



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

INTEGRATED CREDIT AND  
CORPORATE SERVICES, CO.,

*Petitioner,*

G.R. No. 233127

Present:

GESMUNDO, C.J.,

*Chairperson,*

HERNANDO,

ZALAMEDA,

ROSARIO, and

MARQUEZ, JJ.

- versus -

NOVELITA LABRADOR and  
PHILIPPIANS ACADEMY OF  
PARAÑAQUE CITY,

*Respondents.*

Promulgated:

JUL 10 2023 *mtfubulo*

X-----X

DECISION

**GESMUNDO, C.J.:**

This is an Appeal by *Certiorari*<sup>1</sup> seeking to reverse and set aside the February 15, 2017 Decision<sup>2</sup> and the August 2, 2017 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 100060. The CA denied outright the appeal of Integrated Credit and Corporate Services, Co. (*petitioner*) for being the wrong legal remedy.

**Antecedents**

Respondent Novelita Labrador (*Labrador*) was the former owner of two parcels of land with improvements situated in Parañaque City, and

<sup>1</sup> *Rollo*, pp. 10-37.

<sup>2</sup> *Id.* at 39-45; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Rosmari D. Carandang and Mario V. Lopez (now a Member of the Court).

<sup>3</sup> *Id.* at 46-48.

covered by Transfer Certificates of Title (*TCT*) Nos. 173576 and 173577 (*subject properties*). Labrador obtained a loan from Chinatrust (Phils.) Commercial Bank Corporation (*Chinatrust*) in the amount of ₱3,440,000.00. On September 26, 2007, in order to secure the payment of her obligations, Labrador executed a real estate mortgage (*REM*) over the subject properties in favor of Chinatrust. The *REM* was registered and annotated on the *TCTs* of the subject properties. When Labrador defaulted in the payment of her obligations, Chinatrust applied for extrajudicial foreclosure of the *REM* before the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Regional Trial Court of Parañaque City, Branch 196 (*RTC*). The case was docketed as LRC Case No. 12-0044. After notice and publication, pursuant to the provisions of Act No. 3135,<sup>4</sup> as amended, the public auction sale of the subject properties was scheduled on May 26, 2009.<sup>5</sup>

During the public auction sale, petitioner was declared as the highest and winning bidder, and a Certificate of Sale<sup>6</sup> dated June 18, 2009 was issued in its favor. The certificate of sale was registered by petitioner with the Registry of Deeds and annotated on the *TCTs* under Entry No. 2340 dated July 3, 2009.<sup>7</sup>

Labrador failed to exercise her right of legal redemption within one year from July 3, 2009 and, thus, petitioner consolidated its ownership over the subject properties by executing an Affidavit of Consolidation<sup>8</sup> dated July 5, 2010. Consequently, the *TCTs* previously issued in the name of Labrador were cancelled by the Register of Deeds, and *TCT* Nos. 010-2010002226<sup>9</sup> and 010-2010002227<sup>10</sup> were issued in favor of petitioner.<sup>11</sup>

On February 7, 2012, petitioner sent a demand letter<sup>12</sup> to Labrador and another person, a certain Benjamin Labrador, requiring them to surrender possession of the subject properties. Despite receipt of the demand letter, they failed to comply and vacate the subject properties.<sup>13</sup>

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<sup>4</sup> Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages." Approved on March 6, 1924.

<sup>5</sup> *Rollo*, p. 40.

<sup>6</sup> *Id.* at 55.

<sup>7</sup> *Id.* at 40-41.

<sup>8</sup> *Id.* at 57-58.

<sup>9</sup> *Id.* at 59-61.

<sup>10</sup> *Id.* at 62-64.

<sup>11</sup> *Id.* at 41.

<sup>12</sup> *Id.* at 88-89.

<sup>13</sup> *Id.* at 41.

On March 21, 2012,<sup>14</sup> petitioner filed with the RTC an *Ex Parte* Petition for Issuance of a Writ of Possession<sup>15</sup> against Labrador praying that a writ of possession be issued in its favor against Labrador, her successors or assigns or whomsoever may be in possession of the subject properties. It further prayed that a break open order be also issued to the branch sheriff to ensure the effective implementation of the writ of possession with reasonable force, if necessary.<sup>16</sup>

On March 27, 2012, the RTC issued an Order,<sup>17</sup> finding the petition sufficient in form and substance. However, Atty. Teresita C. Marbibi, on behalf of the school administrators of oppositor, co-respondent Philippians Academy of Parañaque City (*Philippians Academy*), filed a Comment<sup>18</sup> on the *Ex Parte* Petition for Issuance of a Writ of Possession before the RTC. Philippians Academy claimed that it is an educational institution which had a right of interest over the subject properties, being a transferee through a Declaration of Trust Agreement<sup>19</sup> extended by Labrador and notarized on September 28, 2007.

Meanwhile, the RTC scheduled a hearing for the reception of petitioner's evidence. In lieu of conducting a direct examination, petitioner filed a Judicial Affidavit<sup>20</sup> of their witness.<sup>21</sup>

On September 26, 2012, Philippians Academy filed a Counter-Petition<sup>22</sup> before the RTC praying for the denial of petitioner's *Ex Parte* Petition for Issuance of a Writ of Possession. Philippians Academy alleged that it is the real owner of the subject properties and that Labrador was merely holding the subject properties in trust for it.<sup>23</sup> On November 20, 2012, petitioner filed a Motion to Dismiss *Ad Cautelam*<sup>24</sup> against Philippians Academy's Counter-Petition.

### The RTC Ruling

The RTC issued an Order<sup>25</sup> dated December 10, 2012 (*RTC Order*),

<sup>14</sup> Id. at 211. In the Order of the RTC dated December 10, 2012, the date of filing of the *ex parte* petition was November 21, 2012. This is evidently a typographical error.

<sup>15</sup> Id. at 66-72.

<sup>16</sup> Id. at 41-42.

<sup>17</sup> Id. at 91.

<sup>18</sup> Id. at 99-109.

<sup>19</sup> Id. at 188-190.

<sup>20</sup> Id. at 115-126.

<sup>21</sup> Id. at 42.

<sup>22</sup> Records, pp. 182-197.

<sup>23</sup> Id. at 183-184.

<sup>24</sup> *Rollo*, pp. 197-210.

<sup>25</sup> Id. at 211-213; docketed as LRC Case No. 12-044.

which denied the motion to dismiss and dismissed the *Ex Parte* Petition for Issuance of a Writ of Possession filed by petitioner. The dispositive portion of which reads:

WHEREFORE, premises considered, [petitioner] Integrated Credit & Corporate Services Co.[’s] Motion to Dismiss dated November 20, 2012 is herewith DENIED for lack of merit, whereas, an adversarial dispute is already existing between the parties at hand, the [*Ex Parte*] Petition for Issuance of a Writ of Possession dated March 7, 2012 by Integrated Credit & Corporate Services, Co., docketed under LRC Case No. 12-0044 is DISMISSED for lack of merit.

**SO ORDERED.**<sup>26</sup>

The RTC stated that petitioner sought a dismissal of the Counter-Petition filed by Philippians Academy, but also admitted to the fact that there existed a declaration of trust between Labrador and Philippians Academy. The latter alleged that it is the real owner of the subject properties and that Labrador was merely holding the same in trust for Philippians Academy. Thus, the RTC pointed out jurisprudence which held that a writ of possession does not become a ministerial duty of a court when a third party, who has possession over property subject of an extrajudicial foreclosure, stands to be gravely affected. The court then must undertake a hearing to determine the nature of the adverse possession if only to determine the claim of a mortgagor. The RTC held that as the incident between the parties had transformed the instant petition into an adversarial concern, the RTC could not simply issue a writ of possession due to the supervening event of the existence of the trust agreement hovering upon the title and ownership over the subject properties. Thus, the RTC concluded that these matters were best ventilated in a proper action between the parties at hand.<sup>27</sup>

Aggrieved, petitioner filed an appeal against the RTC Order before the CA under Rule 41 of the Rules of Court.

### **The CA Ruling**

In its February 15, 2017 Decision, the CA dismissed the appeal and affirmed the RTC Order. The dispositive portion of the decision reads:

**WHEREFORE**, the appeal is **DENIED** [*sic*].

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<sup>26</sup> Id. at 213.

<sup>27</sup> Id. at 211-213.

**SO ORDERED.**<sup>28</sup>

The CA dismissed outright the appeal of petitioner for being the wrong legal remedy. It was emphasized therein that petitioner filed an appeal under Rule 41 of the Rules of Court, assailing the RTC Order, which is interlocutory in nature. The CA underscored that under Section 1(c) of Rule 41 of the Rules of Court, no appeal may be taken from an interlocutory order. It emphasized that an interlocutory order is one that does not dispose of the case completely but leaves something to be decided upon. The CA highlighted that an order denying a motion to dismiss is interlocutory in nature and, hence, not appealable. Instead, the proper remedy would be to file a petition for *certiorari* under Rule 65 of the Rules of Court. The CA likewise underscored that Sec. 2, paragraph 2, Rule 50 of the Rules of Court explicitly provides that an appeal erroneously taken to the CA shall not be transferred to the appropriate court but shall be dismissed outright.<sup>29</sup>

Petitioner filed a motion for reconsideration which the CA denied in its August 2, 2017 Resolution.

Hence, this petition for review on *certiorari* under Rule 45 of the Rules of Court which essentially raises the following issues:

- (1) Whether the CA erred when it dismissed outright petitioner's appeal for not being the proper legal remedy as the RTC's dismissal of the original petition for issuance of a writ of possession is a final judgment on the merits and not an interlocutory order.
- (2) Whether the CA erred when it failed to observe the jurisprudential doctrine that when the title is consolidated in the name of the purchaser at foreclosure sale, the writ of possession becomes a matter of right.
- (3) Whether the CA erred when it decided the case in a manner contrary to law when it overlooked that Philippians Academy's Counter-Petition failed to comply with the requirements in opposing the issuance of a writ of possession.
- (4) Whether the CA erred when it dismissed the petitioner's appeal despite the failure of Philippians Academy to

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<sup>28</sup> Id. at 44.

<sup>29</sup> Id.

prove that it is a “third party which is claiming a right adverse to that of the debtor or mortgagor” under Sec. 33, Rule 39 of the Rules of Court.

- (5) Whether the CA decided contrary to law when it affirmed the RTC’s decision in dismissing the *ex parte* petition when petitioner is a purchaser in good faith and for value in the public auction.

Petitioner argues that the RTC’s dismissal of the *Ex Parte* Petition for the Issuance of a Writ of Possession is clear, categorical, and susceptible of no interpretation other than finality. Thus, the CA erred in concluding that an order denying a motion to dismiss is interlocutory in nature and not appealable as the RTC dismissed the petition on the merits. Further, petitioner insists that the issuance of the writ is a ministerial function of the court. Petitioner also points out that Philippians Academy failed to comply with the requirements in opposing the issuance of a writ of possession under Sec. 8 of Act No. 3135 and failed to sufficiently establish that it is entitled to the exception of the ministerial function of the RTC. Petitioner alleges that Philippians Academy was not able to prove they had any right, which was adverse to the judgment obligor, for they were neither co-owner, tenant, nor usufructuary. Petitioner also points out the dubious origin of the declaration of trust for there was a defective notarization and no registration of the trust in the TCTs or with the Registry of Deeds. Finally, petitioner stresses that it is a purchaser in good faith and for value, thus, the CA erred in affirming the RTC’s Order.<sup>30</sup>

In its Comment,<sup>31</sup> Philippians Academy counters that the issues raised by petitioner had already been decided by the RTC and the CA. It underscores the ruling of the CA, stating that petitioner availed of the wrong legal remedy, and the RTC Order declaring that an adversarial dispute exists between the parties and must first be resolved by the RTC. Thus, Philippians Academy posits that there is something to be done before the RTC, making such order an interlocutory one, which is not appealable.<sup>32</sup>

In its Reply,<sup>33</sup> petitioner reiterates its arguments in its petition adding that its motion for reconsideration filed before the CA need not have been verified as it merely impugned questions of law rather than disputed allegations of fact.<sup>34</sup>

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<sup>30</sup> Id. at 19-31.

<sup>31</sup> Id. at 297-303.

<sup>32</sup> Id. at 301.

<sup>33</sup> Id. at 338-353.

<sup>34</sup> Id. at 350.

### The Court's Ruling

The petition is meritorious.

*An appeal is an improper remedy in assailing an interlocutory order.*

First, the procedural issues must be addressed. When the RTC issued its Order dated December 10, 2012 denying petitioner's motion to dismiss and dismissing its *ex parte* petition for the issuance of a writ of possession, petitioner filed an appeal against the RTC Order claiming that the same was an order of dismissal, which is a final judgment on the merits.

The Court disagrees.

The distinction between a final or interlocutory order is well-settled. In *Spouses Limso v. Philippine National Bank*<sup>35</sup> (*Spouses Limso*), the Court distinguishes between final and interlocutory orders, thus:

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. This Court had the occasion to distinguish a final order or resolution from an interlocutory one in the case of *Investments, Inc. v. Court of Appeals*, thus:

x x x A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented on the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."

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<sup>35</sup> 779 Phil. 287 (2016).

[x x x x]

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory," e.g., an order denying motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.<sup>36</sup> (Citation omitted)

Thus, the main difference between an interlocutory order and a final order is that a final order disposes of a case, an interlocutory order, on the other hand, does not dispose of a case and does not end the court's task of adjudicating the parties' contentions.<sup>37</sup> The test to determine whether an order or a judgment is interlocutory or final is: Does the order or judgment leave something to be done in the trial court regarding the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.<sup>38</sup> In the present case, pertinent parts of the RTC Order states:

Jurisprudence dictates that when a third party holds on a property subject of an [extrajudicial] foreclosure, the issuance of a writ of possession does not anymore become a ministerial duty and a court should undertake a hearing to determine the nature of the adverse possession if only to determine a claim and a duty of a mortgagor. And, in determining adversarial claims over a property where a third party's superior right from that of a purchaser, the former cannot be ejected by a mere writ of possession as it is held adverse to the judgment obligor/mortgagor, rather a proper action instead be instituted to determine such adversarial claim as may favor a party affected therein.

**Indeed, in line with the jurisprudential pronouncement by the Court where an adversarial proceeding should be undertaken for the subject property in determining the better right of the parties of the parties of adverse possession over disputed property, this Court finds no reason for the dismissal of the counter petition borne by the simple admission by a petitioner over a trust arrangement invoked therein.**

**Anent, as the incident between the parties has already transformed the instant petition into an adversarial concern between**

<sup>36</sup> Id. at 356-357, citing *United Overseas Bank v. Judge Ros*, 556 Phil. 178, 188-189 (2007).

<sup>37</sup> *Spouses Limso v. Philippine National Bank*, id.

<sup>38</sup> *Cereza v. Suarez*, G.R. No. 242722, October 10, 2022.



**the parties, this Court finds no plausible reason to entertain a simple writ of possession as the same has already been affected by the supervening circumstances hovering upon title and ownership over a property which can be best ventilated in a proper action between the parties at hand.** This Court finds no reason to maintain a simple petition for issuance of a writ of possession at this time, to lead to the dismissal thereof.<sup>39</sup> (Emphases supplied)

A perusal of the RTC Order reveals that it is indeed an interlocutory order. The RTC Order does not dispose of the case on the merits, seeing as the trial court clearly requires the need to determine the better right of the parties in an adversarial proceeding, and that the trial court found no reason to dismiss the Counter-Petition of Philippians Academy. To reiterate, an order is “interlocutory when it does not dispose of the case completely but leaves something to still be decided by the trial court.”<sup>40</sup> In this case, the order dismissing the writ of possession merely determines that petitioner is not entitled to the writ of possession *ex parte*. It is not a judgment on the merits, contrary to petitioner’s claim. There is still a need for further proceedings to determine the respective rights of the parties involved. Indubitably, the RTC Order dated December 10, 2012 is merely an interlocutory order.

Anent thereto, Sec. 1, Rule 41 of the Rules of Court, provides:

Section 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

**No appeal may be taken from:**

x x x x

**(c) An interlocutory order;**

x x x x

**In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.** (Emphases supplied)

Based on the foregoing, it is clear that no appeal may be taken from an interlocutory order issued by the RTC. The remedy against an interlocutory order is a special civil action for *certiorari* under Rule 65 of

<sup>39</sup> *Rollo*, p. 213.

<sup>40</sup> *Rizal Commercial Banking Corp. v. F. Franco Transport, Inc.*, 843 Phil. 556, 570 (2018).

the Rules of Court, but only when there is grave abuse of discretion.<sup>41</sup> A petition for *certiorari* is an extraordinary remedy availed of when a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his or her 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.<sup>42</sup> Likewise, the Court has previously declared that an appeal and a petition for *certiorari* are two different remedies, which are not interchangeable.<sup>43</sup> Remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.<sup>44</sup>

Nevertheless, jurisprudence shows that there are exceptions wherein a wrong remedy availed of a party may be set aside, such as when the interests of justice and fairness demand it. In the recent case of *Alfiler v. Spouses Cayabyab*,<sup>45</sup> the Court allowed the filing of a petition for *certiorari* even though the remedy of appeal was available. The Court ratiocinated that even though therein petitioner filed the wrong remedy, the procedural error may be set aside in the interest of substantial justice. Similarly, in *Bases Conversion and Development Authority v. Callangan, Jr.*,<sup>46</sup> the Court held that there is no separate appeal available to assail a partial summary judgment because of its interlocutory nature. In that case, petitioner therein filed a Rule 45 petition and availed of the wrong remedy when it should have filed a petition for *certiorari* under Rule 65. Again, the Court excused the procedural defect and relaxed the rules of procedure in the interest of substantial justice, finding that there was grave abuse of discretion which attended the issuance of the partial summary judgment.

In this case, the Court finds that the procedural error committed by petitioner may be set aside for reasons of substantial justice. As will be discussed *infra*, the inferences made by the RTC in its Order are manifestly mistaken, and its conclusions are findings grounded on speculation, surmises, and/or conjectures. Due to these reasons, the Court finds compelling reasons to justify the relaxation of the rules. To deny the case based on the stringent application of the rules would hinder rather than serve the demands of substantial justice for procedural rules were precisely conceived to aid the attainment of justice.<sup>47</sup> As aptly stated in *Subic Bay Metropolitan Authority v. Commission on Audit*:<sup>48</sup>

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<sup>41</sup> See *United Overseas Bank v. Judge Ros*, supra note 36, at 188.

<sup>42</sup> *Uy v. 3tops De Philippines Estate Corp.*, G.R. No. 248140, January 16, 2023.

<sup>43</sup> *Berces v. Civil Service Commission*, G.R. No. 222557, September 29, 2021.

<sup>44</sup> *Id.*

<sup>45</sup> G.R. No. 217111, March 13, 2023.

<sup>46</sup> G.R. No. 241168, August 22, 2022.

<sup>47</sup> *Latogan v. People*, G.R. No. 238298, January 22, 2020, 929 SCRA 605, 614.

<sup>48</sup> 845 Phil. 982 (2019).

Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.<sup>49</sup>

Thus, setting aside these procedural defects, the Court finds the petition meritorious in its substantive aspect.

*Issuance of a writ of  
possession; ministerial  
function; exceptions*

A writ of possession is a writ of execution used to enforce a judgment to recover the possession of land. It orders the sheriff to enter the land and give its possession to the person entitled under the judgment.<sup>50</sup> In this case, petitioner based its prayer for the issuance of the writ of possession on an extrajudicial foreclosure proceeding under Act No. 3135,<sup>51</sup> as amended by Act No. 4118.<sup>52</sup> In extrajudicial foreclosures, a writ of possession may be issued either (1) within the redemption period or (2) after the lapse of the redemption period.<sup>53</sup>

The first instance for the issuance of the writ of possession in an extrajudicial foreclosure is based on Sec. 7<sup>54</sup> of Act No. 3135, as amended, which states that in any sale made under the provisions of Act No. 3135, the purchaser may petition the court to give him or her possession of the

<sup>49</sup> Id. at 997.

<sup>50</sup> *Spouses Reyes v. Spouses Chung*, 818 Phil. 225, 235 (2017).

<sup>51</sup> Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages." Approved on March 6, 1924.

<sup>52</sup> Amendments to Act No. 3135. Approved on December 7, 1933.

<sup>53</sup> *680 Home Appliances, Inc. v. Court of Appeals*, 744 Phil. 481, 491 (2014).

<sup>54</sup> Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

property during the redemption period by furnishing a bond. Such petition shall be made under oath and filed in the form of an *ex parte* motion.

Meanwhile, the second instance for the issuance of a writ of possession in an extrajudicial foreclosure of real estate mortgage is based on **the purchaser's right of ownership**.<sup>55</sup> In such case, the purchaser's right over the property becomes consolidated due to the mortgagor's failure to redeem his or her property within the one-year period after the registration of sale as mandated in Sec. 6<sup>56</sup> of the same Act, as amended.

In *Philippine National Bank v. Sanao Marketing Corporation*,<sup>57</sup> the Court held that a writ of possession may be issued **after consolidation of ownership of the property in the name of the purchaser**. This is because the right to the possession thereof, along with all other rights of ownership, follows the thing sold to the new owner.<sup>58</sup> As such, the purchaser is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his or her name and the issuance of a new TCT as a matter of course.<sup>59</sup>

In the present case, it must be emphasized that petitioner was able to consolidate its title to the subject properties after Labrador failed to redeem the latter after the one-year period. The TCTs previously issued in the name of Labrador were cancelled by the Register of Deeds, and TCT Nos. 010-2010002226 and 010-2010002227 were issued in favor of petitioner. Therefore, petitioner is entitled to the issuance of a writ of possession based on its right of ownership.

The Court elucidated in *Tolentino v. Laurel*,<sup>60</sup> that the individual's title over the subject property is proof of his or her ownership thereof, thus:

It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the

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<sup>55</sup> *Spouses Teves v. Integrated Credit & Corporate Services, Co.*, 829 Phil. 290, 302 (2018); *Bascara v. Sheriff Javier*, 760 Phil. 766, 775 (2015), citing *China Banking Corporation v. Spouses Lozada*, 579 Phil. 454, 472-473 (2008).

<sup>56</sup> 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 four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, [insofar] as these are not inconsistent with the provisions of this Act.

<sup>57</sup> 503 Phil. 260, 271 (2005).

<sup>58</sup> *Uy v. 3tops De Philippines Estate Corp.*, supra note 42.

<sup>59</sup> *Bank of the Philippine Islands v. Spouses Co.*, 772 Phil. 291, 302 (2015).

<sup>60</sup> 682 Phil. 527 (2012).

property in favor of the person whose name appears therein. It is conclusive evidence with respect to the ownership of the land described therein. It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession. **Thus, the Court held that the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.**<sup>61</sup> (Emphasis supplied)

Accordingly, when there has been an extrajudicial foreclosure of a mortgage, the title has been consolidated to the purchaser, and the certificate of title has been issued, the court's duty on such matter is that, upon proper application and proof of title by the petitioner, the issuance of the writ of possession to the purchaser in an extrajudicial foreclosure becomes a ministerial function of the court, which cannot be enjoined or restrained.<sup>62</sup> Even any question concerning the regularity or validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the issuance of the writ.<sup>63</sup> Hence, the general rule is that the lower court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.<sup>64</sup>

Nevertheless, there are narrow exceptions wherein the issuance of the writ of possession shall not be a ministerial duty on the part of the trial court even though the purchaser is the registered owner thereof.<sup>65</sup> In *Nagtalon v. United Coconut Planters Bank*,<sup>66</sup> the Court enumerated the following jurisprudential exceptions, to wit: (a) gross inadequacy of the purchase price; **(b) a third party claiming a right adverse to the mortgagor/debtor**; and (c) the failure to pay the surplus proceeds of the sale to the mortgagor. The second exception is further explained in *Spouses Rosario v. Government Service Insurance System*.<sup>67</sup>

As an exception, the ministerial duty of the court to issue an [*ex parte*] writ of possession ceases when there are third-parties who are actually holding the mortgaged property adversely to the judgment debtor. Sec. 33 of Rule 39, made applicable to extrajudicial foreclosure of real estate mortgages by Sec. 6, Act No. 3135, provides:

SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property[.]

<sup>61</sup> Id. at 540-541.

<sup>62</sup> *Uy v. 3tops De Philippines Estate Corp.*, supra note 42.

<sup>63</sup> *Spouses Torrecampo v. Wealth Development Bank Corp.*, G.R. No. 221845, March 21, 2022.

<sup>64</sup> *Philippine National Bank v. Fontanoza*, G.R. No. 213673, March 2, 2022.

<sup>65</sup> Id.

<sup>66</sup> 715 Phil. 595, 606-607 (2013).

<sup>67</sup> G.R. No. 200991, March 18, 2021.

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.**

Jurisprudence teaches that when there are third-party possessors of the property, the RTC should instead conduct a hearing to determine the nature of the adverse possession. However, for this exception to apply, it is not enough that the property is in the possession of a third party, it must also be held by the third party adversely to the judgment debtor or mortgagor.<sup>68</sup> (Emphasis supplied)

In this case, Philippians Academy claims that the issuance of the writ of possession is not a mere ministerial duty of the trial court because the second exception applies – that there is a third party claiming a right adverse to the mortgagor/debtor.

To be clear, for the second exception of the trial court's ministerial issuance of an *ex parte* writ of possession to apply, a third party should hold possession of the property adversely to the judgment obligor.<sup>69</sup> In *Madriaga, Jr. v. China Banking Corp.*,<sup>70</sup> the Court discussed the meaning of a "third party who is actually holding the property adversely to the judgment obligor," thus:

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.**<sup>71</sup> (Emphasis supplied)

Indeed, to be considered in adverse possession, the third party possessor must have done so in his own right and not as a mere successor or transferee of the debtor or mortgagor.<sup>72</sup> Only in such instance shall the trial court's duty to issue a writ of possession in favor of the purchaser, who has consolidated ownership, not be considered as ministerial.

<sup>68</sup> Id.

<sup>69</sup> *Philippine National Bank v. Fontanoza*, supra.

<sup>70</sup> 691 Phil. 770 (2012).

<sup>71</sup> Id. at 781, citing *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 382, 393 (2011).

<sup>72</sup> *Philippine National Bank v. Fontanoza*, supra.

*A beneficiary of a trust possessing mortgaged property is not holding the same adversely to the judgment debtor who is the trustee.*

In the present case, the Court holds that Philippians Academy cannot be considered a third party in possession of the subject properties for the reason that it does not possess the subject properties adversely to the judgment debtor.

It is to be noted that Philippians Academy claimed a right of interest over the subject properties alleging that it is the real owner thereof by virtue of a trust agreement executed between the academy and Labrador.<sup>73</sup>

A trust is the legal relationship between one person who has equitable ownership of a property and another who owns the legal title to the property.<sup>74</sup> It is a fiduciary relationship that requires the trustee to deal with the property for the benefit of the beneficiary.<sup>75</sup> “The trustor is the one who establishes the trust; the beneficiary, the person for whose benefit the trust was created; and the trustee, the one in whom, by conferment of a legal title, confidence has been reposed as regards the property of the beneficiary.”<sup>76</sup> Express trusts are created by direct and positive acts of the parties, by some writing, deed or will, or by words either expressly or impliedly evincing an intention to create a trust.<sup>77</sup>

Philippians Academy presented a Declaration of Trust between itself and Labrador, thus, claiming that there is an express trust therein. Meanwhile, petitioner raises the dubious provenance of the deed when it found the latter to have a defective notarization. Nevertheless, no particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.<sup>78</sup> In any case, even if such a trust was established, there are several considerations which this Court takes notice of. In an express trust, the trustee has fiduciary obligations and active duties of management.<sup>79</sup>

<sup>73</sup> *Rollo*, pp. 211-212.

<sup>74</sup> *Spouses Oco v. Limbaring*, 516 Phil. 691, 702 (2006).

<sup>75</sup> *Secuya v. Vda. de Selma*, 383 Phil. 126, 136 (2000).

<sup>76</sup> *Spouses Oco v. Limbaring*, supra at 702.

<sup>77</sup> *Spouses Gomez v. Duyan*, 493 Phil. 819, 826 (2005).

<sup>78</sup> CIVIL CODE, Article 1444.

<sup>79</sup> *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 (1993).

Here, it must be emphasized that Labrador obtained a loan from Chinatrust and executed a REM on **September 26, 2007** to secure the payment of the obligation. Meanwhile, the Declaration of Trust that Philippians Academy relies on as proof of its true ownership of the subject properties was notarized on **September 28, 2007**, or merely two days after the REM was executed. The REM was likewise registered and annotated on the TCTs of the subject properties. Notably, the Declaration of Trust was not. Thus, the Declaration of Trust only binds the parties to the deed and does not affect third parties.<sup>80</sup>

More importantly, Philippians Academy's Counter-Petition filed in opposition to petitioner's *Ex Parte* Issuance of a Writ of Possession admits that the loan obtained by Labrador from Chinatrust was partly used in acquiring the subject properties.<sup>81</sup> Thus, by its own admission, Philippians Academy benefited from the actions of Labrador, as trustee, in obtaining the loan from the bank to buy the subject properties. The same Counter-Petition did not allege that Labrador, as trustee, had obtained the loan from Chinatrust without Philippians Academy's knowledge or approval. Further, Philippians Academy never objected to Labrador's act of entering into a REM over the subject properties to secure the same loan. Neither were there any allegations that Labrador acted fraudulently in her fiduciary obligations in managing the trust.

Evidently, even assuming that there was indeed a trust agreement between Philippians Academy and Labrador, the former is bound by the acts of the latter in obtaining a REM over the subject properties. Verily, Philippians Academy, when objecting to the issuance of the writ of possession in favor of petitioner, cannot be considered as a "third party." Rather, Philippians Academy, as beneficiary in the trust agreement, is evidently a successor or assignee of Labrador, and is bound by the acts of the latter, absent any allegation of fraud. Philippians Academy is not a co-owner, agricultural tenant, or usufructuary, which may possess the property in its own right, and cannot prevent the issuance of the writ of possession in favor of petitioner, the registered owner of the subject properties.

*There were no allegations of fraud on the part of Labrador in obtaining the REM.*

Notably, jurisprudence shows that the Court had previously recalled the issuance of the writ of possession because fraud perpetuated the

<sup>80</sup> *Secuya v. Vda. de Selma*, supra at 137.

<sup>81</sup> *Rollo*, p. 153.



transactions between a mortgagor and purchaser in an extrajudicial foreclosure of mortgage. In *Sy v. China Banking Corp.*,<sup>82</sup> the Court recalled a writ of possession based on the finding that the occupants of the property were fraudulently deprived of their share thereon through simulated and forged conveyances. Similarly, in *Development Bank of the Phils. v. Prime Neighborhood Association*,<sup>83</sup> the Court also recalled a writ of possession based on the plea of third parties who were allegedly transferees of the true owner of the foreclosed property. In said case, it was claimed that the judgment mortgagor's supposed right to the property was hinged on a spurious title.

Accordingly, for Philippians Academy's interest on the subject properties to be adverse to Labrador, there should be, at the very least, an allegation of a breach of fiduciary duties or fraud. However, it must be emphasized that Philippians Academy neither repudiated the trust nor the actions of Labrador with allegations of fraud or want of authority over establishing the REM. These matters cannot be presumed by the courts, and must be alleged and proven.<sup>84</sup> The Court has also held that the exercise of trustees of their acts of administration should not be disturbed by the courts unless there is clear proof of fraud or bad faith, or unless the transaction in question is manifestly prejudicial to the interest of the beneficiaries.<sup>85</sup>

Here, there was absolutely no allegation of fraud on the part of Labrador in obtaining the REM. Instead, Philippians Academy admitted that part of the proceeds of the loan obtained from Chinatrust was used in paying for acquiring the subject properties, which clearly indicates that Philippians Academy benefited from the action of Labrador in obtaining the loan from Chinatrust. Such acceptance of the benefit demonstrates its assent in obtaining the loan acquisition from Chinatrust and the resulting establishment of the REM which allowed Philippians Academy to purchase the subject properties in the first place. Thus, the actions of Labrador, which benefited and were accepted by Philippians Academy, should bind the latter. Consequently, Philippians Academy cannot be considered a third party possessor because their interest in the mortgaged property is not independent or adverse to the judgment debtor.<sup>86</sup>

<sup>82</sup> G.R. No. 213736, June 17, 2020, 938 SCRA 314.

<sup>83</sup> 605 Phil. 660 (2009).

<sup>84</sup> *Republic v. Sandiganbayan*, 663 Phil. 212, 326 (2011).

<sup>85</sup> *Perez v. Araneta*, 116 Phil. 779, 786 (1962).

<sup>86</sup> *Spouses Rosario v. Government Service Insurance System*, supra note 67.

*Petitioner is entitled to an ex parte writ of possession.*

To reiterate, when the exception of the third party claiming a right adverse to the mortgagor/debtor arises, jurisprudence teaches that the trial court must conduct a hearing to determine the nature of the adverse possession.<sup>87</sup> This is so the trial court may determine whether the actual possessor may be privy to any of the parties to the action, or the *bona fide* possession may be disputed, or where such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. Only then shall the trial court deny or accede to the enforcement of a writ of possession as the finding shall warrant.<sup>88</sup>

In this case, the RTC took the allegations of Philippians Academy's Counter-Petition at face value without determining whether the latter was privy to any of the parties to the action or whether the purported trust was undertaken in connivance with Labrador in view of frustrating the issuance of the writ of possession in favor of petitioner. It was clear that the RTC overlooked and did not question the fact that the loan proceeds obtained by Labrador from Chinatrust were used to pay the subject properties for the benefit of Philippians Academy. Instead, the RTC erroneously ratiocinated that petitioner had not disputed the existence of the Declaration of Trust, hence, the matters would be better threshed out in a proper action between the parties. Contrary to such pronouncement, petitioner, since the beginning, had vehemently objected to the trust, claiming the dubious provenance of the deed and alleging falsification of the deed in order to give a semblance of legitimacy to the alleged fictitious claim of ownership.<sup>89</sup>

Again, it is to be borne in mind that petitioner had already completed the consolidation of its ownership over the properties after the lapse of the one-year period for the judgment debtor to redeem the property, and had already been issued new TCTs under its name.<sup>90</sup> Petitioner was entitled to an *ex parte* writ of possession as a matter of course. In such case, it is the responsibility of the trial court to be vigilant in protecting the rights of the purchaser given that the general rule is that it is the ministerial duty of the court to issue a writ of possession in due course. This holds true when several questions arise on whether the supposed third party possessor's possession is adverse to the judgment debtor. Thus, it was improper for the RTC to deny the issuance of the writ of possession based on the mere

<sup>87</sup> *Sy v. China Banking Corp.*, supra at 324, citing *Okabe v. Saturnino*, 742 Phil. 1, 14 (2014).

<sup>88</sup> *Spouses Rosario v. Government Service Insurance System*, supra.

<sup>89</sup> *Rollo*, p. 212.

<sup>90</sup> *Id.* at 211.

allegations of Philippians Academy that it was a third party, independent of Labrador, when it was not.

Based on the foregoing, the Court holds that petitioner is entitled to the issuance of the writ of possession *ex parte*. To rule otherwise would be to open doors to scrupulous parties that may attempt to create trusts over mortgaged properties to prevent their land from being taken by innocent purchasers for value by simply saying that the trustee had no power to mortgage the properties.<sup>91</sup>

As it is established that petitioner is entitled to an *ex parte* writ of possession, the Court deems it unnecessary to resolve the other issues raised in the petition as the rest of the issues are factual matters beyond the ambit of this Court.

**WHEREFORE**, the petition is **GRANTED**. The February 15, 2017 Decision and the August 2, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 100060 are **REVERSED** and **SET ASIDE**. The Regional Trial Court of Parañaque City, Branch 196 and its Sheriff are **ORDERED** to **ISSUE** and **PROCEED** with the implementation of the *Ex Parte* Writ of Possession in favor of petitioner Integrated Credit and Corporate Services, Co.

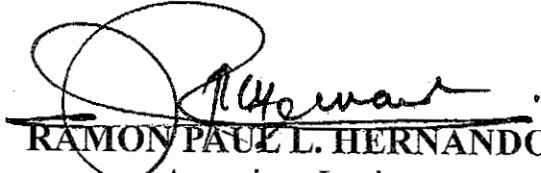
**SO ORDERED.**

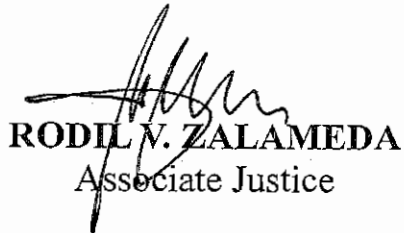
  
**ALEXANDER G. GESMUNDO**  
Chief Justice

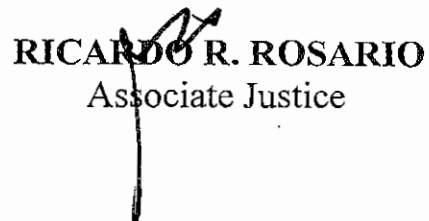
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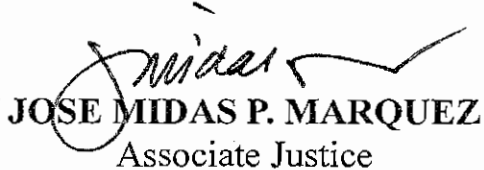
<sup>91</sup> See *Roman Catholic Archbishop of Caceres v. Secretary of Agrarian Reform*, 565 Phil. 598, 609 (2007).

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

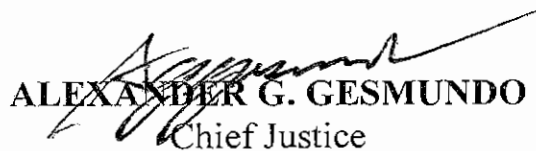
  
**RODIL N. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice