

BONIFACIO G. GEPIELAGO REPRESENTED BY MONALISA T. GEPIELAGO, PETITIONER/INTERVENOR/MOVANT, VS. CAPITAL AND LEVERAGE LENDING INVESTOR (CAPITAL AND LEVERAGE FINANCE CORPORATION) F...

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

This is a Petition for Certiorari under Rule 65 of the Revised Rules of Court seeking to annul and set aside the resolutions dated February 14, 201[1]3 and April 11, 2013[2] of the Regional Trial Court (RTC) of Manila, Branch 4.

The antecedents of this case are as follows:

Respondent Magwagi J. Gomez was the registered owner of a house and lot located at 2042 M. Areullo St., Sta. Mesa, Manila covered by Transfer Certificate of Title (TCT) No. 260475.[3]

Sometime in 2006, the petitioner and respondent Gomez executed a Memorandum of Agreement[4] whereby the latter sold to the former the subject property by installment, as evidenced by the official receipts[5] issued by the respondent Gomez in favor of the petitioner. A Deed of Absolute Sale[6] dated July 25, 2007 was executed and entered into by and between the petitioner and the respondent Gomez involving the subject property. They also entered into a Supplemental to Lease Contract[7] dated July 17, 2007 whereby respondent Gomez as lessee will occupy the ground floor of the subject property for fifteen (15) years and the rentals will be considered as payment of the balance of the purchase price of the said property. The petitioner paid Eighty Thousand Pesos (P80,000.00) to respondent Gomez for the expenses to be incurred in the processing of the transfer of title of the subject property, as evidenced by the acknowledgment receipts.[8] However, no transfer of title in favor of the petitioner took place.

Meanwhile, without the knowledge of the petitioner, respondent Gomez executed a real estate mortgage dated May 18, 2007 in favor of respondent Capital and Leverage Lending Investor (now Capital Leverage Finance Corporation) whereby the subject property was mortgaged for Two Hundred Eighty Thousand Pesos (P280,000.00) as annotated at the back of TCT No. 260475. Thereafter, the same property was mortgaged again by the respondent Gomez in favor of the respondent corporation for Twenty Thousand Pesos (P20,000.00), as shown at the back of the title of the subject property. The real estate mortgage was extrajudicially foreclosed, and a certificate of sale[9] was issued in favor of the respondent corporation. Since it was not redeemed by respondent Gomez within the one-year period, her title to the subject property was cancelled and new certificate of title was issued in the name of the respondent corporation, as evidenced by TCT No. 002-2010000861.[10]

Upon verification, the petitioner learned that a petition for writ of possession[11] was filed by the respondent corporation involving the subject property with the Regional Trial Court of Manila, Branch 4. On November 23, 2012, the petitioner filed a motion for intervention upon leave of court with motion to dismiss the petition for issuance of writ of possession and to admit the attached complaint in intervention[12] with the Regional Trial

Court of Manila, Branch 4 which was denied in a resolution[13] dated February 14, 2013. The decretal portion of the resolution reads:

“WHEREFORE, premises considered, the Motion for Intervention Upon Leave of Court with Motion to Dismiss the Petition for Issuance of Writ of Possession and to Admit The Attached Complaint in Intervention filed by Bonifacio G. Gepielago is hereby Denied.

Set hearing on Commissioner's Report on March 22, 2013 at 8:30 in the morning as previously scheduled.

SO ORDERED.”[14]

The motion for reconsideration was also denied in a resolution[15] dated April 11, 2013. The decretal portion of the resolution reads:

“WHEREFORE, premises considered, the Motion for Reconsideration is Denied. Set the hearing on the Commissioner's Report on May 15, 2013 at 8:30 in the morning.

SO ORDERED.”[16]

Hence, this petition for certiorari.

The issue in this case is whether or not the Regional Trial Court committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in denying the petitioner's motion for intervention upon leave of court with motion to dismiss the petition for issuance of writ of possession filed by the respondent corporation.

THE PETITION IS MERITORIOUS.

Indisputably, the real estate mortgage covering the subject property was extrajudicially foreclosed. Based on the records, the respondent corporation sufficiently established its right to the writ of possession. It presented as documentary exhibits the Certificate of Sale,[17] the annotations thereof at the back of the title,[18] the Affidavit of Non-Redemption and Consolidation of Title[19] proving that respondents failed to redeem the properties within the one-year redemption period, TCT No. 002-2010000861[20] issued in the name of the respondent corporation, and its demand letters[21] addressed to respondent Gomez to vacate the properties. Thus, there is no question relative to the regularity and validity of the mortgage and foreclosure proceedings on the subject property.

It has been held that once the 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.[22] This is not without exception. Under Section 33 of Rule 39 of the Revised Rules of Court, it is provided that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, unless a third party is actually holding the property adversely to the judgment obligor, to wit:

“Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to

redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.” (Emphasis supplied)

Based on the foregoing provision, the obligation of a court to issue a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial, once it appears that there is a third party who is in possession of the property and is claiming a right adverse to that of the debtor/mortgagor.[23] Such is the case here which runs contrary to the ruling of the trial court that the issuance of writ of possession in extrajudicial foreclosure is ministerial and ex parte. The petitioner was a stranger to the mortgage contract executed by and between respondent Gomez and the respondent corporation over the subject property which the petitioner claimed as an owner/lessor who is in actual possession of the subject property, an interest adverse to that of the respondent corporation. To determine the nature of the adverse possession, the trial court is required to order a hearing. With the demand letters sent by the respondent corporation requesting the petitioner to vacate the subject property, the latter may be ejected from the premises only after he has been given an opportunity to be heard, conformably with the time-honored principle of due process.[24] This is the reason why a third party in possession of the property who is claiming a right adverse to that of respondent Gomez may not be dispossessed on the strength of a mere ex-parte possessory writ, since to do so would be tantamount to his summary ejection, in violation of the basic tenets of due process. Hence, the petitioner, being a third party who is in actual possession of the subject property, the writ of possession cannot be issued ex-parte and enforced against him. In the absence of showing that a hearing was conducted by the trial court for the petitioner to present his rights and interests over the subject property, the petitioner was deprived of his property without due process which is more important than the delay it caused in giving due course to the petitioner's motion for intervention.

This Court finds merit on the petitioner's contention that the Special Power of Attorney (SPA) executed by Casilda D. Tan in favor of Kim L. Visaya in filing the petition for issuance of writ of possession is defective because there is no approved board resolution authorizing them to represent the respondent corporation. While it is true that Casilda D. Tan is the president of the respondent corporation, as evidenced by its General Information Sheet in 2011[25], is authorized to sign documents for and in behalf of the corporation, however, there is no showing that Kim L. Visaya is in a position to verify the truthfulness and correctness of the allegations in the petition. It is a settled rule that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course.[26] As can be gleaned in this case, there is no showing of a board resolution nor a subsequent execution of the same authorizing Kim L. Visaya to represent the respondent corporation in a petition for issuance of writ of possession, as an act of ratification by the respondent corporation that cured the defect in the said petition. Hence, the petition for issuance of writ of possession is defective.

In view of the foregoing consideration, the Regional Trial Court of Manila committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in denying the petitioner's motion for intervention upon leave of court with motion to dismiss the petition for issuance of writ of possession and to admit the attached complaint in intervention.

WHEREFORE, premises considered, the petition is GRANTED. The resolutions dated February 14, 2013 and April 11, 2013 of the Regional Trial Court (RTC) of Manila, Branch 4 are REVERSED and SET ASIDE.

SO ORDERED.

Sorongon[*] and Inting,**] JJ., concur.

[*] Vice Justice Ricardo R. Rosario, per Raffle conducted on May 5, 2014.

**] Vice Justice Leoncia R. Dimagiba, per Raffle conducted on May 5, 2014.

[1] Rollo, pp. 24-25.

[2] *ibid.*, p. 27.

[3] Rollo, pp. 58-61.

[4] *ibid.*, pp. 120-123

[5] *ibid.*, pp. 127-129

[6] *ibid.*, pp. 124-125.

[7] *ibid.*, p. 126

[8] *ibid.*, pp. 130-131.

[9] Rollo, pp. 78-79.

[10] *ibid.*, pp. 80-82.

[11] *ibid.*, pp. 36-38.

[12] *ibid.*, pp. 85-103

[13] *ibid.*, pp. 24-25.

[14] *ibid.*, p. 25

[15] Rollo, p. 27.

[16] *ibid.*

[17] *ibid.*, pp. 78-79.

[18] *ibid.*, pp. 60-61.

[19] *ibid.*, p. 113. As mentioned in the Formal Offer of Exhibit dated September 28, 2012.

[20] *ibid.*, pp. 80-82.

[21] Rollo, p. 114. As mentioned in the Formal Offer of Exhibit dated September 28, 2012.

[22] *Nagtalon vs. UCPB*, G.R. No. 172504, July 31, 2013.

[23] *Darcen vs. V.R. Gonzales Credit Enterprises, Inc.*, G.R. No. 199747, April 3, 2013.

[24] *ibid.*

[25] Rollo, p. 213.

[26] Esguerra vs. Holcim Phil., Inc., G.R. No. 182571, September 2, 2013.

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