



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

DEVELOPMENT BANK OF THE PHILIPPINES,  
Petitioner,

- versus -

G.R. No. 175728 & 178914

PRIME NEIGHBORHOOD ASSOCIATION,  
Respondent.

X-----/

May 08, 2009

NOTICE OF JUDGMENT

Sir:

Please take notice that on May 08, 2009 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case(s), the original of which is now on file in this Office.

Very truly yours,

  
LUDICHI YASAY NUNAG  
Clerk of Court 

The Chief Legal Counsel (reg)  
Counsel for Petitioner  
OFFICE OF THE LEGAL COUNSEL  
10<sup>th</sup> Flr., DBP Bldg., Sen. Gil Puyat Ave.,  
1200 Makati City

COURT OF APPEALS (x)  
Ma. Orosa St., Ermita, Manila  
(CA G.R. SP No. 85870)

OSCAR ESTOPIN (reg)  
President  
Prime Neighborhood Association, Inc.,  
Purok 4-A, 4-3 Luzon Avenue,  
Brgy. Culiati, 1100 Quezon City

THE PRESIDING JUDGE (reg)  
Regional Trial Court  
Branch 92, 1100 Quezon City  
(LRC Case No. Q-17793 [04])

Jp/



Republic of the Philippines  
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SECOND DIVISION

DEVELOPMENT BANK OF THE  
PHILIPPINES,

Petitioner,

- versus -

PRIME NEIGHBORHOOD  
ASSOCIATION

Respondents.

G.R. Nos. 175728 & 178914

Present:

CARPIO MORALES, J.,  
*Acting Chairperson,*

TINGA,

VELASCO, JR.,

LEONARDO-DE CASTRO,\*\* and  
BRION, JJ.

Promulgated:

MAY 08, 2009

*gibeling*

X-----X

DECISION

TINGA, J.:

Before this court are two consolidated cases involving two petitions for review on certiorari. The petitions seek to set aside the following decisions and resolutions of the Court of Appeals: in G.R.

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\*Acting Chairperson.

\*\*Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave

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No. 175728, the Decision<sup>1</sup> dated 15 September 2006 and Resolution<sup>2</sup> dated 11 December 2006 of the Court of Appeals Eleventh Division, while in G.R. No. 178914, the Decision<sup>3</sup> dated 28 August 2006 and Resolution<sup>4</sup> dated 17 July 2007 of the Fifteenth Division.

These consolidated cases arose from an *Ex-Parte* Petition for Issuance of a Writ of Possession<sup>5</sup> filed before the Regional Trial Court (RTC) of Quezon City, Branch 92, filed by petitioner Development Bank of the Philippines (DBP) against Y-Electric Power Corporation (Y-Electric), mortgagor and previous owner of the subject parcel of land. Sometime in June 1960, Y-Electric obtained from DBP an industrial loan of ₱408,000.00 secured by a Real Estate Mortgage executed by the spouses Victorino Yenko and Rosa Jaranilla-Yenko in favor of DBP, over the parcel of land situated in Quezon City, covered by certificate of title TCT No. 342461 (RT-101612).

Y-Electric failed to pay its loan obligation; hence, DBP instituted extrajudicial foreclosure of the mortgage. On 4 March 1977, the property was sold at public auction to DBP as the highest bidder. A certificate of sale was issued in favor of DBP and was registered on 25 May 1977. The redemption period expired on 25 May 1978 without the property being redeemed. On 20 May 2000,

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<sup>1</sup>Rollo (G.R. No. 175728), pp. 56-64.

<sup>2</sup>Id. at 66-67.

<sup>3</sup>Id. at 25-26.

<sup>4</sup>Id. at 68-75.

<sup>5</sup>Id. at 68-75/

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DBP consolidated its ownership of the property. Thereafter, DBP subdivided the parcel of land, and on 12 March 2003, had TCT No. 342461 cancelled and in lieu thereof TCT Nos. 247959 and 247960 issued in its name.

On 12 March 2004, DBP filed the *Ex-Parte* Petition for Issuance of a Writ of Possession.<sup>6</sup> On 28 May 2004, the RTC issued an order<sup>7</sup> granting the petition and a writ of possession was issued on 1 June 2004.

On 29 July 2004, respondent Prime Neighborhood Association (PNA) filed its Opposition to the Writ of Possession with Prayer for Temporary Restraining Order (TRO).<sup>8</sup> PNA claimed to represent third persons in possession of the property in their own right and adverse to the mortgagor Y-Electric. It alleged that it became aware of the writ only when it was being served upon its president Oscar Estopin and several of its members on 14 July 2004. PNA claimed that it should have been notified of the proceedings as it is the owner of the subject property pursuant to a Deed of Sale executed to them by Julian M. Tallano, the registered owner's predecessor-in-interest and court-appointed administrator. It disputed the ownership of Y-Electric as mortgagor and DBP as purchaser at auction as their claims arose from a spurious title. PNA alleged it had filed a case for unlawful detainer against DBP and Luzonville Homeowners Association before the Metropolitan Trial Court (MeTC) of Quezon

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<sup>6</sup>Rollo (G.R. No. 178914), pp. 104-109.

<sup>7</sup>Rollo (G.R. No. 175728), pp. 79-80.

<sup>8</sup>Rollo (G.R. No. 178914), pp. 115-122.

City, Branch 21, docketed as Civil Case No. 32412. The unlawful detainer case was dismissed on 6 April 2004. PNA filed a notice of appeal on 11 May 2004, and said appeal was still pending at another branch of the Quezon City RTC. PNA claimed that as it was not included as a party in the proceedings of the issuance of the writ of possession, it was deprived of due process when the said writ was issued.

On 5 August 2004, the RTC issued an order noting PNA's opposition and denying its prayer for the issuance of a TRO.<sup>9</sup> Aggrieved, PNA filed a petition for certiorari<sup>10</sup> with the Court of Appeals docketed as CA-G.R. SP No. 85870 to annul the writ of possession issued on 28 May 2004, with prayer for issuance of a restraining order to prevent DBP from dispossessing them of the property.

In the meantime, on 17 September 2004, DBP served a notice to vacate the premises against PNA through Sheriff Wilfredo Villanueva of the RTC. The occupants of the property however refused to receive the notice and the sheriff was forced to leave the notice to vacate at their residences. DBP thus filed a Motion to Issue an Order of Demolition to Effect the Implementation of the Writ of Possession<sup>11</sup> against PNA, all persons occupying the subject property and all the improvements thereon. On 30 November 2004, the RTC

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<sup>9</sup>*Rollo* (G.R. No. 178914), p. 127.

<sup>10</sup>*Rollo* (G.R. No. 175728), pp. 81-88.

<sup>11</sup>*Rollo* (G.R. No. 178914), pp. 139-142.





denied the motion.<sup>12</sup> DBP's motion for reconsideration was likewise denied. Thus, DBP filed a petition for certiorari<sup>13</sup> with the Court of Appeals docketed as CA-G.R. SP No. 89051 to annul the orders denying its motion for issuance of a demolition order and its motion for reconsideration.

In CA-G.R. SP No. 85870, the Court of Appeals promulgated the assailed Decision<sup>14</sup> dated 15 September 2006 granting PNA's petition for certiorari and setting aside the RTC's order for the issuance of the writ of possession. The appellate court relied on *Philippine National Bank v. Court of Appeals*<sup>15</sup> and *Capital Credit Dimension, Inc. v. Chua*<sup>16</sup> which both held that the obligation of a court to issue an *ex parte* writ of possession in favor of a purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor, and that the issuance of the writ of possession in such a case would be to sanction a summary ejectment in violation of the basic tenets of due process. The Court of Appeals thus held that the RTC should not just ignore PNA's claims but should allow their opposition to be heard in order to determine whether they are actual occupants of the subject property. The dispositive portion of the decision reads:

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<sup>12</sup>Rollo (G.R. No. 178914), pp. 101-102.

<sup>13</sup>Rollo (G.R. No. 178914), pp. 86-100.

<sup>14</sup>Supra note 1. Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Elvi John S. Asuncion and Jose Catral Mendoza.

<sup>15</sup>424 Phil. 757 (2002).

<sup>16</sup>G.R. No. 157213, 28 April 2004, 428 SCRA 259.



WHEREFORE, in view of all the foregoing, the petition is GRANTED and the assailed orders of the public respondent are declared NULL and VOID and are hereby SET ASIDE.

This case is hereby remanded to the court *a quo* for further proceedings, specifically, to determine whether or not members of petitioner Prime Neighborhood Association, Inc., are actually in possession of subject property who are claiming right adverse to that of the original mortgagor.

SO ORDERED.<sup>17</sup>

The appellate court also denied DBP's motion for reconsideration in the assailed Resolution<sup>18</sup> dated 11 December 2006 for lack of merit.

In CA-G.R. SP No. 89051, the Court of Appeals promulgated the assailed Decision<sup>19</sup> dated 28 August 2006 dismissing DBP's petition for certiorari and affirming the RTC's orders denying DBP's motion for the issuance of a demolition order. The appellate court again cited *Philippine National Bank v. Court of Appeals*, saying that the general rule that the issuance of a writ of possession in favor of a purchaser in a foreclosure sale after the lapse of the redemption period and after title is consolidated in its favor does not apply to affect the possession of third persons claiming adverse ownership against the judgment debtor and who were not made a party therein. The Court of Appeals noted that DBP already knew of the actual adverse

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<sup>17</sup>Rollo (G.R. No. 175728), p.63.

<sup>18</sup>Supra note 2.

<sup>19</sup>Supra note 3. Penned by Associate Justice Normandie B. Pizarro, concurred in by Associate Justices Eliezer R. De Los Santos and Aurora Santiago-Lagman.



possession of PNA and that it was for the purpose of racing to beat the proceedings in the ejectment case filed by PNA that the *Ex-Parte* Petition for Issuance of a Writ of Possession was filed. The *fallo* of the decision thus reads:

WHEREFORE, premises considered, the Petition is hereby DISMISSED. The questioned Orders of Br. 92, Regional Trial Court, Quezon City, dated 30 November 2004 and 17 January 2005 respectively, in LRC Case No. Q-17793(04) are hereby AFFIRMED *in toto*.

SO ORDERED.<sup>20</sup>

DBP filed a motion for reconsideration but this was denied in the assailed Resolution<sup>21</sup> dated 17 July 2007.

DBP thus filed these petitions for review. In G.R. No. 175728 assailing the decision and resolution in CA-G.R. SP No. 85870, DBP assigns the following errors:

- (a) The Court of Appeals erred in granting the intervention of PNA in a proceeding which is *ex parte* in nature.
- (b) The Court of Appeals erred in giving due course to the petition for certiorari filed by PNA which is clearly frivolous and unfounded and a collateral attack on herein petitioner's valid and subsisting title.
- (c) The Court of Appeals erred in disregarding the ruling of this Honorable Supreme Court in *St. Dominic Corp. v.*

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<sup>20</sup>Id. at 22..

<sup>21</sup>Supra note 4.



*Intermediate Appellate Court*<sup>22</sup> where it was held that there is no denial of the right of a third party in an *ex parte* proceeding when the latter is merely an intruder/squatter.<sup>23</sup>

In G.R. No. 178914 assailing the decision and resolution in CA-G.R. SP No. 178914, DBP raises the following grounds:

- (a) The Court of Appeals erred in denying DBP's motion for demolition for its reliance on *Philippine National Bank v. Court of Appeals* is off tangent and hence, bereft of basis.
- (b) The Court of Appeals should not have considered PNA's allegations collaterally attacking the integrity of DBP's titles.
- (c) DBP's right to the property is founded on the right to ownership, hence its right over the property is absolute, vesting upon it the right of possession of the property which the court must aid in effecting its delivery.<sup>24</sup>

The propriety of the issuance of the writ of possession relating to the foreclosure of the real estate mortgage is at issue in these consolidated cases. Consequently, DBP's arguments in the two petitions are inter-related, if not similar.

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<sup>22</sup>Cited as 151 SCRA 577.

<sup>23</sup>*Rollo* (G.R. No. 175728), p. 31.

<sup>24</sup>*Rollo* (G.R. No. 178914), pp. 39-49.

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DBP argues that as the purchaser of the foreclosed property in the public auction, it has the right to petition the trial court to place him in possession of the property through the filing of an *ex parte* motion, pursuant to Sec. 7<sup>25</sup> of Act No. 3135,<sup>26</sup> as amended by Act No. 4118.<sup>27</sup> The issuance of a writ of possession to the purchaser in the extrajudicial foreclosure has long been held to be a ministerial function of the trial court. By the very nature of an *ex parte* proceeding that it is brought for the benefit of one party only and without notice to or consent by any person adversely interested, PNA should not have been allowed to intervene by filing an opposition to the motion for issuance of writ of possession. Instead, DBP claims, PNA should have filed a direct proceeding to have DBP's title declared void and not have resorted to the procedural short cut of intervention.

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<sup>25</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.

<sup>26</sup>AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, 6 March 1924.

<sup>27</sup>AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES," 7 December 1933.



DBP also argues that PNA's claim of ownership upon which it based its opposition is baseless. DBP alleges that PNA, through its president Oscar Estopoin, recognized DBP's ownership over the subject property. Estopoin was the former Vice President of Luzonville Homeowner's Association, Inc. (LHA) and one of its incorporators. The Articles of Incorporation and By-Laws of LHA were registered with the Home Insurance and Guaranty Corporation on 21 August 1998 as "Luzonville Homeowners Association, Inc. (Development Bank of the Philippines Property)." The By-Laws also indicated that the members of LHA were all homeowners or long term lessees of houses at the subject property owned by DBP. DBP claims that it was only on 9 February 2004 that PNA started to falsely claim ownership of the foreclosed property by virtue of an alleged Deed of Sale with Real Estate Mortgage from the vendor, a certain Don Julian M. Tallano, when they learned that DBP agreed to sell the subject property to LHA pursuant to a Memorandum of Agreement dated 22 December 2003. DBP clarifies that PNA is merely a break-away group from LHA. With LHA's recognition of DBP's ownership of the foreclosed property under the Memorandum of Agreement, PNA is estopped from making an adverse claim of ownership against DBP.

PNA claims that DBP's title to the foreclosed property is void, having as its source a fraudulent original certificate of title, OCT No. 614. Such a claim, DBP argues, constitutes a collateral attack on DBP's titles to the foreclosed property. DBP points out that the property is covered by a certificate of title and has passed through different owners until it was acquired by DBP. DBP has already consolidated its title to the property and has had it registered in its



name. Previous to that, nobody claimed ownership thereof adverse to the former owners and to DBP. In sanctioning PNA's baseless claim of ownership, DBP alleges that the Court of Appeals has ignored the protection given by law to the Torrens system and to the certificates of title issued to DBP. DBP thus argues that the Court of Appeals should not have relied on *Philippine National Bank v. Court of Appeals* because PNA cannot be considered a third party in possession of the subject property under a claim of title adverse to DBP's. PNA is neither the owner nor is in possession of rights under a color of title, but a mere squatter/intruder. On the other hand, DBP's right to the property is founded on its right of ownership. It has an indefeasible right to the property and its right over the property is absolute, vesting upon it the right of possession. Thus, the Court of Appeals should have allowed DBP to enforce its right to the possession of the property. The Court of Appeals should have relied on *St. Dominic Corp. v. Intermediate Appellate Court*<sup>28</sup> which emphasized the indefeasibility of Torrens title vis-à-vis baseless claims of ownership. It held that as the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, DBP's right over the property has become absolute, vesting upon it the right of possession of the property which the court must aid in effecting its delivery.

DBP thus prays that the decision of the CA in CA-G.R. SP No. 85870 be set aside and the writ of possession granted by the RTC be reinstated, and that the decision in CA-G.R. SP No. 89051 affirming the denial of the motion for a writ of demolition be set aside and the

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<sup>28</sup>235 Phil. 582 (1987).

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implementation of the writ of possession through the issuance of the writ of demolition against PNA be ordered.

The Court finds the petitions bereft of merit. They should be denied.

It is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. The governing law, Act No. 3135, as amended, in Section 7 thereof, 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.<sup>29</sup> The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser.<sup>30</sup>

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<sup>29</sup>*Sulit v. Court of Appeals*, 335 Phil. 914, 924 (1997).

<sup>30</sup>*Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 405.



But the rule is not without exception. Under Section 35,<sup>31</sup> Rule 39 of the Rules of Court, which is made suppletory to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure *unless a third party is actually holding the property adversely to the judgment debtor*. Thus, in the cited case of *Philippine National Bank v. Court of Appeals*,<sup>32</sup> the Court held that the obligation of a court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.<sup>33</sup> This is substantiated by the Civil Code which protects the actual possessor of a property. The discussion in *Philippine National Bank* on this matter is informative:

Under [Article 433<sup>34</sup> of the Civil Code], 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 ownership claims of the contending parties may be properly heard and adjudicated.

An *ex parte* petition for issuance of a possessory writ under Section 7 of Act 3135[, as amended,] is not, strictly speaking, a "judicial process" as contemplated above. Even if the same may

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<sup>31</sup>Now Section 33, Rule 39 of the Rules of Court as revised. The second paragraph thereof reads: "SEC. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.*—x x x 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."

<sup>32</sup>*Supra* note 5.

<sup>33</sup>*Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 406.

<sup>34</sup>ART. 43. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owners must resort to judicial process for the recovery of the property.



be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court by which one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."

It should be emphasized that an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Ac 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less than an action for ejectment to be brought even by the true owner. After all, the actual possessor of a property enjoys a legal presumption of just title in his favor, which must be overcome by the party claiming otherwise.<sup>35</sup>

This was reiterated in *Dayot v. Shell Chemical Company (Phils.), Inc.*<sup>36</sup>

The question now is whether PNA is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor. The answer is yes.

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<sup>35</sup>*PNB v. Court of Appeals*, *supra* note 10 at 769-771.

<sup>36</sup>G.R. No. 156542, 26 June 2007, 525 SCRA 535.

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DBP's right of possession is founded on its right of ownership over the property which he purchased at the auction sale. Upon expiration of the redemption period and consolidation of the title to the property in its name, DBP became substituted to and acquired all the rights, title and interest of the mortgagor Y Electric. As the new owner of the property, DBP can validly exercise his right of possession over it. Thus, as against Y Electric and its successors-in-interest, DBP can apply for the issuance of a writ of possession against them to compel them to deliver and transfer possession to DBP. Note, however, that a third party not privy to the debtor/mortgagor—in this case, Y Electric—is protected by law. The purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.<sup>37</sup> As previously stated, under the law, such third party's possession of the property is legally presumed to be pursuant to a just title which may be overcome by the purchaser in a judicial proceeding for recovery of the property. It is through such a judicial proceeding that the nature of such adverse possession by the third party is determined, according such third party due process and the opportunity to be heard. The third party may be ejected from the property only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process.<sup>38</sup>

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<sup>37</sup>*Roxas v. Buan*, No. L-53798, 8 November 1988, 167 SCRA 43, 50.

<sup>38</sup>*Unchuan v. Court of Appeals (Fifth Division)*, No. L-78775, 31 May 1988, 161 SCRA 710, 716.

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In its petition for certiorari in CA-G.R. No. SP No. 85870, PNA claims that it is the owner of the property in dispute as it purchased it from its true owner, and that the title to the property upon which Y Electric and DBP base their claim is fictitious and non-existent. In exercise of its right of ownership, PNA filed an ejectment case against DBP which is now on appeal with the RTC of Quezon City. There is nothing in the records that would show that PNA derives its claim of ownership from Y Electric or from Y Electric's predecessors-in-interest, or that PNA is a successor-in-interest or transferee of Y Electric's rights. It is thus clear that PNA asserts a claim of ownership adverse to that of Y Electric and DBP, and that it acquired title and possession of the property by virtue of a title entirely distinct from that through which DBP claims. PNA thus stands in the same position as a stranger or third party whose rights to the property cannot be resolved in an *ex parte* proceeding where it was not impleaded or where it could appear to present its side.

*St. Dominic Corp. v. Intermediate Appellate Court*,<sup>39</sup> cited by DBP, actually supports the finding that PNA is a third party possessor claiming against DBP an adverse right. The facts in *St. Dominic* are as follows:

In 1961, the People's Homesite and Housing Corporation (PHHC) awarded a parcel of land covered by TCT No. 83783 to Cristobal Santiago, who sold the same to the spouses Carlos Robes and Adelia Francisco. The spouses Robes mortgaged the lot to Manufacturer's Bank and Trust Company, and this fact was duly

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<sup>39</sup>Supra note 28.

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annotated on the back of TCT No. 84387. Thereafter, Civil Case No. Q-11895, entitled "Ricardo Castulo and Juan V. Ebreo v. Carlos Robes, Adelia Francisco, and People's Homesite and Housing Corporation," was filed seeking the cancellation of TCT No. 83783. Claiming legal interest in the property, the Bustamante spouses were allowed to intervene in the case. A notice of *lis pendens* was annotated on the title at the instance of the Bustamante spouses. For failure of the Robes spouses to pay the mortgage obligation, Manufacturer's Bank foreclosed the lot which was then bought at public auction by Aurora Francisco, who was subsequently issued a certificate of sale. As no redemption of the property was effected, TCT No. 84387 issued in the name of the Robes spouses was cancelled and TCT No. 217192 was issued to the buyer Aurora Francisco. The notice of *lis pendens* was not carried over to TCT No. 217192.

Aurora Francisco applied for, and was issued, a writ of possession for the property. The Bustamante spouses filed a motion to quash the writ, which motion was denied by the lower court. The spouses then filed a petition for certiorari with the Supreme Court. Thereafter, Aurora Francisco sold the property to petitioner St. Dominic Corp, which was issued TCT No. 22337. Again, no notice of any lien or encumbrance appeared on the title.

Meanwhile, Civil Case No. Q-11895 was decided. The trial court ruled that the sale by PHHC to Cristobal Santiago was void and cancelled TCT No. 83783. The sale of the same lot to the spouses Robes was likewise declared void and TCT No. 84387 was cancelled. PHHC was ordered to process Bustamante's application to purchase the lot and execute documents awarding the lot to her. A writ of execution was issued to the Bustamante spouses, with the qualification, however, that the writ could not be enforced against St. Dominic Corp. The spouses questioned the order via certiorari [with St. Dominic Corp. and Aurora Francisco, though not parties to Civil Case No. Q-11895, made respondents thereto] with the Intermediate Appellate Court, which granted the writ of certiorari and ordered the trial court to issue the writ of execution against St. Dominic Corp.<sup>40</sup>

This Court reversed the ruling of the Intermediate Appellate Court and held that St. Dominic Corp. was not bound by the decision in that case because it was never impleaded in Civil Case No. Q-11895. Anent the effect of the trial court's judgment on

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<sup>40</sup>As summarized in the *Malayan Bank v. Lagrama*, 409 Phil. 493, 505-506 (2001).

Manufacturer's Bank's (mortgagee bank) rights and on the foreclosure of the property in question, it was held that where a Torrens title was issued as a result of regular land registration proceedings and was in the name of the mortgagor when given as a security for a bank loan, the subsequent declaration of said title as null and void would not nullify the rights of the mortgagee who acted in good faith. The mortgagee is under no obligation to look beyond the certificate of title and has the right to rely on what appears on its face. The title to the property given as security to Manufacturer's Bank by the spouses Robes was valid, regular, and free from any lien or encumbrance. The title of Aurora Francisco, as a purchaser at the auction sale of the property in question, could not be affected by any adverse claim of the plaintiffs in Civil Case No. Q-11895. This is even more true with petitioner St. Dominic Corp. which had acquired title from Francisco without any notice or flaw.<sup>41</sup>

The Bustamante spouses assailed the grant *ex parte* by the trial court of the writ of possession over the property in favor of Aurora Francisco, alleging that a court has no jurisdiction, power and authority to eject a third person who is not a party to the foreclosure proceedings or mortgage by a mere writ of possession summarily issued in a foreclosure suit. This Court approved of the trial court's disquisition on this matter. The trial court was aware of the limitation that a writ of possession may not issue when the property is in the possession of a third party who holds the property adverse to the buyer in the foreclosure sale. But by their express admission in their motion to intervene, the Bustamante spouses were merely occupants-

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<sup>41</sup>*St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34, at 592-594.



applicants for the purchase of the land from PHHC. Their claim was at best inchoate, and cannot prevent the issuance of the writ of possession prayed for; to do so would becloud the integrity of the Torrens title and in derogation of its indefeasibility. Their inchoate right cannot prevail over the clean title of Aurora Francisco and/or St. Dominic Corp. The Bustamante spouses had no clear title or right that may be enforced, thus, the writ of possession should issue in favor of Aurora Francisco and/or St. Dominic Corp.<sup>42</sup> The Court added:

Indeed, the rules contemplate a situation where a third party holds the property by adverse title or right such as a co-owner, tenant or usufructuary. In such cases, a grant of a writ of possession would be denial of such third person's rights without giving them their day in court. Especially where question of title is involved, the matter would well be threshed out in a separate action and not in a motion for a writ of possession.<sup>43</sup>

Clearly, the facts in *St. Dominic* are hugely different from the facts of the case at bar. The Bustamante spouses' claim is not as owner of the property, but only as an occupant-applicant thereto; it rests on a mere expectancy. They did not hold the property by any adverse title or right. In the case at bar, however, PNA claims ownership of the property through a title adverse to that of DBP and DBP's predecessor-in-interest.

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<sup>42</sup>*St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34 at 595-597.

<sup>43</sup>*St. Dominic Corp. v. Intermediate Appellate Court*, *supra* note 34 at 596.



The other cases<sup>44</sup> cited by DBP also support the finding of PNA as a third party claiming an adverse right. These cases support the ruling that trespassers or intruders without title can be evicted by writ of possession. However, the issuance of the writ of possession in these cases, except for one, is not pursuant to the foreclosure of a mortgage under Act No. 3135, as amended. The said cases involve different judicial proceedings which have for its purpose the recovery of property. Thus, *Caballero v. Court of Appeals* involves an action for cancellation of sale. *Mendoza v. National Housing Authority* and *Galay v. Court of Appeals* are cases for ejectment. *E.B. Marcha Transport Co. v. Intermediate Appellate Court* involves a case for recovery of possession of property. *Rodil v. Benedicto* and *Demorar v. Ibanez* concern registration proceedings. It should be noted too that in these cases, there was a categorical finding by the courts, or there was an admission by the parties, that the persons to be evicted are indeed squatters or intruders without any right to the property.

The only case cited by DBP which involves the issuance of a writ of possession under Act No. 3135 is *Rivero de Ortega v. Natividad* which, however, supports the finding that PNA is a third party possessor protected under the law. Thus:

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<sup>44</sup>*Caballero v. Court of Appeals*, G.R. No. 59888, 29 January 1993, 218 SCRA 56, 64; *Mendoza v. National Housing Authority*, 197 Phil. 596 (1982); *E.B. Marcha Transport Co., Inc. v. Intermediate Appellate Court*, 231 Phil. 275 (1987); *Galay v. Court of Appeals*, 321 Phil. 224 (1995); *Lourdes Rivero D. Ortega v. Hon. Felipe Natividad, et al.*, 71 Phil. 340, 342; *Tomas Rodil, et al. v. Judge Benedicto*, 184 Phil. 107 (1980); and *Demorar v. Ibanez, etc.*, 97 Phil. 72, 74 (1955).

But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree. x x x Thus, it was held that only parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders without title, can be evicted by a writ of possession. x x x The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end.<sup>45</sup>

PNA also need not prove its ownership of the foreclosed property in the same *ex parte* proceeding instituted by DBP. The jurisdiction of the court in the *ex parte* proceeding is limited only to the issuance of the writ of possession. It has no jurisdiction to determine who between the parties is the rightful owner and lawful possessor of the property. As earlier stated, the appropriate judicial proceeding must be resorted to.<sup>46</sup> Consequently, the Court of Appeals' order in CA-G.R. SP No. 85870 to remand the case to the court *a quo* to determine whether PNA and its members are actually in possession of the property claiming a right adverse to that of the original mortgagor is unnecessary.

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<sup>45</sup>*Rivero de Ortega v. Natividad*, 71 Phil. 340, 342-343 (1941).

<sup>46</sup>See CIVIL CODE, Art. 43, *supra* note 29; *Philippine National Bank v. Court of Appeals*, *supra* note 10, at 32; and *Rivero de Ortega v. Natividad*, *supra* note 40, at 343.

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**WHEREFORE**, the petitions for review in certiorari are **DENIED**.

In G.R. No. 175728, the Court of Appeals Decision dated 15 September 2006 is **AFFIRMED** insofar as it declares as null and void the Regional Trial Court's Order dated 5 August 2004. The Resolution dated 11 December 2006 is also **AFFIRMED**.


In G.R. No. 178914, the Decision dated 28 August 2006 and Resolution dated 17 July 2007 are **AFFIRMED**.

**SO ORDERED.**

  
DANTE OTINGA  
Associate Justice

WE CONCUR:

  
CONCHITA CARPIO MORALES  
Associate Justice  
Acting Chairperson

  
PRESBITERO J. VELASCO, JR.  
Associate Justice

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

  
ARTURO D. BRION  
Associate Justice

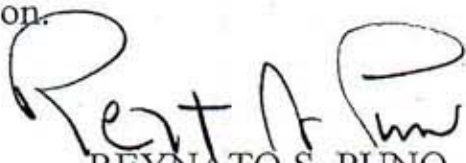
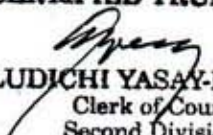


**ATTESTATION**

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.

  
CONCHITA CARPIO MORALES*Associate Justice**Acting Chairperson, Second Division***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified 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.

  
REYNATO S. PUNO*Chief Justice***CERTIFIED TRUE COPY:**  
LUDICHI YASAY-NUNAG  
Clerk of Court  
Second Division