining the implementation of the writ of possession against petitioners since they are not third parties who are in adverse possession of the foreclosed property. It explained that the proper remedy for petitioners is to seek annulment of the mortgage or foreclosure before the HLURB for non-compliance with Section 18²¹ of Presidential Decree (PD) No. 957. It also denied petitioners' and NSJBI's motion for reconsideration²² in a Resolution dated 20 February 2012.

Proceedings in the RTC

GSIS filed an Omnibus motion praying for the RTC to drop Delos Reyes and all other intervenors as parties to the case, and to grant its application for a writ of possession in view of the 28 July 2011 Decision of

¹⁹ *Rollo*, G.R. No. 200683, pp. 136-150.

²⁰ *Id.* at 42-43.

²¹ Section 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

²² *Rollo*, G.R. No. 211512, pp. 76-102.

the CA.²³

Likewise, petitioner Donato filed a motion to suspend proceedings by reason of a prejudicial question. He contended that the instant case should be suspended in view of the pendency of the cases filed by the condominium unit buyer against NSJBI before the HLURB.²⁴

In a Resolution²⁵ dated 15 April 2013, the RTC granted GSIS' motion. It ruled that it is bound by the CA's 28 July 2011 Decision. Meanwhile, the RTC denied Donato's motion to suspend proceedings, explaining that the principle of prejudicial question does not apply. In a Joint Resolution dated 27 December 2013, it also denied petitioners' motions for reconsiderations.²⁶

The Consolidated Petitions Before the Court

Herein petitioners filed their respective petitions for review on *certiorari* to assail the CA Decision dated 28 July 2011. On 07 July 2014, this Court resolved to consolidate G.R. Nos. 211512, 200683, 200710, and 201546.²⁷

Petitioners essentially argue that as buyers of units at St. John Condominium they should be considered third-party possessors who are protected against the writ of possession granted in favor of GSIS. They also allege that their possession should be deemed adverse to NSJBI given that the mortgage agreement between it and GSIS was entered into without authority from the HLURB, in violation of Section 18 of PD 957.²⁸ Thus, petitioners pray that the the Decision dated 28 July 2011 and Resolution dated 20 February 2012 of the CA, in CA-G.R. SP No. 110231 be set aside. In addition, petitioners Abesamis *et al.* in G.R. No. 211512 pray that the GSIS be directed to accept payments from other condominium unit buyers, representing their respective monthly amortization.

Meanwhile, GSIS maintains that the CA correctly reversed the RTC's Resolutions dated 07 April 2008 and 11 June 2009. It argues that petitioners should not be allowed to intervene in its application for a writ of possession because intervention contemplates a suit and is incompatible with *ex-parte* proceedings.²⁹

²³ *Id.* at 276-293.

²⁴ *Id.* at 388.

²⁵ *Id.* at 276-293.

²⁶ *Id.* at 44-48.

²⁷ *Id.* at 154-155.

²⁸ *Id.* at 19-20.

²⁹ *Id.* at 253-257.

Likewise, having consolidated its title to the properties mortgaged by NSJBI after the expiration of the redemption period, GSIS contends that the trial court has a ministerial duty to issue a writ of possession in its favor. Further, it claims that petitioners cannot be considered third parties who possess the property adversely from NSJBI because they are mere transferees or successors of NSJBI.³⁰

GSIS denies being in bad faith when it failed to allege petitioners' possession of the foreclosed properties in its *ex-parte* application. It further averred that it had no knowledge of the supposed sale between NSJBI and petitioners.³¹

It argues that the pending case in the HLURB filed by the condominium unit buyers is still being litigated and should not stay the issuance of a writ of possession.³²

Issue

This Court is tasked to determine whether the CA erred in holding that the RTC committed grave abuse of discretion when it allowed petitioners to intervene in GSIS's *ex-parte* application for a writ of possession, and exempting from its implementation units possessed by petitioners.

Ruling of the Court

The petitions are granted.

At the outset, in *Spouses Rosario v. GSIS*,³³ this Court has made a pronouncement on the propriety of the condominium unit buyers' intervention in an *ex-parte* application for a writ of possession filed by GSIS. Guided by the provisions of PD No. 957, or the Subdivision and Condominium Buyers' Protective Decree, this Court ruled that condominium unit buyers who are actually occupying their units are third parties who possess their respective units adverse to NSBJI. Hence, they are protected against possessory writs secured by mortgagees-creditors of the developers-

³⁰ *Id.* at 257-259.

³¹ *Id.* at 476.

³² *Id.* at 495-501.

³³ G.R. No. 200991, 18 March 2021 [Per J. Zalameda].



mortgagors.

In that case, the Court discussed the preference given by law to condominium unit and subdivision lot buyers compared to other transferees or successors-in-interest of judgment debtors. We noted that P.D. No. 957 is a legislative instrument meant to protect small lot and condominium unit buyers against undisclosed, and often unfavorable transactions between developers and their creditors. It recognizes the hardships of a lot of Filipinos in earning and saving their income to buy properties where they can establish their homes.³⁴ With the prevalence of different forms of contractual breaches and abuses of developers, these individuals are often made to pay more and receive less or defective properties. In some instances, they are made to suffer the inability of developers to fulfill their obligations to their creditors. As in the instant case, these buyers are made to surrender their hard-earned properties for debts which they did not incur.³⁵

Spouses Rosario v. GSIS is a significant shift in Our case law on third-party possessors. Prior to this case, the prevailing rule was that all transferees or successors of the judgment debtor or mortgagors are not considered as third-party possessors. They merely step into the shoes of the debtor-mortgagor, and therefore, are bound by the consequences of the default in the principal obligation. Further, earlier jurisprudence only acknowledges co-owners, agricultural tenants and usufructuaries as third-party adverse possessors who may be excluded from possessory writs issued consequent to foreclosure or execution. These third-party possessors are deemed to have more superior rights than the judgment debtor, which cannot be defeated through a mere writ of possession.³⁶

As early as the case of *Saavedra v. Siari Valley Estates, Inc.*,³⁷ this Court had already declared that the buyers of properties sought to be levied by the judgment creditor do not have independent and adverse rights from the judgment debtor.

Further, in *Roxas v. Buan*,³⁸ this Court also ruled that a buyer of a mortgaged property is merely a transferee of the mortgagor-debtor, who cannot be treated as third-party occupants. The Court explained that the conveyance to such buyers only transferred the right to redeem the property within the period prescribed by law.

³⁴ See Whereas clauses of P.D. No. 957.

³⁵ See also *Philippine National Bank v. Office of the President*, 322 Phil. 6 (1996) [Per J. Panganiban], citing *Breta and Hamor vs. Lao*, CA-GR No. 58728-R, 11 November 1981 [Per J. Melo].

³⁶ *Villanueva v. Cherdan Lending Investors Corp.*, 647 Phil. 494 (2010) [Per J. Nachura].

³⁷ 106 Phil. 432 (1959) [Per J. Montemayor]

³⁸ 249 Phil. 41 (1988) [Per J. Cortes].

In ruling that the buyers of lots are mere successors-in-interest of the debtor corporation, this Court, in *Spouses Paderes v. Court of Appeals*,³⁹ highlighted the nature of a mortgage as a lien to the property. Thus, the Court explained that transferees of such mortgaged property are bound by the lien as long as the principal obligation is not paid, viz:

1. Appellant's stand is that her undivided interest consisting of 20,000 square meters of the mortgaged lot, remained unaffected by the foreclosure and subsequent sale to PNB, and she "neither secured nor contracted a loan" with said bank. What PNB foreclosed, she maintains, "was that portion belonging to Ruperta Lavilles only," not the part belonging to her.

Appellant's position clashes with precepts well-entrenched in law. By Article 2126 of the Civil Code, a "mortgage directly and immediately subjects the property on which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." Sale or transfer cannot affect or release the mortgage. **A purchaser is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the creditor "in order that he, under the terms of the contract, may recover the amount of his credit therefrom."** For, a recorded real estate mortgage is a right in rem, a lien on the property whoever its owner may be. **Because the personality of the owner is disregarded; the mortgage subsists notwithstanding changes of ownership; the last transferee is just as much of a debtor as the first one;** and this, independent of whether the transferee knows or not the person of the mortgagee. So it is, that a mortgage lien is inseparable from the property mortgaged. **All subsequent purchasers thereof must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee. For, the mortgage, until discharge, follows the property.**⁴⁰ (Emphasis ours)

In the oft-cited case of *China Banking Corp. v. Spouses Lozada*,⁴¹ this Court specifically ruled that condominium buyers who derive their right from the developers are not third parties who possess the foreclosed property adversely from the mortgagor. They are merely transferees or successors-in-interest of the developer-mortgagor. This Court did not consider them in the same category, or possessing rights similar to a co-owner, agricultural tenant, and usufructuary. While it recognized the protection accorded to property buyers under Section 18⁴² of P.D. No. 957, it declared that the issue

³⁹ *Spouses Paderes v. Court of Appeals*, 502 Phil. 76 (2005) [Per J. Carpio Morales], citing *Philippine National Bank v. Mallorca*, 21 SCRA 694 (1967) [Per J. Sanchez].

⁴⁰ *Rollo*, G.R. No. 200683, pp. 84-85.

⁴¹ 579 Phil. 454 (2008) [Per J. Chico-Nazario].

⁴² Section 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit

on the validity of the mortgage will not affect the court's obligation to issue a writ of possession in favor of the developer's creditor.

The aforesaid doctrine has been echoed in succeeding cases concerning applications for writs of possession. In *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*,⁴³ this Court declared that the son of the judgment debtors, who bought the property after the foreclosure and registration of sale, is not an adverse possessor but merely a successor of the judgment debtors. Their presence in the foreclosed property do not affect the trial court's ministerial duty to issue a writ of possession in favor of the mortgagee. Likewise, in *Cabling v. Lumapas*,⁴⁴ this Court ruled that when the judgment debtor executes a deed of conditional sale involving the subject property prior to the mortgage or foreclosure, the buyer is not a party whose possession maybe considered independent and adverse to the debtor-mortgagor.

In *Spouses Marquez v. Spouses Alindog*,⁴⁵ this Court upheld the issuance of a writ of possession in favor of the mortgagee despite objection from the buyers of the mortgaged property. The Court explained that a third-party must not only possess the property, he must also have a right adverse to the mortgagor. Otherwise, he is merely a successor-in-interest who cannot seek to enjoin the implementation of a writ of possession.

The Court made the same ruling in *BPI Family Savings Bank v. Golden Power Diesel Sales Center, Inc.*⁴⁶ In that case, not only was the possessor a buyer of the mortgaged property, the Court also found that they were privies to the mortgage, having expressly agreed to assume the remaining portion of the debtor-mortgagor's liability to the mortgagee. Thus, the Court ruled that the implementation of the writ of possession should not be enjoined.

After a review of our laws and jurisprudence, this Court is convinced that there is ample legal basis to treat condominium and subdivision lot buyers in the same way as co-owners, agricultural tenants and usufructuaries, who are considered as third-party adverse possessors entitled to protection against summary possessory writs. In other words, while the general rule remains to be that the trial court has a ministerial duty to issue a writ of possession under the conditions provided by the law, such duty ceases to be *ex-parte* and non-adversarial when there are third-parties, such as co-owners,

directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

⁴³ 706 Phil. 106 (2013) [Per J. Perlas-Bernabe].

⁴⁴ 736 Phil. 582 (2014) [Per J. Brion].

⁴⁵ 725 Phil. 237 (2014) [Per J. Perlas-Bernabe].

⁴⁶ 654 Phil. 382 (2011) [Per J. Carpio].

agricultural tenants, usufructuaries, and condominium units and subdivision lot buyers, who possess the property adversely to the judgment-mortgagor. Our substantive and case law justify this preferential treatment.

The primary law providing protective mantle to real estate buyers is PD 957. Its preamble⁴⁷ states that the impetus for state intervention in these kinds of agreements are the exploitative practices of developers, subdivision, and condominium sellers and operators. Indeed, individual property buyers do not have the resources similar to banks and financial institutions, which can sufficiently inform and protect them from acts, transactions, and contracts that may challenge or oust them of their ownership and possession of their subdivision or condominium property.

Other than PD 957, Republic Act (RA) No. 6552, otherwise known as the Realty Installment Buyer Act (Maceda Law), also accords real estate installment buyers statutory privileges meant to facilitate and safeguard their purchase,⁴⁸ viz:

Section 2. It is hereby declared a public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions.

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

⁴⁷ WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;" xxx

⁴⁸ See also Concurring Opinion of Associate Justice Caguioa in *Spouses Rosario v. GSIS*, *supra* note 1.

(b) If the contract is canceled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

Section 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due.

If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.

Further, it is also relevant to point out that the Civil Code also favors the protection of adverse possessors. Article 433 thereof provides:

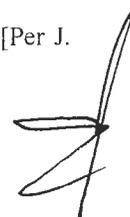
Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Verily, jurisprudence⁴⁹ is replete with pronouncements that persons who are in prior possession of a property are generally respected. They enjoy a disputable presumption of ownership. Thus, even the actual owner cannot instantaneously seize possession without resorting to appropriate legal remedies, where conflicting claims and rights of the parties may be fully ventilated.

Applications for possessory writs is certainly not the proper proceeding where the court is authorized to hear the parties' arguments and adjudicate on the issue of both ownership and possession.⁵⁰ It may be recalled that an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is merely an offshoot of any of the following proceedings: (1) a land registration proceedings under Section 17 of Act 496; (2) a judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had

⁴⁹ *Javelosa v. Tapus*, G.R. No. 204361, 04 July 2018 [Per J. Reyes]; *Hernandez v. Ocampo*, 792 Phil. 854 (2016) [Per J. Járdeleza]; *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002) [Per J. Ynares-Santiago].

⁵⁰ *See Spouses Cabasal v. BPI Family Savings Bank, Inc.*, G.R. No. 233846, 18 November 2020 [Per J. Zalameda].



intervened; (3) and a extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended; and (4) in execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court).⁵¹

Further, in the event that the mortgagee avails of extrajudicial foreclosure of the mortgage, such as in the instant case, the petition is merely filed with the office of the sheriff of the province where the sale is to be made. It is not filed and adjudicated by courts of justice as in judicial foreclosure under Rule 68 of the Rules of Court. Thus, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature.⁵²

This Court therefore reminds trial courts to be circumspect in issuing *ex-parte* possessory writs, particularly, as to buyers of condominium units and subdivision properties in installment, who are deemed third parties in possession asserting rights which are independent or adverse to that of the judgment debtor. Indeed, the court's duty to issue writs of possession ceases to be ministerial once it is established that there are adverse possessors thereon which were deprived their day in court. Courts should not hastily grant possession either to the purchaser, redemptioner or third-party-purchaser when a third party is actually holding the property adversely to the judgment debtor.⁵³

Verily, in *Spouses Rosario v. GSIS*, this Court ruled that GSIS cannot summarily deprive condominium buyers of their properties. While We noted that under Section 18 of PD No. 957, aggrieved property buyers are provided with relief, the same may not be sufficient in implementing their rights therein. Indeed, condominium or subdivision buyers may seek the annulment of the mortgage between the developer and the financial institution entered without the prior written approval of the HLURB. They may likewise avail of *terceria* or an independent separate action to recover the possession of the properties.⁵⁴ By the *terceria*, an aggrieved third party

⁵¹ *Spouses Reyes v. Spouses Chung*, 818 Phil. 225 (2017) [Per J. Velasco].

⁵² *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002) [Per J. Ynares-Santiago].

⁵³ *Hernandez v. Ocampo*, 792 Phil. 854 (2016) [Per J. Jardeleza].

⁵⁴ Section 16, Rule 39 of the Rules of Court provides:

Sec. 16. *Proceedings where property claimed by third person.* --- If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and copy thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from

who is not the judgment debtor may serve an affidavit of his title and a copy thereof upon the judgment creditor.⁵⁵ Upon such service the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent "separate action," the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other.⁵⁶

Despite the availability of these judicial remedies, they do not diminish the adverse consequences that may result from the issuance of a writ of possession in favor of the judgment creditor. Verily, a pending action to annul the mortgage or the foreclosure sale will not, by itself, stay the issuance of the writ of possession.⁵⁷ In the meantime, these property buyers may be deprived of the possession of their property or residence should a financial institution foreclose a mortgage thereon. Such a scenario is clearly inconsistent with the policy behind P.D. No. 957. Individual subdivision and condominium buyers are legally entitled to protection from being summarily ejected from their homes through processes which they may completely be unaware of.

Moreover, the protection afforded to these special group of persons should not be defeated, particularly by someone who is not a mortgagee in good faith.⁵⁸ The Court noted that GSIS knew that the mortgaged properties form part of a condominium projects which are within the purview of PD No. 957. This is clear from Section 6.2 of the Loan Agreement, *viz*:

Section 6.2 That during the lifetime of this mortgage, the BORROWER-MORTGAGOR shall not alienate, sell, dispose of, mortgage, or in any manner, encumber the mortgaged properties, or any portion thereof without the prior written consent of the LENDER-MORTGAGEE.

However, the BORROWER-MORTGAGOR may continue to sell the

the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

xxx

⁵⁵ *China Banking Corp. v. Spouses Ordinario*, 447 Phil. 557 (2003) [Per J. Sandoval-Gutierrez].

⁵⁶ *Hernandez v. Ocampo*, 792 Phil. 854 (2016) [Per J. Jardeleza].

⁵⁷ *Spouses Gallent v. Velasquez*, 784 Phil. 44 (2016) [Per J. Reyes].

⁵⁸ *Luzon Development Bank v. Enriquez*, 654 Phil. 315 (2011) [Per J. Del Castillo].

366 housing units, the 102 condominium units and its right on the 240 condominium units subject to the condition that the net proceeds from the sales should be exclusively used in recoupment of the loan. Should the BORROWER-MORTGAGOR violate this provision, it agrees and obligates itself to pay the LENDER-MORTGAGEE liquidated damages in an amount equivalent to 10% of the total loss, which amount shall automatically be added to the principal of the loan covered by the Mortgage, without the need of executing another contract and the LENDER-MORTGAGEE may declare the entire amount due and demandable.⁵⁹ (Emphasis ours)

By agreeing to the contract, GSIS was aware and consented that the loaned amounts were to be used for the development of NSJBI's various projects.⁶⁰ Thus, GSIS was deemed to have assumed the risk that some of the condominium units would eventually be sold to individual buyers.

In the present case, not only is GSIS charged with constructive knowledge or undertook the risk of third parties occupying the property, it has actual notice of their possession of the condominium units prior to its application for possessory writ. As duly noted by the RTC in its 07 April 2008 Order:

Last but certainly of equal significance is the fact which has been brought to the attention of the Court that petitioner knew of the filing and pendency of the HLURB Case No. REM-A-0SG127-0015, later CA G.R. SP No. 92839 of the Court of Appeals, where a cease-and-desist order has been issued against both petitioner and respondent prohibiting consolidation of title over Marcelino delos Reyes' unit pending termination of that case. The Court, pursuant to Rule 129, Section 1 of the Revised Rules on Evidence, is empowered to take judicial notice of the said orders and proceedings, without the introduction of evidence.

This disclosure reinforces this Court's finding that petitioner was fully cognizant and aware of the possession by third parties-buyers of the subject condominium units, prior to its filing of this petition, and yet it decided to take this "procedural shortcut" in the very words of the Supreme Court afore-cited.⁶¹

Instead of questioning petitioners' supposed ownership of the property in a proper proceeding, GSIS opted to take advantage of the procedural shortcut of a possessory writ. Such unjust situation is precisely the evil sought to be addressed by P.D. No. 957. Despite payment of the purchase price, herein petitioners are suddenly in grave danger of losing their respective properties to GSIS. This compounds the failure of NSJBI and GSIS to inform petitioners of the mortgage agreement. Certainly, this Court

⁵⁹ *Rollo*, G.R. No. 211512, p. 77.

⁶⁰ See *Luzon Development Bank v. Enriquez*, 654 Phil. 315 (2011) [Per J. Del Castillo].

⁶¹ *Rollo* of G.R. No. 211512, p. 63.

cannot countenance such unfair and cursory disregard of petitioners' plight. Procedural rules cannot be used to defeat the interests of justice.

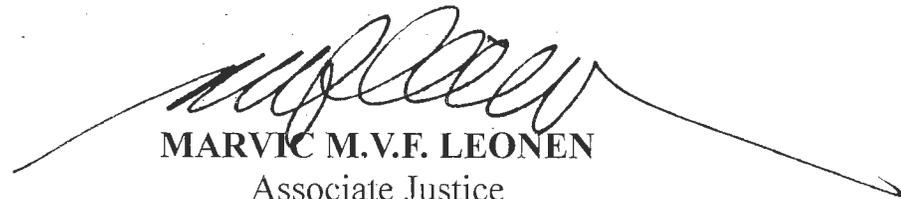
As this Court has held in *Spouse Rosario v. GSIS*, instead of summarily granting GSIS' *ex-parte* application for a writ of possession, the trial court must first conduct a hearing to determine the nature and source of the buyer's supposed right to the foreclosed property. Should the judge be satisfied that the oppositors to the issuance of the writ are *bona fide* condominium or subdivision buyers who are in actual possession of the property, they should be excluded from the implementation of the writ. It should, however, be clarified that exclusion of such buyers is without prejudice to the outcome of cases concerning the validity of mortgage between the developer and the mortgagee financial institution or bank under Section 18 of PD No. 957.

WHEREFORE, the petitions are hereby **GRANTED**. The Decision dated 28 July 2011 and Resolution dated 20 February 2012 of the Court of Appeals (CA), in CA-G.R. SP No. 110231 are hereby **REVERSED** and **SET ASIDE**. The Resolution dated 07 April 2008 of Branch 85, Regional Trial Court (RTC) of Quezon City in LRC Case No. Q-22034 is **REINSTATED**. The case is **REMANDED** to the RTC for a conduct of hearing for the exclusion from the writ of possession buyers of condominium units at St. John Condominium in Sct. Rallos, Quezon City who are in actual possession thereof.

SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



ROSMARID. CARANDANG
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
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.

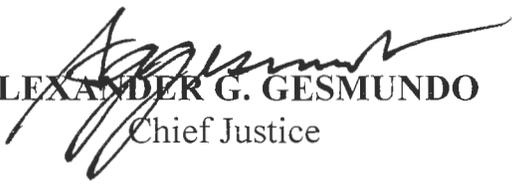


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



CERTIFICATION

Pursuant to the 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.


ALEXANDER G. GESMUNDO
Chief Justice