

FIRST DIVISION

[G.R. No. 151941, August 15, 2003]

**CHAILEASE FINANCE, CORPORATION, PETITIONER, VS.
SPOUSES ROMEO I. MA AND MARIAFE L. MA, RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

Respondents, the spouses Romeo and Mariafe Ma, obtained a loan in the amount of P3,500,000.00 from the Chinatrust (Phils.) Commercial Banking Corporation. As security for the loan, they executed a real estate mortgage over their two parcels of land covered by Transfer Certificates of Title Nos. 68587 and 68390, situated in Barangay Kay Biga, Parañaque City. They defaulted in the payment of their obligations, prompting the said bank to institute extrajudicial foreclosure proceedings against their real estate mortgage.

At the sale at public auction held on June 30, 1999, petitioner Chailease Finance Corporation was declared the highest bidder. A Certificate of Sale was issued in its name on the same date, and registered with the Register of Deeds for Parañaque City on July 9, 1999.^[1]

Respondents failed to redeem the properties within the one-year period. Consequently, on August 23, 2000, title to the properties was consolidated in the name of petitioner.^[2] On November 10, 2000, respondents' TCT Nos. 68587 and 68390 were cancelled and, in lieu thereof, TCT Nos. 146693 and 146692, respectively, were issued in the name of petitioner.^[3]

Petitioner demanded that respondent spouses vacate the properties,^[4] but the latter failed and refused to do so. Thus, petitioner filed an "Ex Parte Petition for the Issuance of a Writ of Possession"^[5] with the Regional Trial Court of Parañaque City, Branch 257, which was docketed as LRC Case No. 01-0055.

On December 4, 2001, the trial court rendered a decision denying the petition for issuance of a writ of possession.^[6] Petitioner filed a motion for reconsideration, which was likewise denied by the trial court in an Order dated January 22, 2002.^[7]

Hence, this petition for review on pure questions of law. Petitioner argues that the trial court erred in denying the petition for issuance of writ of possession on the ground of failure to prove the basis of the foreclosure sale; and contends that the issuance of the writ of possession was the ministerial duty of the trial court.

We find merit in the petition.

A writ of possession is generally understood to be an order whereby the sheriff is

commanded to place a person in possession of a real or personal property, such as when a property is extrajudicially foreclosed.^[8] In cases of extrajudicial foreclosure sales of real estate mortgage, the issuance of a writ of possession is governed by Section 7 of Act No. 3135, which provides:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 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.

The above provision explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.^[9]

It has been consistently held that the issuance of a writ of possession is a ministerial function.^[10] The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond.^[11] The court neither exercises its official discretion nor judgment. If only to stress the writ's ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.^[12]

A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.^[13] Thus: