

## THIRD DIVISION

[ G.R. No. 111662, October 23, 1997 ]

**A.G. DEVELOPMENT CORPORATION, PETITIONER, VS.  
HONORABLE COURT OF APPEALS, HONORABLE IGNACIO  
CAPULONG, PRESIDING JUDGE, REGIONAL TRIAL COURT OF  
MAKATI, BRANCH 134; NATIONAL HOUSING AUTHORITY; AND A.  
FRANCISCO REALTY AND DEVELOPMENT CORPORATION,  
RESPONDENTS.  
D E C I S I O N**

**ROMERO, J.:**

Challenged in this petition for review under Rule 45 of the Rules of Court is the decision of respondent Court of Appeals in CA G.R. S.P. No. 30227 which upheld the order of the Regional Trial Court (RTC), Branch 134, Makati, dismissing petitioner's complaint on the ground of the lack of jurisdiction.

**The pertinent facts are as follows:**

On November 4, 1981, petitioner A.G. Development (AGDC) and public respondent National Housing Authority (NHA) entered into a "Memorandum of Agreement,"<sup>[1]</sup> wherein the former agreed to construct on its lot a dormitory-apartment-commercial building for the latter at a total cost of Eleven Million Four Hundred Fifty Two Thousand Nine Hundred Eighty Nine Pesos (P11,452,989.00). Pursuant to the agreement, AGDC executed in favor of NHA a promissory note<sup>[2]</sup> and a real estate mortgage<sup>[3]</sup> over the land as a security for the obligation. Thereafter, NHA made an initial payment of three million three hundred eight thousand four hundred forty (P3,308,440.00) to AGDC to cover a portion of the contract price.

On August 30, 1983, however, NHA rescinded the agreement and demanded the immediate return of the initial amount paid on the ground that AGDC was not able to complete the project on time. The demand was refused, as a result of which, the real estate mortgage was extra-judicially foreclosed and the property sold to NHA as the highest bidder. The one-year period to redeem having expired, a new Transfer Certificate of Title (TCT) was issued in favor of NHA; thereafter, a writ of possession was applied for and granted by the Regional Trial Court of Quezon City docketed as LRC Case No. 3067 (85).

On December 3, 1986, AGDC filed a complaint against NHA before the Makati RTC docketed as Civil Case No. 15495 for breach of contract, declaration of nullity of the promissory note and real estate mortgage, and annulment of foreclosure sale and reversion of possession and title. NHA filed a motion to dismiss on the ground of *litis pendentia*, which was denied by the trial court. While the case was pending, private respondent A. Francisco Realty and Development Corp. (AFRDC) filed a motion to intervene claiming that it is an innocent purchaser for value of the subject property since it had already bought the foreclosed property from NHA.<sup>[4]</sup>

Consequently, AFRDC filed a motion to dismiss before the Makati RTC, reasoning that the said court has no jurisdiction to entertain the complaint and annul the writ issued by the Quezon City RTC since both are co-equal or coordinate jurisdiction. The Makati RTC ruled in favor of AFRDC and dismissed AGDC's complaint.<sup>[5]</sup> Recourse to the Court of Appeals proved futile. Hence, this petition.

In resolving the instant petition, the principal issue to be addressed is whether the issuance of a writ of possession by the Quezon City RTC constitutes *res judicata* as to bar the complaint filed by AGDC.

It is an oft-repeated rule that for *res judicata* to apply, the following requisites must concur:

- a) the former judgment must be final;
- b) the court which rendered it had jurisdiction over the subject matter and the parties;
- c) the judgment must be on the merits; and
- d) there must be between the first and second actions identity of parties, subject matter and causes of action.<sup>[6]</sup>

Although not explicitly stated, a basic requisite for *res judicata* to apply is that there are two cases which have been decided on the merits.

In affirming the Makati RTC's dismissal of AGDC's complaint, the Court of Appeals ruled that the issuance of the writ of possession has the effect of confirming the title of NHA over the property in question.<sup>[7]</sup> As such, the grant of said writ constitutes an absolute bar to a subsequent action. It is final as to the claim of nullity of the promissory note, real estate mortgage and the resultant extra-judicial foreclosure sale. We cannot agree with the Court of Appeals that the action to annul both the real estate mortgage and the foreclosure sale is barred by *res judicata*.

The issuance of a writ of possession is not a judgment on the merits. 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,<sup>[8]</sup> such as when a property is extra-judicially foreclosed.<sup>[9]</sup> In this regard, the issuance of a writ of possession to a purchaser in an extra-judicial foreclosure is merely a ministerial function.<sup>[10]</sup> As such, the Court neither exercises its official discretion nor judgment.<sup>[11]</sup> In other words, the issuance of the writ of possession is summary in nature,<sup>[12]</sup> hence the same cannot be considered a judgment on the merits which is defined as one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal technical point.<sup>[13]</sup>

Furthermore, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings and not to the exercise of administrative powers or to legislative, executive or ministerial determination.<sup>[14]</sup> Accordingly, cases disposed of on technical grounds do not fall within the doctrine of *res judicata*.<sup>[15]</sup> Hence, the