G.R. No. 200991 – SPOUSES WILFREDO and DOMINICA ROSARIO, *petitioners,* **versus GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondent.*

Promulgated:

MAR 18 2021

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia*'s finding that petitioners' intervention in the *ex parte* possessory writ proceeding is merited as an exception to the ministerial nature of the issuance of a writ of possession under Section 33, Rule 39 of the Rules of Court (Rules). The *ponencia* characterizes individuals who purchase condominium units or subdivision lots from developers such as petitioners in this case as similarly situated with co-owners, usufructuaries and agricultural tenants, who are considered third-party possessors who possess the property subject of the writ adversely to the judgment obligor.[1]

I agree with the *ponencia*'s characterization of petitioners as adverse third-party possessors. In particular, it addresses the concern that is central to this controversy, as that which pertains to the unfairness attending herein petitioners' situation, specifically the lack of notice to them that the condominium unit in their possession, Unit 205, was already foreclosed and sold at an auction, with the Government Service Insurance System (GSIS) as the sole bidder. As applied to the facts of the instant case, it is observable that even with petitioners' resort to the Housing and Land Use Regulatory Board (HLURB) for an annulment of the mortgage and foreclosure of the property in their possession, such resort would still not afford them with an adequate and timely remedy against a dispossession unless they are allowed to intervene in the possessory writ proceeding.

This is the factual scenario that is precisely what Republic Act No. (R.A) 6552[2] or the "Realty Installment Buyer Act" (Maceda Law) contemplates. Concurringly, I submit that Section 18 of Presidential Decree No. (P.D.) 957[3] or the "Subdivision and Condominium Buyers' Protective Decree" and the related and analogous provisions in the Maceda Law should be the proper guideposts which the Court is called upon to follow towards a reasonably anchored conclusion that allows petitioners, and those similarly

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1 *Ponencia*, pp. 4-7.

2 AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS, August 26, 1972.

3 REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, July 12, 1976.

> favor of buyers. **Within the bounds of reason, fairness, and justice, doubts in its interpretation must be resolved in a manner that will afford buyers the fullest extent of its benefits.**[11]

Four years after the Maceda Law came P.D. 957 which, for its part, likewise directed every intendment towards the protection of innocent lot buyers from scheming developers or onerous arrangements. The case of *Metropolitan Bank and Trust Company v. SLGT Holdings, Inc.*,[12] enlightens in this respect:

> As it were, [P.D.] 957 aims to protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices. Its preambulatory clauses say so and the Court need not belabor the matter presently. **Section 18, *supra*, of the decree directly addresses the problem of fraud and other manipulative practices perpetrated against buyers when the lot or unit they have contracted to acquire, and which they religiously paid for, is mortgaged without their knowledge, let alone their consent.** The avowed purpose of [P.D.] 957 compels, as the OP correctly stated, the reading of Section 18 as prohibitory and acts committed contrary to it are void. **Any less stringent construal would only accord unscrupulous developers and their financiers unbridled discretion to follow or not to follow [P.D.] 957 and thus defeat the very lofty purpose of that decree.** It thus stands to reason that a mortgage contract executed in breach of Section 18 of the decree is null and void.[13]

In the same vein, the Court in *Philippine National Bank v. Office of the President*[14] expounded on the rationale behind P.D. 957, as a tool to protect condominium unit and/or subdivision lot buyers against developers **and mortgaging banks**, to wit:

> x x x [T]he unmistakable intent of the law [is] to protect innocent lot buyers from scheming subdivision developers. **As between these small lot buyers and the gigantic financial institutions which the developers deal with, it is obvious that the law — as an instrument of social justice — must favor the weak.** Indeed, the petitioner bank had at its disposal vast resources with which it could adequately protect its loan activities, and therefore is presumed to have conducted the usual "due diligence" checking and ascertaining x x x the actual status, condition, utilization and occupancy of the property offered as collateral. x x x **On the other hand, private respondents obviously were powerless to discover the attempt of the land developer to hypothecate the property being sold to them.** It was precisely in order to deal with this kind of situation that P.D. 957 was enacted, **its very essence and intendment being to provide a protective mantle over helpless citizens who may fall prey to the razzmatazz of what P.D. 957 termed "unscrupulous subdivision and condominium sellers."**[15]

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11 Id. at 89-90 citing *Active Realty & Development Corporation v. Daroya*, 431 Phil. 753 (2002). Emphasis supplied.

12 G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516.

13 Id. at 526. Emphasis supplied.

14 G.R. No. 104528, January 18, 1996, 252 SCRA 9.

15 Id. at 10-11. Emphasis supplied.

Proceeding from the foregoing, if in the Maceda Law, a buyer who defaults after a threshold of installment payments (*i.e.*, at least two years) is given the right to pay the unpaid balance free of additional interests within a grace period equivalent to one month for every year of installment to be exercised every five years, as well as the right to be refunded the cash surrender value of the payments on the property equivalent to 50% of the total payments made in case of cancellation of the contract by a notarial act, then much more latitude should be rightly afforded a buyer on installment such as petitioners in this case, who have not been shown to have defaulted, but instead have been proven to have had possession of Unit 205 since 1998, and had been religiously paying installments for their purchase thereof.

Stated differently, if the defaulting buyers are afforded significant elbow room to ensure that they are given every opportunity to retain the property they are paying installments for, it is even more reasonably conceivable that a requirement of proper and effective notice to non-defaulting buyers/possessors such as herein petitioners is but a meager condition on the part of the mortgagor (*i.e.*, NSJBI) and mortgagee (*i.e.*, GSIS), when viewed in accordance with the overarching protective *animus* behind the Maceda Law and P.D. 957.

The Maceda Law and P.D. 957, thus, clearly grant installment buyers such as petitioners in this case substantive rights which are positively assertible against the developer/seller and other parties, including mortgagees of the latter.

Undoubtedly, this characterization is also consistent with the operative definition of "adverse" in the context of adverse possession under Section 33, Rule 39 of the Rules, which primarily means a possession that is in the possessor's own right, such that the third-party possessor may pursue a cause of action against the judgment debtor in order to preserve his possession over the property in dispute. The logic behind the nature of "adverse" possession in this conceptual context dovetails with the Court's elucidation of the same in the case of *Gallent, Sr. v. Velasquez*:[16]

> In *China Banking Corporation v. Spouses Lozada*, it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse to the debtor/mortgagor:
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> > Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real

[16] G.R. No. 203949, April 6, 2016, 788 SCRA 518.

> property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.
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> Specifically, the Court held that to be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor.[17]

Given the foregoing, since herein petitioners' possession of Unit 205 in this case affords them under the Maceda Law and P.D. 957 with substantive rights which are clearly assertible against the developer/seller and other parties, including mortgagees of the developer/seller, in order that they may be preserved in their possession of the same, such a nuanced statutory configuration effectively sets them apart from the operatively constrained "transferee" of the debtor or mortgagor, in that as opposed to mere transferees who obtain no better right to the property than that which the mortgagor had, petitioners here are granted specific protective substantive rights in order that they may not be expediently ousted from the property they possess by the mere fact that they purchased and are paying for the same in installments.

In fine, by reason of these protective statutory rights under the Maceda Law and P.D. 957, the buyers such as herein petitioners have been accorded third-party status, which they can assert against both the developer-seller mortgagor and the mortgagee. Thus, the sole exception under Section 33, Rule 39 of the Rules squarely applies in the instant case.

It is additionally observed that the GSIS as the mortgagee in this case may not feign unintended disregard or lack of awareness of whether or not the requirement of notice under Section 18 of P.D. 957 was complied with, and instead insist that it may proceed with taking possession of the mortgaged properties which were sold by NSJBI to innocent buyers. On the contrary, GSIS as the creditor in this case would have known precisely whether the buyers including petitioners were notified of said mortgage, since Section 18 of P.D. 957 requires such notice before the loan applied for by the developer may be released.

In this light, notwithstanding the fact that herein petitioners had already instituted a case before the HLURB which is presently pending with the Office of the President, and pursuant to a fair disposition of the instant case, I fully join the *ponencia*'s determination that petitioners should be allowed to intervene in the otherwise *ex parte* proceeding for the possessory writ, as these substantive laws governing sales of condominium units bring petitioners squarely within the contemplation of adverse third-person party possessors under Section 33, Rule 39 of the Rules.

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[17] Id. at 535-536 citing *China Banking Corporation v. Spouses Lozada*, 579 Phil. 454 (2008).

This is only consistent with the Court's repeated exhortation that the procedural rules cannot be used to defeat the ends of justice, or upend substantive rights.[18] Towards this end, I therefore fully agree with the *ponencia*'s conclusion, thus:

> Thus, in keeping with the avowed purpose of [P.D.] 957, the rule should now be that the issuance of a writ of possession ceases to be ministerial if a condominium or subdivision lot buyer intervenes to protect [his/her] rights against a mortgagee bank or financial institution. The court must order 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, the writ should thus be issued excluding the aforesaid buyers from its implementation. 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 [P.D.] 957.

Finally, it is submitted that a disposition otherwise would result in a *remedial gap* that effectively circumvents the singular objective of both the Maceda Law and P.D. 957. For in the final analysis, carving out this route would genuinely afford the most just and equitable remedy for petitioners in this case, who otherwise and despite resort to an action before the HLURB, must still fear an impending eviction by reason of a writ of possession which was issued as an ultimate consequence of a defaulted loan they had no hand in taking out or satisfying.

For these reasons, I vote to **GRANT** the petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[18] *Fajardo, Jr. v. Freedom To Build, Inc.*, G.R. No. 134692, December 8, 2000, 347 SCRA 474, 478.