

SECOND DIVISION

JOSEFINA F. INGLES, JOSE F. INGLES, JR., HECTOR F. INGLES, JOSEFINA I. ESTRADA, and TERESITA I. BIRON, **G.R. No. 141809**
Petitioners,

-versus-

HON. ESTRELLA T. ESTRADA, in her capacity as former EXECUTIVE JUDGE, Regional Trial Court of QUEZON CITY, and CHARLES J. ESTEBAN,
Respondents.

X-----X

JOSEFINA F. INGLES, JOSE F. INGLES, JR., HECTOR F. INGLES, JOSEFINA I. ESTRADA and TERESITA I. BIRON, **G.R. No. 147186**
Petitioners,

-versus-

HON. ARSENIO J. MAGPALE, Judge, Presiding over Branch 225, Regional Trial Court, QUEZON CITY, and CHARLES J. ESTEBAN,
Respondents.

X-----X

**JOSEFINA F. INGLES, JOSE
F. INGLES, JR., HECTOR
INGLES, JOSEFINA I.
ESTRADA and TERESITA I.
BIRON,**

Petitioners,

-versus-

G.R. No. 173641

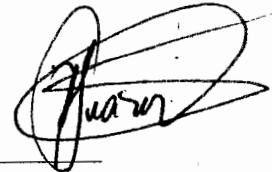
Present:

**CARPIO,
Chairperson,
VELASCO, JR., *
BRION,
DEL CASTILLO, and
PEREZ, JJ.**

CHARLES J. ESTEBAN,
Respondent.

Promulgated:

APR 08 2013



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DECISION

PEREZ, J.:

For decision are the following petitions for review on *certiorari*:¹

1. **G.R. No. 141809**, which assails the Resolutions² dated 28 December 1999 and 28 January 2000 of the Court of Appeals in CA-G.R. SP. No. 56292;

2. **G.R. No. 147186**, which assails the Resolutions³ dated 29 November 2000 and 16 February 2001 of the Court of Appeals in CA-G.R. SP No. 58790; and

* Per Special Order No. 1437 dated 25 March 2013.

¹ All under Rule 45 of the Rules of Court.

² The Resolutions were penned by Associate Justice Ma. Alicia Austria-Martinez (now a retired Justice of the Supreme Court) for the Special Sixth Division of the Court of Appeals with Associate Justices Martin S. Villarama, Jr. (now a Justice of the Supreme Court) and Justice Andres B. Reyes, Jr. concurring. *Rollo* (G.R. No. 141809), pp. 26-27 and pp. 29-31.

³ The Resolutions were penned by Associate Justice Eliezer R. De Los Santos for the Special Seventh Division of the Court of Appeals with Associate Justices Buenaventura J. Guerrero and Jose L. Sabio, Jr. concurring. *Rollo* (G.R. No. 147186), p. 31 and pp. 33-35.



3. **G.R. No. 173641**, which assails the Decision⁴ dated 31 March 2006 and Resolution⁵ dated 19 July 2006 of the Court of Appeals in CA-G.R. SP No. 84738.

These petitions share the same facts:

The Land, Loan and Mortgage

Jose D. Ingles, Sr. (Jose) and his wife, petitioner Josefina F. Ingles (Josefina), were the registered owners of a 2,265 square meter parcel of land in Quezon City per Transfer Certificate of Title (TCT) No. 125341 PR-17485.⁶ TCT No. 125341 PR-17485 contains the following *technical description* of the land of Jose and Josefina:⁷

A parcel of land (lot 13, block W-35 of the subd. [p]lan Psd-7365-D, being a portion of Lot R.P. 3-D-2-B of Plan BSD-7365-D, G.L.R.O. Rec. No. 7681) situated in the District of Diliman, Quezon City. Bounded on the NW., along line 1-2 by lot 14, block W-35[;] on the NE., along line 2-3-4-5-6, by R-285; on the SE., along line 6-7-8-9, by R-283; on the SW., along line 9-10 by lot 13, block Q-35; and on the NW., along line 10-1 by lot 15 block W-35; all of the subd. [p]lan x x x x beginning, containing an area of TWO THOUSAND TWO HUNDRED SIXTY FIVE (2,265) SQUARE METERS, more or less.

On 14 April 1993, Jose and Josefina obtained a loan in the amount of ₱6,200,000.00 from respondent Charles J. Esteban (Charles). As collateral for such loan, Jose and Josefina mortgaged their above-described land in favor of Charles. A *Promissory Note*⁸ and a *Deed of Real Estate Mortgage*,⁹ evidencing both such loan and mortgage, were accordingly executed between Jose, Josefina and Charles on the same day.

The *Deed of Real Estate Mortgage*, the mortgaged land was mistakenly referred to as being covered by TCT No. 125141 PR-

⁴ The Decision was penned by Associate Justice Edgardo F. Sundiam for the Eighth Division of the Court of Appeals with Associate Justices Martin S. Villarama, Jr. (now a Justice of the Supreme Court) and Japar B. Dimaampao, concurring. *Rollo* (G.R. No. 173641), pp. 64-88.

⁵ Id. at 90-91.

⁶ Records (LRC Case No. Q-10766 [98]), Volume II, pp. 546-547.

⁷ Id. at 546.

⁸ *Rollo* (G.R. No. 173641), p. 214.

⁹ Id. at 213.

17485 instead of TCT No. 125341 PR-17485.¹⁰ Nevertheless, the deed identified the mortgaged land exactly in accordance with the *technical description* of TCT No. 125341 PR-17485.¹¹ The pertinent part of the *Deed of Real Estate Mortgage* thus read:¹²

For and in consideration of a loan in the amount of SIX MILLION TWO HUNDRED THOUSAND PESOS (P6,200,000.00), Philippine Currency, in hand given by the MORTGAGEE [Charles] to the MORTGAGOR/S [Jose and Josefina], the receipt, of the said amount is hereby acknowledged and confessed x x x, the MORTGAGOR/S [Jose and Josefina] hereby cede, transfer and convey, BY WAY OF FIRST MORTGAGE, unto and favor of the MORTGAGEE [Charles], his heirs, successors and assigns, a parcel of land located at _____, together with the residential house constructed on the said land, which is more particularly described in **Transfer Certificate of Title No. 125141 PR-17485**, Registry of Deeds of _____ as follows:

A parcel of land (lot 13, block W-35 of the subd. plan Psd-7365-D, being a portion of Lot R.P. 3-D-2-B of Plan Bsd-7365-D, G.L.R.O. Rec. [N]o. 7681) situated in District of Diliman, Quezon City. Bounded on the NW., along line 1-2 by lot 14, block W-35; on the NE., along line 2-3-4-5-6, by R-285; on the SE., along line 6-7-8-9, by R-283; on the SW., along line 9-10 by lot 13, block W-35; and on the NW., along line 10-1 by lot 15, block W-35; all of the subd. plan x x x x beginning, containing an area of TWO THOUSAND TWO HUNDRED SIXTY FIVE (2,265) SQUARE METERS, more or less. (Emphasis and underscoring supplied).

Moreover, the *Deed of Real Estate Mortgage* contained the following stipulation: “*upon the failure of the MORTGAGOR/S [Jose and Josefina] to pay [their loan] at maturity date x x x the MORTGAGOR/S [Jose and Josefina] may elect or choose to foreclose [the] mortgage judicially or extrajudicially x x x.*”¹³ The deed provided further that: “*in the event of extrajudicial foreclosure of [the] mortgage x x x the MORTGAGOR/S [Jose and Josefina] name, constitute and appoint the MORTGAGEE [Charles] as attorney-in-fact without further formality, with full power and authority to dispose*

¹⁰ Id.
¹¹ Id.
¹² Id.
¹³ Id.

the mortgaged property in accordance with the provision of Act 3135 as amended.”¹⁴

On 26 April 1993, Jose and Josefina requested the Register of Deeds of Quezon City for the division of their land into ten (10) lots.¹⁵ The request eventually led to the cancellation of TCT No. 125341 PR-17485 and the issuance of separate *Torrens* titles for each of the 10 lots, namely, TCT Nos. 85825-34.¹⁶

Upon maturity of their loan on 29 May 1993, Jose and Josefina issued to Charles a check for ₱6,200,000.00 as payment. Unfortunately, that check bounced.¹⁷

On 30 October 1993, Jose died.¹⁸ He was survived by Josefina and herein petitioners Jose F. Ingles, Jr., Hector Ingles, Josefina I. Estrada and Teresita Biron (collectively, the Ingleses).

On 13 July 1994, Charles sent to Josefina a letter demanding for the payment of her and her late husband’s loan. Charles, in the same letter, also threatened to foreclose the mortgage in his favor should Josefina fail to heed the demand for payment within ten (10) days from her receipt of the letter.¹⁹ To these, Josefina responded with her own letter asking Charles for an extension of time, *i.e.*, until 30 October 1994, within which to pay for all of her obligations.²⁰ Despite the extension, however, Josefina still failed to pay.²¹

The Extrajudicial Foreclosure

On 12 July 1997, Charles petitioned²² Executive Judge Estrella T. Estrada (Executive Judge Estrada) of the Regional Trial Court (RTC) of Quezon City for the *extrajudicial* foreclosure of the

¹⁴ Id.

¹⁵ Via a Letter dated 26 April 1993. Records (LRC Case No. 10766), Volume II, p. 548.

¹⁶ Id. at 549-558.

¹⁷ Josefina and Jose issued Bank of the Philippine Islands check no. 052161. The said check was subsequently presented by Charles to the United Coconut Planters Bank for deposit. The check, however, was dishonored for being drawn against insufficient funds (DAIF). Id. at 533.

¹⁸ *Rollo* (G.R. No. 173641), p. 66.

¹⁹ Records (LRC Case No. 10766), Volume II, p. 534.

²⁰ Id. at 535.

²¹ *Rollo* (G.R. No. 173641), p. 66.

²² Records (LRC Case No. 10766), Volume II, pp. 536-540.

mortgage in his favor. Invoking the provisions of Act No. 3135²³ and the *Deed of Real Estate Mortgage*, Charles sought for the sale at public auction of the ten (10) lots originally subsumed in TCT No. 125341 PR-17485 but which are now separately covered by TCT Nos. 85825-34 in the names of Josefina and her late husband.

On 8 October 1997, Executive Judge Estrada issued an *Order*²⁴ directing Atty. Mercedes Gatmaytan (Atty. Gatmaytan), the Clerk of Court and *Ex-Officio* Sheriff of the Quezon City RTC, to proceed with the extrajudicial sale of the ten (10) lots covered by TCT Nos. 85825-34.²⁵ Against such *Order*, the Ingleses filed a motion for reconsideration on 13 October 1997. On 20 November 2007, however, Executive Judge Estrada issued an *Order*²⁶ denying such motion for reconsideration.

On 1 December 1997, Atty. Gatmaytan issued a Notice of Sale²⁷ setting the public auction on 6 January 1998.

At the public auction, Charles was declared the highest bidder for all of the ten (10) lots. On 7 January 1998, Atty. Gatmaytan issued to Charles a corresponding Certificate of Sale.²⁸

The Legal Challenges of the Ingleses and the Petition for the Issuance of Writ of Possession of Charles

On 23 January 1998, the Ingleses filed with the Quezon City RTC a complaint for the *Annulment of the Deed of Real Estate Mortgage*²⁹ against Charles. In this complaint, the Ingleses claim that Jose and Josefina never actually consented to any mortgage on their land and that their signatures in the *Deed of Real Estate Mortgage* were obtained thru Charles' deception.³⁰ The Ingleses allege that Charles had deceived Jose and Josefina into signing blank documents, one of which eventually becoming the *Deed of Real Estate Mortgage*

²³ Entitled, "An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages." Act No. 3135 was amended by Act No. 4118.

²⁴ *Rollo* (G.R. No. 141809), pp. 57-60.

²⁵ On 13 October 1997, the Ingleses filed a motion for reconsideration of the 8 October 1997 Order. In her Order dated 20 November 2007, however, Executive Judge Estrada merely noted the said motion. *Rollo* (G.R. No. 173641), pp. 67-68.

²⁶ *Rollo* (G.R. No. 141809), pp. 61-62.

²⁷ Records (LRC Case No. Q-10766 [98]), Volume I, p. 398.

²⁸ *Id.* at 7.

²⁹ Records (LRC Case No. 10766), Volume II, pp. 711-725.

³⁰ *Id.*

and another becoming the *Promissory Note*, on the pretense that such documents were required in a business venture that they had.³¹ This complaint was docketed as **Civil Case No. Q-98-33277**³² and was raffled to Branch 225.

On 24 July 1998, Charles registered his Certificate of Sale with the Register of Deeds of Quezon City.³³

On 15 September 1998, Charles filed an *Ex-Parte Petition for Issuance of a Writ of Possession*³⁴ before the Quezon City RTC,³⁵ wherein he asked to immediately be placed in possession of the ten (10) lots foreclosed in his favor *in lieu* of their current possessors, the Ingleses.³⁶ This petition was docketed as **LRC Case No. Q-10766 (98)** and was raffled to Branch 92.

On 23 February 1999, Branch 92 of the Quezon City RTC issued an *Order*³⁷ directing **LRC Case No. Q-10766 (98)** to be consolidated with **Civil Case No. Q-98-33277**³⁸ under Branch 225. As a consequence of the consolidation, the records of **LRC Case No. Q-10766 (98)** were transferred to Branch 225.

³¹ Id.

³² This complaint was actually a “re-filed” complaint. The first complaint filed by the Ingleses for the annulment of the *Deed of Real Estate Mortgage* was filed on 6 December 1994 and was docketed as **Civil Case No. Q-94-22332**. This first complaint, however, was dismissed without prejudice *See* Records (LRC Case No. Q-10766 [98]), Volume I, p. 38.

³³ Id. at 7

³⁴ Id. at 2-6.

³⁵ In support of this petition, Charles also posted a bond of ₱240,000.00 representing the amount equivalent to the use of the ten (10) lots for a period of twelve (12) months. (*See* Section 7 of Act No. 3135.)

³⁶ Records (LRC Case No. Q-10766 [98]), Volume I, pp. 2-6.

³⁷ Id. at 130-132.

³⁸ The *Order* actually ordered the consolidation of LRC Case No. Q-10766 (98) with **Civil Case No. 94-2232** (Id. at 130-132). Later, by another order dated 9 March 1999, Branch 92 of the Quezon City RTC rectified the docket number of the civil case to which LRC Case No. Q-10766 (98) is to be consolidated with, from **Civil Case No. 94-2232** to **Civil Case No. 94-22332**, *see* Records (LRC Case No. Q-10766 [98]), Volume I, p. 133. However, at the time the *Order* was issued, there was no longer a **Civil Case No. 94-22332** to speak of, as the same had already been dismissed, albeit without prejudice, as of 10 October 1997, *see* Records (LRC Case No. Q-10766 [98]), p. 38. What the *Order* could have meant was the consolidation of LRC Case No. Q-10766 (98) with **Civil Case No. Q-98-33277**—which is the new docket number assigned to the “re-filed” complaint first dismissed without prejudice in **Civil Case No. 94-22332** and the only case pending in Branch 225 of the Quezon City RTC dealing with a similar set of facts. At any rate, LRC Case No. Q-10766 (98) was *in actuality* consolidated with **Civil Case No. Q-98-33277** under Branch 225. The *Order* also denied the *Motion to Dismiss and Opposition to the Petition* filed by the Ingleses *contra* Charles’ petition for the issuance of a writ of possession.

On 17 December 1999, on the other hand, the Ingleses filed before the Court of Appeals a petition for *Annulment of Final Orders*³⁹ pursuant to Rule 47 of the Rules of Court. In it, the Ingleses sought the nullification of the *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998⁴⁰ of Executive Judge Estrada, which allowed Charles to extrajudicially foreclose the mortgage on the ten (10) lots as well as to register the resulting Certificate of Sale. The Ingleses argue that Executive Judge Estrada was bereft of any jurisdiction to issue the assailed *Orders* in light of the provisions in the *Deed of Real Estate Mortgage*: (a) referring to the mortgaged property as being covered by TCT No. 125141 PR-17485 rather than TCT No. 125341 PR-17485, and (b) giving to Jose and Josefina, not to Charles, the right to choose whether the mortgage may be extrajudicially foreclosed or not.⁴¹ In issuing the assailed *Orders*, therefore, the Ingleses accuse Executive Judge Estrada of “*amending*,” “*altering*,” and “*revising*” the terms of the *Deed of Real Estate Mortgage* that could not be done in a mere extrajudicial proceeding.⁴² This petition was docketed as **CA-G.R. SP No. 56292**.

CA-G.R. SP No. 56292: Annulment of Final Orders

On 28 December 1999, the Court of Appeals in **CA-G.R. SP. No. 56292** issued a *Resolution*⁴³ dismissing the petition for *Annulment of Final Orders* on grounds of non-compliance with Section 4, Rule 47⁴⁴ and Section 3, Rule 46⁴⁵ of the Rules of Court. The Ingleses filed a motion for reconsideration.

³⁹ *Rollo* (G.R. No. 141809), pp. 32-56.

⁴⁰ The *Order* dated 27 July 2008 of Executive Judge Estrada, in effect, required the Register of Deeds of Quezon City to complete the registration of Charles’ Certificate of Sale. *Id.* at 63-65.

⁴¹ *Id.* at 32-56.

⁴² *Id.*

⁴³ *Id.* at 26-27.

⁴⁴ Section 4 of Rule 47 states:

Sec. 4. *Filing and contents of petition.* – The action shall be commenced by filing a **verified** petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner’s good and substantial cause of action or defense, as the case may be.

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The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense and a **sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he**

On 28 January 2000, the Court of Appeals issued a *Resolution*⁴⁶ denying the motion for reconsideration. In this later *Resolution*, however, the Court of Appeals used a different, albeit a more fundamental *rationale* to maintain its dismissal of the petition for *Annulment of Final Orders*.

In the later *Resolution*, the Court of Appeals dismissed the petition for *Annulment of Final Orders* on the ground of lack of jurisdiction. According to the Court of Appeals, it cannot take original cognizance of the Ingleses’ petition as the same does not qualify either as an action under Rule 47 or, for that matter, as any other case that would fall within its original jurisdiction under Rule 46 of the Rules of Court.⁴⁷ The Court of Appeals pointed out that the petition for *Annulment of Final Orders* assails orders issued by an executive judge in a proceeding merely for the extrajudicial foreclosure of a mortgage whereas the Rules of Court⁴⁸ clearly prescribes that only judgments, final orders and resolutions issued by a “*Regional Trial Court*” in “*civil actions*” may be the subject of annulment under Rule 47.⁴⁹ The Court of Appeals further added that, at any rate, the principle of hierarchy of courts dictates that the Ingleses should have first challenged the validity of the *Orders* of Executive Judge Estrada in an appropriate case before the RTC instead of resorting to a direct action before it.⁵⁰

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undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (Emphasis supplied).

Section 3 of Rule 46 provides:

Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements.* –

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The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied).

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Rollo (G.R. No. 141809), pp. 29-31.

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Id.

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Section 1 of Rule 47.

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Rollo (G.R. No. 141809), pp. 29-31.

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Id.

Unconvinced, the Ingleses appealed⁵¹ both *Resolutions* of the Court of Appeals before this Court in what would be the first of the three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 141809**.

The Proceedings in Quezon City RTC, Branch 225

Meanwhile, as **LRC Case No. Q-10766 (98)** had already been consolidated with **Civil Case No. Q-98-33277**, Charles filed a *Motion for Issuance of [a] Writ of Possession*⁵² before Branch 225 of the Quezon City RTC on 9 September 1999. Branch 225 was then presided by Judge Arsenio J. Magpale (Judge Magpale).

In his *Motion for Issuance of [a] Writ of Possession*, Charles reiterated his plea to be put in possession of the ten (10) lots.⁵³ But in order to show all the more his entitlement to a writ of possession, Charles also raised therein the fact that he now had consolidated title over the ten (10) lots as a consequence of the failure of the Ingleses to exercise their right of redemption within the period allowed by law.⁵⁴

On 19 November 1999, the RTC denied for lack of merit Charles' *Motion for Issuance of [a] Writ of Possession*. Four days after, Charles filed a motion for reconsideration.

On 7 February 2000, the RTC issued a resolution⁵⁵ on granting Charles' motion for reconsideration. The dispositive portion of the resolution allowed Charles to present *ex parte* evidence in support of his application for a writ of possession before the Branch Clerk of Court, viz:

IN VIEW OF THE FOREGOING, petitioner Charles J. Esteban's Motion for Reconsideration is GRANTED. For this purpose, the petitioner is hereby directed to present evidence *ex parte* before Atty. Arlene V. Mancao, Branch Clerk of Court, the appointed commissioner within five (5) days from receipt of this

⁵¹ Id. at 9-23.

⁵² Records (LRC Case No. Q-10766 [98]), Volume I, pp. 139-143.

⁵³ Id.

⁵⁴ On 2 February 2000, TCT Nos. N-210004 to 13 were issued in favor of Charles. Id. at 573-582.

⁵⁵ Id. at 438-439.

order and for the said commissioner to submit to the Court her report as soon as the presentation of ex-parte evidence is through.⁵⁶

On 29 February 2000, the Ingleses filed a motion for reconsideration against the 7 February 2000 resolution of the RTC.

On 1 March 2000, the Branch Clerk of Court received, in an *ex-parte* hearing, the testimony of Charles in support of his application for a writ of possession.⁵⁷ After which, Charles submitted a *Formal Offer of Evidence*⁵⁸ for his documentary exhibits.

On 10 May 2000, the RTC denied the Ingleses' motion for reconsideration.

Aggrieved, the Ingleses filed a *certiorari* petition⁵⁹ before the Court of Appeals contesting the 7 February 2000 resolution and 10 May 2000 order of the RTC. In the said petition, the Ingleses argue that the RTC gravely abused its discretion in allowing Charles to present *ex-parte* evidence on his application for a writ of possession despite the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**.⁶⁰ The Ingleses posit that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** effectively tied the resolution of Charles' application for a writ of possession with the resolution of their action for annulment of mortgage.⁶¹ For the Ingleses then, the RTC cannot simply allow Charles to present *ex-parte* evidence on his application for a writ possession without first laying to rest, in a judicial proceeding for that purpose, other related issues raised in **Civil Case No. Q-98-33277**.⁶² This *certiorari* petition, which was accompanied by a prayer for a temporary restraining order, was docketed before the Court of Appeals as **CA-G.R. SP No. 58790**.

On account of the pendency of CA-G.R. SP No. 58790, the RTC issued another resolution⁶³ on 10 July 2000 holding in abeyance

⁵⁶ Id. at 439.

⁵⁷ Id. at 583-591.

⁵⁸ Id. at 501-505.

⁵⁹ *Rollo* (G.R. No. 147186), pp. 36-67.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Records (LRC Case No. Q-10766 [98]), Volume III, p. 1106. This resolution was challenged Charles thru a petition for *certiorari* and *mandamus* before the Court of Appeals, which was docketed as CA-G.R. SP No. 61381, Records (LRC Case No. Q-

any action and resolution on Charles’ *Motion for Issuance of a Writ of Possession*.

Subsequently, however, Judge Magpale inhibited himself from further hearing **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**.⁶⁴ The two (2) consolidated cases were thus re-raffled and were eventually assigned to Branch 97 of the Quezon City RTC, which was then presided by Judge Oscar L. Leviste (Judge Leviste).⁶⁵

CA-G.R. SP No. 58790: Certiorari Petition

In **CA-G.R. SP No. 58790**, on the other hand, the Court of Appeals issued a *Resolution*⁶⁶ on 29 November 2000 dismissing outright the *certiorari* petition of the Ingleses on the ground of non-compliance with Section 1 of Rule 65⁶⁷ in relation to Section 3 of Rule 46⁶⁸ of the Rules of Court. The Court of Appeals condemned the

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10766 [98]), Volume III, pp. 1108-1129. On 26 September 2001, however, the Court of Appeals dismissed this petition for mootness in view of 12 July 2001 order of the RTC directing the issuance of a writ of possession in favor of Charles. *See Rollo* (G.R. No. 173641), pp. 77-78.

Id. at 75-76.

Id. at 75-76.

Rollo (G.R. No. 147186), p. 31 and pp. 33-35.

Section 1 of Rule 65 states:

Section 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a **verified** petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphasis supplied)

Section 3 of Rule 46 provides:

Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements*. –

x x x x

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

x x x x

certiorari petition as its verification and certificate against forum shopping⁶⁹ was signed by only two (2) out of its five (5) named petitioners. As it turns out, only Josefina and Hector F. Ingles signed the verification and certificate of non-forum shopping, while Jose F. Ingles, Jr., Josefina I. Estrada and Teresita Biron did not.⁷⁰

On 11 December 2000, the Ingleses filed before the Court of Appeals a motion for reconsideration. On 16 February 2001, the Court of Appeals issued a *Resolution*⁷¹ denying the Ingleses' motion for reconsideration.

The denial of their motion for reconsideration prompted the Ingleses to lodge an appeal⁷² before this Court that, in turn, became the second of three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 147186**.

The Proceedings in Quezon City RTC, Branch 97 and 98

Back in Branch 97 of the Quezon City RTC, proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** continued. On 2 April 2001, the RTC issued an Order⁷³ requiring Charles to submit a memorandum in support of his application for a writ of possession. The same order also required the Ingleses to file a comment on Charles' memorandum.

On 12 July 2001, after evaluating Charles' memorandum and the Ingleses' comment thereon, the RTC issued an Order⁷⁴ granting the *Ex Parte Petition for Issuance of a Writ of Possession*. The order directed the issuance of a writ of possession in favor of Charles.⁷⁵

On 19 July 2001, the Ingleses filed a *Motion For Reconsideration*⁷⁶ from the above order. The Ingleses also submitted a *Supplemental Motion For Reconsideration*⁷⁷ on 23 July 2001.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

⁶⁹ *Rollo* (G.R. No. 147186), pp. 65-67.

⁷⁰ *Id.* at 31.

⁷¹ *Id.* at 33-35.

⁷² *Id.* at 9-28.

⁷³ Records (LRC Case No. Q-10766 [98]), Volume V, p. 1659.

⁷⁴ *Id.* at 2190.

⁷⁵ *Id.*

⁷⁶ *Id.* at 2191-2197.

On 24 July 2001, the RTC issued an Order⁷⁸ directing Charles: (1) to submit an opposition to the Ingleses' *Motion for Reconsideration* and *Supplemental Motion for Reconsideration* within ten (10) days from receipt of the order, and (2) should the Ingleses find it necessary to file a reply in response to his opposition, to submit a rejoinder within ten (10) days from his receipt of such reply.⁷⁹

On 24 July 2001, Charles filed his Opposition⁸⁰ to the Ingleses' *Motion For Reconsideration* and *Supplemental Motion For Reconsideration*. On 2 August 2001, the Ingleses filed their Reply⁸¹ to Charles' opposition.

On 26 September 2001, the Ingleses also filed a *Motion To Dismiss*⁸² asking for the dismissal of the *Ex-Parte Petition for Issuance of a Writ of Possession*. For his part, Charles filed an Opposition⁸³ to the *Motion To Dismiss*.

Unfortunately, at about that time, Judge Leviste retired without being able to resolve the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss*.⁸⁴ The retirement of Judge Leviste eventually⁸⁵ led to a re-raffle of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** on 16 January 2003 that transferred the two (2) consolidated cases to Branch 98—presided by Judge Evelyn Corpuz-Cabochan (Judge Corpuz-Cabochan).⁸⁶

⁷⁷ Id. at 2198-2201.

⁷⁸ Id. at 2214.

⁷⁹ Id.

⁸⁰ Id. at 2215-2225.

⁸¹ Id. at 2241-2253.

⁸² Id. at 2273-2275.

⁸³ Id. at 2278-2285.

⁸⁴ *Rollo* (G.R. No. 173641), p. 78.

⁸⁵ Before LRC Case No. Q-10766 (98) and Civil Case No. Q-98-33277 were re-raffled, the resolution of the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* was initially brought before the sala of Judge Lucas P. Bersamin (who, at that time, was Presiding Judge of Branch 96 of the Quezon City, RTC, but is now an Associate Justice of this Court) in his capacity as pairing Judge of Branch 97. Then Judge Bersamin, in an Order dated 22 March of 2002, however, declined to resolve the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* citing as his reason: “the pendency of enumerable incidents attendant in these cases, thus, the interest of the parties will be better served if these cases will be heard by the regular judge.” Records (LRC Case No. Q-10766 [98]), Volume V, p. 2328.

⁸⁶ Raffle dated 16 January 2003. *Rollo* (G.R. No. 176341), pp. 78-79.

On 23 June 2004, or more than a year after **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** were raffled to Branch 98, Charles filed a *mandamus* petition⁸⁷ before the Court of Appeals. In it, Charles asked the Court of Appeals to compel Judge Corpuz-Cabochan to rule on the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* that have remained unresolved well beyond the period prescribed for its resolution under Supreme Court Administrative Circular No. 01-28.⁸⁸ This petition was docketed before the Court of Appeals as **CA-G.R. SP No. 84738**.

During the pendency of CA-G.R. SP No. 84738, the RTC (thru an 18 June 2004 Order⁸⁹ signed by Judge Corpuz-Cabochan) suspended the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**. As *rationale* for the suspension, the RTC cited the pendency of **G.R. Nos. 141809** and **147186** before this Court, to wit:

WHEREFORE, premises considered, it is hereby ordered that the proceedings in these consolidated cases are suspended until after the Honorable Supreme Court shall have resolved the pending petitions before it, docketed as G.R. No. (sic) 141809 and 147186.⁹⁰

As a response to the issuance of the above order, Charles filed a supplemental petition⁹¹ to his *mandamus* petition.

CA-G.R. SP No. 84738: Mandamus Petition

On 31 March 2006, the Court of Appeals rendered a *Decision*⁹² granting Charles' *mandamus* petition. The Court of Appeals thus disposed:

WHEREFORE, above premises all considered, the petition is hereby GRANTED. Public respondent Judge [Judge Corpuz-Cabochan] is hereby DIRECTED to resolve with dispatch the pending incidents in LRC Case No. Q-10766 (98), i.e. *Motion for*

⁸⁷ Id. at 93-103.

⁸⁸ Id.

⁸⁹ Id. at 79-80.

⁹⁰ Id.

⁹¹ Id. at 104-125.

⁹² Id. at 64-88.

Reconsideration dated July 19, 2001, *Supplemental Motion for Reconsideration* dated July 23, 2001 and *Motion to Dismiss*, dated September 21, 2001.⁹³

In its *Decision*, the Court of Appeals found that the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* were already due to be resolved pursuant to Section 15, Article VIII of the 1987 Constitution⁹⁴ and Supreme Court Administrative Circular No. 01-28,⁹⁵ which mandates trial courts to decide or resolve all cases or matters pending before them within three (3) months from the time they were submitted for decision or resolution.⁹⁶

Moreover, the Court of Appeals held that no justifiable reason exists why the Ingleses' *Motion For Reconsideration*, *Supplemental Motion For Reconsideration* and *Motion To Dismiss* should remain unresolved.⁹⁷ The Court of Appeals was not convinced that either the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277** or the pendency of **G.R. Nos. 141809** and **147186** may be used as a valid excuse to delay resolution of the subject motions.⁹⁸

The Ingleses filed a motion for reconsideration, but the Court Appeals remained steadfast in its *Resolution*⁹⁹ dated 19 July 2006.

Feeling slighted, the Ingleses filed an appeal¹⁰⁰ before this Court—the third of three petitions consolidated herein. This appeal by *certiorari* is currently **G.R. No. 173641**.

OUR RULING

We deny all three petitions.

⁹³ Id. at 87.

⁹⁴ Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and **three months for all other lower courts**. (Emphasis supplied).

⁹⁵ Dated 28 January 1998.

⁹⁶ *Rollo* (G.R. No. 173641), pp. 64-88.

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ Id. at 90-91.

¹⁰⁰ Id. at 14-60.

G.R. No. 141809

The sole issue presented in **G.R. No. 141809** was whether the Court of Appeals erred in dismissing the Ingleses' petition for *Annulment of Final Orders*.¹⁰¹

The Ingleses would have us answer in the affirmative; adamant that their petition for *Annulment of Final Orders* is an action validly instituted under Rule 47 of the Rules of Court.¹⁰² They argue that the Court of Appeals could have still taken cognizance of their petition even though the orders assailed therein were issued merely by an executive judge in an extrajudicial foreclosure proceeding.¹⁰³ The Ingleses posit that the assailed *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive Judge Estrada may, in view of their peculiar nature, be treated as final orders issued in a “civil action” by a “Regional Trial Court” itself.¹⁰⁴

On that note, the Ingleses claim that the assailed *Orders* of Executive Judge Estrada are not the usual orders issued in proceedings for extrajudicial foreclosure of mortgages.¹⁰⁵ According to the Ingleses, Executive Judge Estrada had to practically assume and exercise powers otherwise reserved only to an RTC judge presiding over a civil action when she issued the assailed *Orders*.¹⁰⁶ As the Ingleses further explain:

1. The assailed *Orders* allowed the extrajudicial foreclosure on their ten (10) lots despite the express provision in the *Deed of Real Estate Mortgage* referring to the mortgaged property as being covered by TCT No. 125141 PR-17485 and not by TCT No. 125341 PR-17485 *i.e.*, the mother title of the ten (10) lots.¹⁰⁷ In issuing the assailed *Orders*, therefore, Executive Judge Estrada acted as if she was a judge in an action for *Reformation of Contract* by interpreting that what the *Deed of Real Estate Mortgage* really meant was that the mortgaged property was covered by TCT No. 125341 PR-17485.¹⁰⁸

¹⁰¹ *Rollo* (G.R. No. 141809), p. 18.

¹⁰² *Id.* at 9-23.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

2. The assailed *Orders* also allowed the extrajudicial foreclosure on their ten (10) lots even though Jose and Josefina never exercised their prerogative under the *Deed of Real Estate Mortgage* to have the mortgage on their property extrajudicially foreclosed.¹⁰⁹ In issuing the assailed *Orders*, therefore, Executive Judge Estrada acted as if she was a judge in some justiciable case by essentially setting aside the above prerogative of Jose and Josefina under the *Deed of Real Estate Mortgage*.¹¹⁰

Hence, the Ingleses conclude, the assailed *Orders* of Executive Judge Estrada are basically as good as a final orders issued in a “civil action” by a “Regional Trial Court.”¹¹¹

We disagree.

***The Exclusive Original Jurisdiction
of the Court of Appeals and Rule 47***

Section 9(2) of *Batas Pambansa Blg. 129* or the *Judiciary Reorganization Act of 1980*, vests the Court of Appeals with exclusive original jurisdiction over actions for “*annulment of judgments of Regional Trial Courts*.” The remedy by which such jurisdiction may be invoked is provided under Rule 47 of the Rules of Court.

Conformably, Rule 47 sanctions the filing of a petition for the *Annulment of Judgments, Final Orders and Resolutions* before the Court of Appeals. Section 1 of Rule 47, however, defines the scope and nature of this petition:

RULE 47

ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND
RESOLUTIONS

SECTION 1. *Coverage*.—This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in **civil actions** of **Regional Trial Courts** for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (Emphasis supplied)

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id.

The above-quoted section sets forth in no unclear terms that only judgments, final orders and resolutions in “*civil actions*” of “*Regional Trial Courts*” may be the subject of a petition for annulment before the Court of Appeals. Against this premise, it becomes apparent why the Ingleses’ petition for *Annulment of Final Orders* must fail. We substantiate:

***Proceedings for the Extrajudicial
Foreclosure of Mortgages are not
Civil Actions***

The subject of the Ingleses’ petition for *Annulment of Final Orders* are not the proper subjects of a petition for annulment before the Court of Appeals. The assailed *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive Judge Estrada are not the final orders in “*civil actions*” of “*Regional Trial Courts*” that may be the subject of annulment by the Court of Appeals under Rule 47. There is a clear-cut difference between issuances made in a “*civil action*” on one hand and orders rendered in a proceeding for the extrajudicial foreclosure of a mortgage on the other.

“*Civil actions*” are suits filed in court involving either the enforcement or protection of a right, or the prevention or redress of a wrong.¹¹² They are commenced by the filing of an original complaint before an appropriate court¹¹³ and their proceedings are governed by the provisions of the Rules on Court on ordinary or special civil actions.¹¹⁴ Civil actions are adversarial in nature; presupposing the existence of disputes defined by the parties that are, in turn, submitted before the court for disposition. Issuances made therein, including and most especially judgments, final orders or resolutions, are therefore rendered by courts in the exercise of their judicial function.

In contrast, proceedings for the extrajudicial foreclosure of mortgages, as the name already suggests, are not suits filed in a

¹¹² Section 3(a) of Rule 1 of the Rules of Court gives the following definition of a *civil action*:

a) A civil action is one by which a **party sues another** for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. **Both are governed by the rules for ordinary civil actions**, subject to the specific rules prescribed for a special civil action. (Emphasis supplied)

¹¹³ Section 5 of Rule 1 of the Rules of Court provides that “*a civil action is commenced by the filing of the original complaint in court.*”

¹¹⁴ Section 3(a) of Rule 1 of the Rules of Court.

court.¹¹⁵ They are commenced not by the filing of a complaint, but by submitting an application before an executive judge¹¹⁶ who, in turn, receives the same neither in a judicial capacity nor on behalf of the court.¹¹⁷ The conduct of such proceedings is not governed by the rules on ordinary or special civil actions, but by Act No. 3135, as amended, and by special administrative orders issued by this Court.¹¹⁸ Proceedings for the extrajudicial foreclosure of mortgages are also not adversarial; as the executive judge merely performs therein an administrative function to ensure that all requirements for the extrajudicial foreclosure of a mortgage are satisfied before the clerk of court, as the *ex-officio* sheriff,¹¹⁹ goes ahead with the public auction of the mortgaged property.¹²⁰ Necessarily, the orders of the executive judge in such proceedings, whether they be to allow or disallow the extrajudicial foreclosure of the mortgage, are not issued in the exercise of a judicial function but, in the words of *First Marbella Condominium Association, Inc. v. Gatmaytan*:

x x x issued by the RTC Executive Judge in the exercise of his **administrative function to supervise the ministerial duty of the Clerk of Court as Ex Officio Sheriff in the conduct of an extrajudicial foreclsoure sale** x x x.¹²¹
(Emphasis supplied)

Verily, the *Orders* dated 8 October 1997, 20 November 1997 and 27 July 1998 of Executive Judge Estrada cannot be the subject of a petition for annulment before the Court of Appeals. Such orders, issued as they were by an executive judge in connection with a proceeding for the extrajudicial foreclosure of a mortgage, evidently do not fall within the type of issuances so carefully identified under Section 1 of Rule 47. The Court of Appeals was, therefore, correct in postulating that the annulment of the assailed *Orders* is not within their exclusive original jurisdiction per Section 9(2) of *Batas Pambansa Blg. 129*.

¹¹⁵ *Ochoa v. China Banking Corporation*, G.R. No. 192877, 23 March 2011, 646 SCRA 414, 419.

¹¹⁶ Thru the Clerk of Court. *See* Supreme Court Administrative Order No. 3 dated 19 October 1984 and Section 1 of Administrative Matter No. 99-10-05-0 *Re: Procedure in Extrajudicial Foreclosure of Mortgage* dated 14 December 1999.

¹¹⁷ *Ochoa v. China Banking Corporation*, *supra* note 115 at 419; *Supena v. Dela Rosa*, RTJ-93-1031, 28 January 1997, 267 SCRA 1, 14.

¹¹⁸ *See* Supreme Court Administrative Order No. 3 dated 19 October 1984 and Section 1 of Administrative Matter No. 99-10-05-0 *Re: Procedure in Extrajudicial Foreclosure of Mortgage* dated 14 December 1999.

¹¹⁹ *Id.*

¹²⁰ *First Marbella Condominium Association, Inc. v. Gatmaytan*, G.R. No. 163196, 4 July 2008, 557 SCRA 155, 160-161.

¹²¹ *Id.* at 160.

***Allegation that the Assailed Orders
were Rendered Without Jurisdiction
is Immaterial, Baseless***

The allegation of the Ingleses that Executive Judge Estrada overstepped her jurisdiction in issuing the assailed *Orders* is immaterial to the issue of whether the Court of Appeals may assume jurisdiction over their petition. Assuming *arguendo* that Executive Judge Estrada did exceed her jurisdiction in issuing the assailed *Orders*, the nature of such orders and the circumstances under which they were issued would still remain the same. The mere fact, nay, the mere allegation, that the assailed *Orders* have been issued without jurisdiction do not make them, even by the limits of either the strongest reasoning or the most colourful imagination, final orders in a “civil action” by a “Regional Trial Court.” Clearly, a petition under Rule 47 even then would still not be a viable remedy.

At any rate, this Court finds that Executive Judge Estrada did not actually “exceed” her jurisdiction when she issued the assailed *Orders*. All that Executive Judge Estrada did was to render an interpretation of the *Deed of Real Estate Mortgage* on its face—which is something that she is lawfully entitled, if not obliged, to do in an extrajudicial foreclosure proceeding. After all, an executive judge has the administrative duty in such proceedings to ensure that all the conditions of the law have been complied with before authorizing the public auction of any mortgaged property¹²² and this duty, by *necessity*, includes facially examining the mortgage agreement as to whether it adequately identified the land to be auctioned or whether it contains sufficient authorization on the part of the mortgagee to push forth with an extrajudicial sale. Of course, an executive judge may *err* in the exercise of such administrative function and, as a result, may improvidently sanction an extrajudicial sale based on a faulty construction of a mortgage agreement—but those are not errors of jurisdiction inasmuch as they relate only to the *exercise* of jurisdiction.

In fine, therefore, We see no reversible error on the part of the Court of Appeals in dismissing the Ingleses’ petition for *Annulment of Final Orders*.

¹²²

Id. at 164.

G.R. No. 147186

At the core of **G.R. No. 147186**, on the other hand, is the solitary issue of whether the Court of Appeals erred in dismissing the Ingleses' *certiorari* petition.

The Ingleses submit that the Court of Appeals erred. They contend that the failure of some of them to sign the subject verification and certification of non-forum shopping may be excused given the fact that all of them are members of only one family and, as such, share but a common interest in the cause of their petition.¹²³ The Ingleses point out that the two (2) of them who were actually able to sign the verification and certificate against forum shopping, *i.e.*, Josefina and Hector F. Ingles, are mother and brother, respectively, to the rest of them who were unable to sign.¹²⁴ Hence, the Ingleses argue, the signatures of only two (2) of them in the verification and certification of non-forum shopping ought to be enough to be considered as substantial compliance with the requirements thereon per Section 1 of Rule 65 and Section 3 of Rule 46.¹²⁵

We find that the Court of Appeals did err in dismissing the Ingleses' *certiorari* petition on the ground of non-compliance with the requirements on verification and certification against forum shopping. The Court of Appeals ought to have given due course to the *certiorari* petition because there was, in this case, substantial compliance with the said requirements by the Ingleses.

However, instead of remanding the Ingleses' *certiorari* petition to the Court of Appeals, this Court opted to exercise its sound discretion to herein resolve the merits of the same. This was done for the sole purpose of finally putting an end to a pervading issue responsible for delaying the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**, *i.e.*, the effect of the consolidation of the two cases to Charles' entitlement to a writ of possession.

On that end, We find that the Ingleses' *certiorari* petition to be without merit. Ultimately, We deny **G.R. No. 147186**.

¹²³ *Rollo* (G.R. No. 147186), pp. 9-28.

¹²⁴ *Id.*

¹²⁵ *Id.*

I

We begin with the Court of Appeals' erroneous dismissal based on technicality.

*The Requirements of Verification and Certification Against Forum Shopping and the Altres*¹²⁶ Ruling

A *certiorari* petition under Rule 65 of the Rules of Court is one where the pleadings required to be both verified and accompanied by a certification against forum shopping when filed before a court.¹²⁷ While both verification and certification against forum shopping are concurring requirements in a *certiorari* petition, one requirement is distinct from the other in terms of nature and purpose.

In the seminal case of *Altres v. Empleo*, this Court laid out guiding principles that synthesized the various jurisprudential pronouncements regarding non-compliance with the requirements on, or submission of a defective, verification and certification against forum shopping. We quote them at length:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.¹²⁸
- 3) **Verification is deemed *substantially complied with* when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**¹²⁹

¹²⁶ *Altres v. Empleo*, G.R. No. 180986, 10 December 2008, 573 SCRA 583.

¹²⁷ Section 1 of Rule 65 of the Rules of Court.

¹²⁸ Supra note 126 at 596 citing *Sari-Sari Group of Companies, Inc. v. Piglas Kamao (Sari-Sari Chapter)*, G.R. No. 164624, 11 August 2008, 561 SCRA 569, 579-580.

¹²⁹ *Altres v. Empleo*, id. at 597 citing *Rombe Eximtrade (Phils.), Inc. v. Asiatruster Development Bank*, G.R. No. 164479, 13 February 2008, 545 SCRA 253, 259-260.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."¹³⁰

5) **The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case;¹³¹ otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.¹³²**

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel.¹³³ If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney [citation omitted] designating his counsel of record to sign on his behalf.¹³⁴ (Emphasis and underscoring supplied)

Guided by the *Altres* precedent, We find that the dismissal by the RTC of the Ingleses' *certiorari* petition on the ground of a defective verification and certification against forum shopping to be incorrect. We substantiate:

The Ingleses Substantially Complied with the Requirement of Verification

The Ingleses' *certiorari* petition was properly verified even though not all of them were able to sign the same. As related by *Altres*, the requirement of verification is deemed substantially complied with if "*one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.*"

¹³⁰ Id. citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*, G.R. No. 159422, 28 March 2008, 550 SCRA 180, 190-191.

¹³¹ Id. citing *Juaban v. Espina*, G.R. No. 170049, 14 March 2008, 548 SCRA 588, 603.

¹³² Id. citing *Pacquing v. Coca-Cola Philippines, Inc.*, G.R. No. 157966, 31 January 2008, 543 SCRA 344, 353-354.

¹³³ Id. citing *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415, 447 (2004).

¹³⁴ Id. at 596-598.

The pronouncement in *Altres* is based on the recognition that the purpose of verifying a petition or complaint, *i.e.*, to assure the court that such petition or complaint was filed in good faith; and that the allegations therein are true and correct and not the product of the imagination or a matter of speculation,¹³⁵ can sufficiently be achieved even if only one of the several petitioners or plaintiffs signs the verification.¹³⁶ As long the signatory of the verification is competent, there is already substantial compliance with the requirement.

Verily, the signatures of *all* of the Ingleses were not required to validly verify their *certiorari* petition. It suffices, according to *Altres*, that the verification was signed by at least one of the Ingleses who was competent to do so. In this case, the *certiorari* petition was verified by Josefina and Hector F. Ingles—both of whom this Court finds competent to attest to the truth of the allegations of their petition, considering that they are unquestionably principal parties-in-interest to their *certiorari* petition.¹³⁷ Hence, their *certiorari* petition contains a substantially valid verification.

***The Ingleses Substantially Complied
with the Requirement of Certification
Against Forum Shopping***

The Ingleses' *certiorari* petition likewise contains a substantially complaint certificate against forum shopping. *Altres* articulates the rule where a certification against forum shopping is required to be attached in a petition or complaint that names several petitioners or plaintiffs, as follows:

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case;¹³⁸ otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.¹³⁹ (Emphasis and underscoring supplied).

¹³⁵ *Tan v. Ballena*, G.R. No. 168111, 4 July 2008, 557 SCRA 229, 248-249.

¹³⁶ *Altres vs. Empleo*, supra note 126 at 595.

¹³⁷ *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, 6 July 2004, 433 SCRA 455, 463-464.

¹³⁸ *Altres v. Empleo*, supra note 126 at 597 citing *Juaban v. Espina*, supra note 131 at 603.

¹³⁹ *Id.* at 597 citing *Pacquing v. Coca-Cola Philippines, Inc.*, supra note 132 at 353-354.

The rule exposes the fault of the Court of Appeals:

First. To begin with, the mere fact that only some and not all of the Ingleses signed the certification against forum shopping attached to their *certiorari* petition—is not a valid ground for the outright dismissal of such petition as to *all* of the Ingleses.¹⁴⁰ As *Altres* elucidates, the most that the Court of Appeals could have done in such a case is to dismiss the *certiorari* petition only with respect to the Ingleses who were not able to sign.

Second. Nevertheless, the *certiorari* petition should be sustained as to *all* of the Ingleses since substantial compliance with the requirement of a certification against forum shopping may be appreciated in their favor. Jurisprudence clearly recognizes that “under reasonable or justifiable circumstances x x x as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense” the rule requiring all such petitioners or plaintiffs to sign the certification against forum shopping may be relaxed.¹⁴¹

In this case, the “reasonable or justifiable circumstance” that would warrant a relaxation of the rule on the certification against forum shopping consists in the undeniable fact that Ingleses are immediate relatives of each other espousing but only one cause in their *certiorari* petition. A circumstance similar to that of the Ingleses was already recognized as valid by this Court in cases such as *Traveno v. Bobongon Banana Growers Multi-Purpose Cooperative*¹⁴² and in *Cavile v. Heirs of Cavile*,¹⁴³ just to name a few.

Given the above, no other conclusion can be had other than that the Court of Appeals erred in dismissing the Ingleses’ *certiorari* petition based on technicality.

II

Rather than remanding the Ingleses’ *certiorari* petition to the Court of Appeals, however, this Court chooses to herein resolve the merits of the same. This Court finds that a prompt resolution of the

¹⁴⁰ Id. at 597 citing *Juaban v. Espina*, supra note 131.

¹⁴¹ Id. citing *Pacquing v. Coca-Cola Philippines, Inc.*, supra note 132.

¹⁴² G.R. No. 164205, 3 September 2009, 598 SCRA 27.

¹⁴³ 448 Phil. 303 (2003).

issue raised in the Ingleses' *certiorari* petition is necessary, for it will ultimately determine the progress of the proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277**. Hence, to avoid any further delay and to prevent the possibility of conflicting decisions between the Court of Appeals and the RTC, We resolve the Ingleses' *certiorari* petition.

The pivotal issue in the Ingleses' *certiorari* petition is whether the RTC, thru Judge Magpale, committed grave abuse of discretion in allowing Charles to present *ex-parte* evidence in support of his application for the issuance of a writ of possession despite the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**.

The Ingleses submit an affirmative stance. The Ingleses posit that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** effectively tied the resolution of Charles' application for a writ of possession with the resolution of their action for annulment of mortgage.¹⁴⁴ For the Ingleses then, the RTC cannot simply allow Charles to present *ex-parte* evidence on his application for a writ possession without first laying to rest, in a judicial proceeding for that purpose, other related issues raised in **Civil Case No. Q-98-33277**.¹⁴⁵

We deny the petition. The entire stance of the Ingleses hinges on the propriety of the consolidation of **LRC Case No. Q-10766 (98)** with **Civil Case No. Q-98-33277**. On that, this Court does not agree.

***Consolidation of a Petition for the
Issuance of a Writ of Possession
with an Ordinary Civil Action, the
Active Woods Doctrine and
Subsequent Cases***

As a rule, a petition for the issuance of a writ possession may not be consolidated with any other ordinary action. It is well-settled that a petition for the issuance of a writ of possession is *ex-parte*, summary and non-litigious by nature; which nature would be rendered

¹⁴⁴ Rollo (G.R. No. 147186), pp. 36-67.

¹⁴⁵ Id.

nugatory if such petition was to be consolidated with any other ordinary civil action.¹⁴⁶

The exception to the foregoing rule is the case of *Active Wood Products, Co., Inc. vs. Court of Appeals*.¹⁴⁷ In *Active Wood*, this Court allowed the consolidation of a petition for the issuance of a writ of possession with an ordinary action for the annulment of mortgage. In doing so, *Active Wood* justified such consolidation as follows:

It is true that a petition for a writ of possession is made *ex-parte* to facilitate proceedings, being founded on a presumed right of ownership. **Be that as it may, when this presumed right of ownership is contested and made the basis of another action, then the proceedings for writ of possession would also become seemingly groundless. The entire case must be litigated and if need be as in the case at bar, must be consolidated with a related case so as to thresh out thoroughly all related issues.** (Emphasis supplied).

The unbridled construction of *Active Wood*, however, led to a deplorable practice where mortgagors aggrieved by the result of an extrajudicial foreclosure would prevent possession by the successful purchaser by simply filing an action contesting the latter's "*presumed right of ownership*" either by an annulment of mortgage or of the extrajudicial sale, and then asking the court for their consolidation with the petition for the issuance of a writ of possession. Needless to state, this abusive practice have reached the attention of this Court that, in turn, led to subsequent decisions refining the application of the *Active Wood* doctrine.

Hence, in *Sps. De Vera v. Hon. Agloro*,¹⁴⁸ this Court held that the consolidation of an action for the annulment of mortgage and extrajudicial sale with a petition for the issuance of a writ of possession, is not mandatory but still rests within the discretion of the trial court to allow. *De Vera* opined that "*when the rights of [a purchaser in an extrajudicial foreclosure sale] would be prejudiced x x x especially since [the latter] already adduced its evidence [in*

¹⁴⁶ *Espinoza v. United Overseas Bank Phils.*, G.R. No. 175380, 22 March 2010, 616 SCRA 353, 358.

¹⁴⁷ 260 Phil. 825, 829 (1990). The ruling in *Active Wood* was reiterated in *Philippine Savings Bank v. Sps. Mañalac, Jr.*, 496 Phil. 671 (2005).

¹⁴⁸ 489 Phil. 185 (2005).

support of his application for a writ of possession]” consolidation of the two cases may rightfully be denied.¹⁴⁹

Amplifying further on *Sps. De Vera* is the case of *Philippine National Bank v. Gotesco Tyan Ming Development, Inc.*¹⁵⁰ In *Philippine National Bank*, this Court held that consolidation of an action for annulment of extrajudicial sale and a petition for the issuance of a writ of possession should not be allowed when doing so would actually lead to more delay in the proceedings and thus “*defeat the very rationale of consolidation.*”¹⁵¹ In the same case, this Court even ordered the separation of the then already consolidated action for the annulment of extrajudicial sale and petition for the issuance of a writ of possession.¹⁵²

But perhaps the most crucial refinement of *Active Wood* was in the case of *Espinoza v. United Overseas Bank Phils.*¹⁵³ *Espinoza* declared that the mere fact that the purchaser’s “*presumed right of ownership is contested and made the basis of another action*” does not mean that such action ought to be consolidated with the petition for the issuance of a writ of possession.¹⁵⁴ For *Espinoza*, the application of the *Active Wood* doctrine must be limited only to cases with the same factual circumstances under which the latter was rendered.

Espinoza called attention to the fact that in *Active Wood* the petition for the issuance of a writ of possession was “*filed before the expiration of the one-year redemption period*” and that “*the litigated property had not been consolidated in the name of the mortgagee.*”¹⁵⁵ Hence, *Espinoza* invalidated the consolidation of an action for the annulment of the extrajudicial sale with a petition for the issuance of a writ of possession after finding that the latter petition was filed *after* the expiration of the one-year redemption period and *after* the purchaser had already consolidated his title over the auctioned property. This must be, *Espinoza* explained, because when:

x x x title to the litigated property had already been consolidated in the name of respondent, x x x the issuance of a writ of possession [becomes] a matter of right. Consequently,

¹⁴⁹ Id. at 198-199.

¹⁵⁰ G.R. No. 183211, 5 June 2009, 588 SCRA 798.

¹⁵¹ Id. at 806-807.

¹⁵² Id. at 805-806.

¹⁵³ Supra note 146.

¹⁵⁴ Id. at 359.

¹⁵⁵ Id. at 360.

the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but **the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership.**¹⁵⁶ (Emphasis supplied).

Applying the foregoing judicial pronouncements to the case at bar, this Court discerns that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** had already ceased to become proper by the time the RTC allowed him to present *ex-parte* evidence in support of his application for the issuance of a writ of possession. Separation of the two cases is moreover warranted. We substantiate:

***Charles Has Already Consolidated
His Title Over the Mortgaged Lots;
No Grave Abuse of Discretion in
Allowing Charles to Present Ex-
Parte Evidence***

The ruling in *Espinoza* applies. It is uncontested that by the time he filed his *Motion for Issuance of a Writ of Possession*, which was before the RTC allowed him to present *ex-parte* evidence in support of his application for the issuance of a writ of possession, Charles had already consolidated his title over the ten (10) lots.¹⁵⁷ At that time, Charles was already the absolute owner of the ten (10) lots and, as such, his right to possess the same becomes a matter of right on his part.¹⁵⁸ Charles' claim of possession is no longer merely based on a "*presumed right of ownership*" as the Ingleses have evidently failed to exercise their right of redemption within the period provided by law. By then, the consolidation of Charles' application for a writ

¹⁵⁶ Id. at 361.

¹⁵⁷ Pertinent facts are these: Charles was able to register his Certificate of Sale on 24 July 1998 (Records of LRC Case No. Q-10766 [98], Volume I, p. 7). Under Section 6 of Act No. 3135, the Ingleses have one (1) year from that time within which to exercise their right of redemption. **The Ingleses, however, were unable to.** On 9 September 1999, Charles filed his *Motion for the Issuance of a Writ of Possession* (Records of LRC Case No. Q-10766 [98], Volume I, pp. 139-143). On 7 February 2000, the RTC allowed Charles to present *ex-parte* evidence in support of his application for a writ of possession (Records of LRC Case No. Q-10766 [98], Volume I, pp. 438-439). Eventually on 2 February 2000, TCT Nos. 85825-34 of the Ingleses were cancelled and, in their stead, TCT Nos. N-210004 to 13 were issued in favor of Charles. (Records of LRC Case No. Q-10766 [98]), Volume II, pp. 573-582.

¹⁵⁸ *Sps. De Vera v. Agloro*, supra note 147 at 197-198.

of possession with the Ingleses' action for the annulment of mortgage had already lost its basis and, therefore, ceased to become proper. Consequently, no grave abuse of discretion may be imputed on the part of the RTC in allowing Charles to present *ex-parte* evidence in support of his application for the issuance of a writ of possession.

Even though Charles filed his original *Ex-Parte Petition for Issuance of a Writ Possession* still within the redemption period, *Espinoza* would nevertheless apply. Charles' subsequent filing of his *Motion for Issuance of a Writ of Possession* at a time that he was already absolute owner of the auctioned lots supplemented his earlier *Ex-Parte Petition for Issuance of a Writ Possession*—thus making his application for a writ of possession similar to that in the *Espinoza* case.

All in all, the Ingleses *certiorari* petition must therefore be dismissed.

Consolidation of LRC Case No. Q-10766 (98) and Civil Case No. Q-98-33277 Delayed Rather Than Expedited Resolution of Both Cases; Separation of Both Cases In Order

In addition, this Court finds that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** had actually been counter-productive for the resolution of the two cases. It may not be amiss to point out that from the time **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** were consolidated¹⁵⁹ up to time the RTC ordered a halt to their proceedings on 18 July 2004, more than four (4) years have already lapsed. Yet in all those years, the records were still silent as to whether presentation of the evidence on the Ingleses' annulment of the *Deed of Real Estate Mortgage* had already started. This circumstance alone casts immense doubt as to just how effective the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** was, in terms of finding an expeditious resolution for both cases. This Court cannot sanction such kind of procedure.

¹⁵⁹ The two cases were ordered consolidated on 23 February 1999. Records (LRC Case No. Q-10766 [98]), Volume I, pp. 130-132.

Considering that the consolidation of **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** serves no other useful purpose, this Court finds their separation to be in order.

G.R. No. 173641

We thus come to **G.R. No. 173641**, which poses the lone issue of whether the Court of Appeals erred in granting Charles' *mandamus* petition praying for the immediate resolution by the RTC of the Ingleses' *Motion For Reconsideration*,¹⁶⁰ *Supplemental Motion For Reconsideration*¹⁶¹ and *Motion To Dismiss*.¹⁶²

The Ingleses argue in the affirmative and goes even further by saying that a suspension of the entire proceedings in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** is called for.¹⁶³ The Ingleses stand behind the 18 July 2004 *Order* of the RTC, thru Judge Corpuz-Cabochan, which ordered the suspension of the proceedings in view of the pendency of **G.R. Nos. 141809** and **147186** before this Court.¹⁶⁴

In view of our above discussions in **G.R. Nos. 141809** and **147186**, there is no longer any legal reason on which the suspension of the proceedings before the RTC in **LRC Case No. Q-10766 (98)** and **Civil Case No. Q-98-33277** may be anchored on. The two cases are ordered deconsolidated. **Civil Case No. Q-98-33277** should proceed and be resolved with dispatch. **In LRC Case No. Q-10766 (98)**, the Writ of Possession in favor of Charles J. Esteban should be issued immediately. This is line with the order issued on 12 July 2001 by the Regional Trial Court granting the Ex Parte Petition for Issuance of a Writ of Possession after evaluating Charles' Memorandum and the Ingleses' comment thereon.

Hence, We deny this petition.

WHEREFORE, premises considered, the consolidated petitions are hereby **DENIED**. Accordingly, We hereby render a Decision:

¹⁶⁰ Id., Volume V, pp. 2191-2197.

¹⁶¹ Id. at 2198-2201.

¹⁶² Id. at 2273-2275.

¹⁶³ *Rollo* (G.R. No. 173641), pp. 14-60.

¹⁶⁴ Id.

1. **AFFIRMING** the Resolutions dated 28 December 1999 and 28 January 2000 of the Court of Appeals in CA-G.R. SP. No. 56292;
2. **AFFIRMING** the Resolutions dated 29 November 2000 and 16 February 2001 of the Court of Appeals in CA-G.R. SP No. 58790, insofar as they effectively dismissed the Ingleses' *certiorari* petition;
3. **AFFIRMING** the Decision dated 31 March 2006 and Resolution dated 19 July 2006 of the Court of Appeals in CA-G.R. SP No. 84738; *and*
4. **ORDERING** the deconsolidation of **Civil Case No. Q-98-33277** and **LRC Case No. Q-10766 (98)**; the resolution of **Civil Case No. Q-98-33277** with dispatch; and the issuance of the Writ of Possession in favor of private respondent Charles J. Esteban in **LRC Case No. Q-10766 (98)**.

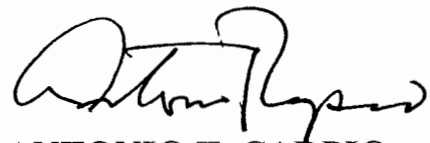
Costs against petitioners.

SO ORDERED.




JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESVITERO J. VELASCO, JR.
Associate Justice



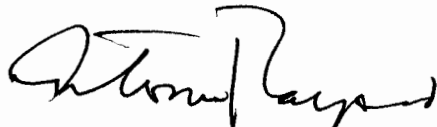
ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

ATTESTATION

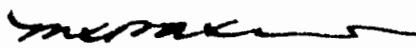
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice