

**CECILIA S. BALDUEZA, REPRESENTED BY HER ATTORNEY-IN-FACT
CLODUALDO M. ESCOBAR, PETITIONER, VS. HONORABLE COURT OF
APPEALS, PRUDENTIAL BANK, AND HON. ARTURO G. TAYAG,
DEPUTY SHER...**

G.R. No. 155813. October 15, 2008

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals in CA-G.R. SP No. 69961, promulgated on July 26, 2002, and its Resolution dated October 10, 2002 denying petitioner's motion for reconsideration. In its Decision, the Court of Appeals dismissed petitioner's petition, thus sustaining the issuance of a writ of possession in favor of respondent Prudential Bank by the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 79.

The facts are as follows:

Petitioner, Cecilia S. Baldueza, is the mortgagor of a parcel of land with a land area of 212 sq. m., located in Meycauayan, Bulacan, covered by Transfer Certificate of Title (TCT) No. T-114481 (M). The real estate mortgage was used to obtain a loan in the amount of P380,000 from respondent Prudential Bank.

Petitioner failed to pay the loan upon maturity despite demand. On December 12, 1995, respondent bank extrajudicially foreclosed the mortgaged property under the provisions of Act No. 3135, as amended. Respondent bank was the highest bidder in the public auction.

On even date, December 12, 1995, petitioner filed a complaint for declaration of nullity, cancellation of contract with damages with prayer for the issuance of a writ of preliminary injunction. The case was raffled to the RTC of Malolos, Bulacan, Branch 80, and docketed as Civil Case No. 818-M-95.

On December 12, 1996, the one-year redemption period expired, without redemption of the subject property by petitioner. Respondent bank consolidated ownership over the property.[1] Thereafter, the Registry of Deeds, Meycauayan Branch, cancelled TCT No. T-114481 (M) and issued TCT No.T-297416 (M) in favor of respondent bank.

On August 8, 2001, respondent bank filed with the RTC of Malolos, Bulacan an ex-parte petition for the issuance of a writ of possession over the subject property. The case was raffled to the RTC of Malolos, Bulacan, Branch 79 and docketed as LRC Case No. P-389-2001. Petitioner filed an Opposition thereto and respondent bank filed a Comment to the Opposition.

In an Order dated November 15, 2001, the RTC granted the issuance of a writ of possession in favor of respondent bank, disposing thus:

WHEREFORE, after examining all the documents submitted before this Court and pursuant to the provisions

of Section 7, Act. 3135, as amended, let a writ of possession over a parcel of land covered by Transfer Certificate of Title No. T-297416 (M) (formerly TCT No. T-114481 (M)) of the Registry of Deeds of Bulacan, Meycauayan Branch be issued against respondent Cecilia S. Baldueza and all occupants, tenants and other persons claiming to have rights and interest under her to vacate immediately the premises and ordering the Deputy Sheriff of this Court to execute said Writ and place petitioner Bank in possession thereof.[2]

The RTC held that under Sec. 7 of Act No. 3135, as amended by Act No. 4118,[3] the purchaser is entitled to the possession of the property during the redemption period, provided that a proper motion has been filed, a bond approved and no third person is involved. It cited *Vda. de Zaballero v. Court of Appeals*[4] which held that after the expiration of the redemption period, a purchaser can demand possession of the land without posting a bond, and upon proper application and proof of title, the issuance of a writ of possession becomes a ministerial duty of the court.

Petitioner's motion for reconsideration was denied by the RTC in its Order dated February 15, 2002.

Petitioner filed before the Court of Appeals a petition for certiorari, prohibition and preliminary injunction with prayer for the issuance of a temporary restraining order.

The Court of Appeals dismissed the petition for lack of merit in its Decision dated July 26, 2002.[5]

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution promulgated on October 10, 2002.[6]

Hence, this petition.

Petitioner died on November 27, 2002. In a Resolution dated January 27, 2003, the Court allowed that petitioner be substituted by her son, Caesar Baldueza, and her daughter, Jennifer Baldueza.

Our task in an appeal by petition for review on certiorari is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the Court of Appeals.[7]

The substantive issue in this case is whether or not the Court of Appeals correctly sustained the issuance of the writ of possession in favor of respondent bank.

The Court upholds the decision of the Court of Appeals as respondent bank is entitled to possession of the subject property. In several cases, this Court has held:[8]

It is settled the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act 3135 as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

The facts show that petitioner mortgaged the subject property to respondent bank. Upon maturity of the loan, petitioner failed to pay the loan despite demand. The property was foreclosed and sold in a public auction where respondent bank was the highest bidder. Petitioner failed to redeem the property within the one-year redemption period. Respondent bank consolidated its ownership over the property and a new title was issued in its favor. Hence, it became the ministerial duty of the court to issue the writ of possession applied for by respondent bank. Despite the pending suit for annulment of the mortgage and Notice of Sheriff's Sale, respondent bank is entitled to a writ of possession, without prejudice to the eventual outcome of the said case.[9]

Further, petitioner concedes that under the law, a writ of possession may be issued ex-parte in foreclosure proceedings under Sec. 7 of Act No. 3135.[10] Petitioner, however, submits that the provision of law presupposes that the mortgagee or subsequent purchaser is in good faith. Petitioner contends that respondent bank is not a mortgagee or subsequent purchaser in good faith considering the following badges of bad faith:

- Respondent bank deliberately caused the notice of lis pendens originally annotated on petitioner's TCT No. T-11448 (M) to be omitted or removed in the new TCT No. T-297416 issued in its name, making it appear that the land in question is free from any liens or encumbrances to make it easily disposable as it would then be beyond the reach and control of the Court;
- Respondent bank deliberately did not allege in its petition for issuance of a writ of possession, the pendency of the petition for annulment of mortgage concerning the subject property earlier filed by petitioner, with the obvious reason that such allegation would invite attention to the fact that the title is not free from liens or encumbrances;
- The verification is defective not only because it was signed by an unauthorized representative of the bank, but more importantly, because the certificate of forum shopping deliberately failed to inform the Court of the existence of a pending petition for annulment of mortgage;
- Respondent bank did not conduct an ocular inspection of the subject property; hence, it was negligent in its duty to exercise care and prudence in dealing with registered lands sought to be mortgaged.

Petitioner must be reminded that this Court is not a trier of facts. Petitioner's allegations of bad faith against respondent bank are factual matters which were already raised in her motion for reconsideration before the RTC and Court of Appeals. The trial and appellate courts, however, did not find respondent bank in bad faith and granted it possession of the subject property. The factual finding of the RTC and Court of Appeals is binding upon this Court.

In fine, the decision of the Court of Appeals is in accordance with the law and jurisprudence on the matter. It correctly sustained the Order of the RTC in issuing a writ of possession in favor of respondent bank.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 69961 promulgated on July 26, 2002 and its Resolution promulgated on October 10, 2002 are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona and Leonardo-De Castro, JJ., concur.

[1] Consolidation of Ownership, Annex "3," rollo, p. 95.

[2] CA rollo, p. 42.

[3] AN ACT TO AMEND ACT NO. 3135, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES."

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 Sec. 194 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 court shall, upon the filing of such petition, collect the fees specified in paragraph 11 of Sec. 114 of Act No. 496, as amended by Act No. 2866, 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.

[4] G.R. No. 106958, February 9, 1994, 229 SCRA 810.

[5] Annex "A," rollo, p. 26.

[6] Annex "B," id., 33.

[7] Dadulo v. Court of Appeals, G.R. No. 175451, April 13, 2007, 521 SCRA 357.

[8] LZK Holdings and Development Corp. v. Planters Development Bank, G.R. No. 167998, April 27, 2007, 522 SCRA 731, 740; Chailease Finance Corporation v. Ma, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253-254; Vda. de Zaballero v. Court of Appeals, G.R. No. 106958, February 9, 1994, 229 SCRA 810, 814; F. David Enterprises v. Insular Bank of Asia and America, G.R. No. 78714, November 21, 1990, 191 SCRA 516, 523.

[9] Jetri Construction Corporation v. Bank of the Philippine Islands, G.R. No. 171687, June 8, 2007, 524 SCRA 522.

[10] Supra, note 3.

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