



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**RIZAL COMMERCIAL  
BANKING CORPORATION,**

Petitioner,

- versus -

**FEDERICO A. SERRA,  
SPOUSES EDUARDO and  
HENEDINA ANDUEZA,  
ATTY. LEOMAR R. LANUZA,  
MR. JOVITO C. SORIANO,  
ATTY. EDWIN L. RANA,  
ATTY. PARIS G. REAL,  
ATTY. PRUDENCIO B. DENSING, JR.,  
HON. JUDGE MAXIMINO R. ABLES,  
and ATTY. ERWIN S. OLIVA,**  
Respondents.

**G.R. No. 216124**

Present:

CARPIO, J., Chairperson,  
PERALTA,  
MENDOZA,  
LEONEN,\* and  
MARTIRES, JJ.

Promulgated:

19 JUL 2017  
*[Signature]*

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**DECISION**

**CARPIO, J.:**

**The Case**

Before the Court is a petition for indirect contempt<sup>1</sup> with prayer for the issuance of a temporary restraining order (TRO) filed by petitioner Rizal Commercial Banking Corporation (RCBC) against respondents Federico A. Serra, et al., for acts allegedly disregarding this Court's final and executory decisions in G.R. Nos. 103338,<sup>2</sup> 182478,<sup>3</sup> 182664,<sup>4</sup> and 203241.<sup>5</sup>

\* On official leave.

<sup>1</sup> Under Rule 71 of the Rules of Court.

<sup>2</sup> Entitled *Serra v. Court of Appeals*, which was promulgated on 4 January 1994 (299 Phil. 63 [1994]).

<sup>3</sup> Entitled *Liok v. RCBC*. Resolution issued on 30 June 2008.

<sup>4</sup> Entitled *Serra v. RCBC*. Resolution issued on 22 October 2008.

<sup>5</sup> Entitled *Rizal Commercial Banking Corporation v. Serra*, which was promulgated on 10 July 2013 (713 Phil. 722 [2013]).

*[Handwritten mark]*

### The Facts

On 25 August 2011, RCBC filed a motion for execution before the Regional Trial Court, Makati, Branch 134 (RTC-Makati), in Civil Case No. 10054. RCBC sought to execute the RTC-Makati's Order dated 5 January 1989, which directed respondent Federico A. Serra (Serra) to sell to RCBC a parcel of land in Masbate covered by Original Certificate of Title (OCT) No. O-232 on which the Masbate Business Center of RCBC is located (subject property).

During the pendency of Civil Case No. 10054, Serra mortgaged the subject property to respondent Spouses Eduardo M. Andueza and Henedina V. Andueza (Spouses Andueza) on 21 September 2011. On 26 September 2011, Spouses Andueza had the real estate mortgage annotated on OCT No. O-232 under Entry No. 2011000513.<sup>6</sup>

In an Order dated 16 February 2012,<sup>7</sup> the RTC-Makati denied RCBC's motion for execution for lack of basis. The RTC-Makati found that it had been almost 18 years after the 5 January 1989 Order had become final and executory that RCBC filed the motion for execution. Neither did RCBC file an action to revive judgment within ten years from the date the Order became final.

In an Order dated 26 July 2012, the RTC-Makati denied RCBC's motion for reconsideration.

On 11 October 2012, RCBC filed a petition for review with this Court assailing the RTC-Makati's Orders dated 16 February 2012 and 26 July 2012. The petition was docketed as G.R. No. 203241. In its petition, RCBC prayed for the issuance of a TRO to prevent any attempt to remove it from the subject property, since Serra and Atty. Gina Besa-Serra had already caused the service of a notice to vacate and demand for the payment of accrued back rentals, dated 6 September 2012, on RCBC.

On 3 December 2012, the Court issued a TRO, which restrained Serra and the RTC-Makati from implementing and enforcing the Orders dated 16 February 2012 and 26 July 2012 and from performing any act to remove or threaten RCBC from the subject property.

On 14 February 2013, RCBC had the TRO issued by this Court annotated on OCT No. O-232 under Entry No. 2013000087.

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<sup>6</sup> *Rollo*, Vol. I, p. 69.

<sup>7</sup> *Rollo* (G.R. No. 203241), pp. 39-42.



On 10 July 2013, the Court issued a Decision in G.R. No. 203241 which reads:

WHEREFORE, we GRANT the petition. We SET ASIDE the assailed Orders of the Regional Trial Court of Makati dated 16 February 2012 and 26 July 2012. The Temporary Restraining Order issued by this Court on 3 December 2012 is made permanent. The Regional Trial Court of Makati City is DIRECTED to issue the writ of execution in Civil Case No. 10054 for the enforcement of the decision therein. Costs against petitioner.

SO ORDERED.<sup>8</sup>

The Decision became final and executory on 27 November 2013.<sup>9</sup>

Meanwhile, Andueza filed a petition for extrajudicial foreclosure of real estate mortgage,<sup>10</sup> dated 13 August 2013, with the Provincial Sheriff of Masbate since Serra defaulted on his loan obligation.

Pursuant to the Decision in G.R. No. 203241, RCBC filed on 27 February 2014 a new motion for execution before the RTC-Makati. Andueza, a non-party to the case, filed an opposition to the motion for execution with affirmative reliefs.

In an Order dated 14 May 2014,<sup>11</sup> the RTC-Makati granted the motion for execution and dismissed the opposition of Andueza. The RTC-Makati held that the real estate mortgage is inferior to RCBC's right since the mortgage was constituted when Serra no longer had ownership and free disposal of the subject property. Accordingly, the RTC-Makati ordered the issuance of a writ of execution.

Andueza did not file a motion for reconsideration of the RTC-Makati's execution order. Neither did he file an appeal before the Court of Appeals. Thus, the Order of 14 May 2014 became final.

On 23 June 2014, the RTC-Makati issued a writ of execution.<sup>12</sup>

Based on his Report,<sup>13</sup> Sheriff Roberto V. Harina (Sheriff Harina) of the RTC-Makati attempted to serve on Serra a copy of the Notice to Comply and a copy of the Writ of Execution. However, Serra was not in his office so Sheriff Harina left with Serra's caretaker copies of the Notice to Comply and the Writ of Execution, who returned such copies by leaving them at the information table of the Bulwagan ng Katarungan, Masbate City.

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<sup>8</sup> *Rollo*, Vol. 1, p. 75.

<sup>9</sup> *Id.* at 77.

<sup>10</sup> *Id.* at 78-79.

<sup>11</sup> *Id.* at 80-83.

<sup>12</sup> *Id.* at 84-86.

<sup>13</sup> *Id.* at 87.

Meanwhile, acting on the petition for extrajudicial foreclosure, respondents Atty. Leomar R. Lanuza (Atty. Lanuza), Clerk of Court and Ex-Officio Provincial Sheriff of the RTC-Masbate, and Jovito C. Soriano (Soriano), Sheriff of the RTC-Masbate, scheduled the public auction of the subject property on 26 June 2014 at 2:00 in the afternoon.<sup>14</sup>

On 14 June 2014, RCBC filed a petition for injunction<sup>15</sup> before the RTC-Masbate, docketed as Civil Case No. 6971, to enjoin the extrajudicial foreclosure sale and public auction of the subject property. Respondent Judge Maximino R. Ables (Judge Ables), as Executive Judge of the RTC-Masbate, issued a 72-hour TRO on 25 June 2014.

In a Notice of Extrajudicial Foreclosure and Sale of Real Estate Mortgage dated 18 August 2014,<sup>16</sup> Soriano scheduled anew the public auction sale of the subject property on 24 September 2014 at 2:00 in the afternoon.

In the meantime, RCBC filed before the RTC-Makati a motion to divest Serra of his title, invoking Section 10(a), Rule 39 of the Rules of Court.<sup>17</sup>

In a Resolution dated 23 September 2014,<sup>18</sup> the RTC-Masbate denied RCBC's motion for the issuance of a 20-day TRO.

The public auction sale of the subject property proceeded on 24 September 2014, with Andueza being the highest bidder.<sup>19</sup>

On 25 September 2014, a Certificate of Sale<sup>20</sup> was issued by Soriano, noted by Atty. Lanuza and approved by Judge Ables. The certificate of sale showed that the subject property was sold to Andueza.

In an Order dated 26 September 2014,<sup>21</sup> the RTC-Makati granted RCBC's motion to divest Serra of his title. The RTC-Makati also granted RCBC's prayer to have the Registry of Deeds for Masbate cancel Entry No. 2011000513, representing the mortgage of the subject property. The RTC-Makati stated:

In the same vein, the Court resolves to grant plaintiff's prayer to remove or cancel the mortgage annotation on OCT No. O-232, specifically Entry No. 2011000513. As held by this Court in its Order dated 14 May 2014, defendant no longer had ownership and free disposal of the property

<sup>14</sup> Id. at 128-129.

<sup>15</sup> *Rollo*, Vol. II, pp. 549-564.

<sup>16</sup> *Rollo*, Vol. I, pp. 91-92.

<sup>17</sup> *Rollo*, Vol. II, pp. 574-585.

<sup>18</sup> Id. at 586-588.

<sup>19</sup> *Rollo*, Vol. I, pp. 93-94.

<sup>20</sup> Id. at 95.

<sup>21</sup> Id. at 96-98.

by the time he fraudulently mortgaged the property to the Spouses Eduardo M. Andueza and Dina Andueza. Clearly, mortgagees-spouses Andueza do not have any right or interest over the property and the title to be transferred to plaintiff must be free from invalid encumbrances, such as that of Entry No. 2011000513 of the Real Estate Mortgage in favor of the Spouses Andueza.<sup>22</sup>

In his Comment dated 7 October 2014,<sup>23</sup> Serra asserted that due to the public auction sale on 24 September 2014, where the subject property was sold to Andueza for being the highest bidder, he could no longer sell the subject property to RCBC.

In a motion dated 10 December 2014,<sup>24</sup> Spouses Andueza pleaded that the RTC-Makati vacate its 26 September 2014 Order. Spouses Andueza claimed that the RTC-Makati erred in cancelling the real estate mortgage without the trial court conducting any full-blown hearing. They also alleged that they were not parties in Civil Case No. 10054; thus, they are not bound by whatever decision or order the trial court issued in the case. RCBC opposed the motion.<sup>25</sup>

On 22 December 2014, RCBC had the Decision in G.R. No. 203241 annotated on OCT No. O-232 under Entry No. 2014000568.

On 27 January 2015, Andueza, through his counsels respondents Atty. Paris G. Real (Atty. Real) and Atty. Prudencio B. Densing, Jr. (Atty. Densing) filed before the RTC-Masbate an ex-parte motion for issuance of writ of possession,<sup>26</sup> which was granted by Judge Ables in an Order dated 28 January 2015.<sup>27</sup>

On 29 January 2015, respondent Atty. Edwin L. Rana (Atty. Rana), Clerk of Court of RTC-Masbate, Branch 47 and Assistant Provincial Sheriff of RTC-Masbate, issued a writ of possession,<sup>28</sup> directing the provincial sheriff to place Andueza in possession of the subject property, and to eject all persons claiming rights under Serra.

On the same day, Atty. Rana issued a Notice to Vacate,<sup>29</sup> directed against Serra and RCBC, and all persons claiming any right under Serra. The Notice to Vacate was served on RCBC on 30 January 2015. The Notice to Vacate directed RCBC to “vacate the subject property and to peaceably turn-over its possession in favor of the mortgagee within five (5) working

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<sup>22</sup> Id. at 98.

<sup>23</sup> Id. at 99-101.

<sup>24</sup> Id. at 107-119.

<sup>25</sup> Id. at 134-145.

<sup>26</sup> Id. at 146-153.

<sup>27</sup> Id. at 154.

<sup>28</sup> Id. at 155-156.

<sup>29</sup> Id. at 157.



days from receipt hereof.”<sup>30</sup> The Notice to Vacate also stated that RCBC will be forcibly evicted from the subject property should it refuse to vacate.

On 4 February 2015, RCBC filed the present petition for indirect contempt with prayer for a TRO to enjoin respondents from enforcing the Notice to Vacate and the Writ of Possession issued by RTC-Masbate, and to enjoin the respondent Register of Deeds from annotating on OCT No. O-232 the Notice to Vacate and Writ of Possession. RCBC pleaded that respondents be declared guilty of indirect contempt for disregarding the Court’s decisions in G.R. Nos. 103338, 182478, 182664, and 203241, as well as the permanent restraining order in G.R. No. 203241.

On 11 February 2015, the Court issued a TRO,<sup>31</sup> enjoining respondents, the RTC-Masbate, the Register of Deeds of Masbate City, their agents, representatives, and all other persons acting on their behalf from (1) enforcing or causing the enforcement of the Notice to Vacate and the Writ of Possession, and (2) annotating on OCT No. O-232 the Notice to Vacate and Writ of Possession.

In its petition for indirect contempt, RCBC argues that Serra is liable for indirect contempt of court for refusing to obey the Court’s restraining order and Decision in G.R. No. 203241, the RTC-Makati’s 5 January 1989 Order, and for colluding with Spouses Andueza for the illegal mortgage and foreclosure of the subject property.

Respondents filed their respective Comments to the petition.

In his Corrected Comment filed on 13 March 2015,<sup>32</sup> Serra alleged that he is not liable for indirect contempt of court. He stated:

As it is, the enforcement of the aforesaid Supreme Court Resolution dated July 10, 2013 was directed by the Supreme Court to the RTC of Makati, Branch 134. In turn, the enforcement of the RTC of Makati, Branch 134’s May 14, 2014 Order of Execution and Writ of Execution dated June 23, 2014, were directed to be enforced by Sheriff Roberto V. Harina. Such being the case, Atty. Serra, to whom the power and authority to enforce the aforesaid Order and Writ of Execution is not being directed to, cannot be held liable for indirect contempt of court.  
x x x.<sup>33</sup>

Serra further claimed that he did not collude with Spouses Andueza in having the subject property mortgaged in 2011. Serra alleged he was a mortgagor in good faith and the Spouses Andueza were mortgagees in good faith when they executed a real estate mortgage over the subject property on 15 August 2011. Spouses Andueza validly annotated the mortgage on the

<sup>30</sup> Id.

<sup>31</sup> Id. at 199-201.

<sup>32</sup> Id. at 428-455.

<sup>33</sup> Id. at 443.

title of the subject property with the Register of Deeds for Masbate City on 26 September 2011. At the time of the execution of the mortgage, OCT No. O-232 had no notice of *lis pendens*, no adverse claim, and there was no other lien annotated on the title of the subject property. In addition, Serra alleged that RCBC is guilty of forum-shopping. RCBC filed a petition for certiorari before the Court of Appeals assailing the RTC-Masbate's denial of RCBC's application for TRO. Meanwhile, RCBC filed with this Court the instant petition for indirect contempt seeking a similar relief.

In their Comment filed on 19 March 2015,<sup>34</sup> Spouses Andueza<sup>35</sup> and Atty. Real contended that they are not guilty of indirect contempt considering that the writ of execution issued by the RTC-Makati was directed to Sheriff Roberto V. Harina, and not to Spouses Andueza; and the Decision in G.R. No. 203241 was not directed to Spouses Andueza, who are not parties in the case. Spouses Andueza accused RCBC and its counsels of negligence and lack of prudence in failing to annotate for almost 18 years RCBC's supposed rights over the subject property on OCT No. O-232. Spouses Andueza claimed good faith in executing the real estate mortgage with Serra, after checking with the Register of Deeds of Masbate City that OCT No. O-232 was free from any lien. RCBC and its counsels allegedly did not exercise prudence to protect RCBC's interests even after the annotation of the real estate mortgage on OCT No. O-232 on 26 September 2011. Neither did RCBC and its counsels inform Spouses Andueza of RCBC's rights over the subject property. RCBC and its counsels also failed to oppose Andueza's petition for extrajudicial foreclosure, which Andueza filed after Serra defaulted on his loan obligation. They also failed to file any action to cancel the real estate mortgage with application for TRO to possibly enjoin the foreclosure proceedings. Spouses Andueza also claimed that RCBC committed forum-shopping when it filed the present petition since it had a pending petition for certiorari before the Court of Appeals seeking practically the same relief, which is to prevent the foreclosure of the real estate mortgage and auction sale of the subject property. Likewise, RCBC violated the doctrine of hierarchy of courts when it filed the present petition directly with this Court, when it should have been filed with the RTC.

In his Comment filed on 26 February 2015, Atty. Densing alleged that he was not a party or a counsel in G.R. No. 203241. He was merely a collaborating counsel in the extrajudicial foreclosure case filed by Spouses Andueza.

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<sup>34</sup> Id. at 469-538.

<sup>35</sup> In a Manifestation dated 22 June 2015, counsel for respondent Henedina Andueza informed the Court of the death of Eduardo M. Andueza, who will be substituted in this case by his heirs, Henedina Andueza and children Farrah France A. Corbeta and Froilan V. Andueza. *Rollo*, Vol. II, pp. 703-705.



In his Comment filed on 9 July 2015,<sup>36</sup> Judge Ables argued that he issued a writ of possession order in favor of Andueza “after finding mortgagee x x x Andueza to have satisfied all the requirements provided for under Act No. 3135 x x x.” He stated that he “simply performed his ministerial duty and was not in a position to adjudicate and look further on matters not forming part” of the case before him. Further, he alleged that at the time he issued the writ of possession, there was no injunction from the Court.

In their Comment filed on 11 March 2015,<sup>37</sup> Atty. Lanuza, Atty. Rana, and Soriano claimed that they were merely performing their ministerial duties under A.M. No. 99-10-05-0 which prescribes the procedure in extrajudicial foreclosure of mortgage. The TRO issued by this Court was specifically addressed to Serra, RTC-Makati, their agents, representatives and any person acting in their behalf. In short, the TRO was not addressed to respondent clerks of court and sheriff. Further, Atty. Rana issued the Writ of Possession and Notice to Vacate against Serra, RCBC, and all persons claiming rights under the former pursuant to the Order of RTC-Masbate dated 28 January 2015 and Section 10(c), Rule 39 of the Rules of Court.

In his Comment filed on 6 March 2015,<sup>38</sup> respondent Atty. Erwin S. Oliva, as Acting Register of Deeds for the Province of Masbate, argued that he was merely performing his ministerial duty to approve and annotate documents when all the requirements have been complied with. The restraining order was allegedly not directed or addressed to his office.

### **The Issue**

The issue in this case is whether respondents are liable for indirect contempt.

### **The Ruling of the Court**

The petition is granted in part.

### ***Indirect Contempt***

In *Castillejos Consumers Association, Inc. v. Dominguez*,<sup>39</sup> the Court defined contempt of court, as follows:

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<sup>36</sup> Id. at 714-715.

<sup>37</sup> *Rollo*, Vol. I, pp. 296-299.

<sup>38</sup> Id. at 278-281.

<sup>39</sup> 757 Phil. 149, 158-159 (2015).





Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.

There are two (2) kinds of contempt of court, namely: direct and indirect. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. A person who is guilty of disobedience or of resistance to a lawful order of a court or who commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt.

In this case, RCBC accuses respondents of committing indirect contempt under Section 3, paragraphs (b) and (d), Rule 71 of the Rules of Court, to wit:

Section 3. *Indirect contempt to be punished after charge and hearing.* After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x

**(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court**, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

x x x x

**(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;**

x x x x

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (Emphasis supplied)

RCBC alleges that respondents are guilty of indirect contempt for disregarding this Court's final and executory decisions in G.R. Nos. 103338, 182478, 182664, and 203241, which essentially upheld RCBC's superior right over the subject property.

In G.R. No. 103338, which became final and executory on 15 April 1994, the Court found that “the contract of ‘LEASE WITH OPTION TO BUY’ between [Serra] and [RCBC] is valid, effective and enforceable, the price being certain and that there was consideration distinct from the price to support the option given to the lessee.”<sup>40</sup>

In G.R. Nos. 182478 and 182664, the Court issued separate Resolutions dated 30 June 2008 and 22 October 2008, which became final and executory on 27 August 2008 and 3 March 2009, respectively, finding neither reversible error nor grave abuse of discretion on the part of the Court of Appeals which held that Serra’s donation of the subject property to Ablao was simulated and was done solely to evade Serra’s obligation of selling the subject property to RCBC. Consequently, the deed of donation was null and void.<sup>41</sup>

### ***The Decision and TRO in G.R. No. 203241***

In its Resolution of 3 December 2012 in G.R. No. 203241, the Court issued a TRO which pertinently reads:

x x x x

NOW, THEREFORE, effective immediately and continuing until further orders from this Court, **You, the respondent [Federico A. Serra], and the Regional Trial Court, Br. 134, Makati City, your agents, representatives and anyone acting on your behalf** are hereby RESTRAINED from implementing and enforcing the Orders dated 16 February 2012 and 26 July 2012 of the Regional Trial Court, Br. 134, Makati City, in Civil Case No. 10054 and from performing any act to remove or threaten to remove the petitioner Rizal Commercial Banking Corporation from the subject property.

x x x x<sup>42</sup> (Emphasis supplied)

In its Decision of 10 July 2013 in G.R. No. 203241, the Court directed the RTC-Makati to issue the writ of execution in Civil Case No. 10054 and made the TRO permanent. The Court further stated that:

In the present case, there is no dispute that RCBC seeks to enforce the decision which became final and executory on 15 April 1994. This decision orders Serra to execute and deliver the proper deed of sale in favor of RCBC. However, to evade his obligation to RCBC, Serra transferred the property to his mother Ablao, who then transferred it to Liok. Serra’s action prompted RCBC to file the Annulment case. Clearly, the delay in the execution of the decision was caused by Serra for his own advantage. x x x.<sup>43</sup>

<sup>40</sup> *Serra v. Court of Appeals*, 299 Phil. 63, 75 (1994).

<sup>41</sup> *Rollo* (G.R. No. 182664), p. 45.

<sup>42</sup> *Rollo*, p. 64.

<sup>43</sup> *Supra* note 5, at 727.

***Serra and Spouses Andueza are guilty of indirect contempt.***

As a party in G.R. No. 203241, Serra cannot feign ignorance of the Court's decision and restraining order in that case. The TRO was issued on 3 December 2012 while the decision was promulgated on 10 July 2013. By virtue of the TRO, which was made permanent, Serra was enjoined to perform any act to remove RCBC from the subject property. Yet, by defaulting on his loan obligation with Andueza, and Andueza's foreclosure of the real estate mortgage, Serra in effect allowed the removal of RCBC from the subject property. Serra's conduct tended to impede the administration of justice by effectively allowing RCBC to be removed from the premises of the subject property, in contravention of the clear directive in the decision and restraining order in G.R. No. 203241. Therefore, Serra is guilty of indirect contempt and accordingly fined ₱30,000.

Serra also claims that "he can no longer execute a Deed of Absolute Sale in favor of [RCBC] because the subject property was already foreclosed and sold in public auction in favor of Spouses Eduardo and Dina Andueza x x x."<sup>44</sup> In other words, Serra alleges that a supervening event – the foreclosure sale in favor of Spouses Andueza – occurred precluding the execution of the Court's decision in G.R. No. 203241.

In *Abrigo v. Flores*,<sup>45</sup> the Court held:

A supervening event consists of facts that transpire after the judgment became final and executory, or of new circumstances that develop after the judgment attained finality, including matters that the parties were not aware of prior to or during the trial because such matters were not yet in existence at that time. In that event, the interested party may properly seek the stay of execution or the quashal of the writ of execution, or he may move the court to modify or alter the judgment in order to harmonize it with justice and the supervening event. The party who alleges a supervening event to stay the execution should necessarily establish the facts by competent evidence; otherwise, it would become all too easy to frustrate the conclusive effects of a final and immutable judgment.

The Court is not convinced that a supervening event occurred which would effectively prevent the execution of the decision in G.R. No. 203241. While the foreclosure sale proceeded on 24 September 2014, after the finality of the decision in G.R. No. 203241, the real estate mortgage in favor of Spouses Andueza was executed on 21 September 2011 while G.R. No. 203241 was pending. Serra could not possibly be unaware that a foreclosure sale would likely transpire since he was the mortgagor who defaulted on his loan obligation. Clearly, Serra performed acts intended to defeat and circumvent the conclusive effects of the final decision in G.R. No. 203241. Serra defaulted on his loan obligation and did not lift a finger to prevent

<sup>44</sup> *Rollo*, Vol. 1, p. 100.

<sup>45</sup> 711 Phil. 251, 262 (2013).

Andueza or any person for that matter from removing RCBC from the subject property.

The 5 January 1989 Order of the RTC-Makati, which directed Serra to sell to RCBC the subject property, became final and executory on 15 April 1994. Serra has delayed for 23 years the execution of this Order. As the Court observed in G.R. No. 203241, "Serra has continued to evade his obligation by raising issues of technicality." Clearly, Serra deserves to be sanctioned for such reprehensible conduct of delaying for 23 years the execution of the final and executory order of the RTC-Makati, as affirmed by this Court in G.R. No. 203241.

Despite being non-parties in G.R. No. 203241, Spouses Andueza have notice of the pendency of such action. On 14 February 2013, RCBC had the TRO issued by this Court annotated on OCT No. O-232 under Entry No. 2013000087. Therefore, Spouses Andueza have actual knowledge of the Court's TRO in G.R. No. 203241 prior to their filing of the petition for extrajudicial foreclosure of the subject property on 13 August 2013. Further, the decision in G.R. No. 203241 was promulgated prior to the Spouses Andueza's initiation of foreclosure proceedings. Spouses Andueza cannot therefore invoke lack of knowledge of RCBC's interest over the subject property when they filed the petition for extrajudicial foreclosure. Hence, such knowledge should have prevented, or at the very least cautioned, the Spouses Andueza from proceeding with the foreclosure which had the effect of removing RCBC from the property, in contravention of the clear language of the Court in G.R. No. 203241. In other words, the Spouses Andueza's act of instituting the petition for extrajudicial foreclosure, which would ultimately result in removing RCBC from the subject property, obviously tended to impede the administration of justice and thus constitutes indirect contempt of court. Accordingly, the Spouses Andueza are likewise adjudged guilty of indirect contempt and fined ₱30,000.

The other respondents, namely the counsels of the Spouses Andueza, merely acted to protect the interests of their clients over the subject property while the public respondents simply acted pursuant to their ministerial duties and responsibilities in foreclosure proceedings. These acts do not constitute indirect contempt of court absent any clear and convincing evidence that they willfully disobeyed the decision and restraining order in G.R. No. 203241 or committed any act which tended to impede the administration of justice.

***The TRO must be lifted.***

The TRO earlier issued in this case must be lifted. The Court notes that RCBC filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 137314, assailing the denial by Judge Jose C. Fortuno of



RTC-Masbate, Branch 48 of its motion for issuance of a TRO, and praying for a writ of injunction to enjoin “respondent Clerk of Court and *Ex Officio* Sheriff of the Regional Trial Court of Masbate City, Deputy Sheriff Soriano, respondent Spouses Andueza, the Register of Deeds for the Province of Masbate, and respondent-intervenor Federico A. Serra, x x x from further performing any act done pursuant to or resulting from the illegal foreclosure sale of the subject property, x x x and any other act pursuant to or resulting from the foreclosure sale that has the effect of ousting petitioner RCBC from the subject property, x x x.”<sup>46</sup> RCBC’s certiorari petition before the Court of Appeals questions the proceedings resulting from the extrajudicial foreclosure sale of the subject property and similarly involves the respondents impleaded in this contempt petition. Since the certiorari petition before the Court of Appeals likewise prays for an injunction writ and clearly involves the extrajudicial foreclosure of the subject property, the Court of Appeals must be given the opportunity to resolve the propriety of such prayer for injunction, and ultimately the validity of RCBC’s claims over the subject property. This petition for indirect contempt is not the proper action to determine the validity of the mortgage between Serra and the Spouses Andueza, and the foreclosure proceedings resulting from such mortgage.

**WHEREFORE**, the petition is **GRANTED IN PART**. Respondents Federico A. Serra and Spouses Eduardo and Henedina Andueza are found guilty of indirect contempt of court and accordingly ordered to pay a fine of Thirty Thousand Pesos (₱30,000.00) each. The Temporary Restraining Order issued earlier is hereby **LIFTED**.

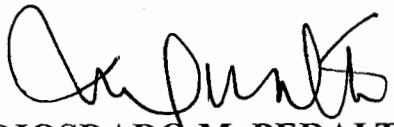
**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

<sup>46</sup> *Rollo*, Vol. II, pp. 621-622.

**WE CONCUR:**

  
**DIOSDADO M. PERALTA**  
Associate Justice


  
**JOSE CATRAL MENDOZA**  
Associate Justice

(on official leave)  
**MARVIC M.V.F. LEONEN**  
Associate Justice

  
**SAMUEL R. MARTIRES**  
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.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

### **CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice