

**HILVELYN LOBATON AND EMILIA A. LOBATON, PETITIONERS, VS.
HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH
16, DAVAO CITY, MR. ABE ANDRES, SHERIFF IV, REGIONAL TRIAL
COUR...**

Ponente: PEREZ, J.

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PEREZ, J.:

Spouses Hilvelyn Lobaton and Emilia A. Lobaton (petitioners) filed this Petition for Certiorari[1] under Rule 65 of the Rules of Court seeking nullification of the Order[2] rendered by the Regional Trial Court, Branch 16, Davao City, dated 26 May 2010 in Other Case No. 900-09 denying petitioners' Motion to Set Aside Order dated 29 January 2010 granting the Writ of Possession and the Motion to Set Aside Writ of Possession; and the Order[3] dated 23 June 2010 denying the Motion for Reconsideration of the 26 May 2010 Order.

The Facts.

Hi-Provite Industry, Inc. (Hi-Provite), a duly organized domestic stock corporation,[4] entered into a contract for a short-term revolving credit line worth Four Million Pesos (P4,000,000.00) with the Trade and Investment Development Corporation of the Philippines (TIDCORP), a government-owned financial institution created by virtue of P.D. No. 1080.

As security for the said credit line, Napoleon Ceasar G. Reyes, Jr., in accommodation of Hi-Provite, executed a Real Estate Mortgage[5] dated 18 July 2004 in favor of TIDCORP on the lot, buildings and improvements located at 104 Pluto Street, GSIS Village, Davao City with Transfer Certificate of Title No. 32487[6] and registered under Reyes' name.

On 30 August 2004, Hi-Provite drew three million four hundred thousand pesos (P3,400,000.00) from the credit line, for which it he issued a Promissory Note[7] with a maturity date of 15 November 2004.

However, upon maturity of the promissory note, Hi-Provite failed to pay its loan obligations with TIDCORP.[8] As a result, TIDCORP, filed an application for Extra-Judicial Foreclosure of Real Estate Mortgage before the Regional Trial Court of Davao City docketed as EJP-REM Case No. 8220-07.[9]

On 30 August 2007, the Reyes property was sold at a public auction. TIDCORP emerged as the highest bidder during the auction sale and a Certificate of Sheriff's Sale[10] was subsequently issued to it. Consequently, after the expiration of the one year redemption period given by law, without the Spouses Reyes redeeming the property, the title of the said property was consolidated in TIDCORPS name under TCT No. T-440939.[11]

On November 2009, TIDCORP auctioned-off the subject property. In the said auction, Maceste Uy was declared the winning bidder.[12]

When they discovered claimants in possession of the subject property, TIDCORP and Maceste Uy filed an Ex-Parte Petition[13] for the issuance of a writ of possession over a parcel of land covered by TCT No. T-440939

before RTC, Branch 16, Davao City (court a quo), in order to acquire possession over the property

In its 29 January 2010 Order,[14] the court a quo issued a Writ of Possession in favor of TIDCORP and Uy, which reads:

“The issuance of a writ of possession to a purchaser in a public auction is a ministerial act – after the consolidation of title in the buyer’s name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right.

Regardless of whether or not there is appending suit for annulment of the mortgage or of the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the ensuing outcome of the other proceeding. (LAM v. METROPOLITAN BANK AND TRUST COMPANY- 546 SCRA 200-201)

Accordingly, the Motion to Set Aside Order dated January 29, 2010, granting the Writ of Possession and Motion to Set Aside Writ of Possession filed by movants Spouses Hivelyn Lobaton and Emilia A. Lobaton are DENIED.

SO ORDERED.”

Pursuant to the above-mentioned order, Abe C. Andres, Sheriff of the court a quo, issued a Notice to Vacate,[15] dated 11 February 2010, which reads:

“Notice to Vacate

TO: Sps. Napoleon Ceasar G. Reyes, Jr. and all persons
claiming rights under them.
104 Pluto St., GSIS Heights
Matina, Davao City.

Greetings:

You are hereby notified that by virtue of the Writ of Possession dated February 4, 2010, issued in the above-entitled case by the Honorable Court, Regional Trial Court, Branch 16, Davao City, copy of which is herewith served upon you to serve as notice that pursuant to the said writ of possession you are hereby given by the undersigned a period of fifteen (15) days from the date of service hereof, to voluntarily vacate the property covered by TCT No. T-440939 which is subject of the said writ of possession, and peacefully turn over possession thereof to the petitioner.

Failure on your part to comply the same, the undersigned will be constrained to implement the writ in accordance with its mandate.

Davao City, Philippines, February 11, 2010.”

Upon learning that a writ of possession was issued over the subject property, petitioners, who claim to be the rightful owners of the property instead of the Spouses Reyes, filed a Motion to Set Aside Order, dated 29 January 2010, Granting the Writ of Possession and Motion to Set Aside Writ of Possession.[16] They opposed the issuance of the writ citing mainly their right over the subject property.

At the same time, they filed a case for “Declaration of Nullity of Deed of Absolute Sale, Declaration of Nullity of Transfer Certificate of Title No. T-324387 Registered in the name of Napoleon Ceasar G. Reyes, Jr. married to Esther L. Reyes, Declaration of Nullity of Real Estate Mortgage, Declaration of Nullity of Alleged Extra-Judicial Foreclosure, Etc.”[17] against spouses Napoleon Ceasar G. Reyes, Jr., and Esther L. Reyes which is pending before the RTC, Branch 14, Davao City.

Private respondent Uy then filed his Comment and/or Opposition to petitioners’ above-mentioned motion.[18]

In rejoinder, petitioners filed a Manifestation by way of Reply.[19]

The court a quo, through the assailed 26 May 2010 Order, denied petitioners motion to set aside its previous order, which granted the writ of possession.

Unsatisfied with the denial of their motion, petitioners moved to reconsider the court a quo's 26 May 2010;[20] a move which was formally opposed by Uy in his Opposition filed in court.[21]

Finding no convincing reason to abandon their previous order, the court a quo, through its 23 June 2010 Order, denied petitioners' Motion for Reconsideration.

Undeterred, petitioners filed this petition for certiorari, imputing the following:

1. THAT THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ERROR AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION TO SET ASIDE ORDER, DATED JANUARY 29, 2010, GRANTING THE WRIT OF POSSESSION AND MOTION TO SET ASIDE WRIT OF POSSESSION FILED BY HEREIN PETITIONERS.

2. THAT THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ERROR AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS.

Therefore, the core issue in this case is whether or not the court a quo committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the writ of possession in favor of the respondents.

The Court's Ruling

The petition is bereft of merit.

The issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court.[22] After the consolidation of title in the buyer's name for failure to redeem the property, entitlement of the writ becomes a matter of right.[23] The right to the issuance of a writ of possession is outlined in Sections 6 and 7 of Act 3135, as amended by Act 4118.[24]

In the case at bar, it is undisputed that the mortgaged property was under the name of Spouses Reyes when it was mortgaged then foreclosed in favor of TIDCORP. Settled is the rule that a Torrens title over a land is indefeasible and binding upon the whole world unless it is nullified by a court of competent jurisdiction in a direct proceeding for cancellation of title.[25] Without such nullification, Spouses Reyes, for all intents and purposes, remain the true owners of the property subject of this case. Thus, the real estate mortgage and the subsequent foreclosure sale of the property were also valid.

Moreover, spouses Reyes failed to redeem the property within the redemption period. Jurisprudence teems with pronouncements that, upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute.[26] Thus, the mere filing of an ex parte motion for the issuance of a writ of possession would suffice, and there is no bond required since possession is a necessary consequence of the right of the confirmed owner.[27]

Considering the foregoing circumstances, the court a quo did not commit grave abuse of discretion. For an act to be considered as grave abuse of discretion, the court a quo should have exercised its discretion with attending caprice and whim. In this juncture, the Supreme Court's explanation of what constitute graves abuse of discretion in the case of *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*[28] citing *Yu v. Judge Reyes-Carpio*,[29] is instructive:

The term ‘grave abuse of discretion’ has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a ‘capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.’ The abuse of discretion must be so patent and gross as to amount to an ‘evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.’ Furthermore, the use of a petition for certiorari is restricted only to ‘truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.’ From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.

Evidently, in this case, there was no patent or manifest abuse on the part of the court a quo. The issuance of the assailed writ conforms to law given that the Spouses Reyes’ title over the property enjoys the presumption of validity. When the Spouses Reyes failed to redeem the subject property TIDCORP acquired an absolute right to secure the possession thereof. Thus, it is only logical for the court a quo to issue a writ of possession after TIDCORP and Maceste Uy filed an ex-parte motion for a writ of possession.

In trying to convince this Court that the writ of possession was erroneously issued, petitioners argued that they are the real owners thereof and that a case for nullification is pending before another court.

We are not convinced.

The fact that petitioners question the title of the Spouses Reyes over the subject property, does not bar the court a quo to issue the assailed writ. Even with the fact that a case for nullification of title is pending before a court, the court a quo is still duty bound to issue the writ of possession.

In *Nagtalon v. United Coconut Planters’ Bank*,^[30] the Supreme Court, once again, held that the issuance of a writ of possession is not a matter of discretion on the part of the RTC, the pertinent portion of the ruling reads:

“x x x jurisprudence is replete with cases holding that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.

We have long recognized the rule that once title to the property has been consolidated in the buyer’s name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at anytime. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court’s discretion. The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay.”

WHEREFORE, foregoing premises considered, this petition for certiorari is hereby DENIED for lack of merit. The assailed Orders of the Regional Trial Court, Branch 16, Davao City, dated 26 May 2010 and 23 June 2010 are AFFIRMED.

SO ORDERED.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 3-19

[2] Rollo, p. 26.

[3] Rollo, p. 27.

[4] Rollo, p. 238. Certificate of Incorporation.

[5] Rollo, pp.125-133.

[6] Rollo, p. 123.

[7] Rollo, p. 137.

[8] Id.

[9] Id.

[10] Rollo, p. 235.

[11] Rollo, p. 199.

[12] Rollo, p. 171.

[13] Rollo, pp. 28-32.

[14] Rollo, p. 35.

[15] Rollo, p. 37.

[16] Rollo, pp. 38-44.

[17] Rollo, pp. 108-122.

[18] Rollo, pp. 47-53.

[19] Rollo, pp. 54-56.

[20] Rollo, pp. 88-92.

[21] Rollo, pp. 93-101.

[22] Spouses Lam v. Metropolitan Bank and Trust Company, G.R. No. 178881, 18 February 2008.

[23] Id.

[24] SECTION 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 Four hundred and ninety-six, as amended by 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.

[25] Catagao v. Almaonte, et al., G.R. No. 174004, 09 October 2013

[26] Philippine National Bank v. Gotesco Tyan Ming Development, Inc., G.R. No. 183211, 05 June 2009

[27] Id.

[28] G.R. No. 155306, 28 August 2013.

[29] G.R. No. 189207, 15 June 2011.

[30] G.R. No. 172504, 31 July 2013

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