

**SPOUSES EMILIO R. CU AND DOLORES S. CU, PETITIONERS, VS.
PRESIDING JUDGE LILIA MERCEDES ENCARNACION A. GEPTY, RTC,
BRANCH 75 OF VALENZUELA CITY AND SOLID BANK CORPORATION
(NOW M...**

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is a Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure by spouses Emilio R. Cu and Dolores S. Cu seeking the setting aside and nullification of the following issuances by public respondent Hon. Lilia Mercedes Encarnacion A. Gepty, Presiding Judge of the Regional Trial Court (RTC) of Valenzuela City, Branch 75, in AD Case No. 41-V-00:[1]

(1)

Order[2] dated April 28, 2011 denying petitioners' motion for consolidation and granting the petition for the issuance of a writ of possession filed by Solidbank Corporation;

(2)

Order[3] dated August 17, 2011 denying petitioners' Notice of Appeal; and

(3)

Order[4] dated October 1, 2012 denying petitioners' motion for reconsideration of the Order dated August 17, 2011.

The antecedent facts follow.

On February 2, 1998, petitioners obtained a principal loan of P6,300,000.00 from Solidbank Corporation (hereinafter referred to as "Solidbank"). As security for the loan, petitioners executed a Real Estate Mortgage over several parcels of land located at 33 St. Louis Compound, Malinta, Valenzuela City, covered by Transfer Certificates of Title Nos. V-46911, V-46881, and V-46903 (hereinafter referred to as the "foreclosed properties").[5]

On August 20, 1998, for failure and refusal of petitioners to pay their past due loan, Solidbank filed a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage under Act 3135, as amended, and caused the sale of the mortgaged properties at a public auction. After compliance with the notice requirements, namely, (a) the Notice of sale, (b) Publication of the said notice and (c) posting, the foreclosed properties were sold to Solidbank on October 28, 1998, as the highest bidder, and the corresponding Certificate of Sale was issued in its favor.

On March 17, 1999, the Certificate of Sale was duly registered with the Registry of Deeds, Valenzuela City. On

March 17, 2000, after the expiration of the one year redemption period, Solidbank caused the consolidation of the titles over the foreclosed properties and TCT Nos. V-58332, V-58333, and V-58334 were issued in its name.[6]

On March 17, 2000, petitioners filed a Complaint[7] for Nullification of the Foreclosure Proceedings docketed as Civil Case No. 77-V-00. On April 28, 2000, Solidbank filed its Answer with Compulsory Counterclaim.[8] On September 26, 2000, RTC Valenzuela City, Branch 75, issued an Order[9] declaring petitioners non-suited for failure to appear for pre-trial and dismissing the Complaint for Nullification of Foreclosure Proceedings.

Meanwhile, on May 31, 2000, Solidbank filed a Petition for Issuance of the Writ of Possession[10] against petitioners, docketed as AD Case No. 41-V-00. In their Opposition to the Petition with Prayer for Consolidation[11] dated October 12, 2004, petitioners prayed for the consolidation of the Petition for Issuance of Writ of Possession and the Complaint for Nullification of Foreclosure Proceedings mentioned above.

In its Order[12] dated April 28, 2011, the court a quo denied the motion for consolidation filed by petitioners and granted the writ of possession in favor of Solidbank, to wit:

“WHEREFORE, the prayer for consolidation is hereby DENIED while the petition for the issuance of a writ of possession is GRANTED. Let a writ of possession issue in favor of the petitioner.

SO ORDERED.”

On May 17, 2011, petitioners filed a Notice of Appeal.[13]

In an Order[14] dated August 17, 2011, the court a quo denied petitioners' Notice of Appeal, viz.:

“WHEREFORE, the Notice of Appeal is, hereby, DENIED for being unmeritorious. Let, therefore, a Writ of Possession issue in favor of the petitioner.

SO ORDERED.”

Petitioners' Motion for Reconsideration[15] was denied in the court a quo's Order[16] dated October 1, 2012:

“WHEREFORE, premises considered, the Motion for Reconsideration filed by herein Oppositors-Spouses is hereby DENIED for lack of merit.

SO ORDERED.”

Hence, this petition whereby petitioners impute grave abuse of discretion amounting to lack and/or excess of jurisdiction on the part of Honorable Judge Gepty in:

- Denying the Notice of Appeal which is contrary to settled jurisprudence;
- Rendering a biased resolution granting the petition for writ of possession; and
- Ignoring the merits of opposition to petition for the issuance of writ of possession and of the consolidation.[17]

We resolve to deny the petition.

By its nature, an ex parte petition for the issuance of a writ of possession, as in this case, is a non-litigious proceeding authorized under Act No. 3135, as amended.[18] It is summary in nature, brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest.[19] As such, petitioners were neither entitled to a copy of the petition nor to a notice of hearing thereon.[20]

In cases of extrajudicial foreclosure sales of real estate mortgage, the issuance of a writ of possession is governed by Section 7 of Act No. 3135.[21] Accordingly, a writ of possession may be issued after consolidation of ownership of the property in the name of the purchaser if it is not redeemed during the period of one year after the

registration of sale.[22] In the present case, the certificate of sale of the foreclosed properties was annotated on TCT Nos. V-46911, V-46881, and V-46903 on March 17, 1999.[23] The redemption period thus lapsed on March 17, 2000, one year from the registration of the sale. So when Solidbank applied for the issuance of a writ of possession on May 31, 2000, it was already outside the redemption period. Title to the foreclosed properties were consolidated in the name of Solidbank and TCT Nos. V-58332, V-58333, and V-58334 were issued. The consolidation of ownership in Solidbank's name and the issuance to it of new TCTs therefore entitles Solidbank to demand possession of the foreclosed properties at any time.[24]

In other words, Solidbank had acquired an absolute right, as purchaser, to the writ of possession[25] and it had become the ministerial duty of the lower court to issue the writ of possession pursuant to Act No. 3135, as amended.[26] The trial court does not exercise discretion in the issuance thereof[27] and any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession.[28]

Moreover, jurisprudence is settled that petitioners cannot oppose or appeal the court's order granting the writ of possession in an ex parte proceeding.[29] Under the law, petitioners may file a petition to set aside the sale and writ of possession before the RTC on any objection on the validity of the sale and the writ issued, pursuant to Section 8[30] of Act No. 3135.[31] Thus, the court a quo correctly ruled that appeal is not the proper remedy in cases of writ of possession, but a separate action for the nullification of the foreclosure sale. Unfortunately, this remedy had already been availed of by petitioners, only that it was dismissed way back September 26, 2000.[32]

At this point, it bears to stress the well-settled rule that a dismissal for failure to appear at the pre-trial hearing is deemed an adjudication on the merits, unless otherwise stated in the order.[33] The Order[34] of RTC Valenzuela City, Branch 75, dismissing petitioners' Complaint for Nullification of Foreclosure Proceedings does not contain any such statement. Thus, such dismissal is an adjudication on the merits of petitioners' Complaint. Ostensibly, the court a quo did not commit an error in denying petitioners' motion to consolidate the Complaint for Nullification of Foreclosure Proceedings and the Petition for the Issuance of a Writ of Possession.

A special civil action for certiorari is a remedy designed to correct errors of jurisdiction and not errors of judgment.[35] A writ of certiorari is not intended to correct every controversial interlocutory ruling and is resorted only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack or excess of jurisdiction.[36] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It exists where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility,[37] and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[38] Grave abuse of discretion may likewise arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.[39] We find no such grave abuse of discretion on the part of the court a quo in issuing the assailed Orders.

WHEREFORE, the instant petition is DENIED for lack of merit.

SO ORDERED.

Zalameda and Reyes-Carpio,[*] JJ., concur.

[*]Acting Junior Member vice J. Diy per Office Order No. 283-14-ABR dated June 16, 2014.

[1]In Re: Petition for Issuance of Writ of Possession for Real Properties covered by Transfer Certificates of Title

Nos. V-46911, V-46881 and V-46903 (now TCT Nos. V-58332, V-58333 and V-58334 issued in the name of Metrobank) of the Registry of Deeds for Valenzuela City (Spouses Emilio R. Cu and Dolores S. Cu, Valenzuela properties), Solidbank Corporation (now Metropolitan Bank & Trust Company, successor-in-interest), Petitioner.

[2] Annex “B” to Petition, Rollo, pp. 45-46.

[3] Annex “E” to Petition, Rollo, pp. 71-72.

[4] Annex “A” to Petition, Rollo, pp. 43-44.

[5] Rollo, pp. 118-119.

[6] Rollo, p. 119.

[7] Rollo, pp. 88-95.

[8] Rollo, pp. 192-202.

[9] Rollo, p. 215.

[10] Rollo, pp. 96-102.

[11] Rollo, pp. 103-109.

[12] Rollo, pp. 45-46.

[13] Rollo, pp. 47-48.

[14] Rollo, pp. 71-72.

[15] Dated September 5, 2011, Rollo, pp. 73-76.

[16] Rollo, pp. 43-44.

[17] Rollo, pp. 18-19.

[18] *Motos vs. Real Bank (a Thrift Bank), Inc.*, G.R. No. 171386, July 17, 2009 citing *Metropolitan Bank and Trust Company vs. Bance*, G.R. No. 167280, April 30, 2008.

[19] *Mallari vs. GSIS*, G.R. No. 157659, January 25, 2010.

[20] *Motos vs. Real Bank (a Thrift Bank), Inc.*, G.R. No. 171386, July 17, 2009 citing *Metropolitan Bank and Trust Company vs. Bance*, G.R. No. 167280, April 30, 2008.

[21] Section. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 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.

[22] Chailese Finance Corporation vs. Spouses Ma, G.R. No. 251941, August 15, 2003.

[23] Rollo, pp. 161, 165, and 169, respectively.

[24] Mallari vs. GSIS, G.R. No. 157659, January 25, 2010.

[25] Cua Lai Chu vs. Laqui, G.R. No. 169190, February 11, 2010.

[26] Cua Lai Chu vs. Laqui, G.R. No. 169190, February 11, 2010.

[27] GC Dalton Industries, Inc. vs. Equitable PCI Bank, G.R. No. 171169, August 24, 2009 citing Mallari vs. Banco Filipino Savings & Mortgage Bank, G.R. No. 157660, August 29, 2008.

[28] GC Dalton Industries, Inc. vs. Equitable PCI Bank, G.R. No. 171169, August 24, 2009 citing Fernandez vs. Espinosa, G.R. No. 156421, April 14, 2008.

[29] Cua Lai Chu vs. Laqui, G.R. No. 169190, February 11, 2010.

[30] SEC. 8. Setting aside of sale and writ of possession. – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six; and if it finds the complaint of the debtor justified, it shall dispense in his favor of all or part of the bond furnished by their person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four Hundred and Ninety-Six; but the order of possession shall continue in effect during the pendency of the appeal.

[31] Motos vs. Real Bank (a Thrift Bank), Inc., G.R. No. 171386, July 17, 2009.

[32] Order dated August 17, 2011, denying the Notice of Appeal filed by petitioners, Rollo, p. 71.

[33] Spouses Mondonedo vs. Court of Appeals, G.R. No. 113349, January 18, 1996.

[34] Dated September 26, 2000, Rollo, p. 215.

[35] NM Rothschild & Sons (Australia) Limited vs. Lepanto Consolidated Mining Company, G.R. No. 175799, November 28, 2011 citing Rimbunan Hijau Group of Companies vs. Oriental Wood Processing Corporation, 507 Phil. 631, 645 (2005).

[36] Sui Man Hui Chan vs. Court of Appeals, G.R. No. 147999, February 27, 2004.

[37] Carabeo vs. CA, G.R. Nos. 178000 and 178003, December 4, 2009.

[38] Sawadjaan vs. CA, G.R. No. 141735, June 8, 2005.

[39] Republic of the Philippines vs. Cocofed, G.R. Nos. 147062-64, December 14, 2001.

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