

**FOREX CREDIT AND BUSINESS SHOP, INC. REPRESENTED BY ITS
GENERAL MANAGER – SOCORRITO B. ALCANTARA, PETITIONER, VS.
HON. PRESIDING JUDGE FE LUALHATI D. BUSTAMANTE, BRANCH 33,
REGI...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

The Case

Before Us is an Amended Petition for Certiorari and Prohibition under Rule 65 with Injunction and Issuance of a Temporary Restraining Order[1] from the Orders[2] dated February 29, 2012 and November 9, 2012, respectively of the Regional Trial Court, Seventh (7[th]) Judicial Region, Branch 33, Dumaguete City in Civil Case No. 13874 for Sum of Money and Damages.

The Antecedents

In gist, the instant Petition stemmed from a civil action for sum of money and damages instituted by the private respondents against Asian Lending Investors Incorporated denominated as Civil Case No. 13874.

In the said case, private respondents, spouses Jonathan and Ruth Sarah Lim posited that Asian Lending Investors Incorporated failed to comply with its obligations as stipulated in the promissory notes issued by the latter in their favor. Subsequently, a favorable ruling was obtained by the private respondents as can be gleaned from the Decision[3] of the respondent court dated July 16, 2007. The dispositive portion states:

"WHEREFORE, from the foregoing disquisition, judgment is hereby rendered in favor of the plaintiffs and ordering the defendant to pay:

1. The principal amount of Php1,202,200.00 plus interest of 22% per annum from the date of the execution of the promissory note until the obligation is paid;
2. One (1%) percent per month as penalty charge to be reckoned from the date this decision shall have become final until such time that the entire obligation shall have been paid;
3. Php18,645.00 as litigation expenses; and
4. Php30,000.00 as moral damages.

This Court finds no cogent reason to award the attorney's fees because there is nothing in the record which shows that the defendant had acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claims for the payment of defendant's obligation. The mere filing of a complaint does not ipso facto entitle a party to attorney's fees because it has been said that no premiums should be placed on the right to litigate.

SO ORDERED."[4]

On June 4, 2008, a Writ of Execution[5] was issued by the trial court, which ordered the Provincial Sheriff of Negros Oriental or any of his deputies to execute such decision against defendant Asian Lending Investors Incorporated.

On October 3, 2008, a Notice of Levy Upon Realty[6] was issued by Sheriff Edgardo P. Quilnet, notifying the City Assessor of Bayawan City, Negros Oriental that by virtue of the Writ of Execution, any rights and participation of Asian Lending Investors Incorporated may have in the disputed realty is hereby levied.

On December 8, 2008, the in-house deputy sheriff scheduled a Notice of Sale of Execution of Real Property on January 5, 2009 and Notices to Parties of Sheriff's Public Auction Sale were then issued on December 10, 2008.[7]

On January 5, 2009, private respondent Jonathan Lim was adjudicated as the highest bidder.[8]

On April 29, 2009, the trial court issued to the winning bidder the Certificate of Sale.[9]

On November 15, 2010, after the one (1) year redemption period had lapsed and there was no showing on the part of Asian Lending Investors, Inc. that it has redeemed the property, the trial court issued a Sheriff's Certificate of Final Deed of Sale.[10]

On March 1, 2011, private respondents through counsel filed a Motion for Issuance of a Writ of Possession in accordance with Sec. 33, Rule 39 of the Rules of Court.[11]

On April 18, 2011, the trial court issued a Writ of Possession to the highest bidder, which in this case are the private respondent spouses.[12]

On the other hand, petitioner contested that it bought the disputed property from Asian Lending Investors, Inc. on June 2, 2009.[13] But before buying the realty, petitioner secured the tax declaration and conducted an ocular inspection on the said property. Petitioner also posited that it inquired from the Register of Deeds of Negros Oriental the status of the property and found no registered levy on it.

Thus, petitioner was surprised to receive on April 18, 2011 a copy of the Writ of Possession and subsequently, a Motion to implement the Writ of Possession filed by Sheriff Edgardo Quilnet. To vindicate its rights, petitioner on July 29, 2011 filed a Motion to Quash Writ of Possession.[14]

The Ruling of the Regional Trial Court

In an Order[15] dated February 29, 2012, the Regional Trial Court of Negros Oriental, Seventh (7th) Judicial Region, Branch 33 of Dumaguete City in Civil Case No. 13874 ruled against the Motion to Quash Writ of Possession filed by the petitioner. The decretal portion of the Order reads:

“WHEREFORE, all premises considered, together with the foregoing ratiocinations, the Motion to Quash Writ of Possession is hereby DENIED for lack of merit.

SO ORDERED.”[16]

Unsatisfied, petitioner filed a Motion for Reconsideration[17] which was also denied by the trial court in an Order[18] dated November 9, 2012.

In the said Order the trial court explained that the issuance of a writ of possession becomes a ministerial duty upon the court after the party seeking its issuance has shown that no redemption had been made within the redemption period and that title to the property had been consolidated in the buyer's name.

Aggrieved by the ruling, the petitioner Forex Credit and Business Shop, Inc., represented by its General Manager

Socorro B. Alcantara comes before Us, raising the following issues, to wit:

- a. The Regional Trial Court seriously erred and erred with grave abuse of discretion in not holding that the unregistered levy on execution sale and the subsequent sale of the levied property in favor of the private respondents are null and void ab initio;
- b. The Regional Trial Court seriously erred and erred with grave abuse of discretion in not holding that, by reason of the fact that the unregistered levy on execution sale and the subsequent sale of the levied property are null and void ab initio, the Writ of Possession is not enforceable and therefore should be quashed as prayed for by the petitioner;
- c. The Regional Trial Court seriously erred and erred with grave abuse of discretion in not holding that petitioner is a third party in peaceful possession of the levied property and as such was not impleaded and a stranger in Civil Case No. 13874 instituted by private respondents against Asian Lending Investors, Inc. which resulted in the execution sale, therefore petitioner being a stranger cannot be ejected pursuant to a mere motion for Writ of Possession but only in a separate action.

The Ruling of this Court

The petition is not meritorious.

At the outset, the Court finds it imperative to emphasize the meaning and scope of a Petition for Certiorari under Rule 65 in relation to grave abuse of discretion, as elucidated by the Supreme Court in the case of *Yu v. Hon. Reyes-Carpio*,^[19] to wit:

A Petition for Certiorari under Rule 65 is the proper remedy in assailing that a judge has committed grave abuse of discretion amounting to lack or excess of jurisdiction. Section 1, Rule 65 of the Rules of Court clearly sets forth when a petition for certiorari can be used as a proper remedy:

SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis Ours.)

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."^[20] 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."^[21] 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."^[22] 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.^[23]

In the case at bench, petitioner maintains that the trial court committed grave abuse of discretion when it refused the quashal of the writ of possession. Petitioner reiterates that a defect exists in the procedure commenced for the levy on execution sale. Moreover, petitioner asseverates that being a stranger to the action and at the same time in peaceful possession of the levied property, it cannot be automatically ejected by virtue of a mere Motion for Writ of Possession.

These postulations stand on futile ground.

It bears stressing that the issuance of a writ of possession is a ministerial function of the court.[24] Corollary thereto, the invocation of grave abuse of discretion must certainly fail.

An order issuing a writ of possession is an order where the sheriff is commanded to place a person in possession of a real or personal property. To a purchaser in an auction sale, be it foreclosure or execution, a writ of possession is merely a ministerial function.[25] In it the Court neither exercises its official discretion nor judgment. Being a ministerial function and summary in nature, it is not a judgment on the merits, but simply an incident in the transfer of title.[26]

Moreover, instructive and germane to the present case is the ruling in *Spouses Ching v. Family Savings Bank*,[27] thus:

It is settled that execution is enforced by the fact of levy and sale. The result of such execution was that title over the subject property was vested immediately in the purchaser subject only to the Spouses Ching's right to redeem the property within the period provided for by law.[28] The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is, like any other right, entitled to protection and must be respected until extinguished by redemption.[29] Since, the Spouses Ching failed to redeem the subject property within the period allowed by law, they have been divested of their rights over the property.

Verily, the Bank's "Motion to Retrieve Records, For Issuance of Final Deed of Conveyance, To Order the Register of Deeds of Makati City to Transfer Title and For Writ of Possession" was merely a consequence of the execution of the summary judgment as the judgment in Civil Case No. 142309 had already been enforced when the lot was levied upon and sold at public auction, with the Bank as the highest bidder.

x x x A writ of possession is employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[30] It may be issued in several instances, among which is in execution sales. There was, therefore, no grave error on the part of the RTC in granting the motion.

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Moreover, it is settled that 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.[31] To be sure, regardless of whether or not there is a pending action for nullification of the sale at public auction, the purchaser is entitled to a writ of possession without prejudice to the outcome of such action.[32] Undeniably, Alfredo failed to redeem the property within the redemption period and, thereafter, ownership was consolidated in favor of the Bank and a new certificate of title, TCT No. 221703, was issued in its name. It was, therefore, a purely ministerial duty for the trial court to issue a writ of possession in favor of the Bank and issue the Order granting the motion for designation of another sheriff to serve the writ, which is merely an order enforcing the writ of possession.

x x x x x x x x

In the instant case, there is no dispute that the property of the petitioner was sold in an execution sale in favor of the respondent bank and that no redemption was made by the former over the said property within the required one-year period. It has been held that a writ of possession may be issued in favor of the purchaser in an execution sale when the deed of conveyance has been executed and delivered to him after the period of redemption has expired and no redemption has been made by the judgment debtor. After such period, the judgment debtor would be divested of his ownership of the property. Thus, just like in extrajudicial

foreclosure, the issuance of the writ of possession after the lapse of the period of redemption is ministerial on the part of the court. (emphasis supplied)

In the current controversy, a revisit of the facts would show that private respondents obtained a judgment against Asian Lending Investors, Inc., the original owner of the disputed property. Subsequently, the following chronological events, among others transpired: issuance of a Writ of Execution, issuance of a Notice of Levy upon Realty, issuance of a Notice of Sale of Execution of Real Property and Notices to Parties of Sheriff's Public Auction Sale. In the said public auction, private respondent Jonathan Lim was considered the highest bidder and was then awarded a Certificate of Sale. After the one (1) year redemption period had expired and considering that Asian Lending Investors, Inc. did not redeem the property, a Sheriff's Certificate of Final Deed of Sale was issued. Finally, a Motion for the Issuance of a Writ of Possession was filed by the private respondents, to which the trial court issued a Writ of Possession.[33]

Accordingly, taking into consideration the factual milieu of the instant case and applying the principles in the afore-cited jurisprudence, there is no doubt that the trial court acted within the bounds of its jurisdiction when it issued the assailed Writ of Possession in favor of the private respondents, spouses Jonathan and Ruth Sarah Lim.

The alleged irregularities on the levy on execution sale and the subsequent sale as claimed by the petitioner are of no moment. In fact, in a litany of cases, it has been held that questions on the regularity of the auction sale itself cannot be used as a tool or justification to assail the issuance of the writ of possession.

By analogy, the ruling in *Nagtalon v. United Coconut Planters Bank*[34] is enlightening in this matter, thus:

The issue this Court is mainly called upon to resolve is far from novel; 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[35] and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.[36] The court, acting on an application for its issuance, should issue the writ as a matter of course and without any delay. (emphasis supplied)

However, as dictated by law and echoed in a number of jurisprudence, this doctrine is not a hard and fast rule since it admits of certain exceptions.

At this juncture, We find guidance in Section 33 of Rule 39 of the Rules of Court as cited in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*,[37] viz:

There is, however, an exception. Section 33, Rule 39 of the Rules of Court provides:

Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. -
x x x

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)

Therefore, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of

a third party holding the same adversely to the judgment obligor, the issuance by the trial court of a writ of possession in favor of the purchaser of said real property ceases to be ministerial and may no longer be done ex parte.[38] The procedure is for the trial court to order a hearing to determine the nature of the adverse possession.[39] For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the judgment obligor.

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Moreover, in *China Bank v. Lozada*,[40] we discussed the meaning of "a third party who is actually holding the property adversely to the judgment obligor." We stated:

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.[41]

In this case, respondents cannot claim that their right to possession over the properties is analogous to any of these. x x x Respondents cannot assert that their right of possession is adverse to that of CEDEC when they have no independent right of possession other than what they acquired from CEDEC. Since respondents are not holding the properties adversely to CEDEC, being the latter's successors-in-interest, there was no reason for the trial court to order the suspension of the implementation of the writ of possession. (emphasis supplied)

After a judicious assessment, We find the present case not falling within the purview of the cited exception. Even if the disputed realty was sold to a third person (the petitioner in this case), the law explicitly provides that such third party must hold the property adversely to the judgment obligor. Indubitably, the facts would reveal that herein petitioner acquired through sale the levied property from Asian Lending Investors, Inc.; hence, making it a mere transferee or a successor-in-interest and not the third party as contemplated by law.

Thus, based upon the foregoing disquisitions, We also find no merit to petitioner's contention that being a stranger to the original action, she cannot be ejected by virtue only of a writ of possession. Likewise, We find no further reason to discuss in detail the other issues raised, as they are all predicated upon the presence of grave abuse of discretion, which the Court has already ruled to be wanting in this case.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The Orders dated February 29, 2012 and November 9, 2012, respectively of the Regional Trial Court, Seventh (7th) Judicial Region, Branch 33, Dumaguete City in Civil Case No. 13874 are hereby AFFIRMED.

SO ORDERED.

Hernando, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 98-386; See also Petition for Certiorari and Prohibition under Rule 65 with Injunction and Issuance of a Temporary Restraining Order, rollo, pp. 3-190.

[2] Rollo, pp. 232-236; p. 244.

[3] Rollo, pp. 245-250.

[4] Rollo, pp. 249-250.

[5] Rollo, pp. 251-252.

- [6] Rollo, pp. 253-254.
- [7] See, Writ of Possession, rollo, 282-283.
- [8] See, Writ of Possession, rollo, 282-283.
- [9] See, Writ of Possession, rollo, 282-283.
- [10] See, Writ of Possession, rollo, 282-283.
- [11] See, Writ of Possession, rollo, 282-283.
- [12] See, Writ of Possession, rollo, 282-283.
- [13] See Deed of Sale of a Portion of Unregistered Land with Existing Commercial Building, rollo, pp. 263-264.
- [14] See Amended Petition for Certiorari and Prohibition under Rule 65 with Injunction and Issuance of a Temporary Restraining Order, rollo, pp. 206-208.
- [15] Rollo, pp. 249-250.
- [16] Rollo, p. 236.
- [17] Rollo, p. 237-243.
- [18] Rollo, p. 244.
- [19] G.R. No. 189207, June 15, 2011.
- [20] Yu v. Hon. Reyes-Carpio, G.R. No. 189207, June 15, 2011, citing Beluso v. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-15; Fajardo v. Court of Appeals, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.
- [21] Yu v. Hon. Reyes-Carpio, G.R. No. 189207, June 15, 2011, citing Beluso v. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457; citing De Vera v. De Vera, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-15; Fajardo v. Court of Appeals, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163; 2 Jose Y. Feria & Maria Concepcion S. Noche, Civil Procedure Annotated 463 (2001).
- [22] Yu v. Hon. Reyes-Carpio, G.R. No. 189207, June 15, 2011, citing J.L. Bernardo Construction v. Court of Appeals, G.R. No. 105827, January 31, 2000, 324 SCRA 24, 34.
- [23] Yu v. Hon. Reyes-Carpio, G.R. No. 189207, June 15, 2011, citing Beluso v. Commission on Elections, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456-457.
- [24] Nagtalon v. United Coconut Planters Bank, G.R. No. 172504, July 31, 2013.
- [25] Philippine National Oil Company v. National College of Business and Arts, G.R. No. 155698, January 31, 2006, citing A.G. Development Corporation v. Court of Appeals, G.R. No. 111662, 23 October 1997, 281 SCRA 155, 159.
- [26] Philippine National Oil Company v. National College of Business and Arts, G.R. No. 155698, January 31, 2006.
- [27] G.R. No. 167835, November 15, 2010.
- [28] Spouses Ching v. Family Savings Bank, G.R. No. 167835, November 15, 2010, citing Heirs of Gaudencio Blancaflor v. Court of Appeals, 364 Phil. 454, 462-463 (1999).

- [29] *Spouses Ching v. Family Savings Bank*, G.R. No. 167835, November 15, 2010, citing *Heirs of Gaudencio Blancaflor v. Court of Appeals*, 364 Phil. 863.
- [30] *Spouses Ching v. Family Savings Bank*, G.R. No. 167835, November 15, 2010, citing *H. Black, Black's Law Dictionary* 1611 (6th ed.)
- [31] *Spouses Ching v. Family Savings Bank*, G.R. No. 167835, November 15, 2010, citing *Lam v. Metropolitan Bank and Trust Company*, G.R. No. 178881, February 18, 2008, 546 SCRA 200, 206.
- [32] *Spouses Ching v. Family Savings Bank*, G.R. No. 167835, November 15, 2010, citing *Oliveros v. Presiding Judge, RTC, Br. 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 121-122.
- [33] Refer to the Writ of Possession, rollo, pp. 282-283.
- [34] G.R. No. 172504, July 31, 2013.
- [35] *Nagtalon v. United Coconut Planter's Bank*, G.R. No. 172504, July 31, 2013, citing *Spouses Saguan v. Philippine Bank of Communications*, 563 Phil. 696, 706 (2007).
- [36] *Nagtalon v. United Coconut Planter's Bank*, G.R. No. 172504, July 31, 2013, citing *Spouses Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006).
- [37] G.R. No. 176019, January 12, 2011.
- [38] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, citing *Philippine National Bank v. Court of Appeals*, 424 Phil. 757 (2002), citing *Barican v. Intermediate Appellate Court*, 245 Phil. 316 (1988).
- [39] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, citing *Unchuan v. Court of Appeals*, 244 Phil. 733 (1988).
- [40] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, citing *China Banking Corporation v. Lozada*, G.R. No. 164919, 4 July 2008, 557 SCRA 177, citing *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595 (1967).
- [41] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, citing *China Banking Corporation v. Lozada*, G.R. No. 164919, 4 July 2008, 557 SCRA 202-204. Citations omitted.

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