

CAPITAL CREDIT DIMENSION, INC., PETITIONER, VS. ALLAN VITA CHUA, ALFREDO VITA, JR., NELSON P. VITA, MANUEL P. VITA, AND LORNA P. VITA, RESPONDENTS.*G.R. No. 157213. April 28, 2004*

Ponente: PUNO, J.

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Assailed in this petition for review is the Decision dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 71703[2] ordering the Presiding Judge and Sheriff of the Regional Trial Court of Quezon City, Branch 97, and all persons acting under them, to desist from enforcing the Order dated May 31, 2002 and other allied processes against herein respondents.

Respondents Allan Vita Chua, Alfredo Vita, Jr., Nelson P. Vita, Manuel P. Vita, and Loran P. Vita appear to be the registered co-owners of the residential property located at No. 25 Yale St., Cubao, Quezon City under TCT No. 91086 (348965). Through a purported Deed of Sale dated October 25, 1993 executed by them in favor of Jesus Cunanan, married to Melodina Cunanan, TCT No. 91086 (348965) was cancelled and TCT No. 98208 issued in the name of Jesus Cunanan.

On May 13, 1998, Jesus Cunanan mortgaged the property to petitioner Capital Credit Dimension, Inc. (“CCDI”) for a loan of P2,350,000.00. When he failed to pay the loan, the mortgage was extrajudicially foreclosed. It was sold at public auction to CCDI as the highest bidder. The one-year period of redemption expired and petitioner CCDI consolidated its ownership. TCT No. N-211793 was issued in its name. On April 13, 2000, petitioner CCDI filed a petition for the issuance of a writ of possession over the subject property before the Regional Trial Court of Quezon City docketed as LRC Case No. Q-12688 (“possessory petition”). The petition was raffled to Branch 97.

Respondent Allan Vita Chua filed a motion to intervene in the proceeding. He alleged that the Deed of Sale executed in favor of Jesus Cunanan was void as his father, Juanito Chua, stole the owner’s copy of TCT No. 91086 (348965) from his residence at No. 25 Yale St., Cubao, Quezon City, and forged his signature and those of his co-owners as sellers. He further alleged that they have filed a case for annulment of deed of sale, transfer certificates of title and public auction sale (“annulment case”) before Branch 100 of the Regional Trial Court of Quezon City against Jesus and Melodina Cunanan, Juanito Chua, CCDI, and the Register of Deeds of Quezon City. The case was docketed as Civil Case No. Q-40354. He prayed that the possessory petition be consolidated with the annulment case. His motion was denied. He challenged the denial in the Court of Appeals but again lost the case.[3] We, in turn, denied the petition to review the Court of Appeals’ decision on technical grounds in our Resolution dated April 3, 2002 in G. R. No. 151399.[4]

It likewise appears that the RTC of Quezon City, Branch 100, decided the annulment case in favor of the respondents Allan Chua and the Vitas in a Decision dated January 18, 2002, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against

defendants (Juanito Chua, Spouses Jesus and Melodina Cunanan and CCDI), ordering the following:

- Declaring the Deed of Sale dated October 23, 1993 as null and void;
- Ordering the Registry (sic) of Deeds for Quezon City to effect the cancellation of TCT No. 211793 in the name of defendant CCDI and the restitution of TCT No. RT-91086 (348965) in the name of herein plaintiffs;
- Payment by the aforesaid defendants of attorney's fees in the amount of P30,000.00; and
- The costs of suit.

SO ORDERED.[5]

Petitioner CCDI appealed the decision. Its appeal, docketed as CA-G.R. CV No. 74522, is still pending before the Court of Appeals.

The case became more entangled when on May 31, 2002, the possessory petition was resolved by the RTC of Quezon City, Branch 97, in favor of petitioner CCDI, as follows:

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WHEREFORE, let a writ of possession issue in favor of petitioner Capital Credit Dimension, Inc. over the property covered by Transfer [Certificate] of Title No. N-211793 of the Registry (sic) of Deeds of Quezon City.

SO ORDERED.

A Writ of Possession dated August 5, 2002 was thereafter issued in favor of petitioner CCDI directing the Branch Sheriff to place petitioner in possession of the subject property and to eject therefrom Sps. Jesus Cunanan and "all persons presently staying therein and claiming rights under them." The Sheriff, in turn, issued a Notice to Vacate directing the occupants of No. 25 Yale St., Cubao, Quezon City, to vacate the premises and gave them until September 12, 2002 within which to do so.

Faced with eviction, respondents Allan Vita Chua and the Vitas filed a petition for prohibition before the Court of Appeals to enjoin the implementation of the Order dated May 31, 2002. The Court of Appeals granted the petition in its now assailed Decision dated February 13, 2003, the dispositive portion of which reads:

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. It is ORDERED of the respondents Presiding Judge and Sheriff and all those acting for or through them, that they cease and desist from enforcing against the petitioners the assailed Order dated May 31, 2002 and the other processes allied thereto.

SO ORDERED.[6]

Hence, this petition.

Petitioner CCDI contends that the Court of Appeals erred in prohibiting the implementation of the writ of possession against respondents considering that its issuance is ministerial and cannot be affected by a pending suit to annul the mortgage or its foreclosure.

Respondents, on the other hand, contend that they should not be adversely affected by the writ of possession as they were not parties to the possessory petition and further considering that the writ was directed against the Cunanans and "all persons presently staying therein and claiming rights under them." They contend that they are not parties claiming rights under the Cunanans and are, on the contrary, asserting a totally adverse right against them.

We deny the petition.

In *Philippine National Bank v. Court of Appeals*[7] we have ruled that an ex-parte writ of possession issued pursuant to Act No. 3135, as amended, cannot be enforced against a third person who is in actual possession of the foreclosed property and who is not in privity with the debtor/mortgagor. To do so would be to sanction his summary ejectment in violation of the basic tenets of due process.[8] This is because properties brought within the ambit of Act No. 3135, unlike those subject to judicial foreclosure, are foreclosed by the mere filing of a petition with the office of the sheriff of the province where the sale is to be made.[9] A third person in possession of the extrajudicially foreclosed property, who claims a right superior to that of the original mortgagor, is thus given no opportunity to be heard in his claim. Considering the lack of opportunity, such third person may therefore not be dispossessed on the strength of a mere ex-parte possessory writ[10] issued in foreclosure proceedings to which he was not a party.

The cases[11] cited by petitioner to support his claim that the issuance of a writ of possession in favor of the mortgagee of a foreclosed property after the period of redemption has expired is ministerial upon the trial court do not apply since the parties who filed the cases questioning the mortgage and its foreclosure were the debtors/mortgagors themselves, not third parties, as in the instant case.

We shall refrain from resolving the issue of whether petitioner is a buyer in good faith of the subject property. This is an issue raised in the annulment case now pending appeal before the Court of Appeals. The case at bar deals only with the legality of the issuance of the writ of possession against the respondents.

IN VIEW WHEREOF, the petition is DENIED. The questioned Decision dated February 13, 2003 of the Court of Appeals in CA-G.R. SP No. 71703 is AFFIRMED. No costs.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr. and Tinga, JJ., concur.

[1] This respondent was omitted in the title of the petition filed by the petitioner which omission was carried on in the titles of the subsequent pleadings filed in this case. However, since he is included as a party in the decision of the Court of Appeals under review and no reason appears why he should now be excluded, his name is accordingly included in our enumeration of the respondents. Besides, he was specifically named a respondent in the respondents' Memorandum.

[2] Entitled "Allan Vita Chua, Alfredo Vita, Jr., Nelson P. Vita, Manuel P. Vita, and Loran P. Vita v. Hon. Lucas P. Bersamin, Presiding Pairing Judge of Branch 97, Regional Trial Court of Quezon City, the Sheriff George D. Mabborang of Br. 97, Regional Trial Court of Q.C. and Capital Credit Dimension, Incorporated."

[3] Docketed as CA-G.R. SP No. 64524 entitled "Allan Vita Chua v. Honorable Oscar L. Leviste, Presiding Judge, Branch 97, Regional Trial Court of Quezon City and Capital Credit Dimension, Inc."

[4] Entitled "Allan Vita Chua, et al. v. Court of Appeals, et al."

[5] Rollo, pp. 94-102.

[6] Id., pp. 20-27.

[7] 374 SCRA 22 (2002); see also *Barican v. Intermediate Appellate Court*, 162 SCRA 358 (1988) and *Philippine National Bank v. Court of Appeals*, 275 SCRA 70 (1997).

[8] *Id.*, p. 32.

[9] Sec. 4, Act. No. 3135, as amended.

[10] *Philippine National Bank v. Court of Appeals*, 374 SCRA 22, 31-32 (2002).

[11] *Ong v. Court of Appeals*, 333 SCRA 189 (2000); *Veloso v. Intermediate Appellate Court*, 205 SCRA 227 (1992).

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