

FIRST DIVISION

[CA–G.R. CV No. 98982, March 10, 2015]

**BPI FAMILY SAVINGS BANK, INC., PETITIONER-APPELLEE, VS.
SPOUSES VIRGINIA M. CERVERA AND ARLENO M. CERVERA,
RESPONDENTS-APPELLANTS.**

DECISION

SORONGON, E.D., J.

This is an Appeal^[1] from the Decision^[2] dated April 16, 2012 of the Regional Trial Court of Mariveles, Bataan, Branch 4 in *CAD Case No. 734-ML*.

The Facts

On November 23, 2010, petitioner-appellee BPI Family Savings Bank (BPI) filed an *Ex-Parte Petition for Issuance of Writ of Possession* with the Regional Trial Court of Bataan docketed as *CAD Case No. 734-ML*^[3] against respondents-appellants spouses Virginia M. Cervera and Arleno M. Cervera (spouses Cervera). BPI averred that by virtue of the extra-judicial foreclosure proceeding and pursuant to the pertinent provisions of Act No. 3135, as amended, the Provincial Ex-Officio Sheriff of Balanga City sold at public auction^[4] on May 21, 2009 to BPI, being the highest bidder, the real property covered by TCT No. T-79126 of the Registry of Deeds of the Province of Bataan, consisting of 253 square meters, under the name of spouses Cervera.

On June 23, 2009, the Certificate of Sale^[5] was presented, registered and annotated at the back of TCT 79126. The spouses Cervera failed to exercise their one (1) year legal right of redemption reckoned from June 23, 2009. Consequently, ownership over said property was consolidated in the name of BPI and TCT No. T-79126 was canceled and a new title (TCT No. 038-2010006488)^[6] was issued in its name.

Finding the petition to be sufficient in form and substance, the trial court set the same for initial hearing. However, prior to the said hearing on March 15, 2011, the trial court received an *Opposition to the Motion for Writ of Possession*^[7] filed by spouses Cervera arguing on the main the pendency of a case for annulment of foreclosure and auction sale of the same property subject of the sought writ of possession which case should justify the suspension of the proceedings until such time that the said case is finally disposed. But BPI replied^[8] that the issuance of writ is ministerial and that it can proceed independently of any action seeking for the annulment of the foreclosure and auction sale.

On May 19, 2011, BPI was allowed to present evidence *Ex-Parte* during which witness Jennifer C. Salalila testified on the material averments of the petition.

Several documentary evidence^[9] were also submitted by BPI and admitted by the trial court as part of the testimony of said witness.

On April 16, 2012, the trial court issued its assailed Decision granting the petition, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court hereby orders the issuance of a Writ of Possession in favor of herein petitioner, BPI Family Savings Bank, Inc., involving one (1) parcel of land situated in Poblacion, Limay, Bataan and embraced by Transfer Certificate of Title No. 038-2010006488 against defendants, Spouses Virginia M. Cervera and Arleno M. Cervera and all persons/entities claiming rights under them."

Displeased, spouses Cervera filed a Notice of Appeal^[10] which was granted in the trial court's Order dated May 16, 2012. In their appeal brief, spouses Cervera alleged:

I.

THE COURT A *QUO* GRAVELY ERRED IN SETTING ASIDE THE OPPOSITION OF THE APPELLANT TO THE EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION AND DENYING THE RIGHT OF APPELLANT TO PARTICIPATE IN SAID PROCEEDING THEREBY DENYING APPELLANTS' RIGHT TO DUE PROCESS.

II.

THE COURT A *QUO* GRAVELY ERRED IN DENYING APPELLANTS' OPPOSITION THAT CIVIL CASE NO. 834-ML FOR ANNULMENT OF EXTRA-[JUDICIAL] FORECLOSURE PROCEEDINGS, AND APPLICATION FOR TEMPORARY RESTRAINING ORDER/INJUNCTION INVOLVING THE SAME PARTIES AND PROPERTY IN ISSUE [BE] RESOLVED FIRST AND ABATE THE PETITION FOR ISSUANCE OF WRIT OF POSSESSION.

In short, two main issues are raised in this appeal, *viz*: (1) Is the trial court correct in excluding spouses Cervera in the proceedings before it? (2) Will the pendency of the case for annulment of foreclosure proceedings and public auction have an effect over the proceedings for the issuance of a writ of possession?

We resolve the first issue in the affirmative. The trial court did not commit any error in maintaining the non-adversarial nature of a proceeding for the issuance of a writ of possession. A petition for the issuance of a writ of possession is *ex parte*, non-adversarial, and summary in nature because the only issue involved is the purchaser's right to possession. In fact, Section 7 of Act 3135 expressly provides that it is the ministerial duty of the court to issue a writ of possession in favor of the purchaser even during the redemption period, unless the case falls under the exceptions provided by law and jurisprudence.^[11]

In the case of *Spouses Fortaleza vs. Spouses Lapitan*^[12], it was held that:

Accordingly, unless a case falls under recognized exceptions provided by law and jurisprudence, we maintain the *ex parte*, non-adversarial,