

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER, VS. HON. COURT OF APPEALS AND RENE KNECHT, RESPONDENTS.

G.R. No. L-42278. January 20, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari filed by the Government Service Insurance System (GSIS) seeking the reversal of the decision of the respondent Court of Appeals dated October 13, 1975, in the special civil action for certiorari docketed as CA-G.R. No. SP-04300, entitled "Rene Knecht vs. Hon. Pedro JL. Bautista, etc., et. al.", and its resolution dated December 18, 1975, denying petitioner's motion for reconsideration. Per Resolution dated May 4, 1976, however, We treated this case as a special civil action (p. 217, Rollo).

The assailed decision set aside, "as having been issued in grave abuse of discretion," the Orders of the Court of First Instance (now Regional Trial Court) of Rizal, Branch III, Pasay City, dated May 26, 1975 and May 27, 1975, which respectively denied private respondent Knecht's "Urgent Motion for Intervention" and granted GSIS' "Ex-parte Motion for Issuance of Writ of Possession" in GLRO Record No. 317 and 1356, or CFI Case No. 1104.

The antecedent facts in the instant case are as follows:

Mariano R. Dulay Enterprises (hereinafter referred to as Dulay) obtained on various occasions, real estate loans from the Government Service Insurance System (GSIS for short) all amounting to P9,535,000.00 (p. 3, Rollo). These loans were secured by a real estate mortgage of a certain parcel of land (which included Hotel Frederick), then covered by Transfer Certificate of Title No. 17638 of the Registry of Deeds of Pasay City, under Act No. 3135, as amended by Act No. 4118.

As of September 10, 1974, DULAY had incurred arrearages in the payment of its loans all amounting to P3,335,878.81. In view thereof, the GSIS instituted extrajudicial foreclosure proceedings on the mortgaged property and on November 5, 1974, the said property was sold at public auction by the Sheriff of Pasay City to the GSIS as the highest bidder for P13,426,382.00. A Certificate of Sale was subsequently issued on November 22, 1974, and the same was duly registered on December 13, 1974 (p. 4, Rollo).

On January 7, 1975, the GSIS filed with the Court of First Instance (now Regional Trial Court) of Rizal, with station at Pasay City, an "Ex-Parte Petition for Issuance of a Writ of Possession" in the original registration proceedings (therein docketed as GLRO Record No. 317 and 1356, or CFI Case No. 1104), conformably with Section 7 of Act No. 3135, as amended, and Section 4 of P.D. 385 (p. 355, Rollo).

On January 16, 1975, private respondent Rene C. Knecht (Knecht for short), filed with the aforesaid court, an "Urgent Motion for Intervention" claiming that DULAY had sold the property to him on May 4, 1974 and assigned to him on November 5, 1974, the right to redeem the same. The GSIS opposed the motion alleging that "intervention will not lie when there is no pending litigation; when it impairs substantial rights of the adverse party; when the intervenor is guilty of laches; and that the intervenor has no legal interest in the property subject

of a writ of possession" (p. 5, Rollo).

On May 26, 1975, the Court of First Instance of Rizal, with Judge Pedro JL. Bautista presiding, denied Knecht's motion for intervention citing Section 7 of Act No. 3135 and Section 4 of PD No. 385, and, on May 27, 1975, directed the issuance of a writ of possession in favor of the GSIS upon the latter's posting a bond in the amount of P2,000,000.00 (p. 6, Rollo).

On June 11, 1975, Knecht filed a special civil action for certiorari with the Court of Appeals wherein he assailed the said Orders of the Court of First Instance of Rizal as having been issued in grave abuse of discretion amounting to lack of jurisdiction (p. 4, Rollo). The Court of Appeals immediately, and without any prior hearing, issued a writ of preliminary injunction, upon Knecht's filing of a bond in the sum of P1,000.00, enjoining the Court of First Instance of Rizal from issuing the writ of possession and the Sheriff of Pasay City from executing the same, if already issued (p. 642, Rollo).

On October 13, 1975, respondent Court of Appeals rendered a decision (p. 78, Rollo) (after GSIS had filed its Answer to the Petition but before the parties could file their respective Memoranda) upholding Knecht's right to intervene in the proceedings for the issuance of a writ of possession, as a successor-in-interest of the Dulays, and standing "on better footing than a necessary or an indispensable party" (p. 89, Rollo). Respondent Court of Appeals likewise set aside, "as having been issued in grave abuse of discretion", the Orders of the CFI of Rizal, dated May 26, 1975 (denying the motion for intervention) and May 27, 1975 (granting the writ of possession), and making permanent the injunction it had earlier issued. The motion for reconsideration filed by GSIS (p. 102, Rollo) was denied per Resolution dated December 18, 1975 (p. 108, Rollo).

On January 7, 1976, the GSIS filed the present "Petition for Review on Certiorari" praying for the reversal of respondent Court of Appeals' Decision.

Meantime, title to the subject property was consolidated in the name of the GSIS on January 15, 1976. Transfer Certificate of Title No. 17638, in the name of Manuel R. Dulay Enterprises, Inc. was cancelled and Transfer Certificate of Title No. 19836 of the Register of Deeds of Pasay City was issued in the name of the GSIS.

On August 11, 1976, upon motion of GSIS, We issued a Writ of Preliminary Mandatory and Prohibitory Injunction enjoining the Court of Appeals from enforcing its final injunction issued against the GSIS, and directing Knecht: (1) to turn over to the GSIS the possession of the subject property; (2) to submit an accounting of all revenues derived from his hotel operations as of November 5, 1974; (3) to deposit with this court all such revenues on hand as of turn-over of premises to GSIS.

Knecht moved to dissolve the preliminary injunction. In a Resolution dated August 18, 1976 (p. 399, Rollo), We upheld said preliminary injunction but suspended the portion regarding deposit of revenues, and declared the case submitted for decision.

Knecht refused to comply with the preliminary injunction, prompting the GSIS to move to declare him in contempt of court for which We issued a Show-Cause Order on November 15, 1976 (p. 425, Rollo). On January 24, 1977, however, the day set for the hearing of the contempt charge, the parties filed a Joint Manifestation and Motion praying for the cancellation of the hearing in view of possible amicable settlement. This was granted per Our Resolution dated January 28, 1977 (p. 517, Rollo).

However, the parties failed to reach an amicable settlement, prompting the GSIS to move for immediate compliance (by Knecht) with the Resolution of August 11, 1976, and upon his failure to do so, the immediate implementation of the Writ of Preliminary Mandatory and Prohibitory Injunction issued by Us on August 11, 1976.

Petitioner GSIS seeks the reversal and setting aside of the decision of respondent Court of Appeals, on the following grounds:

1.

Subject orders are predicated on Sec. 7 of Act 3135 and Sec. 4 of PD 385; hence respondent Court of Appeals could not have possibly found the CFI of Rizal guilty of capricious, arbitrary, whimsical or despotic exercise of judgment;

2.

Respondent Court of Appeals failed to support its conclusion of grave abuse of discretion with a finding of capricious, arbitrary, whimsical, or despotic exercise of judgment in issuing the Orders;

3.

The Extraordinary writ of certiorari is available only to correct or rectify jurisdictional errors. It cannot be used where the error assigned is one of judgment, nothing more;

4.

Other procedural infirmities suggest bias or prejudice against the lawful interest of petitioner:

a.)

the issuance of a preliminary injunction without prior hearing

b.)

the bond of P1,000.00 required of Knecht, as against the P2M posted by GSIS

c.)

promulgation of the decision prior to the expiration of the period granted by the Court of Appeals for the parties to submit their respective memoranda (p. 693, Rollo).

On the other hand, respondent Knecht claims that:

1.

as a purchaser of the mortgaged property, and subsequent assignee of the redemption rights of mortgagor, (per

Deed of Assignment), dated November 7, 1974, he has pecuniary interest in the mortgaged property which would warrant his right to intervene in the petition for issuance of the writ of possession.

2. the extrajudicial foreclosure is null and void.

The petition is impressed with merit.

Respondent Court of Appeals gravely erred in setting aside the Orders of the Court of First Instance (now Regional Trial Court) of Rizal, dated May 26, 1975 and May 27, 1975, which respectively denied Knecht's "Urgent Motion for Intervention" and granted GSIS' "Ex-Parte Motion for Issuance of Writ of Possession".

The CFI orders denying the motion for intervention and granting the writ of possession upon an ex-parte motion of petitioner GSIS were premised on Section 7 of Act No. 3135 and Sec. 4 of P.D. No. 385.

Section 7 provides as follows:

"SEC. 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.

" (Emphasis ours)

It has been held:

"Sections 7 and 8 of Act 3135, expressly authorize the purchaser at the public auction in an extrajudicial foreclosure of mortgage to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession. Under said sections, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion" (Emphasis ours) (Eugenio S. de Garcia vs. Hon. Ramon R. San Jose, et. al. (94 Phil. 623)).

Likewise in the case of Marcelo Steel Corp. vs. Court of Appeals, (G.R. Nos. L-34317 and L-34335, November 28, 1973, 54 SCRA 891), We stated that the issuance of the writ is a legal mandate, and the judge may not be charged with grave abuse of discretion, for complying with, and implementing said legal mandate:

Having merely followed an express provision of law, whose validity is not questioned, the Judge cannot be charged with having acted without jurisdiction or with grave abuse of discretion. The rule that the purchaser at a judicial public auction is not entitled to possession during the period of redemption is not applicable to a sale under Act No. 3135 where the granting of said possession is expressly authorized" (p. 18, Rollo) (underscoring

supplied).

On the other hand, Sec. 4 of P.D. 385, issued on January 31, 1974 provides:

"SECTION 4. As a result of foreclosure or any other legal proceedings wherein the properties of the debtor which are foreclosed, attached, or levied upon in satisfaction of a judgment are sold to a government financial institution, the said properties shall be placed in the possession and control of the financial institution concerned, with the assistance of the Armed Forces of the Philippines whenever necessary. The Petition for Writ of Possession shall be acted upon by the court within fifteen (15) days from the date of filing." (Emphasis ours)

In *PNB vs. M. Adil, et al.* (G.R. No. 52823, November 2, 1982, 118 SCRA 110) We stated that P.D. No. 385 makes it mandatory for the court to place a financial institution in possession of the property:

"The right of the purchaser to be placed in the possession of the property is bolstered by Section 8 of the aforecited Act which provides that if the judge finds the complaint assailing the legality of the foreclosure sale justified, it shall not transfer the possession of the property, even on appeal, but will only proceed against the bond posted by the purchaser."

Based on the foregoing, the order for the issuance of the writ was clearly within the power, competence and jurisdiction of the court a quo to issue.

As to the wisdom or soundness of the challenged order granting such writ of possession, it is a matter of judgment in connection with which the remedy is ordinary appeal. (*Toribia Lamagan vs. Hon. Rafael de la Cruz and Cosme O. Follosco*, G.R. No. L-27950, July 29, 1971; 40 SCRA 101); *Salvador E. Bimeda vs. Arcadio Perez and Hon. Jose T. Surtida*, 93 Phil. 636). There being no showing that the court a quo acted whimsically or capriciously as to amount to excess or lack of jurisdiction in issuing the questioned orders, but acted precisely in compliance with the mandatory provisions of Sec. 7, Act 3135 and PD 385, the respondent Court of Appeals erred in acting on the petition for certiorari, which is intended to correct defects of jurisdiction solely and not to correct errors of procedure or matters in the court a quo's findings or conclusions (*Ilacad vs. Court of Appeals*, 78 SCRA 301).

Is Knecht a proper intervenor?

In allowing Knecht to intervene in the proceedings for the issuance of the writ, respondent Court of Appeals premised its ruling on his being the purchaser of the mortgaged property, whose rights allegedly would be adversely affected by the foreclosure (CA decision, p. 85, Rollo). This ruling, unfortunately, admits the validity of the Deed of Sale with Assumption of Mortgage, executed between the Dulays and Knecht as against petitioner GSIS. There is, however, no evidence that this sale was registered. It is well-settled that in case of a piece of land titled under the Torrens system, it is the act of registration that transfers the ownership of the land sold (*Agbulos vs. Alberto*, G.R. No. L-17483, July 31, 1982, 115 Phil. 797; Sec. 50, Land Registration Act, Act No. 496, now Sec. 51, Property Registration Decree, P.D. No. 1529). Moreover, this sale was made without the prior consent of GSIS, in violation of condition No. 7 of the Mortgage Contract (p. 149, Rollo), Annex "A", Comment). Well settled is the rule that the consent of the creditor is indispensable for a valid novation consisting of a change of debtor (*Garcia vs. Khu Yeh Chiong*, 38 OG 926).

In the absence of such registration and GSIS consent, Knecht was not validly substituted as debtor (*Mc Collough and Co., Inc. vs. Velasco*, 46 Phil. 1), on the basis of which he could assail and/or intervene in the proceedings for the issuance of the writ of possession. The sale therefore did not in any manner bind GSIS which is obliged to recognize only the Dulays as mortgagor. (Thus, the GSIS notice of arrearages was directed solely to the Dulays. Neither is there any GSIS board resolution officially recognizing Knecht as substitute debtor). To rule otherwise would be to defeat the statutory remedy of foreclosure. A wily mortgagor could easily avoid and/or delay the

transfer of possession of the foreclosed property to the purchaser by secretly conveying the same to third persons, who would then assert ownership rights/pecuniary interests thereon to the prejudice of the legitimate purchaser.

Foregoing considered, Knecht therefore acquired no legal right over the mortgaged property as against the GSIS, and consequently is not a proper intervenor.

Assuming the validity of the sale, then Knecht would hold the title and possess the property as the Dulays' transferee, i.e., any right he has to the property cannot be better than that of the transferor Dulays. Thus, in the instant case, considering that the property has already been sold at public auction, pursuant to an extrajudicial foreclosure, and the Dulays have not contested the validity either of the foreclosure proceedings instituted against the mortgaged properties, or the ex parte motion for the issuance of a writ of possession (p. 34, Rollo), the only right transferrable to Knecht is the right to redeem the mortgaged properties within the period prescribed by law. Knecht subscribed to this view, when he asserted a right to redeem the foreclosed property, based on an alleged "deed of assignment of redemption rights, dated November, 1974" (p. 134, Rollo). (See Alberto C. Roxas and Nenita de Guia vs. Mariano Buan, et. al., G.R. No. 53798, November 8, 1988).

However, as there is likewise no evidence on record of the assignment, nor was it duly annotated on TCT No. 17638, (covering the Mortgaged property) Knecht is not validly substituted as debtor, and the assignment is not effective against GSIS, which is again obliged to recognize the redemption rights of the Dulays only:

"There is no right conferred by law in favor of a buyer of mortgaged property to redeem the same where the sale to such third party was not with the consent of the mortgaged creditor" (R. Bonnevie vs. CA, G.R. No. L-4910, October 24, 1983, 125 SCRA 122, at p. 125).

Aside from the lack of legal interest, We also agree with petitioner that intervention is not proper when there is no pending litigation.

The proceedings in which respondent Knecht sought to intervene is an ex-parte proceeding pursuant to Sec. 7 of Act No. 3135, and, as pointed out by petitioner, is a "judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested (Stella vs. Mosele, 19 N.E., 2d. 433, 435, 299 Ill. App. 53; Imbrough v. Parker, 83 N.E. 2d 42, 43, 336 Ill App. 124; City Nat. Bank & Trust Co. v. Aavis Hotel Corporation, 280 Ill. App. 247), x x x or a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard" (Restatement, Torts, S 674, p. 365, Rollo).

On the other hand, Rule 12, Sec. 2 of the Revised Rules of Court on Intervention provides:

"SEC. 2. Intervention. - Any person may, before or during a trial be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof" (underscoring supplied).

Intervention is defined as "a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings" (33 C.J., 477, cited in Eulalio Garcia, et. al. vs. Sinforoso David, et. al., 67 Phil. 279, at p. 282).

Action, under Rule 2, Sec. 1, is defined as an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong.

From the aforesaid definitions, it is clear that intervention contemplates a suit, and is therefore exercisable during a trial and, as pointed out by petitioner is one which envisions the introduction of evidence by the parties, leading to the rendition of the decision in the case (p. 363, Rollo). Very clearly, this concept is not that contemplated by Sec. 7 of Act No. 3135, whereby, under settled jurisprudence, the Judge has to order the immediate issuance of a writ of possession 1) upon the filing of the proper motion and 2) the approval of the corresponding bond. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership. A trial which entails delay is obviously out of the question.

Knecht's remedy, as correctly pointed out by petitioner GSIS, is a separate, distinct, and independent suit, provided for in Section 8 of Act No. 3135:

"And any question regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*" (De Gracia v. San Jose, et al., 94 Phil. 623, p. 12, Rollo).

Respondent Court of Appeals also enjoined the Court *a quo* from implementing the writ of possession issued on May 27, 1975, ultimately depriving petitioner GSIS of its property rights for over a decade, and effectively barring its right to dispose of and/or sell subject property in order to generate much-needed funds.

Section 2 of PD 385 makes it mandatory for the Court to place a government financial institution in possession of the property. The injunction against the petitioner from taking possession of the property rendered nugatory the provisions of the decree:

"SECTION 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings."

xxx xxx xxx

(See *T. Lamagan vs. Hon. R. de la Cruz and C. O. Follosco*, supra; and *S. E. Bimeda vs. A. Perez and Hon. J. T. Surtida*, supra) likewise specially noting the provisions of the 13th Whereas Clause, which state:

WHEREAS, it has been shown by the experience of government financial institutions that in instances where extrajudicial foreclosure on large loans is successfully pursued, the assets, aside from land, that form part of the foreclosed collaterals, including buildings, machinery, equipment, materials, furniture and fixtures, are usually pilfered or lost rendering it necessary that the foreclosing government creditor have a writ of possession issued in its favor without delay after the foreclosure auction sale." (Emphasis ours)

As regards the validity of the foreclosure sale, this matter has been resolved in the decision of the Court of Appeals in CA-G.R. No. Civil Case No. 08858, (promulgated March 15, 1988) (p. 695, Rollo) which affirmed the decision of the lower court dismissing the action for annulment of foreclosure, separately filed by Knecht:

"There was no fraudulent inducement committed by the GSIS on the appellant and the foreclosure sale was valid. Contrary to appellant's narrow view, Manuel Dulay himself, in Annex Q of the basic complaint, requested for the deferment of the payment of the principal and the interests of his loan and this alone is indicative that Dulay was then in arrears. To demonstrate the infirmity of the sale with assumption of mortgage, it is at once flagrant and obvious from the records that Rene Knecht and Dulay Enterprises entered

into the assumption of mortgage in derogation of the original mortgage contract between GSIS and Dulay Enterprises to the effect that any disposition, transfer or encumbrance of the properties must be made with the prior written consent of the mortgagee (Annex F, Complaint, p. 116, Record). Now, had not the appellant and Dulay not preempted such consent and conformity of the mortgagee GSIS, the course of events and proceedings would have necessarily taken an entirely different path.

"Foreclosure was clearly in order and the GSIS had a perfect right to protect its investment it appearing that the first loan granted to the Dulay spouses was granted in 1968 yet and the auction sale was conducted more than six (6) years thereafter, or on November 5, 1974. The presumption of regularity of the foreclosure proceedings and subsequent proceedings as well as the consolidation of ownership by the GSIS over the property has not been overturned by appellant"

xxx xxx xxx(pp. 9-10).

ACCORDINGLY, the petition is hereby granted, and the assailed decision of the respondent Court of Appeals, dated October 13, 1975, as well as its Resolution, dated December 8, 1975 are hereby reversed and set aside.

Further, private respondent Rene Knecht is directed:

1.

to immediately turn over to the petitioner GSIS the possession of the property covered by TCT No. 19836 (formerly TCT No. 17638). The Armed Forces of the Philippines is hereby directed to place petitioner in possession and control of the properties, without any further delay, pursuant to Sec. 4 of PD No. 385, 2.) to render an accounting of all the revenues derived from the operations thereof, from November 5, 1974, the date when petitioner purchased the property at the extrajudicial foreclosure sale and 3.) to deliver to petitioner all revenues on hand as of turn-over of premises to GSIS.

This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Griño-Aquino, JJ., concur.

Gancayco, J., no part, participated in CA decision.

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