

IN RE: EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION UNDER ACT 3135 AS AMENDED

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is an appeal from the Decision[1] dated December 29, 2011 of the Regional Trial Court of Dagupan City, Branch 44 in SPL. PROC. No. 2008-0015-D which granted petitioner-appellee Banco De Oro – EPCI's [BDO-EPCI] Ex-Parte Petition for Writ of Possession.

Respondent-appellant Pangasinan Hope Mercantile Corp. [PHMC] filed its Appellee's Brief.[2] Subsequently, BDO-EPCI filed its Manifestation with Motion for Immediate Execution and Implementation of Writ of Possession.[3] PHMC filed its Comment and Reply Brief.[4]

On August 15, 2013, this Court issued a Resolution[5] granting BDO-EPCI's Motion for Immediate Execution and Implementation of Writ of Possession and declaring the instant case submitted for decision. PHMC sought the reconsideration thereof via the Motion for Reconsideration with Motion to Hold the Immediate Implementation/Execution of the Writ of Possession in Abeyance.[6] BDO-EPCI filed a Manifestation[7] stating that the parties have already agreed to amicably settle the case through a Compromise Agreement dated September 27, 2013 and that PHMC's motion for reconsideration has been rendered moot and academic. The pertinent portions of the notarized Compromise Agreement read:

“COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement made and executed by and between:

PANGASINAN HOPE MERCANTILE CORP., a domestic corporation duly organized and existing under and by virtue of Philippine laws, with office address at J. Rizal Street, Poblacion, Mangaldan, Pangasinan, represented herein by WILFRED T. LEE, and hereinafter referred to as 'PHMC';

- and -

BDO UNIBANK, INC. (formerly known as Equitable PCI Bank/Equitable Banking Corporation), a universal bank duly organized and existing under and by virtue of Philippine laws, with office address at the BDO Corporate Towers, 7899 Makati Avenue corner H.V. Dela Costa Street, Makati City, Metro Manila, represented herein by its Senior Vice President MELANIE S. BELEN and First Vice President, GERTRUDES J. LUMAIN, and hereinafter referred to as the 'BANK'

Witnesseth that:

WHEREAS, PHMC was previously granted by the BANK BDO a term loan of P8,000,000.00 duly covered and secured by a Real Estate Mortgage executed by PHMC in April 1997 over its properties in Poblacion, Mangaldan, Pangasinan then covered by Transfer Certificates of Title Nos. 213370 and 220794 of the Registry

of Deeds of Pangasinan ('Subject Properties');

WHEREAS, upon PHMC's default in the payment of said loan, the Bank instituted an extrajudicial foreclosure of the aforementioned mortgage resulting in the public auction of the Subject Properties with the BANK emerging as the highest bidder and in the subsequent consolidation of ownership thereof in October 2004 in favor of the BANK under Transfer Certificates of Title Nos. 282670 and 282671;

WHEREAS, PHMC thereafter, or sometime in November 2004, filed with (sic) Regional Trial Court of Dagupan City, Pangasinan a Complaint for Injunction With Damages, Preliminary Injunction and Temporary Restraining Order, docketed as Civil Case No. 2004-0399-D pending before Branch 42 of said Court;

WHEREAS, the BANK subsequently filed a Petition for Writ of Possession against PHMC, docketed as Spec. Proc. No. 2008-0176-D, which was granted by Branch 44 of the same Court and is now pending appeal before the Court of Appeals and docketed therein as CA-G.R. CV No. 99425;

WHEREAS, the parties hereto have agreed to amicably settle the aforementioned cases and enter into this Compromise whereby PHMC will buy back (sic) the BANK the Subject Properties, based on the terms and conditions herein set forth.

NOW THEREFORE, for and in consideration of the above-mentioned premises, and by these presents, the parties have agreed, as they hereby agree, as follows:

1. PHMC shall buy the Subject Properties from the BANK and pay the latter the total purchase price of PESOS: TWELVE MILLION (P12,000,000.00) payable in installments covered by postdated checks, to wit:

1.1. Downpayment of PESOS: TWO MILLION (P2,000,000.00) payable upon signing of this Agreement;

1.2. The balance of PESOS: TEN MILLION (P10,000,000.00) payable in installments for FIVE (5) years with fixed interest rate of 8% per annum in accordance with the Installment Schedule attached to and forming an integral part of this Agreement as Annex 'A' hereafter.

1.3 PHMC shall submit to the BANK the corresponding postdated checks for the installments set forth in said Annex 'A' upon signing of this Agreement.

2. After the execution of this Compromise Agreement, the parties shall immediately file with the RTC-Dagupan City, Branch 42 in connection with Civil Case No. 2004-0399-D and the Court of Appeals in connection with CA-G.R. CV No. 99425 the appropriate motion for approval of this Agreement and rendition of judgment based thereon.

3. PHMC confirms the lawful and absolute ownership of the BANK over the Subject Properties. Thus, the parties agree that, by virtue of this Agreement, Civil Case No. 2004-0399-D before Branch 42 of RTC of Dagupan City, Pangasinan against both the BANK and co-defendant Alberto R. Ubando be accordingly dismissed.

4. Upon receipt by BDO from the Petitioner of the stipulated purchase price of TWELVE MILLION PESOS (P12,000,000.00) and the rendition by the RTC of Dagupan City, Pangasinan, Branch 42 in Civil Case No. 2004-0399-D and by the Court of Appeals in CA-G.R. CV No. 99425 of their respective judgments approving this Agreement, the BANK shall issue in favor of PHMC the corresponding Deed of Absolute Sale covering the Subject Properties.

5. PHMC irrevocably waives any and all claims, demands, and causes of action of whatever kind and nature, which they have raised against the BANK and its co-defendant (Alberto R. Ubando) in Civil Case No. 2004-0399-D and CA-G.R. CV No. 99425, or any of its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors and consultants. The Parties further

acknowledge that should they hereafter discover facts different from or in addition to, those which they believed to be true with respect to any or all of any claims, liabilities, causes of action, damages, cause or demands herein released, they (sic) parties hereby agree that the release, waiver and quitclaim herein set forth shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts that may have already accrued or yet to accrue.

6. In the event that PHMC fails and/or refuses to comply with its obligation to pay the purchase price or with any other obligation/s under this Agreement, the BANK shall have the right to cancel the sale of the Subject Properties and be placed in possession thereof. Moreover, any payments made by PHMC pursuant to this Agreement shall be forfeited in favor of the BANK, as and by way of penalties, rental and liquidated damages. Finally, PHMC and any and all persons claiming rights under it shall peacefully vacate the Subject Properties without need of demand and voluntarily turn-over possession of the Subject Properties to the BANK and if they fail or refuse to do so, the BANK shall be entitled to the issuance of a Writ of Execution by either Branch 42 (in Civil Case No. 2004-0399-D) or the Court of Appeals (in CA-G.R. CV No. 99425).

7. The Creditable Withholding Tax (CWT) up to 6.0% of the Purchase Price of P12,000,000.00 shall be for the account of the BANK. The CWT in excess of 6.0% of the purchase price, documentary stamp tax, transfer tax, real estate tax, business tax (if any), registration fees and all other taxes and expenses incidental to the transfer of the title to the Subject Properties in the name of PHMC shall be for its (PHMC's) account. The consolidation of title in the name of PHMC shall be undertaken by said party.

8. Sale shall be on 'AS IS' basis, by virtue of which the Subject Properties are being sold and purchased at the sole risk of PHMC under the same conditions existing at the time of sale (physical condition and legal status) and subject to any and all present and future liens, actions, suits, proceedings, claims and encumbrances of whatever nature (existing at the time of sale or which may arise during or after the sale, and annotated in the title or otherwise) [collectively referred to as 'Claims'], and that the BANK makes no representations or warranties whatsoever with respect to the Subject Properties. It is agreed that the Claims shall be the sole responsibility of the Petitioner and that they hereby agree to indemnify and render the BANK, its affiliates, subsidiaries, directors, officers, employees and agents, free from any liability whatsoever with respect to the Claims.

9. In the event that any of the provisions of this Agreement shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be impaired or affected thereby.

10. PHMC hereby undertakes to defend and hold the BANK or any of its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors and consultants, free and harmless from any claim, demand, suit, or cause of action arising from, in connection with or in relation to the purchase by PHMC of the Subject Properties and undertake to indemnify the BANK for any claim, demand or liability it may be adjudged in any suit or case filed or to be filed arising from, in connection with or in relation to the purchase of the Subject Properties.

11. The Parties' signatories hereto warrant that they are fully authorized to enter into this Agreement.

12. The Parties hereby acknowledge that the stipulations contained in this Agreement have been mutually agreed upon by them, without any act of force, fraud or undue intimidation. The parties also acknowledge that they have consulted their respective legal counsels and that they understand the legal consequences of this Agreement. Accordingly, the parties hereby agree to abide by the foregoing stipulations with the force and effect of a lawful right and a demandable obligation.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this day of SEP 27, 2013, 2013, in MAKATI CITY.

PANGASINAN HOPE MERCANTILE CORP. BDO UNIBANK INC.

By: By:

(Sgd.)

(Sgd.)

WILFRED T. LEE
Representative
MELANIE S. BELEN
Senior Vice President

(Sgd.)

GERTRUDES J. LUMAIN
First Vice President”[8]

On November 20, 2013, this Court issued a Resolution[9] holding in abeyance the implementation and/or execution pending appeal of the writ of possession on equitable grounds and due to the existence of the afore-quoted Compromise Agreement.

ACCORDINGLY, finding the Compromise Agreement not being contrary to law, morals, good custom and public policy, the same is hereby APPROVED. The parties are enjoined to comply with the terms and conditions of the same.

The above-entitled case is now considered CLOSED and TERMINATED.

Let this case be excluded from the docket of this Court.

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]Rollo, pp. 33-35.

[2] Rollo, pp. 44-67.

[3] Rollo, pp. 69-72.

[4] Rollo, pp. 95-103.

[5] Rollo, pp. 106-109.

[6] Rollo, pp. 110-112.

[7] Rollo, pp. 118-119.

[8] Rollo, pp. 120-123.

[9] Rollo, p. 127.

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