



Republic of the Philippines  
**Supreme Court**  
 Manila

SECOND DIVISION

**HELEN E. CABLING**, assisted by her  
 husband **ARIEL CABLING**,  
 Petitioner,

**G.R. No. 196950**

Present:

BRION, J.,\*  
*Acting Chairperson*,  
 DEL CASTILLO,  
 PEREZ,  
 MENDOZA,\*\* and  
 PERLAS-BERNABE, JJ.

- versus -

**JOSELIN TAN LUMAPAS**, as  
 represented by **NORY ABELLANES**,  
 Respondent.

Promulgated:

JUN 18 2014 *WY Cabalag Perfecto*

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**DECISION**

**BRION, J.:**

We review the present petition for review on *certiorari*<sup>1</sup> that assails the May 12, 2011 decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 110865. The CA dismissed the petition for *certiorari*, prohibition and *mandamus* filed by petitioner Helen E. Cabling, assisted by her husband Ariel Cabling, which questioned the July 14, 2009<sup>3</sup> and September 10, 2009<sup>4</sup> orders of the Regional Trial Court (RTC) 3<sup>rd</sup> Judicial Region, Branch 75, Olongapo City, in Other Case No. 16-0-09.

\* In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1699 dated June 13, 2014.  
 \*\* Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 1696 dated June 13, 2014.  
<sup>1</sup> Filed under Rule 45 of the Rules of Court.  
<sup>2</sup> *Rollo*, pp. 20-28; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Japar B. Dimaampao.  
<sup>3</sup> Id. at 29-30; penned by Judge Raymond C. Viray.  
<sup>4</sup> Id. at 31.

*WY*

### **The Facts**

The petitioner was the highest bidder in an extrajudicial foreclosure sale conducted on December 21, 2007 over a 216-square meter property situated in the Barrio of Sta. Rita, Olongapo City and covered by Transfer Certificate of Title (*TCT*) No. T-14852.<sup>5</sup> The Final Deed of Sale<sup>6</sup> was issued by the Sheriff of Olongapo City on February 14, 2009 and the title to the property was duly transferred. TCT No. T-14853 was issued to the petitioner on March 23, 2009.<sup>7</sup>

On May 6, 2009, the petitioner filed an Application<sup>8</sup> for the Issuance of a Writ of Possession with the RTC.

On May 19, 2009, the RTC issued an order<sup>9</sup> granting the petitioner's application, and subsequently issued a Writ of Possession<sup>10</sup> and Notice to Vacate<sup>11</sup> dated May 20, 2009 and May 25, 2009, respectively.

On May 29, 2009, respondent Joselin Tan Lumapas, through counsel, filed a Motion for Leave of Court for Intervention as Party Defendant (with Urgent Motion to Hold in Abeyance Implementation of Writ of Possession)<sup>12</sup> and an Answer in Intervention,<sup>13</sup> as a third party in actual possession of the foreclosed property. She claimed that the property had previously been sold to her by Aida Ibabao, the property's registered owner and the judgment debtor/mortgagor in the extrajudicial foreclosure sale, pursuant to a Deed of Conditional Sale.<sup>14</sup>

On June 1, 2009, the RTC issued an order<sup>15</sup> holding in abeyance the implementation of the petitioner's writ of possession until after the resolution of the respondent's motion. The following day, the RTC denied the respondent's motion for intervention.<sup>16</sup> The respondent promptly filed a motion for reconsideration.<sup>17</sup>

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<sup>5</sup> Particularly described in a Certificate of Sale issued by the RTC on December 21, 2007; id. at 110-111.

<sup>6</sup> Id. at 112-113.

<sup>7</sup> Id. at 53-54.

<sup>8</sup> Id. at 45-52.

<sup>9</sup> Id. at 61.

<sup>10</sup> Id. at 62.

<sup>11</sup> Id. at 109.

<sup>12</sup> Id. at 64-68.

<sup>13</sup> Id. at 75-78.

<sup>14</sup> Id. at 104-105.

<sup>15</sup> Id. at 84.

<sup>16</sup> In an order dated June 2, 2009; id. at 85-86.

<sup>17</sup> In a motion for reconsideration dated June 11, 2009 and a Supplemental Motion for Reconsideration dated June 19, 2009; id. at 87-88 and 118-120, respectively.

### **The RTC's Orders**

On July 14, 2009, the RTC issued the 1<sup>st</sup> assailed order<sup>18</sup> granting the respondent's motion for reconsideration. It recalled and rendered ineffective the writ of possession issued to the petitioner, stating that "an ex-parte writ of possession issued pursuant to Act No. 335 (sic), as amended, cannot be enforced against a third person who is in actual possession of the foreclosed property and who is not in privity with the debtor/mortgagor."<sup>19</sup> Considering that the respondent was not a party to the extrajudicial foreclosure, the RTC held that she cannot be ousted of her possession by a mere *ex-parte* motion for the issuance of a possessory writ, and that the petitioner must now resort to the appropriate judicial process in order to recover the foreclosed property.

This time, the petitioner moved to reconsider the RTC's July 14, 2009 order, but the RTC denied the petitioner's motion in an order dated September 10, 2009 - the 2<sup>nd</sup> assailed order.<sup>20</sup>

### **The CA Ruling**

Before the CA, the petitioner filed a petition for *certiorari*, prohibition and *mandamus*, under Rule 65 of the Rules of Court, assailing the July 14, 2009 and September 10, 2009 orders of the RTC.

In a decision dated May 12, 2011, the CA dismissed the petitioner's Rule 65 petition and affirmed *in toto* the RTC's assailed orders. It ruled that, while the issuance of a writ of possession is generally a ministerial act, the RTC committed no grave abuse of discretion in recalling the petitioner's writ of possession because "the obligation of the trial court to issue a writ of possession ceases to be ministerial once it appears that there is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor[; and where] such third party exists, the trial court should conduct a hearing to determine the nature of his adverse possession."<sup>21</sup>

### **The Petition**

The petitioner argues that the present case is not an *exception* to the ministerial issuance of a writ of possession.

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<sup>18</sup> *Supra* note 3.

<sup>19</sup> *Rollo*, p. 29.

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

<sup>21</sup> *Rollo*, p. 26.

While recognizing the respondent's actual possession of the subject property, the petitioner contends that such possession is not adverse to that of the judgment debtor/mortgagor. Neither is possession in the concept of an owner because in a conditional sale, ownership is retained by the seller until the fulfillment of a positive suspensive condition, that is, the full payment of the purchase price.

### Our Ruling

#### **We find merit in the petitioner's arguments.**

The well-settled rule is that in the extrajudicial foreclosure of real estate mortgages under Act No. 3135<sup>22</sup> (as amended), the issuance of a writ of possession<sup>23</sup> is *ministerial* upon the court after the foreclosure sale and during the redemption period when the court may issue the order for a writ of possession upon the mere filing of an *ex parte* motion and the approval of the corresponding bond.<sup>24</sup>

The writ of possession also issues *as a matter of course*, without need of a bond or of a separate and independent action, after the lapse of the period of redemption,<sup>25</sup> and **after the consolidation of ownership and the issuance of a new TCT in the purchaser's name.**<sup>26</sup>

There is, however, an exception to the rule.

Under Section 33,<sup>27</sup> Rule 39 of the Rules of Court, which is made applicable to extrajudicial foreclosures of real estate mortgages, the

<sup>22</sup> Also known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages," approved on March 6, 1924.

<sup>23</sup> A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property.

<sup>24</sup> Section 7, Act No. 3135, as amended by Act No. 4118.

<sup>25</sup> *Bank of the Phil. Islands v. Icot, et al.*, 618 Phil. 320, 328-329 (2009).

<sup>26</sup> *Dev't Bank of the Phils. v. Prime Neighborhood Ass'n.*, 605 Phil. 660, 669 (2009).

<sup>27</sup> Section 33, Rule 39 of the Rules of Court provides:

*Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given.*

If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property in a capacity adverse to the judgment obligor.<sup>28</sup> Thus, the court's obligation to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial when there is a third party in possession of the property claiming a right adverse to that of the judgment debtor/mortgagor.

We emphasize that the exception provided under Section 33, Rule 39 of the Rules of Court contemplates a situation in which a third party holds the property **by adverse title or right**, such as that of a co-owner, tenant or usufructuary, **who possesses the property in his own right, and is not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.**<sup>29</sup>

In the present case, the respondent cannot be said to possess the subject property by adverse title or right as her possession is merely premised on the alleged *conditional* sale of the property to her by the judgment debtor/mortgagor.

The execution of a contract of conditional sale does not immediately transfer title to the property to be sold from seller to buyer. In such contract, ownership or title to the property is retained by the seller until the fulfillment of a positive suspensive condition which is normally the payment of the purchase price in the manner agreed upon.<sup>30</sup>

In the present case, the Deed of Conditional Sale between the respondent (buyer) and the subject property's registered owner (seller) expressly reserved to the latter ownership over the property until full payment of the purchase price, despite the delivery of the subject property to the respondent. It is provided in paragraph 6 of the parties' contract that only upon full payment of the total sale value of ₱2.2 million that the seller shall execute a deed of absolute sale in favor of the respondent.<sup>31</sup>

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Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** [emphasis ours, italics supplied]

<sup>28</sup> See *Bank of the Phil. Islands v. Icot, et al.*, *supra* note 25; *Dev't Bank of the Phils. v. Prime Neighborhood Ass'n.*, *supra* note 26, at 671; *Dayot v. Shell Chemical Company, (Phils.), Inc.*, 552 Phil. 602, 616 (2007); and *Philippine National Bank v. Court of Appeals*, 424 Phil. 757, 769 (2002).

<sup>29</sup> *China Banking Corp. v. Sps. Lozada*, 579 Phil. 454, 478-480 (2008).

<sup>30</sup> *Gomez v. Court of Appeals*, 395 Phil. 115, 124 (2000).

<sup>31</sup> *Rollo*, p. 105.

It likewise appears from the records that no deed of absolute sale over the subject property has been executed in the respondent's favor. Thus, the respondent's possession from the time the subject property was "delivered" to her by the seller cannot be claimed as possession in the concept of an owner, as the ownership and title to the subject property still then remained with the seller until the title to the property was transferred to the petitioner in March 2009. In order for the respondent not to be ousted by the *ex parte* issuance of a writ of possession, her possession of the property must be adverse in that she must prove **a right independent of and even superior to that of the judgment debtor/mortgagor.**

Under these circumstances, the general rule, and not the exception, applies.

**WHEREFORE**, premises considered, we **GRANT** the petition for review on *certiorari* and **REVERSE** and **SET ASIDE** the May 12, 2011 decision of the Court of Appeals in CA-G.R. SP No. 110865.

Accordingly, we **ORDER** the Regional Trial Court, 3<sup>rd</sup> Judicial Region, Branch 75, Olongapo City, to issue a Writ of Possession in favor of petitioner Helen E. Cabling.

**SO ORDERED.**

  
**ARTURO D. BRION**  
Associate Justice

**WE CONCUR:**

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL REREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
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.

**ARTURO D. BRION**

Associate Justice

Acting Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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