



Republic of the Philippines
Supreme Court
Baguio City

CONFIRMED TRUE COPY
Wifredo S. Lopez
Vice President, CAPITAN
Division of Court
MAY 26 2016

THIRD DIVISION

SPOUSES GEORGE A. GALLENT, SR. G.R. No. 203949
and MERCEDES M. GALLENT,
Petitioners,

- versus -

JUAN G. VELASQUEZ,
Respondent.

X-----X

JUAN G. VELASQUEZ,
Petitioner,

G.R. No. 205071

Present:

VELASCO, Jr., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

- versus -

SPOUSES GEORGE A. GALLENT, SR.
and MERCEDES M. GALLENT,
Respondents.

Promulgated:

April 6, 2016

X-----X

Wifredo S. Lopez

DECISION

REYES, J.:

Before this Court are two conflicting decisions rendered by two different divisions of the Court of Appeals (CA) on the same question of whether the Regional Trial Court (RTC) may validly issue an *ex parte* writ

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of possession to the transferee of the winning bidder at the extrajudicial foreclosure sale of mortgaged real property.

Antecedent Facts

George A. Gallent, Sr. (George) was the registered owner of a 761-square-meter residential property covered by Transfer Certificate of Title (TCT) No. S-99286,¹ located at No. 3, Angeles Street, Alabang Hills Village, Muntinlupa City, with improvements thereon consisting of a two-storey house and a swimming pool. On December 20, 1996, the Spouses George and Mercedes Gallent (Spouses Gallent) mortgaged the said property to Allied Banking Corporation (Allied Bank) as security for a loan of ₱1.5 Million. The Spouses Gallent failed to pay their loan, which had ballooned to ₱4,631,974.66; thus, Allied Bank extrajudicially foreclosed the mortgaged property. At the public auction, Allied Bank emerged as the highest bidder and was issued a corresponding certificate of sale² dated September 25, 2000. Since the Spouses Gallent failed to redeem the subject property after one year, Allied Bank consolidated its ownership over the subject property. Accordingly, TCT No. S-99286 was cancelled and replaced with TCT No. 8460³ in the name of Allied Bank.⁴

On June 11, 2003, Allied Bank agreed to sell back the foreclosed property to the Spouses Gallent for ₱4 Million, as evidenced by an Agreement to Sell,⁵ wherein the Spouses Gallent paid a down payment of ₱3.5 Million, evidenced by an Official Receipt (O.R.) No. 0990687-A⁶ dated March 12, 2003, and the balance thereof was payable in 12 monthly amortizations. It was also stipulated that the Spouses Gallent would be allowed to keep the possession of the subject property as tenants or lessees of Allied Bank.⁷

Due to financial difficulties, sometime in October 2003, the Spouses Gallent sought the help of their close family friend, Juan Velasquez (Velasquez), to help them settle their remaining monthly amortizations. As an inducement, they agreed that Velasquez would have the subject property registered under his name until they have repaid him.⁸

¹ *Rollo* (G.R. No. 203949), pp. 79-83.

² *Id.* at 85-86.

³ *Id.* at 88-90.

⁴ *Id.* at 158-159.

⁵ *Id.* at 92-96.

⁶ *Id.* at 98.

⁷ *Id.* at 159.

⁸ *Id.* at 19.

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On October 24, 2003, the Spouses Gallent executed a Deed of Assignment of Rights⁹ whereby they assigned to Velasquez all their rights, interests, and obligations under their Agreement to Sell with Allied Bank. Velasquez paid Allied Bank the remaining balance amounting to ₱216,635.97, evidenced by O.R. No. 0006352.¹⁰

On November 5, 2003, Allied Bank and Velasquez executed a Deed of Absolute Sale¹¹ over the subject property for the price of ₱4 Million, wherein George himself signed as an instrumental witness.¹² However, the said instrument was not registered. Subsequently, Velasquez caused another Deed of Sale¹³ dated November 19, 2003, over the subject property which showed a lower selling price of ₱1.2 Million to be registered, purportedly for tax purposes.

On November 28, 2003, TCT No. 11814¹⁴ was issued under the name of Velasquez to replace TCT No. 8460.

After more than four years, or on June 27, 2008, Velasquez sent a demand letter¹⁵ to the Spouses Gallent to vacate the subject property, but the latter refused to do so. On July 6, 2009, Velasquez filed an *ex parte* petition for issuance of a writ of possession, docketed as LRC Case No. 09-055, in the RTC of Muntinlupa City.¹⁶ The Spouses Gallent sought to dismiss the petition by filing Consolidated Motions for Leave to Intervene and to Dismiss Petition¹⁷ on January 14, 2010.

On February 12, 2010, the RTC of Muntinlupa City, Branch 256, issued an Order¹⁸ denying the Spouses Gallent's consolidated motions, *viz*:

The issuance of the writ of possession is a ministerial duty of the court upon filing of the proper application and proof of title and by its nature does not require notice upon persons interested in the subject properties. By virtue of the sale of the properties involved, [Velasquez] became the new owner of the lots entitled to all rights and interests its predecessor [Allied Bank] had therein, including the right to file an application for writ of possession. The court therefore finds the petition to be sufficient in form and substance.

⁹ Id. at 100-101.

¹⁰ Id. at 103.

¹¹ Id. at 105-107.

¹² Id. at 106.

¹³ Id. at 147-149.

¹⁴ Id. at 113-115.

¹⁵ Id. at 117.

¹⁶ Id. at 120-125.

¹⁷ *Rollo* (G.R. No. 205071), pp. 159-170.

¹⁸ *Rollo* (G.R. No. 203949), p. 153

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As to the motion for leave to intervene filed by [Spouses Gallent], the same will be treated by this court as their opposition to the petition and they will be considered an oppositor.

Wherefore premises considered, the motions are hereby denied for lack of merit.

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SO ORDERED.¹⁹ (Emphasis ours)

The Spouses Gallent filed a motion for reconsideration but it was denied by the RTC in an Order²⁰ dated April 13, 2010, reasoning as follows:

The instant motion deserves a scant consideration considering that the issues and arguments raised by the oppositors are mere rehashed which were already passed upon by this court in the order sought to be reconsidered. To reiterate, it is a ministerial duty on the part of this court to act on cases of this nature, particularly if the twelve-month period for redemption had already lapsed. Should the oppositors intend to recover title over the subject property, the same should be ventilated in a separate proceeding and proceed independently of this petition.

Wherefore premises considered, the motion for reconsideration is hereby denied for lack of merit. Accordingly, the reception of ex parte evidence is hereby assigned to the Branch Clerk of Court to act as Commissioner and to make a report to this Court ten (10) days upon completion thereof.

x x x x

SO ORDERED.²¹

On July 2, 2010, the Spouses Gallent filed a petition for *certiorari*²² before the CA, docketed as **CA-G.R. SP No. 114527**, raffled to the Special 4th Division, seeking to annul the RTC Orders dated February 12, 2010 and April 13, 2010. Invoking *Mendoza v. Salinas*,²³ the Spouses Gallent argued that: (1) the RTC has no jurisdiction to issue an *ex parte* writ of possession to Velasquez since he did not acquire the property at a foreclosure sale, but purchased the same from the mortgagee, winning bidder and purchaser, Allied Bank, and only after it had consolidated its title thereto;²⁴ (2) in their Agreement to Sell, Allied Bank and the Spouses Gallent entered into new contractual relations as vendees-lessees and vendor-lessor, and ceased to be

¹⁹ Id.

²⁰ Id. at 155.

²¹ Id.

²² *Rollo* (G.R. No. 205071), pp. 82-124.

²³ 543 Phil. 380 (2007).

²⁴ *Rollo*, (G.R. No. 205071), pp. 97-101.

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mortgagors and mortgagee;²⁵ (3) Velasquez should have filed an action for ejectment or for recovery of ownership or possession, not an *ex parte* petition for writ of possession;²⁶ and (4) the RTC's duty to issue the writ has ceased to be ministerial in view of the Spouses Gallent's adverse claim upon the property based on their substantial payment of its purchase price, in addition to the fact that Velasquez and Allied Bank executed a forged deed of sale.²⁷

Meanwhile, on July 7, 2010, the RTC rendered its Decision²⁸ in LRC Case No. 09-055, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing and considering that it is a ministerial duty of the court to issue writ of possession, the redemption period having been expired without the subject property being redeemed by the mortgagors, the petition is hereby granted. Accordingly, let a writ of possession be issued in favor of [Velasquez] and against the oppositors and all persons claiming rights under them, to place [Velasquez] in possession of the subject property and for the oppositors and all persons claiming rights under them to vacate the land covered by TCT No. 11814 of the Register of Deeds of Muntinlupa City.

SO ORDERED.²⁹

On September 24, 2010, the Spouses Gallent filed another petition for *certiorari*³⁰ before the CA, docketed as **CA-G.R. SP No. 116097** and raffled to the 10th Division, arguing that the deed of sale between Velasquez and Allied Bank was a forgery. In their certification of non-forum shopping,³¹ they mentioned the pendency of **CA-G.R. SP No. 114527** in the CA. Surprisingly, neither of the parties nor the CA 10th Division moved for the consolidation of CA-G.R. SP No. 116097 with CA-G.R. SP No. 114527.

Meanwhile, on October 21, 2010, the Spouses Gallent also filed before the RTC of Muntinlupa City a complaint for "Reformation of Instruments, Consignation, Annulment of TCT No. 11814 of the Registry of Deeds for the City of Muntinlupa and Damages With Application for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction," docketed as Civil **Case No. 10-102**. In this action, the Spouses Gallent sought to annul the deed of assignment they executed in favor of Velasquez allegedly because their true intent was an equitable mortgage. They thus prayed to declare void the sale between Velasquez and

²⁵ Id. at 101-103.

²⁶ Id. at 103-107.

²⁷ Id. at 107-110.

²⁸ *Rollo* (G.R. No. 203949), pp. 72-73.

²⁹ Id. at 73.

³⁰ Id. at 303-360.

³¹ Id. at 358-359.

Allied Bank on account of forgery, to order the judicial consignment of the amount of ₱216,635.97 to settle their “loan” from Velasquez, and to enjoin him from taking possession of the property.³²

Rulings of the CA

CA-G.R. SP No. 116097

The CA 10th Division rendered its Decision³³ on May 23, 2012 finding that since Allied Bank, the mortgagee-purchaser at the extrajudicial foreclosure sale, is entitled to an *ex parte* writ of possession after the title to the mortgaged property had been consolidated in its name, Velasquez, as the bank’s transferee of the said property may also petition the court for an *ex parte* writ of possession since he merely stepped into the shoes of Allied Bank. The 10th Division also ruled that the Spouses Gallent can no longer be considered to hold an interest in the property adverse to Allied Bank or Velasquez after they assigned their entire interest therein to Velasquez. Having no more claims on the title of either Allied Bank or Velasquez, an *ex parte* writ of possession may issue against them.

On October 12, 2012, the CA 10th Division denied the Spouses Gallent’s motion for reconsideration.³⁴ On December 6, 2012, they filed a Petition for Review on *Certiorari*³⁵ before this Court docketed as **G.R. No. 203949**.

CA-G.R. SP No. 114527

The CA Special 4th Division issued its Decision³⁶ dated August 28, 2012, finding that an *ex parte* writ of possession cannot issue against the Spouses Gallent since they are adverse claimants of the property who are in actual possession. The CA relied on *Mendoza*,³⁷ where the Court ruled that an *ex parte* writ of possession may be issued as a ministerial duty of the court only in three instances: (a) in a land registration case, as provided under Section 17 of Act No. 496; (b) in a judicial foreclosure of real estate mortgage; or (c) in an extrajudicial foreclosure of real estate mortgage under Section 7 of Act No. 3135,³⁸ as

³² Id. at 23-24.

³³ Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio concurring; id. at 58-68.

³⁴ Id. at 70.

³⁵ Id. at 12-55.

³⁶ Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Socorro B. Inting concurring; *rollo* (G.R. No. 205071), pp. 66-79.

³⁷ *Supra* note 23.

³⁸ AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on March 6, 1924.

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amended.³⁹ According to the CA, since Velasquez did not acquire his title to the property in a foreclosure sale, but bought the same directly from Allied Bank after title had been consolidated in the said bank, he must first bring an ejectment suit or an *accion reivindicatoria* against the Spouses Gallent in order for him to obtain possession thereof.⁴⁰

According to *Mendoza*, an *ex parte* writ of possession ceases to issue as a ministerial duty of the court when sought against a party who has remained in the property upon an adverse claim of ownership, viz:

Based on these tenets, the issuance of a writ of possession, therefore, is clearly a ministerial duty of the land registration court. **Such ministerial duty, however, ceases to be so with particular regard to petitioners who are actual possessors of the property under a claim of ownership.** Actual possession under claim of ownership raises a disputable presumption of ownership. This conclusion is supported by Article 433 of the Civil Code, which provides:

Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Under said provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term “judicial process” could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.⁴¹ (Citation omitted and emphasis ours)

Velasquez filed a motion for reconsideration, but it was denied;⁴² hence, he filed a Petition for Review on *Certiorari*⁴³ before this Court docketed as **G.R. No. 205071**.

Ruling of the Court

The Court grants the petition of the Spouses Gallent, but denies the petition of Velasquez.

The general rule in extrajudicial foreclosure of mortgage is that after the consolidation of the title over the foreclosed property in the

³⁹ Supra note 23, at 386.

⁴⁰ *Rollo* (G.R. No. 205071), pp. 75-77.

⁴¹ *Mendoza v. Salinas*, supra note 23, at 387.

⁴² *Rollo* (G.R. No. 205071), pp. 80-81.

⁴³ *Id.* at 26-65.

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buyer, it is the ministerial duty of the court to issue a writ of possession upon an *ex parte* petition⁴⁴ by the new owner as a matter of right.

It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem.⁴⁵ As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*.⁴⁶

A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the *civil law*. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, [*jus utendi; jus fruendi*] the right to consume the thing by its use, [*jus abutendi*] the right to alienate, encumber, transform or even destroy the thing owned, [*jus disponendi*] and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing [*jus vindicandi*].⁴⁷

Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership,⁴⁸ after consolidation of title the purchaser in a foreclosure sale may demand possession as a matter of right.⁴⁹ This is why Section 7 of Act No. 3135, as amended by Act No. 4118, imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.⁵⁰ Section 7 reads:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount

⁴⁴ An *ex parte* petition is taken or granted at the instance and for the benefit of only one party, without notice to, or contestation by any person adversely interested. [BLACK'S LAW DICTIONARY, 5th Edition (1979), p. 517.]

⁴⁵ ACT NO. 3135, Section 6.

⁴⁶ *Laureano v. Bormaheco, Inc.*, 404 Phil. 80, 86 (2001).

⁴⁷ Separate Opinion of Associate Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 994-995 (2000).

⁴⁸ See NEW CIVIL CODE, Book II, Title II, Articles 428-430.

⁴⁹ *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768-769.

⁵⁰ *Metropolitan Bank & Trust Company v. Hon. Judge Abad Santos, et al.*, 623 Phil. 134, 146 (2009).

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equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Section 194 of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph 11 of Section 114 of Act No. 496, as amended by Act No. 2866, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

In *Spouses Arquiza v. CA*,⁵¹ it is reiterated that simply on the basis of the purchaser's ownership of the foreclosed property there is no need for an ordinary action to gain possession thereof:

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.⁵² (Citations omitted)

As also explained in *Asia United Bank v. Goodland Company, Inc.*,⁵³ the *ex parte* application for writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

⁵¹ 498 Phil. 793 (2005).

⁵² Id. at 804.

⁵³ 650 Phil. 174 (2010).

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The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.⁵⁴ (Citations omitted)

Moreover, not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of the writ of possession, as held in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*:⁵⁵

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.⁵⁶ (Citations omitted)

When the thing purchased at a foreclosure sale is in turn sold or transferred, the right to the possession thereof, along with all other rights of ownership, follows the thing sold to its new owner.

In *Laureano v. Bormaheco*,⁵⁷ the mortgagee-purchaser, Philippine National Cooperative Bank (PNCB), sold the foreclosed lots located in Bel-Air, Makati City to Bormaheco, Inc. without first seeking its possession. The latter filed an *ex parte* petition for a writ of possession, but the RTC of Makati City ordered the service of a copy of the petition upon the former owners, the Spouses Laureano, who as in the case before the Court, opposed the *ex parte* petition and moved to dismiss the same on the ground of the RTC's lack of jurisdiction. The RTC denied the said motion, which was upheld by the CA in a *certiorari* action. When the case reached the Court, it was held that, by the nature of an *ex parte* petition for writ of possession, no notice is needed to be served upon the Spouses Laureano, the mortgagors-debtors of PNCB, since they already lost all their interests in the properties when they failed to redeem them. By virtue of the sale, Bormaheco, Inc. became the new owner of the lots, entitled to all rights and interests that its predecessor PNCB acquired, including the right to a writ of possession.

⁵⁴ Id. at 185-186.

⁵⁵ 654 Phil. 382 (2011).

⁵⁶ Id. at 394.

⁵⁷ 404 Phil. 80 (2001).

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As an exception, the ministerial duty of the court to issue an *ex parte* writ of possession ceases once it appears that a third party, not the debtor-mortgagor, is in possession of the property under a claim of title adverse to that of the applicant.


Section 33 of Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor.**

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.

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)

Pursuant to Section 6 of Act No. 3135, the application of Section 33, Rule 39 of the Rules of Court has been extended to *extrajudicial foreclosure sales*, thus:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of Sections 464 to 466, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.



In *China Banking Corporation v. Spouses Lozada*,⁵⁸ it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse to the debtor/mortgagor:

Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.⁵⁹ (Citation omitted)

Specifically, the Court held that to be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor:

The exception provided under Section 33 of Rule 39 of the Revised 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. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x.⁶⁰ (Citations omitted)

Thus, in *BPI Family*,⁶¹ the Court held that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*,⁶² is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process.⁶³

In *Okabe v. Saturnino*,⁶⁴ the Court made a definite ruling on the matter, to wit:

⁵⁸ 579 Phil. 454 (2008).

⁵⁹ Id. at 474-475.

⁶⁰ Id. at 478-480.

⁶¹ Supra note 55.

⁶² 244 Phil. 733 (1988).

⁶³ Id. at 738.

⁶⁴ G.R. No. 196040, August 26, 2014, 733 SCRA 652.

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The remedy of a writ of possession, a remedy that is available to the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor, is made available to a subsequent purchaser, *but only after hearing and after determining that the subject property is still in the possession of the mortgagor. Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue ex parte or without hearing.* In other words, if the purchaser is a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor or is already in the possession of a third party holding the same adversely to the defaulting debtor or mortgagor. If the property is in the possession of the mortgagor, a writ of possession could thus be issued. Otherwise, the remedy of a writ of possession is no longer available to such purchaser, but he can wrest possession over the property through an ordinary action of ejectment.⁶⁵

In regard to their deed of assignment in favor of Velasquez, the Spouses Gallent may be considered as adverse possessors in their own right, the said agreement being in essence an equitable mortgage.

It is the Spouses Gallent's contention that the Deed of Assignment of Rights which they executed in favor of Velasquez was in reality an equitable mortgage under Article 1602 of the New Civil Code. The Spouses Gallent maintained that their true agreement with Velasquez was an equitable mortgage and not an assignment of their interest in the subject property.⁶⁶ Having substantially paid the repurchase price of their property, that is, ₱3,790,500.00 out of the price of ₱4 Million, they insisted that they had virtually recovered full ownership of the house when they entered into an equitable mortgage with Velasquez. To prove their allegation, they filed an action, Civil Case No. 10-102, to reform the said deed into a mortgage. In addition, they are seeking to declare void the transfer of the title to Velasquez.

⁶⁵ Id. at 666.

⁶⁶ Rollo (G.R. No. 203949), p. 24.

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An equitable mortgage⁶⁷ has been defined as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent.⁶⁸ A contract where the vendor/mortgagor remains in physical possession as lessee or otherwise has been held to be an equitable mortgage.⁶⁹ In determining the nature of a contract, the Court is not bound by the title or name given to it by the parties, but by their intention, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds *prior to, during and immediately after* executing the agreement.⁷⁰

Without in any way pre-empting the trial court's factual determination in Civil Case No. 10-102, particularly as regards what the Spouses Gallent may have additionally received from Velasquez by way of favor or consideration for the house, if any, the Court will rule on the matter, but only in order to resolve the question of whether the Spouses Gallent may be considered as adverse claimant-occupants against whom an *ex parte* writ of possession will not issue. The substantial payment for the repurchase from Allied Bank of the subject property, ₱3,790,500.00 out of the price of ₱4 Million, as against Velasquez's assumption of the remaining balance of ₱216,635.97, entitles the Spouses Gallent to the legal presumption that their assignment to Velasquez of all their interest under their Contract to Sell with Allied Bank was an equitable mortgage. In a contract of mortgage, the mortgagor retains possession of the property given as security for the payment of the sum borrowed from the mortgagee.⁷¹ By the clear dictate of equity, and as held in *Rockville Excel International Exim Corporation v. Spouses Culla and Miranda*,⁷² when the vendor remains in possession of the property sold as lessee or otherwise, or the price of the sale is unusually inadequate, as in this case, the law deems the contract as an equitable mortgage.⁷³

⁶⁷ Art. 1602 of the New Civil Code provides:

Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

- (1) When the price of a sale with right to repurchase is unusually inadequate;
- (2) **When the vendor remains in possession as lessee or otherwise;**
- (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
- (4) **When the purchaser retains for himself a part of the purchase price;**
- (5) When the vendor binds himself to pay the taxes on the thing sold; and
- (6) **In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.**

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. (Emphasis ours)

⁶⁸ *Go v. Bacaron*, 509 Phil. 323, 331 (2005).

⁶⁹ *Legaspi v. Spouses Ong*, 498 Phil. 167, 186 (2005).

⁷⁰ *Zamora v. CA*, 328 Phil. 1106, 1115 (1996).

⁷¹ *See Cosio and De Rama v. Palileo*, 121 Phil. 959 (1965).

⁷² 617 Phil. 328 (2009).

⁷³ *Id.* at 338.

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It is evident that on account of the Spouses Gallent's substantial down payment under their contract to sell, Allied Bank allowed them to remain in the property, albeit as "lessees". The Spouses Gallent eventually paid a total of ₱3,790,500.00, all within five months. After the additional payment by Velasquez of ₱216,635.97, the next logical step would have been for Allied Bank to execute the sale in favor of the Spouses Gallent, by virtue of their Contract to Sell, but the Spouses Gallent had assured Velasquez that he could keep the title to the property until they have repaid him. To achieve this, they executed a deed of assignment to enable Allied Bank to transfer the title directly to Velasquez, since a transfer, first to the Spouses Gallent, and then a sale or assignment to Velasquez, would have entailed paying capital gains and documentary stamp taxes twice, along with the transfer fees. It was also apparently agreed with Velasquez that the Spouses Gallent could remain in the property, but it seems that they could do so not just as lessees but as owners-mortgagors.

If there was a forgery in the sale to Velasquez by Allied Bank, it was obviously a mere ploy to reduce the taxes and fees due on the said transaction, and not the cause of the transfer of the title of Allied Bank to Velasquez. The consent of the Spouses Gallent to the said transfer, for the probable reasons already expounded, is clear from the fact that George himself signed in the first deed of sale to Velasquez as an instrumental witness. But even if it is eventually shown that there was in fact forgery for the purpose of committing fraud against the Spouses Gallent, as held in *Capital Credit Dimension, Inc. v. Chua*,⁷⁴ they, as third party occupants, should not be adversely affected by the *ex parte* writ of possession sought by Velasquez, for not being parties to the forgery. Thus, they cannot be summarily ejected without due process.

To recapitulate, it is important to note that this controversy can no longer be considered as an offshoot of the extrajudicial foreclosure proceedings involving Allied Bank, but rather is the result of a subsequent personal transaction between the Spouses Gallent and Velasquez, which they called an assignment; but which the law otherwise recognizes as an equitable mortgage. In the face then of the *ex parte* motion of Velasquez for a writ of possession, it must be kept in mind that, under the facts laid down, the contending parties are now Velasquez and the Spouses Gallent. The Spouses Gallent's defense of equitable mortgage is upheld in law and, they have a superior right to retain the possession of the subject property in their own right.

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G.R. No. 157213, April 28, 2004, 428 SCRA 259.



WHEREFORE, premises considered, the petition in **G.R. No. 203949** is **GRANTED**. The Decision dated May 23, 2012 of the Court of Appeals in CA-G.R. SP No. 116097 is **SET ASIDE**.

The petition in **G.R. No. 205071** is **DENIED**. The Decision dated August 28, 2012 of the Court of Appeals in CA-G.R. SP No. 114527 is **AFFIRMED**.


No costs.

SO ORDERED.

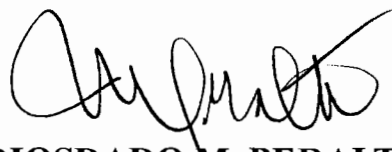


BIENVENIDO L. REYES
Associate Justice


WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



FRANCIS H. JARDELEZA
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.



PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson

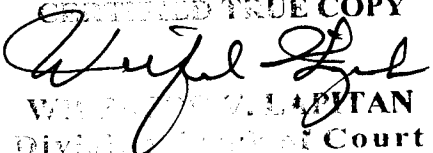
CERTIFICATION

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

CERTIFIED TRUE COPY

WILFREDO L. LAPID
Division Chairperson
MAY 26 2016

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