CARDINAL BUILDING OWNERS ASSOCIATION, INC., PETITIONER, VS. ASSET RECOVERY AND MANAGEMENT CORPORATION, RESPONDENT.

G.R. NO. 149696. July 14, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari[1] assailing the Decision[2] dated August 31, 2001 of the Court of Appeals in CA-G.R. SP No. 53216, entitled "ASSET RECOVERY & MANAGEMENT CORPORATION, petitioner, versus HON. ANTONIO I. DE CASTRO, as Pairing Judge of the Regional Trial Court, Branch 4, Manila, and CARDINAL BUILDING OWNERS ASSOCIATION, INC., respondents."

The facts of this case are:

Cardinal Building Owners Association, Inc., petitioner, is a corporation organized and existing under Republic Act (R.A.) No. 4726 (The Condominium Act) with office located at 999 Stanisco Towers, Pedro Gil corner Agoncillo Streets, Malate, Manila.

Benjamin Marual is a member of petitioner association being the owner of two condominium units at the Cardinal Office Condominium, covered by Condominium Certificates of Title No. 14335 (1st floor) and No. 17730 (2nd floor). Due to his failure to pay assessment dues in the amount of P530,554.00, petitioner association filed with the Regional Trial Court (RTC), Branch 4, Manila, a complaint for sum of money against him, docketed as Civil Case No. 95-74919.

During the course of the proceedings, or on September 13, 1996, petitioner and Marual filed with the RTC a Compromise Agreement,[3] declaring that they have amicably settled their controversy under the following terms and conditions:

1. Defendant (Benjamin Marual) binds himself to settle all his outstanding dues and/or assessments to plaintiff (Cardinal Building Owners Association, Inc.) totaling, as of July 1, 1996, the sum of P381,152.52 in the following manner:

a) P75,000.00 - upon signing of this agreement as and by way of initial settlement of dues and/or assessments in the amount of P25,000.00, and attorney's fees in the amount of P50,000.00;

b) P21,739.52 - every fifth day of each and every succeeding month until his account is fully paid.

To this end, defendant agrees to issue two (2) checks in payment of the amount mentioned in par. 1(a), and one (1) check in the amount of P21,739.52 dated August 5, 1996, and one (1) check in the same amount every month thereafter;

2. The parties hereby waive their respective claims and counterclaims with respect to the case at bar;

3. Should defendant fail to make good any of the postdated checks given to the plaintiff in payment of his obligation, the plaintiff shall be entitled to execute the judgment of this court, for the full amount of plaintiff's claim of P381,152.52, plus accruing amounts due in months subsequent to July 1, 1996 and interest and charges. Should the foregoing be not complied with, the parties further agree that plaintiff may, at his option, proceed with the extrajudicial enforcement of its lien under the provisions of the Condominium Act and the condominium's master deed, and pertinent provisions of documents covering defendant's condominium units at Stanisco Towers (formerly Cardinal Bldg. Condominium).

x x x

On October 9, 1996, the RTC rendered a Decision[4] approving the Compromise Agreement and enjoining the parties to strictly comply with its terms.

However, Marual failed to comply with his obligation, prompting petitioner to file with the RTC a motion for the execution of the compromise judgment. Accordingly, on February 25, 1997, the RTC issued a writ of execution.[5] On March 7, 1997, the court sheriff served a "Notice of Levy/Attachment upon Realty"[6] on the Registry of Deeds of Manila. It was only at this time when petitioner learned[7] that there were prior annotations on the same titles, thus:

(a) On October 7, 1993, Marual mortgaged his two condominium units to Planters Development Bank. The mortgage was foreclosed and the said units were sold to the bank at a public auction. On March 27, 1996, the certificate of sale was annotated on the two Condominium Certificates of Title.

(b) On November 11, 1996, before the expiration of the period for redemption of the foreclosed realties, Marual sold the same units to Asset Recovery and Management Corporation,[8] herein respondent. On February 26, 1997, the deed of sale was registered in the Registry of Deeds of Manila.[9]

(c) On March 4, 1997, respondent filed with the RTC, Branch 55, Manila, an action for mandamus to redeem the condominium units against the bank, docketed as Civil Case No. 97-82366. On April 1, 1997, the RTC issued a writ of preliminary injunction[10] enjoining the bank from consolidating in its name the titles or taking possession of the units, or otherwise disposing of them until further orders from the court.

After learning of the above circumstances, petitioner filed with the RTC, Branch 4, in the same Civil Case No. 95-74919 for sum of money, a Motion for Possession[11] of the units. On June 8, 1999, the RTC, Branch 4 issued an Order[12] granting the motion and directing the issuance of the writ of possession, as prayed for by petitioner, thus:

x x x. Accordingly:

(a) plaintiff (now petitioner Cardinal Building Owners Association, Inc.) is allowed to repossess subject condo units for four (4) years to enable it to recover the aforesaid account of defendant (Benjamin Marual) plus reasonable interest thereon, under proper accounting procedure and periodic reports thereon to the Court;

(b) plaintiff is allowed to lease, as it may deem necessary, but not to mortgage or sell, said condo units to achieve the foregoing objective; and

(c) defendant and/or his agents or assigns are enjoined from interfering in any manner the aforesaid possession by plaintiff until the foregoing objective is achieved.

Further, upon the filing of an indemnity bond of P2 million, let a writ of possession issue directing a sheriff of the Regional Trial Court of Manila or his authorized representative to place plaintiff herein in actual, physical possession of the two condominium units located in the Cardinal Office Condominium at 999 Pedro Gil St.,

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Malate, Manila and covered by CCTs No. 14335 (1st floor) and No. 17730 (2nd floor) and to eject therefrom defendant Benjamin Marual and all other persons claiming rights under him.

SO ORDERED.

On July 30, 1999, upon petitioner's filing of the required bond, a writ of possession[13] was issued.

Aggrieved, respondent filed with the Court of Appeals a Petition for Certiorari, docketed as CA-G.R. SP No. 53216. Respondent alleged mainly that the RTC Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order dated June 8, 1999 and the writ of possession which are in variance with the compromise judgment and the corresponding writ of execution in Civil Case No. 95-74919.

On August 31, 2001, the Court of Appeals rendered a Decision[14] granting respondent's petition and nullifying the assailed RTC Order of June 8, 1999, thus:

There are four instances when a writ of possession may be issued, to wit:

1) in a land registration proceeding, which is a proceeding in rem (Sec. 17, Act No. 496; Estipona v. Navarro, L-41825, Jan. 30, 1976, 69 SCRA 285, 291);

2) in an extra-judicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135);

3) in a judicial foreclosure of mortgage, a quasi in rem proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened (Rivera v. Court of First Instance of Nueva Ecija and Rupac, 61 Phi. 201; Ramos v. Manalac and Lopez, 89 Phil. 270, 275); and

4) in execution sales (last par. Of Sec. 35, Rule 39, Rules of Court).[15]

Since the case at bar does not fall under any of these four instances and, in any event, since it is not claimed that the judgment based on a compromise contemplated the issuance of a writ of possession to private respondent of the condominium units in case Marual, from whom petitioner claims to have purchased the same, failed to comply with his obligation under said judgment based on a compromise, then public respondent's assailed Order directing the issuance of a writ of possession was issued with grave abuse of discretion.

Hence, the instant Petition for Review on Certiorari. Petitioner contends that the Court of Appeals Decision "is not based upon, and militates against, the applicable law, R.A. No. 4726."

In its Comment,[16] respondent avers that the petition should be denied for being unmeritorious.

The petition must fail.

Section 20 of R.A. No. 4726, otherwise known as the Condominium Act, provides:

Sec. 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium unit against which the same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the

management body shall cause to be registered a release of the lien.

Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances. Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgage or real property. Unless otherwise provided for in the declaration of restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages. (Underscoring supplied)

Records do not show that petitioner had its notice of assessment registered with the Registry of Deeds of Manila in order that the amount of such assessment could be considered a lien upon Marual's two condominium units. Clearly, pursuant to the above provisions, petitioner's claim can not be considered superior to that of respondent. As mentioned earlier, the deed of sale wherein Marual conveyed to respondent his two condominium units, was registered in the Registry of Deeds of Manila.

Moreover, the Decision rendered by the RTC based on the compromise agreement by the parties is a money judgment, the enforcement of which is provided in Section 9, Rule 39 of the 1997 Rules of Civil Procedure, as amended, thus:

Section 9. Execution of judgments for money, how enforced.- (a) Immediate payment on demand. - The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the same amount within the same day to the clerk of court that issued the writ.

If the judgment obligee or his authorized representative is not present to receive payment, the judgment obligor shall deliver the aforesaid payment to the executing sheriff. The latter shall turn over all the amount coming into his possession within the same day to the clerk of court of the court that issued the writ, or if the same is not practicable, deposit said amounts to a fiduciary account in the nearest government depository bank of the Regional Trial Court of the locality.

The clerk of said court shall thereafter arrange for the remittance of the deposit to the account of the court that issued the writ whose clerk of court shall then deliver said payment to the judgment obligee in satisfaction of the judgment. The excess, if any, shall be delivered to the judgment obligor while the lawful fees shall be retained by the clerk of court for disposition as provided by law. In no case shall the executing sheriff demand that any payment by check be made payable to him.

(b) Satisfaction by levy.- If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied upon in like manner and with like effect as under a writ of attachment.

(c) Garnishment of debts and credits.- The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

The garnishee shall make a written report to the court within five (5) days from service of the notice of garnishment stating whether or not the judgment obligor has sufficient funds or credits to satisfy the amount of the judgment. If not, the report shall state how much funds or credits the garnishee holds for the judgment obligor. The garnished amount in cash, or certified bank check issued in the name of the judgment obligee, shall be delivered directly to the judgment obligee within ten (10) working days from service of notice on said garnishee requiring such delivery, except the lawful fees which shall be paid directly to the court.

In the event there are two or more garnishees holding deposits or credits sufficient to satisfy the judgment, the judgment obligor, if available, shall have the right to indicate the garnishee or garnishees who shall be required to deliver the amount due; otherwise, the choice shall be made by the judgment obligee.

The executing sheriff shall observe the same procedure under paragraph (a) with respect to delivery of payment to the judgment obligee. (8a, 15a)

There is nothing in the above provisions which authorizes the RTC, Branch 4, Manila to issue a writ of possession over the two condominium units in favor of petitioner. As we held in Abinujar v. Court of Appeals:[17]

A judgment is the foundation of a writ of execution which draws its vitality therefrom (Monaghon v. Monaghon, 25 Ohio St. 325). An officer issuing a writ of execution is required to look to the judgment for his immediate authority (Sydnor v. Roberts, 12 Tex. 598).

An execution must conform to and be warranted by the judgment on which it was issued (Francisco, The Revised Rules of Court, 641 [1966]; Kramer v. Montgomery, 206 Okla. 190 242 P. 2d 414 [1952]). There should not be a substantial variance between the judgment and the writ of execution (Avery v. Lewis, 10 Vt. 332). Thus, an execution is fatally defective if the judgment was for sum of money and the writ of execution was for the sale of the mortgaged property (Bank of the Philippine Islands v. Green, 48 Phil. 284 [1925]).

As petitioners' obligation under the compromise agreement as approved by the court was monetary in nature, private respondents can avail only of the writ of execution provided in Section 15 (now Section 9), Rule 39 of the Revised Rules of Court, and not that provided in Section 13 (now Section 10 [c] [18]). (Underscoring supplied)

In sum, we find no reversible error committed by the Court of Appeals in its assailed Decision.

WHEREFORE, we DENY the instant petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 53216 is AFFIRMED. Costs against petitioner.

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SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Conchita Carpio-Morales (now Associate Justice of this Court), with Associate Justices Rebecca De Guia-Salvador and Juan Q. Enriquez, concurring; rollo, pp. 30-34.

[3] See Annex "A" (Decision dated October 9, 1996 of RTC, Branch 4, Manila in Civil Case No. 95-74919), Respondent's Comment, id., pp. 73-74.

[4] Id., pp. 73-75.

[5] See Annex "E" (Notice of Levy/Attachment Upon Realty), Respondent's Comment, id., p. 82.

[6] Id.

[7] See Annex "F" (petitioner's Motion for Possession), id., p. 84.

[8] Annex "B" (Deed of Sale), Respondent's Comment, id., pp. 76-78.

[9] Annexes "C" and "C-1," id., pp. 79-80.

[10] Annex "D," id., p. 81.

[11] Annex "F," id., pp. 83-86.

[12] Annex "D," Petition, id., pp. 43-46.

[13] Annex "H," Respondent's Comment, id., pp. 91-92.

[14] Annex "B," Petition, id., pp. 29-34.

[15] Citing Mabale v. Apalisok, No. L-46942, February 6, 1979, 88 SCRA 234, 247-248, reiterated in Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[16] Rollo, pp. 59-92.

[17] G.R. No. 104133, April 18, 1995, 243 SCRA 531, 536-537.

[18] Section 10 [c] Delivery or restitution or real property.- The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment oblige; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

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