

METROPOLITAN BANK AND TRUST COMAPNY (METROBANK), BURGOS BRANCH, TACLOBAN CITY, REPRESENTED BY ITS BRANCH MANAGER LAURO G. SEQUITO, PETITIONER-APPELLEE, VS. LAND ERA REALTY CORPO...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is an appeal on the Order[1] of the Regional Trial Court (RTC), Branch 9, Tacloban City in Cad. Case No. 2008-04-32 dated May 13, 2009 directing the issuance of an alias writ of possession in favor of petitioner-appellee Metropolitan Bank and Trust Company (Metrobank).

The Antecedents

Spouses Manuel and Alicia Tomanda (Spouses Tomanda) were registered owners of Lots Nos. 2306 and 2307, both of the Cadastral Survey of Tacloban, situated in Tigbao, Tacloban City and covered by a single Transfer Certificate of Title (TCT) No. T-35232.[2] Spouses Tomanda sold the properties to respondent Land Era Realty Corporation (LERC). Consequently, Spouses Tomanda's certificate of title was canceled and TCT No. T-49299[3] was issued in favor of LERC.

Subsequently, LERC mortgaged the properties to Metrobank to secure the payment of a loan amounting to P5,700,000.00. When LERC failed to pay its indebtedness, Metrobank extrajudicially foreclosed the mortgage under Act 3135, as amended by Republic Act 4118.[4] During the public auction, Metrobank was the highest bidder and a Sheriff's Certificate of Sale[5] was issued to it on July 21, 1999. LERC failed to redeem the properties within the 12-month period. Thereafter, Metrobank filed an Affidavit of Consolidation of Ownership[6] with the Registry of Deeds of Tacloban on August 29, 2000 and on the basis thereof, TCT No. T-54765[7] was issued in favor of Metrobank. On April 10, 2008, Metrobank filed with the RTC a Petition[8] for the issuance of a writ of possession. The RTC issued a Writ of Possession[9] on April 29, 2008.

However, on May 16, 2008, third-party claimants-appellants Spouses Manuel and Myrna Salazar (Spouses Salazar) filed with the RTC a Joint Affidavit of Third-Party Claim[10] declaring their resistance to Metrobank's intended possession of the properties by virtue of the writ of possession issued by the RTC. According to Spouses Salazar, the properties involved in the writ of possession were the subjects of a Contract to Sell[11] (contract) that they had entered into with Spouses Tomanda on February 8, 1994. They had been in possession of the properties since the execution of the contract and in order to secure their interests thereon, they caused the annotation of a notice of adverse claim[12] on TCT No. 35232. However, on August 12, 1997, Spouses Tomanda requested Spouses Salazar to allow them [Spouses Tomanda] to sell the properties to LERC. They, however, had an agreement that Spouses Salazar would remain in possession of Lot 2307 until Spouses Tomanda would have fully reimbursed them of the P600,000.00 and the other considerations in the contract, as well as the costs of the improvements introduced by Spouses Salazar on the lot. Spouses Salazar averred that upon the prodding of LERC, they agreed to have their notice of adverse claim in TCT No. 35232 canceled. Subsequently, however,

Spouses Tomanda reneged on their commitments to Spouses Salazar; for which reason, Spouses Salazar posited that their contract was not canceled since the considerations were not complied with. Spouses Salazar claimed that they were third-parties holding the properties adversely against LERC or its predecessor Spouses Tomanda. The writ of possession could not be enforced against them since they held the properties in their own right and not as agents of LERC or Spouses Tomanda.

On May 20, 2008, Spouses Salazar moved to suspend the implementation of the writ of possession dated April 29, 2008.[13] Metrobank commented and objected on the pleading.[14] In resolving the issue of whether or not Spouses Salazar had a valid claim over the properties subject of the writ of possession, the RTC made the following discussions, viz.:

xxx the Court finds no valid claim on the part of Spouses Salazar over Lot 2307, subject matter of the writ of possession. xxx Metrobank xxx, attached and marked as Annex "1" xxx an Affidavit dated August 12, 1997 executed by Manuel T. Salazar submitted to the Office of the Register of Deeds of Tacloban City. Paragraphs 1, 2 and 3 reads-

- That I had caused the annotation of a Notice of Adverse Claim on TCT No. T-43708 being a vendee of two (2) parcels of land, xxx and Lot 2307 with an area of 16,709 square meters more or less, in a contract to sell xxx.
- That said contract to sell was already rescinded by mutual agreement of parties;
- That said notice of adverse claim should be canceled by reason of said rescission of contract to sell.

The affidavit was notarized before Notary Public Cesar E. Lee, who is not the counsel of Metrobank. The validity of said affidavit is affirmed as the original is a public record in the custody of a public officer and is recorded in a public office, the Office of the Register of Deeds of Tacloban City. Besides, Spouses Salazar failed to submit a reply to the comments/objections of Metrobank, and did not refute nor rebut said affidavit. Said affidavit puts an end to whatever legal claim Spouses Salazar have over Lot 2307. Section 33, Rule 39 of the 1997 Rules of Civil Procedure [which] states that" "The possession of the foreclosed property may be awarded to the purchaser or highest bidder unless a third party is actually holding the property adversely to the judgment debtor xxx is applicable. Spouses Salazar, the third party holding the property were not adversely holding the properties in issue against Metrobank, the purchaser or highest bidder because the said spouses in their aforesaid affidavit dated August 12, 1997 expressly stated that their contract to sell was already rescinded by mutual agreement of the parties, so that their notice of adverse claim be canceled by reason of the rescission of the contract to sell. On this point alone, the motion is without any legal grounds to stand on.[15]

Based on the foregoing findings, the RTC found no legal basis to suspend the implementation of the writ of possession. It denied Spouses Salazar's motion and directed the sheriff to immediately implement the writ of possession.[16]

Spouses Salazar moved for reconsideration[17] stating that their claim over Lot 2307 is not in the sense of ownership, but as ordinary or plain possessor who could not be dispossessed by mere ex-parte writ of possession. Since they had filed a Joint Affidavit of 3rd Party Claim or commonly called *terceria*, and had instituted a separate action to vindicate their claim of possession in Civil Case No. 2008-06-60, Spouses Salazar posited that Metrobank still had to sue for ejectment or *accion reivindicatoria* to remove them from possession of the properties.

The RTC denied Spouses Salazar's motion for reconsideration in its Order dated October 22, 2008.[18] Spouses Salazar then filed a Motion to Dismiss[19] praying for the reconsideration and recall of the following issuances of

the RTC, to wit: writ of possession dated April 29, 2008; the order denying their motion to suspend the implementation of the writ; and the order denying their motion for reconsideration. As ground for their motion to dismiss, Spouses Salazar contended that Burgos Branch was not a juridical person, and even if it was one, the signatory of the verification and certification of non-forum shopping was not specifically authorized by Metrobank to file the petition for issuance of the writ of possession. Metrobank filed its Comments/Objections on the Motion to Dismiss[20] and appended thereto the pertinent Special Power of Attorney[21] and Secretary's Certificate[22] refuting Spouses Salazar's claim. The RTC denied Spouses Salazar's motion to dismiss in its Order dated February 3, 2009.[23]

On April 16, 2009, Metrobank filed a Motion for Issuance of An Alias Writ of Possession.[24] Despite Spouses Salazar's opposition,[25] the RTC directed the issuance of the alias writ in its Order dated May 13, 2009.[26] The alias writ was issued on May 22, 2009[27] and was returned duly served by the Sheriff on June 9, 2009.[28]

Aggrieved, Spouses Salazar filed this appeal and posed for this Court's resolution the following issues, to wit:

I.

WHETHER OR NOT THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN NOT SUSPENDING THE IMPLEMENTATION OF THE WRIT OF POSSESSION AFTER THIRD PARTY CLAIMANTS-APPELLANTS SPOUSES SALAZAR HAVE FILED BEFORE THE LOWER COURT THEIR JOINT AFFIDAVIT OF THIRD PARTY CLAIM;

II.

WHETHER OR NOT THIRD PARTY CLAIMANTS-APPELLANTS SPOUSES SALAZAR MAY BE EJECTED FROM LOT 2307 AND ORDERED TO DEMOLISH IMPROVEMENTS PLACED THEREON WITHOUT PETITIONER-APPELLEE MBTC FILING ANY COURT ACTION TO TAKE POSSESSION FROM SAID THIRD PARTY CLAIMANTS-APPELLANTS SPOUSES SALAZAR.

This Court's Ruling

The appeal warrants outright dismissal.

Appeal is not the proper remedy from the denial of a third-party claim.[29] Spouses Salazar were only third-party claimants and not really parties to the petition for issuance of a writ of possession instituted by Metrobank. As such, they could not appeal from the RTC's denial of their third-party claim. This is the ruling in the case of *Solidum v. Court of Appeals*, thus:

Since the third-party claimant is not one of the parties to the action, he could not, strictly speaking, appeal from the order denying its claim, but should file a separate reivindicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. The rights of a third-party claimant should be decided in a separate action to be instituted by the third person. In fine, the appeal that should be interposed, if the term "appeal" may be properly employed, is a separate reivindicatory action against the execution creditor or complaint for damages to be charged against the bond filed by the judgment creditor in favor of the sheriff. [Emphasis and underscoring supplied.]

Apparently Spouses Salazar already instituted on June 2, 2008 a separate action against Metrobank to vindicate their claim of possession in Civil Case No. 2008-06-60.[30] The suit, and not this appeal, is the proper avenue to fully determine their asserted right to the possession of the subject properties.

Even if We set aside technicality and confront the merits of Spouses Salazar's arguments, the appeal still fails.

Spouses Salazar contended that the writ of possession could not be implemented against them since they were

holding the properties adversely against the judgment debtor LERC and Spouses Tomanda. They came into possession of the properties by virtue of their contract with Spouses Tomanda which had a consideration of P600,000.00. As third-party claimants, they should be considered the rightful and legal possessor of the properties and the RTC should have suspended the implementation of the writ of possession until the issue of possession is finally determined in the appropriate court proceeding.

The contentions are without merit.

Section 33, Rule 39 of the Rules of Court provides, thus:

Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. —
xxx

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. [Emphasis and underscoring supplied.]

Thus, the general rule is that a purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession and, upon an ex parte petition of the purchaser, it is ministerial upon the trial court to issue the writ of possession in favor of the purchaser.[31] The exception is when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done ex parte. However, for the exception to apply, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.[32]

In *China Banking Corporation v. Spouses Lozada*,[33] the meaning of "a third party who is actually holding the property adversely to the judgment obligor" was detailed in this wise, thus:

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. [Emphasis and underscoring supplied.]

Spouses Salazar's claim over the properties was not among, or even analogous to the foregoing. Hence, their possession could not be considered adverse to LERC or its predecessor, Spouses Tomanda. As vendees to the contract to sell, Spouses Salazar are more appropriately considered as transferees or successors of Spouses Tomanda.

A similar issue was resolved in the above-mentioned case of *China Banking Corporation v. Spouses Lozada* where the character of Spouses Lozada's possession of Condominium Unit No. 402 was declared not adverse to the mortgagor PPGI, hence, could not bar the ex-parte issuance and implementation of the writ of possession in favor of Chinabank. As in this case, therein Spouses Lozada also possessed the unit pursuant to a contract to sell it entered with mortgagor PPGI. PPGI mortgaged the unit to Chinabank. When PPGI did not pay its indebtedness, Chinabank foreclosed the mortgage; became the purchaser at the public auction; consolidated its title when PPGI failed to redeem; and filed an ex-parte writ of possession which the RTC granted. The writ, however, was not implemented because Spouses Lozada resisted and questioned it. They averred that they held Unit No. 402 adversely to the debtor/mortgagor PPGI, and the character of their possession was sufficient obstacle to the ex parte issuance of a writ of possession in favor of Chinabank.

The Supreme Court rejected Spouses Lozada's arguments. It declared that they may not claim the defense of possession by third persons as they were mere successors-in-interest of PPGI and only stepped into the latter's shoes. The pronouncements therein are hereby quoted, viz.:

The spouses Lozada acquired possession of Unit No. 402 pursuant to the Contract to Sell executed in their favor by PPGI. xxx xxx xxx

Given the foregoing, it is apparent that the spouses Lozada's possession of Unit No. 402 cannot be considered adverse to that of PPGI. Their right to possess the said property was derived from PPGI under the terms of the Contract to Sell executed by the latter in their favor. It was because PPGI contractually agreed to deliver Unit No. 402 to them even prior to the transfer of ownership and title over the same that they came into its possession. They cannot assert that said right of possession is adverse or contrary to that of PPGI when they have no independent right of possession other than what they acquired from PPGI. The spouses Lozada can be more appropriately considered the transferee of or successor to the right of possession of PPGI over Unit No. 402. [Emphasis and underscoring supplied.]

Also in the case of *Roxas v. Buan*,^[34] the sheriff was unable to implement a writ of possession issued in favor of Buan because Roxas and De Guia resisted it. Roxas claimed that he previously bought the foreclosed property from the mortgagor Valentin and leased it to De Guia. Roxas and De Guia contended that the writ of possession was ineffective against them as they were third-parties adversely holding the property against the mortgagor Valentin. In ruling out the contention, the Supreme Court held, thus:

It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of P100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes. Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption xxx Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin. [Emphasis and underscoring supplied.]

In the light of the foregoing precedents, Spouses Salazar cannot assert that their right of possession is adverse to that of LERC or Spouses Tomanda. They had no independent right of possession other than what they acquired from Spouses Tomanda under the contract. Since they were merely Spouses Tomanda's successors-in-interest and were not considered third-parties within the purview of Section 33, Rule 39 of the Rules of Court, the trial court correctly refused to suspend the implementation of the writ of possession.

WHEREFORE, the appeal is DISMISSED. The Order of the Regional Trial Court, Branch 9, Tacloban City in Cad. Case No. 2008-04-32 dated May 13, 2009 directing the issuance of an alias writ of possession in favor of Metrobank is hereby AFFIRMED.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*]Acting Chairperson per Office Order No. 14-14-GTI dated June 26, 2014.

[1] Record, p. 211; rollo, p. 135.

[2] Record, p. 16.

- [3] Record, pp. 21-24.
- [4] Otherwise known as the Real Estate Mortgage Law.
- [5] Record, pp. 5-6.
- [6] Record, p. 7.
- [7] Record, p. 8.
- [8] Record, pp. 1-4.
- [9] Record, p. 9.
- [10] Record, pp. 29-34.
- [11] Record, pp. 38-39.
- [12] See Entry No. P.E. No. 3238; T-35232 inscribed on September 29, 1995.
- [13] Record, pp. 47-60.
- [14] Comments/Objections to the Motion to Suspend Implementation of Writ of Possession, record, p. 65-70.
- [15] Record, pp. 97-98.
- [16] Order dated August 13, 2008, record, pp. 97-98.
- [17] Record, pp. 108-114.
- [18] Record, p. 142.
- [19] Record, pp. 151-159.
- [20] Record, pp. 160-162.
- [21] Record, pp. 163-164.
- [22] Record, pp. 165-166.
- [23] Record, pp. 177-180.
- [24] Record, pp. 181-183.
- [25] Record, pp. 198-203.
- [26] Record, p. 211.
- [27] Record, p. 212.
- [28] Record, pp. 213-214.
- [29] See *Solidum v. Court of Appeals*, G.R. No. 161647. June 22, 2006.
- [30] See allegation # 8 and the Prayer portion in the Motion to Dismiss, record, pp. 111-112.
- [31] See *BPI Family Savings Bank v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019. January 12, 2011.
- [32] See *China Banking Corporation v. Spouses Lozada*, G.R. No. 164919. July 4, 2008.

[33] G.R. No. 164919. July 4, 2008.

[34] G.R. No. L- 53798. November 8, 1988.

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