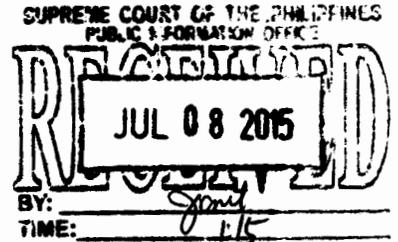




Republic of the Philippines  
**Supreme Court**  
 Manila



**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **June 17, 2015**, which reads as follows:*

**“G.R. No. 160996 (Lydia Arroyo v. The Development Bank of the Philippines, substituted by PHILIPPINE INVESTMENT TWO [SPV AMC], Inc.).** - Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Orders dated July 17, 2003,<sup>1</sup> and October 13, 2003,<sup>2</sup> respectively, issued by the Regional Trial Court (*RTC*) of Negros Occidental, Branch 43, in Cadastral Case No. 02-1500. The dispositive portion of the July 17, 2003 Order reads:

WHEREFORE, the Court, finding the Ex-Parte [M]otion for Writ of Possession to be sufficient in form and in substance, and upon the authority of the afore-quoted provision, hereby orders the issuance of the writ prayed for, to enable the movant-Development Bank of the Philippines (DBP) to gain possession of the property subject of this ex-parte motion and dispossess therefrom all occupants and others claiming to have rights thereunder and placing the said movant-bank in possession of the property covered by Transfer Certificate of Title No. T-263835.

SO ORDERED<sup>3</sup>

Meanwhile, the October 13, 2003 Order reads:

For reasons stated in the Opposition to Motion for Reconsideration and finding the said Motion for Reconsideration not to be impressed with merit, the same is DENIED.

SO ORDERED<sup>4</sup>

The facts are as follows:

<sup>1</sup> *Rollo*, pp. 21-22.

<sup>2</sup> Penned by Judge Philadelfa B. Pagapong-Agraviador ; *id.* at 23.

<sup>3</sup> *Rollo*, p. 22.

<sup>4</sup> *Id.* at 23.

32.

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In a verified Ex-Parte Petition for Issuance of Writ of Possession<sup>5</sup> dated March 15, 2002, the respondent Development Bank of the Philippines (DBP) alleged that it is the registered owner of the subject property covered by Transfer of Certificate Title (TCT) No. T-263835. The property was formerly owned by the spouses Frank and Lydia Arroyo who mortgaged it to the DBP on November 17, 1975. When the Spouses Arroyo (*the Spouses Arroyo*) failed to pay their mortgage account, the DBP extrajudicially foreclosed the mortgage and a certificate of sale was issued to it as the sole buyer of the property in an auction sale on July 12, 1999. As the Spouses Arroyo remained in possession of the property despite their failure to redeem it, the DBP prayed for the issuance of a writ to place it in control and possession thereof.

Finding the Ex-Parte Petition for Issuance of Writ of Possession to be sufficient in form and in substance, the RTC granted the petition, pursuant to Section 7 of Act No. 3135, as amended.<sup>6</sup>

In an Opposition and Motion for Reconsideration<sup>7</sup> dated September 9, 2003, petitioner Lydia Arroyo claimed that the DBP consolidated the title in its name and was issued TCT No. T-263835 without proper notice to her and her husband. She also pointed out that the filing of the petition for writ of possession is unauthorized. She noted that there is no allegation in the verification and certification against forum shopping that the person who filed and signed it was authorized by the Board of Directors of the DBP, and that there is no board resolution authorizing such person to do so.

In its Opposition to Motion for Reconsideration<sup>8</sup> dated October 13, 2003, the DBP insisted that the title of the property was consolidated in its name in accordance with law. In support of its claim that the person who filed the petition was authorized to do so, the DBP submitted a copy of a Secretary's Certificate<sup>9</sup> dated July 31, 2000 stating that as Acting Head of the DBP Bacolod Branch, Assistant Manager Mrs. Rosario Melanie C. Pama

<sup>5</sup> *Id.* at 27-30.

<sup>6</sup> 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 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 in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

<sup>7</sup> Records, pp. 27-29.

<sup>8</sup> *Id.* at 35-37.

<sup>9</sup> *Id.* at 38.

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was authorized to sign documents covering administrative matters necessary in conducting the business affairs of the bank, which include the filing of cases for recovery of possession of its properties, pursuant to Board Resolution No. 0575 dated December 11, 1995.

The RTC denied in the October 13, 2003 Order petitioner Lydia Arroyo's opposition and motion for reconsideration for lack of merit. Hence, she filed this petition for review on *certiorari*.

Petitioner's sole contention is that the RTC has decided a question of substance not in accord with law and jurisprudence. Specifically, it erred in rendering the assailed Orders when it overlooked the fact that the person who filed the Ex-Parte Petition for Issuance of Writ of Possession and who signed the Verification and Certification of Non-Forum Shopping was unauthorized.

The petition lacks merit.

On all fours with the instant petition is *Green Asia Construction and Development Corporation v. Court of Appeals*.<sup>10</sup> In that case where the issue of validity of the Certificate of Non-Forum Shopping was questioned in an application for the issuance of a Writ of Possession, the Court held:

x x x it bears stressing that a **certification on non-forum shopping is required only in a complaint or a petition which is an initiatory pleading. In this case, the subject petition for the issuance of a writ of possession filed by private respondent is not an initiatory pleading.** Although private respondent denominated its pleading as a petition, it is more properly a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but its purpose. The purpose of a motion is not to initiate litigation, but to bring up a matter arising in the progress of the case where the motion is filed.

Indeed, **an original action is not necessary to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property.** The right to possession is based simply on the purchaser's ownership of the property. Thus, **the mere filing of an *ex parte* motion for the issuance of a writ of possession would suffice. No verification and certification on non-forum shopping need be attached to the motion at all.**<sup>11</sup>

In *Metropolitan Bank and Trust Company v. Spouses Bance*,<sup>12</sup> the Court held that a certificate of non-forum shopping, as provided in Section

<sup>10</sup> 537 Phil. 889 (2006):

<sup>11</sup> *Green Asia Construction and Development Corporation v. Court of Appeals*, *supra*, at 894-895. (Emphasis added)

<sup>12</sup> 576 Phil. 471, 481 (2008).

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5, Rule 7 of the 1997 Rules of Civil Procedure, is required only in complaints or other initiatory pleadings, and a petition or motion for the issuance of the writ under Section 7 of Act No. 3135, as amended, is not a complaint or an initiatory pleading. Indeed, any insignificant lapse in the certification of non-forum shopping filed by petitioner does not render the writ irregular for no verification and certification on non-forum shopping need be attached to the motion at all. Thus, in *Metropolitan Bank & Trust Company v. Hon. Santos*,<sup>13</sup> the Court even went on to state that the certificate that Metrobank attached to its petition is a superfluity that the lower court should have disregarded.

In *The PTA of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co. (MBTC)*,<sup>14</sup> the Court stressed that it is not necessary to initiate an original action in order for the purchaser at an extrajudicial foreclosure of real property to acquire possession, because even if the application for the writ of possession was denominated as a "petition," it was in substance merely a motion. Thus, any insignificant lapse in the certification on non-forum shopping filed by the MBTC did not render the writ irregular. After all, no verification and certification on non-forum shopping need be attached to the motion.

Guided by the foregoing jurisprudence, the Court rules that it is immaterial that the verification and certification on non-forum shopping in the DBP's petition was signed by its Acting Branch Head, as such inconsequential oversight does not render such petition defective in form. All told, the RTC did not err in granting the DBP's *ex-parte* petition for writ of possession and in denying petitioner's opposition and motion for reconsideration.

**WHEREFORE**, the instant petition is **DENIED**. The assailed Orders dated July 17, 2003 and October 13, 2003, respectively, of the Regional Trial Court of Negros Occidental, Branch 43, in Cadastral Case No. 02-1500, are **AFFIRMED**. Costs against petitioner. (*Velasco, Jr., J., on leave; Del Castillo, J., designated Acting Member per Special Order No. 2060 dated June 17, 2015; Peralta, J., Acting Chairperson, per Special Order No. 2059 dated June 17, 2015*)

**SO ORDERED."**

Very truly yours,

  
WILFREDO V. LAPITAN  
Division Clerk of Court  
6/22/15

<sup>13</sup> 623 Phil. 134, 146 (2009).

<sup>14</sup> 627 Phil. 569, 681-682 (2010).

June 17, 2015

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Hon. Presiding Judge  
Regional Trial Court  
Branch 43, Bacolod City  
(Cadastral Case No. 02-1500)

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