PRUDENTIAL BANK (NOW BANK OF THE PHILIPPINE ISLANDS), PETITIONER-APPELLEE, V. SPS. CARLITO GOCHUICO AND DALISAY GOCHUICO, RESPONDENTS-APPELLANTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is an Appeal[1] filed under Rule 41 of the Rules of Court. The Appeal assails the Order[2] dated August 25, 2010 of the Regional Trial Court ("lower court" for brevity) of Mariveles, Bataan, Branch 4 in CAD CASE NO. 708-ML for the "Ex-Parte Petition for Issuance of Writ of Possession".

The antecedent facts are as follows:

Subject of this Appeal are real properties ("subject properties" for brevity) located in the Municipality of Limay, Bataan, which are covered by Transfer Certificates of Title (TCT) Nos. T-276061[3], T-276059[4] and T-276060[5], and are registered in the name of petitioner-appellee Prudential Bank, now Bank of the Philippine Islands ("petitioner-appellee" for brevity).

On July 9, 2009, petitioner-appellee filed an "Ex-Parte Petition for Issuance of Writ of Possession"[6] before the lower court, alleging the following, among others:

> "xxx By virtue of an extra-judicial foreclosure proceeding, and pursuant to the pertinent provisions of Act No. 3135, as amended, City Sheriff Charles S. Gatbunton sold at public auction on July 12, 2004 to Petitioner (petitioner-appellee here) the real properties together with all the improvements erected thereon, covered by 3 various torrens titles and whose transfer certificates of title, technical descriptions and area are indicated in the certificate of sale xxx.
>
> xxx On May 30, 2006, the aforementioned Certificate of Sale was annotated on the aforementioned 3 Torrens titles;
>
> xxx When the mortgagors, SPS. CARLITO GOCHUICO and DALISAY GOCHUICO (respondents-appellants here), failed to exercise their legal right of redemption within one-year from the annotation of the Certification of Sale, Petitioner (petitioner-appellee) became the absolute owner of the above-mentioned real properties and all the improvements thereon xxx Thus, the various transfer certificates of title described in the certificate of sale were all cancelled and in lieu thereof new titles were issued and consolidated in the name of Petitioner (petitioner-appellee) under Transfer Certificates of Title Nos. T-276061; T-276059 & T-276060 (subject properties here) of the Registry of Deeds of the Province of Bataan xxx.

xxx

> xxx Petitioner (petitioner-appellee) is entitled as a matter of right to a writ [of] possession upon filing of this ex-parte petition without the necessity of filing a bond;
>
> xxx Further the duty of this Honorable Court is merely ministerial xxx."[7] (Emphasis Supplied)

On August 27, 2009, respondents-appellants Spouses Carlito Gochuico and Dalisay Gochuico

("respondents-appellants" for brevity) filed an "Opposition to Ex-Parte Petition for Issuance of Writ of Possession"[8], alleging the following, among others:

> "xxx respondents (respondents-appellants) in this instance has filed a case for Nullification of the Extra-judicial foreclosure, Sheriff's Sale, Consolidation of the lots in issue with Prayer for Temporary Restraining Order or Preliminary Injunction under Civil Case No. 814-ML last July 31, 2009 and now pending in the sala of this Honorable Court entitled Sps. Carlito and Dalisay Gochuico, plaintiffs versus Bank of the Philippine Islands and Sps. Rosauro and Cecilia Somo and the Provincial Sheriff of Bataan, defendants xxx
>
> xxx respondents are adopting the said Civil Case No. 814-ML as opposition to the instant Ex-Parte Petition for Issuance of a Writ of Possession."[9] (Emphasis Supplied)

On September 9, 2009, the lower court issued an Order[10] denying respondents-appellants' "Opposition to Ex-Parte Petition for Issuance of Writ of Possession".[11]

Petitioner-appellee presented its evidence ex-parte[12].

On November 6, 2009, the lower court issued an Order[13] denying respondents-appellants' Motion for Reconsideration[14] from the lower court's Order dated September 9, 2009.

On June 1, 2010, the lower court issued an Order[15] granting petitioner-appellee's "Ex-Parte Petition for Issuance of Writ of Possession"[16]. Consequently, a "Writ of Possession"[17] was issued by the lower court's Branch Clerk of Court, Atty. Rovelyn B. Baluyot.

On July 30, 2010, a "Demand to Vacate"[18] was issued by the lower court's Sheriff Paladin E. Palad for respondents-appellants to "voluntarily vacate/remove and peacefully surrender possession"[19] of the subject properties to petitioner-appellee.

On August 5, 2010, respondents-appellants filed an "Urgent Motion to Quash Writ or Set Aside Writ of Possession"[20]. The Motion was denied by the lower court in its assailed Order[21] dated August 25, 2010, which stated the following:

> "There being no compelling reason to warrant the quashal or setting aside of the writ of possession, the 'Urgent Motion to Quash Writ or Set Aside Writ of Possession' filed by respondents, through counsel Atty. Ranato C. Bagay, pleading that the writ of possession in this case be quashed or set aside, is hereby DENIED for lack of merit.
>
> SO ORDERED."[22] (Emphasis was made in the original)

Respondents-appellants then filed the instant Appeal[23] praying for the following:

> "WHEREFORE, it is respectfully prayed of this Honorable Court to set aside the order of the trial court a quo, dated August 25, 2010, and in lieu, thereof issue a resolution quashing or setting aside the Writ of Possession for being a nullity.
>
> Defendants-Appellants also pray for such other or further reliefs as may be deemed just and equitable under the premises."[24] (Emphasis was made in the original)

Respondents-appellants raised the following assignment of errors:

> "I. THE COURT A QUO GRAVELY ERRED IN SETTING ASIDE THE OPPOSITION OF THE APPELLANT TO THE EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION AND DENYING THE MOTION OF THE APPELLANT TO PARTICIPATE IN SAID EX-PARTE PROCEEDING THEREBY DE[N]YING APPELLANTS THEIR RIGHT TO DUE PROCESS

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> II. THE COURT A QUO GRAVELY ERRED IN DENYING APPELLANTS' MOTION THAT CIVIL CASE NO. 814-ML FOR AN[N]ULMENT OF EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS, TEMPORARY RESTRAINING ORDER/INJUNCTION INVOLVING THE SAME PARTIES AND PROPERTIES IN ISSUE BE RESOLVED FIRST"[25]

Contrary to respondents-appellants' assigned error I, respondents-appellants were not denied due process when petitioner-appellee presented its evidence ex parte.

Respondents-appellants had argued as follows:

> "The court (RTC-Br. 4) granted the application of the appellees for a writ of possession without the participation of the appellants. xxx

xxx

> Such that the resulting order dated June 1, 2010 granting the writ of possession and the Writ of Possession dated July 28, 2010 came about as a consequence of the ex-parte presentation of evidence by appellee to the exclusion of the appellant[s]. Appellant was denied the chance to present [his] position or cross-examine the witness for the appellees or at the [very] least comment or oppose the evidence being presented. All of these constitute a denial of the due process and a disregard to the rights of the appellant[s]. Appellant[s] was not given the sporting chance in this regard.
>
> And, the erroneous disregard of the rights of the appellants to due process voids the proceeding and ergo, the resulting order and the Writ of Possession should be rightfully set aside. xxx

xxx

> This is the essence of due process which is nothing more and nothing less than the embodiment of the sporting idea of fair play. And because appellants were not afforded a sporting chance to present their case as they were not allowed to participate, the result is an order and a Writ of Possession which is a nullity. View that a judgment arrived at after a trial marked by lack of due process deserves to be stuck down as a nullity. xxx"[26] (Emphasis Supplied)

Trumping respondents-appellants' allegations however, is that the lower court properly allowed petitioner-appellee to present its evidence ex parte. This is because the nature of the Petition for the Issuance of a Writ of Possession is ex parte, non-adversarial, summary, and ministerial[27]. Being ex parte in nature, the proceeding is brought for the benefit of one party only, such as petitioner-appellee here, and without notice to, or consent by any person who is adversely interested, such as the respondents-appellants. That this is to be so is in accordance with the following pronouncement of the Supreme Court in The Parents-Teachers Association (PTA) of St. Matthew Christian Academy, et. al. vs. The Metropolitan Bank and Trust Co.[28]:

> "This ex parte petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a 'judicial process' as contemplated in Article 433 of the Civil Code. As a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit by which one party 'sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.'
>
> In Idolor v. Court of Appeals, we described the nature of the ex parte petition for issuance of possessory writ under Act No. 3135 to be a non-litigious proceeding and summary in nature. As an ex parte proceeding, it is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard. It does not matter even if the herein petitioners were not specifically named in the writ of possession nor notified of such proceedings. In Sagarbarria v. Philippine Business Bank, we rejected

> therein petitioner's contention that he was denied due process when the trial court issued the writ of possession without notice." (Emphasis Supplied; Italics was made in the original)

Moreover, the lower court has a ministerial function to issue a Writ of Possession in favor of petitioner-appellee. This is because, as records revealed, respondents-appellants, as the mortgagors, failed to redeem the subject properties from petitioner-appellee, the latter being the purchaser of the properties in an extrajudicial foreclosure, within the one year redemption period[29]. As a result, petitioner-appellee's ownership over the subject property had been consolidated[30], and new certificates of title, TCT Nos. T-276061[31], T-276059[32] and T-276060[33], were accordingly issued under petitioner-appellee's name. All of these matters were as also found by the lower court in its Order[34] dated June 1, 2010, to wit:

> "Records show that petitioner (petitioner-appellee) is a commercial banking corporation, duly organized, registered and existing under and by virtue of the laws of the Philippines; that on July 12, 2004 an AUCTION SALE over the said three (3) parcels of land covered and embraced by Transfer Certificates of Title N[o]s. T-47243, T-55457 and T-170443 of the Registry of Deeds of Bataan was conducted by Sheriff Charlie S. Gatbunton; that petitioner (petitioner-appellee) was declared the highest bidder per copy of the Certificate of Sheriff's Sale xxx that for failure of the mortgagors/respondents Sps. Carlito Gochuico and Dalisay Gochuico to exercise their legal right of redemption within the one-year period from the annotation of the Certification of Sale, petitioner (petitioner-appellee) became the absolute owner of the aforesaid properties and all the improvements thereon; that as the new registered owner of the Transfer Certificates of Title Nos. T-276061 xxx T-276059 xxx and T-276060 xxx"[35] (Emphasis Supplied)

That the court has a ministerial function to issue a Writ of Possession upon consolidation of ownership of the properties under the purchaser's name, such as petitioner-appellee here, is pursuant to the following pronouncement of the Supreme Court in Eligio P. Mallari vs. Government Service Insurance System and the Provincial Sheriff of Pampanga[36]:

> "xxx The consolidation of ownership in the purchaser's name and the issuance to him of a new TCT then entitles him to demand possession of the property at any time, and the issuance of a writ of possession to him becomes a matter of right upon the consolidation of title in his name.
>
> The court can neither halt nor hesitate to issue the writ of possession. It cannot exercise any discretion to determine whether or not to issue the writ, for the issuance of the writ to the purchaser in an extrajudicial foreclosure sale becomes a ministerial function. xxx" (Emphasis Supplied)

Considering the ministerial function of the lower court to issue a Writ of Possession in favor of petitioner-appellee, then respondents-appellants could not properly argue in their assigned error II that Civil Case No. 814-ML for "Nullification of Extrajudicial Foreclosure, Sheriff's Sale, Consolidation of title of land to wit: TCT No[s]. T-276059, T-276060, T-276061 and T-279736 with Prayer for Temporary Restraining Order or Preliminary Injunction"[37] which was filed by respondents-appellants against petitioner-appellee should be resolved first. A pending action for annulment of foreclosure, such as Civil Case No. 814-ML here, does not stay the issuance of a Writ of Possession. This is pursuant to the following declaration of the Supreme Court in Spouses Montano T. Tolosa and Merlinda Tolosa vs. United Coconut Planters Bank[38]:

> "Given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, it has been ruled, moreover, that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ. More to the point, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession. Regardless of the pendency of such suit, the purchaser remains entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case. Otherwise stated, the issuance of the writ of possession remains the ministerial duty of the RTC until the issues raised in the

annulment case are, once and for all, decided by a court of competent jurisdiction." (Emphasis Supplied)

Indeed, the findings of the lower court are entitled to great weight and respect on appeal, and are in fact accorded finality when supported by sufficient evidence on the record[39], as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be just under the circumstances, the following disposition is therefore made on this matter.

IN VIEW OF ALL THESE, the Appeal is DENIED.

SO ORDERED.

Dicdican (Chairperson) and Acosta,[*] JJ., concur.

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[*] New member vice J. Paredes (inhibited) per raffle dated January 13, 2014.

[1] Rollo, pp. 18-27

[2] Records, p. 105

[3] Records, p. 8

[4] Records, pp. 9-10

[5] Records, p. 11

[6] Records, pp. 1-6

[7] Records, pp. 1-5

[8] Records, pp. 30-32

[9] Records, pp. 30-31

[10] Records, pp. 47-48

[11] Records, pp. 30-32

[12] Records, p. 60; p. 77

[13] Records, p. 86

[14] Records, pp. 79-82

[15] Records, pp. 93-94

[16] Records, pp. 1-6

[17] Records, pp. 96-97

[18] Records, p. 98

[19] Records, p. 98

[20] Records, pp. 99-101

[21] Records, p. 105

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[22] Records, p. 105

[23] Rollo, pp. 18-27

[24] Rollo, p. 27

[25] Rollo, p. 23

[26] Rollo, pp. 24-25

[27] Spouses Charlie Fortaleza and Ofelia Fortaleza vs. Spouses Raul Lapitan and Rona Lapitan, G.R. No. 178288, August 15, 2012

[28] G.R. No. 176518, March 2, 2010

[29] Records, p. 12

[30] Records, p. 12

[31] Records, p. 8

[32] Records, pp. 9-10

[33] Records, p. 11

[34] Records, pp. 93-94

[35] Rollo, p. 93

[36] G.R. No. 157659, January 25, 2010

[37] Records, p. 33

[38] G.R. No. 183058, April 3, 2013

[39] Spouses Patricio and Myrna Bernales vs. Heirs of Julian Sambaan, et al., G.R. No. 163271, January 15, 2010.

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