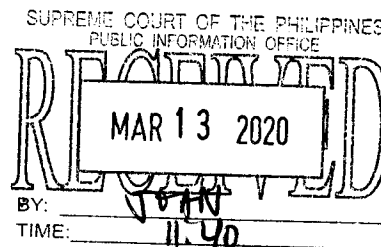




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 10, 2019** which reads as follows:*

“G.R. No. 226732- (Heirs of Edison S. Ang [a.k.a. Ang Pue Ke], represented by Pik Chun Co Ang [Mrs. Edison S. Ang], Steve C. Ang, and Queenie C. Ang v. BPI Family Savings Bank, Inc.)

Through a Petition for Review on *Certiorari*, heirs of Edison S. Ang (petitioners) impugn the Decision¹ dated May 30, 2016 and Resolution² dated August 23, 2016 of the Court of Appeals (CA) in CA- GR. CV No. 101489.

Relevant Antecedents

The case stemmed from an *Ex Parte* Petition for Issuance of Writ of Possession of a Certain Parcel of Real Property Described in and Covered by Transfer Certificate of Title No. T-252747 (M) of the Registry of Deeds of Meycauayan filed by BPI Family Savings Bank, Inc. (respondent).³

In said petition, respondent alleged that the spouses Pue Ke Ang (deceased) and Pik Chun Co (Spouses Ang) executed a real estate mortgage covered by Transfer Certificate of Title (TCT) No T-252747 (subject property) in its favor to secure the spouses Ang’s payment of loans, credit facilities, and other credit accommodations in the amount of ₱6 Million.⁴

However, Spouses Ang defaulted in their obligation; and

¹ Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante, concurring; *rollo*, pp. 25-41.

² *Id.* at 8-10.

³ *Id.* at 26.

⁴ *Id.*

despite demands, refused to pay the same.⁵

Consequently, respondent sought to extrajudicially foreclose the subject property pursuant to Act No. 3135.⁶

Respondent emerged as the highest bidder; and a Certificate of Sale was issued in its favor. The latter was subsequently registered with the Register of Deeds of Meycauayan, Bulacan on March 22, 2010.⁷

On July 27, 2010, a Demand to Vacate was sent to petitioners. Within the period of redemption, respondent filed an *ex parte* petition praying that a writ be issued directing the Sheriff to break open any enclosed fence, door or window of the subject property for the purpose of outstaying the spouses Ang and its occupants and to place or install respondent into actual possession.⁸

In a Decision⁹ dated November 25, 2010, the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11 granted the *ex parte* petition, thus:

WHEREFORE, finding the petition to be sufficient in form and in substance and the allegations therein to be meritorious, the same is hereby GRANTED. Let writ of possession be issued directing the Sheriff of this court to break open any enclosed fence, door or window to purposely oust therefrom respondents Sps. Pue Ke Ang and Pik Chun Co and/or any person or persons occupying and claiming rights and authority under them and to install herein petitioner the actual possession of the property described above as lot 1 Blk 1 of the subd. Plan Psd-03-068625, being a portion of lot 10-C-2-D, Psd-03-048199 L.R.C. Rec No.) situated in Bancal, City of Meycauayan, Province of Bulacan, together with all the improvements existing thereon.

SO ORDERED.

Correspondingly, on February 21, 2012, a Writ of Possession¹⁰ was issued.

On December 7, 2012, petitioners moved to set aside the foreclosure sale and the writ of possession, alleging that: (1) respondent failed to demand payment of their obligation; (2) the

⁵ Id.

⁶ Id.

⁷ Id. at 26-27.

⁸ Id. at 27.

⁹ Id. at 51-52.

¹⁰ Id. at 53-54.

foreclosure petition has not faithfully complied with the procedural requirements; and (3) the notice of posting, publication, and auction was defective.¹¹

Respondent opposed the motion, stating that any question regarding regularity and validity of the issuance of a writ of possession cannot be raised in the same proceeding as the issuance of such writ is a ministerial duty of the court. Thus, any question arising therefrom must be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135.¹²

In its reply, petitioners countered that there was no need to file a separate action based on Section 8 of Act No. 3135, which explicitly allows the same.¹³

On June 13, 2013, the RTC denied the motion, essentially upholding the ministerial duty of the court to issue a writ of possession in favor of the owner in a foreclosure sale.¹⁴

A Motion for Reconsideration was filed by petitioners, which was denied in an Order dated August 1, 2013.¹⁵

Aggrieved, petitioners filed an appeal before the CA.

In the assailed Decision¹⁶ dated May 30, 2016, the CA denied the appeal and affirmed the ruling of the RTC. Anchored on the text of Section 8 of Act No. 3135, which allows the debtor to challenge the issuance of the writ of possession and foreclosure sale in the *same proceedings*, the CA held that such provision applies only when the purchaser is placed in possession of the property. In this case, however, petitioners who are the debtors were still in actual possession of the subject property at the time of filing of their motion to set aside the writ of possession and foreclosure sale. Thus, they cannot file such motion in the same proceedings in which the issuance of a writ of possession was requested.

Moreover, the CA observed that petitioners failed to redeem the property within the prescribed period; as such, respondent becomes the absolute owner of the subject property. Accordingly, it is a ministerial duty of the trial court to issue a writ of possession. Thus,

¹¹ Id. at 29.

¹² Id. at 30.

¹³ Id.

¹⁴ Id. at 80-81.

¹⁵ Id. at 86.

¹⁶ Supra note 1.

any question regarding the validity of the foreclosure sale and the issuance of the writ of possession must be determined in a subsequent proceeding.

The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Orders dated June 13, 2013 and August 1, 2013 of the Regional Trial Court of Malolos, Bulacan, Branch 11, in LRC Case No. P-455-2010 are hereby **AFFIRMED**.

SO ORDERED.

Petitioners filed a motion for reconsideration, which was likewise denied in a Resolution¹⁷ dated August 23, 2016.

Hence, this petition.

In sum, petitioners insist that they may raise the issue of the propriety of the foreclosure sale and the issuance of a writ of possession in the *same* proceedings.

The petition must be denied.

In an extrajudicial foreclosure sale, the purchaser's title is merely inchoate during the redemption period. As such, the debtor is given the opportunity to contest the transfer of possession during the redemption period.¹⁸ Such remedy is explicit in Section 8 of Act No. 3135:

Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

¹⁷ Supra note 2.

¹⁸ See *680 Home Appliances, Inc. v. Court of Appeals*, 744 Phil. 481, 492 (2014).

Under Section 8, the motion to set aside the sale and cancel the writ of possession may be filed in the *same proceedings* in which the possession was requested; *provided*, that the purchaser in the foreclosure sale is placed in *actual possession* of the subject property. This is required because until then the debtor, as the owner of the property, does not lose his right to possess.¹⁹

In this case, it is undisputed that petitioners continued to possess and occupy the subject property even after its sale to respondent. As the latter was never placed in actual possession thereof, the remedy under Section 8 is not available to petitioners.

Moreover, it must be emphasized that before the filing of said motion, the title of the subject property was already consolidated in the name of the respondent after the lapse of redemption period, without the petitioners exercising their right to redeem. On this note, the writ of possession becomes a matter of right; and the issuance thereof becomes a ministerial function of the court.²⁰

Corollary, the motion to set aside the foreclosure sale and writ of possession must be filed in a separate proceeding.

Petitioners' reliance in the cases of *Samson v. Rivera*²¹ and *Spouses Ong v. Court of Appeals*²² is misplaced. In both cases, this Court recognized that the purchaser must be placed in possession first before the remedy under Section 8 becomes available. Neither can they find relief in the case of *Marcelo Steel Corporation v. Court of Appeals*²³ as the Court therein categorically held that any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8 because the proceedings for the issuance of a writ of possession is *ex parte*.

Moreover, petitioners' allegation that the Orders dated June 13, 2013 and August 1, 2013 issued by the RTC did not comply with the Constitutional requirement that a decision rendered by any court shall clearly and distinctly set out the facts and law on which it is based deserves scant consideration.

An examination of the Order dated June 13, 2013 reveals that

¹⁹ Id.

²⁰ See *Nagtalon v. United Coconut Planters Bank*, 715 Phil. 595, 601-602 (2013).

²¹ 472 Phil. 836 (2004).

²² 388 Phil. 857 (2000).

²³ 158 Phil. 333 (1974).


the RTC sufficiently explained its disposition. Citing jurisprudence to reinforce its decision, the RTC explained that the issuance of a writ of possession becomes a matter of course as it is the ministerial duty of the courts to do so based on the factual circumstances of the case. Moreover, in the Order dated August 1, 2013 is a resolution of the RTC based on petitioners' motion for reconsideration, which merely reiterated the issues already decided upon. By denying due course the motion, the RTC complied with the Constitutional requirement when it cited petitioners' failure to advance any compelling ground to warrant the reversal of its earlier ruling.²⁴

In all, this Court finds no reason to warrant the reversal of the assailed CA Decision and Resolution.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated May 30, 2016 and Resolution dated August 23, 2016 of the Court of Appeals in CA- G.R. CV No. 101489 are **AFFIRMED in toto**.

SO ORDERED."

Very truly yours,


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Division Clerk of Court ^{mtw}
272-B

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(LRC Case No. P-455-2010)

²⁴ See *German Machinerics Corporation v. Endaya*, 486 Phil. 545, 556-557 (2004).