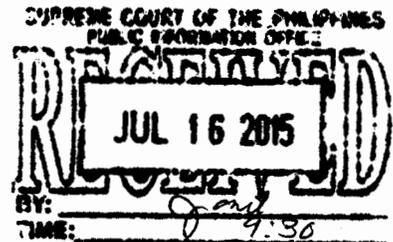




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 17, 2015, which reads as follows:

“G.R. No. 204642 (Arco Pulp & Paper Company, Arcadio C. Santos, Jr., Candida A. Santos and Arcadio Ivan Santos III vs. Prudential Bank [now Bank of the Philippine Islands]). – The Court NOTES respondent’s comment on the motion to withdraw petition for review on certiorari.

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 assailing the Decision² dated September 21, 2012 of the Court of Appeals (CA), as well as its Resolution³ dated December 6, 2012 in CA-G.R. CV No. 97881. The assailed decision affirmed the Decision⁴ dated November 3, 2011 of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, in LRC Case No. LP 10-0079, granting the petition of Prudential Bank (now Bank of the Philippine Islands) (respondent bank) for the Issuance of a Writ of Possession over a property covered by Transfer Certificate of Title (TCT) No. T-85271 (T-34266).

The Facts

From May 24, 2002 to October 15, 2004, Arco Pulp & Paper Company - represented by its co-petitioners, namely: Arcadio C. Santos, Jr., Candida A. Santos (Candida) and Arcadio Ivan A. Santos III (Ivan) (petitioners) - applied for, and was granted various loans by the respondent bank. To secure said loans, the petitioners executed deeds of real estate mortgage in the amounts of ₱17,000,000.00, ₱8,600,000.00, ₱24,000,000.00 and ₱125,400,000.00 over a property covered by TCT No. T-85271 (T-34266) of the Registry of Deeds of Las Piñas City.⁵

¹ *Rollo*, pp. 8-18.

² Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Franchito N. Diamante and Danton Q. Bueser concurring; *id.* at 78-90.

³ *Id.* at 103-105.

⁴ Issued by Judge Erlinda Nicolas-Alvaro; *id.* at 47-50.

⁵ *Id.* at 79-80.

June 17, 2015

For failure of the petitioners to settle their obligations when it fell due, the respondent bank filed a petition for extrajudicial foreclosure of real estate mortgage under Act 3135, as amended. In the auction sale of the subject property held on September 25, 2009, the respondent bank was declared as the highest bidder. Consequently, a duly approved certificate of sale was issued in its favor. On November 18, 2009, the certificate of sale was registered and was duly annotated on the original copy of the title.⁶

On June 9, 2010, petitioners Candida and Ivan filed an action for *Judicial Declaration of Nullity of Foreclosure of Real Estate Mortgages, Certificate of Sale and Damages* against Deputy Sheriff Roberto T. Galing, Clerk of Court VI and *Ex-Officio* Sheriff Zandra T. Bato and the Register of Deeds of Las Piñas City.⁷

On October 8, 2010, due to the alleged refusal of the petitioners to voluntarily vacate the subject property in spite of having been served with Notice to vacate, the respondent bank filed the Petition for Ex-Parte Issuance of Writ of Possession.⁸

In their Comment/Opposition (to the Petition for *Ex-Parte* Issuance of Writ of Possession),⁹ the petitioners claim that the respondent bank's *ex-parte* petition should be denied due to the following reasons: a) the respondent bank is guilty of forum shopping for its failure to divulge the pendency of the aforesaid nullification case; and b) the *ex-parte* petition is prematurely filed since the redemption period was yet to expire on November 18, 2010.¹⁰

After trial, the RTC rendered its Decision on November 3, 2011, the *fallo* of which reads:

WHEREFORE, premises considered, the petition is granted. *Upon compliance by the petitioner with the requirements of consolidation of ownership and proof of title*, let writ of possession be issued commanding the deputy sheriff of the court to place petitioner Bank of the Philippine Islands in possession of the subject property situated in Las Piñas City and covered by TCT No. T-85271 of the Registry of Deeds, Las Piñas City and to eject therefrom all persons who may be occupying the same, more particularly Candida A. Santos and Arcadio Ivan A. Santos III and all persons claiming rights under them.

⁶ Id. at 80.
⁷ Id. at 81.
⁸ Id. at 19-25.
⁹ Id. at 26-31.
¹⁰ Id. at 28.

June 17, 2015

SO ORDERED.¹¹ (Emphasis and italics in the original)

The petitioners appealed the decision of the RTC to the CA. On September 21, 2012, the CA rendered the assailed Decision affirming that of the RTC. Undaunted, the petitioners sought reconsideration¹² but to no avail. On December 6, 2012, the CA issued the assailed Resolution denying the petitioners' motion for reconsideration.

Hence this petition.

As formulated by the petitioners, the following are the issues under consideration, thus:

1. Whether or not the institution of the Petition for *Ex-Parte* Issuance of Writ of Possession without the one-year redemption period expiring is valid considering the fact that the redemption period is yet to expire on November 18, 2010 and the petition was filed on October 8, 2010, and considering further that no bond was ever posted by the respondent bank when the petition was filed which is mandatorily required in cases of that nature; and

2. Whether or not the subsequent lapsed [sic] of the redemption period cleansed the defect of the prematurely filed Petition.¹³

However, while the Court awaits their reply to the respondent bank's comment on the instant petition, the petitioners filed a motion¹⁴ for the withdrawal of the petition instead.

According to the petitioners, they have decided to amicably settle their claims with the respondent bank. As such, they have vacated the property subject matter of this case.

Per Resolution¹⁵ dated January 14, 2015, the Court required the respondent bank to comment on said motion to withdraw. On March 17, 2015, the respondent bank filed the required Comment¹⁶ and interposed no objection to the withdrawal of the instant petition. It confirmed that an amicable settlement has indeed been reached by the parties, and that there is no more reason for it to pursue the issuance of a writ of possession on the subject property.

¹¹ Id. at 50.

¹² Id. at 91-95.

¹³ Id. at 12-13.

¹⁴ Id. at 126-127.

¹⁵ Id. at 128.

¹⁶ Id. at 129-131.

June 17, 2015

The Court resolves to grant the withdrawal of the instant petition.

By virtue of the amicable settlement reached by the parties, the instant petition has become moot and academic, and has ceased to present a justiceable controversy.

In any event, since the parties are yet to submit their respective briefs or memoranda, this petition may be withdrawn as a matter of right. In *Cosmos Bottling Corporation v. Nagrama, Jr.*,¹⁷ it was held that:

The time for withdrawal of the appeal is governed by Section 3, Rule 50 of the 1997 Rules of Civil Procedure, viz.:

Sec. 3. *Withdrawal of appeal.* – An appeal may be withdrawn as of right **at any time before the filing of appellee’s brief.** Thereafter, the withdrawal may be allowed in the discretion of the court.

Verily, **the withdrawal of this petition for review on certiorari, which is in the nature of an appeal, may be done as a matter of right at any time before the filing of the appellee’s brief or memorandum.** After that period, the withdrawal may only be done with the consent of the court. (Citation omitted and emphasis ours)

WHEREFORE, the Court **GRANTS** the Motion to Withdraw the Petition.” (Velasco, Jr., J., on leave; Peralta, J., designated as Acting Chairperson per Special Order No. 2059 dated June 17, 2015; Del Castillo, J., designated as Acting Member per Special Order No. 2060 dated June 17, 2015.)

Very truly yours,


WILFREDO V. LAPITAN
Division Clerk of Court 7/18/15


Atty. Ramon L. Carpio
Counsel for Petitioners
Suite 326, 3/F Dona Consolacion Bldg.
Gen. Santos Avenue, Araneta Center
Cubao, 1109 Quezon City

¹⁷ 571 Phil. 281, 308 (2008).

COURT OF APPEALS
CA G.R. CV No. 97881
1000 Manila

Atty. Franklin S. Umadhay
Counsel for Respondent
FRANKLIN S. UMADHAY & ASSOCIATES
Unit 304, Civic Prime Bldg.
Civic Drive, Filinvest City
Alabang, 1780 Muntinlupa City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 198, Las Piñas City
(LRC Case No. LP-10-0079)

PUBLIC INFORMATION OFFICE
LIBRARY SERVICES
Supreme Court, Manila
[For uploading pursuant to A.M. 12-7-1-SC]

Judgment Division
JUDICIAL RECORDS OFFICE
Supreme Court, Manila

204642



(53)