PRIMETOWN PROPERTY GROUP, INC., PETITIONER, VS. HON. LYNDON D. JUNTILLA, IN HIS CAPACITY AS HOUSING AND LAND USE ARBITER OF HLURB, REGION VII, CEBU CITY, AND TERESA C. AGUILAR, ...

G.R. NO. 157801. June 08, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69812 which held that the Housing and Land Use Arbiter of the Housing and Land Use Regulatory Board (HLURB) did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in granting the motion of herein private respondent for a writ of possession.

The controversy arose from the following antecedents:

In 1996, Teresa C. Aguilar entered into a contract to sell with Primetown Property Group, Inc. (PPGI) covering a condominium unit which was under construction at Mary Cielo Leisure Resort Compound, Opon, Lapu-Lapu City. PPGI obligated itself to deliver the unit by June 1998, as indicated in its promotional material. Thereafter, Aguilar paid by installment the purchase price of the condominium unit in the total amount of P727,921.82.[2]

After the lapse of almost two years after the signing of the contract to sell, Aguilar saw that the construction of the building, where her supposed condominium unit was to be located, had barely even started. Believing that PPGI would not be able to deliver the unit to her by June 1998, she demanded in writing the rescission of her contract to sell with PPGI and the refund of what she had paid. When PPGI refused, she filed a complaint[3] against PPGI for the rescission of the contract to sell and damages with the HLURB. The case was docketed as HLURB Case No. REM-0207-0326198.

On August 26, 1999, the HLURB rendered its Decision[4] in favor of Aguilar. The fallo of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant declaring the Contract to Sell executed by the parties as having been Rescinded and ordering the Respondent to:
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> - Pay the complainant the amount of P727,921.82 as refund of the payments made;
>
> - Pay the complainant 12% legal interest computed from the date of filing of this instant case until its final determination;
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> - Pay the complainant the amount of P50,000.00 as moral damages;
>
> - Pay the complainant the amount of P30,000.00 as exemplary damages;
>
> - Pay the complainant the amount of P25,000.00 as attorney's fees and litigation expenses;
>
> - Pay the Board administrative fine of P10,000.00 for violating Section 20. Of (sic) Presidential Decree No.

957.

SO ORDERED.[5]

The respondent appealed the decision to the HLURB Board of Commissioners which, on December 21, 1999, affirmed the same and declared it as final and executory. On motion of the complainant, the HLURB issued a writ of execution ordering the ex-officio sheriff to execute its decision against PPGI with address at the Penthouse, Century Citadel, No. 5007 P. Burgos Street, Bel-Air, Makati City.

Sheriff Cesar D. Raagas of the Regional Trial Court (RTC) of Makati City, Branch 138, levied several properties of PPGI, one of which was a condominium unit identified as Condominium Unit No. 3301 in the Makati Prime Citadel located at P. Burgos Street, Makati City, and covered by Condominium Certificate of Title (CCT) No. 25156. The sale at public auction was set on March 30, 2000. He issued a Sheriff's Notice of Sale dated February 17, 2000,[6] posted a copy[7] thereof to satisfy the writ of execution, and sent a copy of the said notice to PPGI at Room 2807, Makati Prime Citadel Condominium, P. Burgos Street, Makati City.[8] The same notice was also published in the newspaper.[9]

Before the scheduled auction sale, or on March 21, 2000, Michael J. O'Pallick served a copy of his affidavit of third-party claim[10] to Sheriff Raagas. O'Pallick claimed that the condominium unit was the subject of a contract to sell executed by PPGI in favor of Reynaldo Poblete and Tomas Villanueva who, in turn, had executed a deed for assignment in his favor. The latter appended copies of the said deeds to his affidavit.[11]

The Sheriff proceeded with the sale at public auction on March 30, 2000. Aguilar was declared the highest bidder for the condominium unit for P1,200,000.00. The Sheriff executed a certificate of sale over the property in her favor.[12]

Following the failure of PPGI to redeem the property, the Sheriff executed, on April 20, 2001, a final deed of sale[13] in favor of Aguilar, and in whose favor CCT No. 74777 was issued.[14] She declared the condominium unit for taxation purposes under Tax Declaration No. 10134.[15]

In the meantime, on November 6, 2001, the counsel of PPGI withdrew his appearance as its counsel.[16] On November 28, 2001, Aguilar filed a motion with the HLURB for the issuance of a writ of possession.[17] A copy of the motion was served on PPGI at its principal office as alleged in the complaint at No. 21/F Multinational BanCorporation Centre, 6805 Ayala Avenue, Makati City. It appears that Ramon Reyes, Jr. received the said copy for PPGI on November 23, 2001.[18]

During the hearing of the said motion, no representative of the PPGI appeared. On December 21, 2001, the HLURB issued its Order[19] granting Aguilar's motion for the issuance of a writ of possession, and directing the PPGI, its officers, incorporators, stockholders and/or assignees/transferees to peacefully vacate the subject condominium.[20] It appears that the president of PPGI was to be served with a copy of the order at Multinational BanCorporation Centre, 6809 Ayala Avenue, Makati City.[21]

On January 18, 2002, PPGI filed its motion for reconsideration[22] of the December 21, 2001 Order of the HLURB, contending that it was not served with a copy of Aguilar's motion for the issuance of a writ of possession. PPGI averred that it had transferred its office from 21/F Multinational BanCorporation Centre, 6805 Ayala Avenue, Makati City to the Prime Citadel Condominium, No. 5007 P. Burgos Street, Makati City. PPGI further averred that despite its earnest efforts to secure copies of the aforementioned motion of Aguilar, the HLURB Arbiter refused to furnish it with such copies. PPGI prayed that the HLURB Order dated December 21, 2001 be recalled and set aside and, in the meantime, an order suspending the implementation thereof be issued. PPGI set the hearing of its motion on January 21, 2002. Meanwhile, on January 22, 2002, the Sheriff placed

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Aguilar in physical possession of the subject condominium.[23]

On February 27, 2002, the HLURB issued its Resolution[24] denying the said motion for reconsideration for lack of merit, and for the added reason that the same had already been enforced and, as a consequence, the said motion was considered moot and academic.[25]

Aggrieved, PPGI filed, on April 11, 2002, its petition for certiorari with the CA under Rule 65 of the Rules of Court, and sought the reversal of the HLURB Order dated December 21, 2001 on the following issue:

> WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE QUESTIONED ORDER DATED DECEMBER 21, 2000 (SIC) AND THE RESOLUTION DATED FEBRUARY 27, 2002, WHICH DENIED THE MOTION FOR RECONSIDERATION.[26]

PPGI asserted that in issuing the writ of execution, the HLURB Arbiter took judicial notice of its new address at the Prime Citadel Condominium at No. 5007 P. Burgos Street, Bel-Air, Makati City. Despite this, the respondent caused the service of a copy of her motion for the issuance of a writ of possession at its old office; hence, it behooved the HLURB to defer consideration of the said motion until service had been made upon it at the said address. The petitioner asserted that the HLURB acted arbitrarily when it allowed time to elapse before resolving the motion of the respondent herein, and enabled the Sheriff to place her in possession of the property.

In her comment on the petition, respondent Aguilar averred that (1) in view of the petitioner's failure to exhaust all administrative remedies (including a petition for certiorari before the Board of Commissioners of the HLURB), the petition was premature; (2) in view of the claim of O'Pallick that he had acquired ownership over the property, the latter was the real party-in-interest to file the petition; and (3) the HLURB acted in accordance with the Rules of Procedure of the HLURB when it resolved the respondent's motion for a writ of possession.

On November 12, 2002, the CA rendered its Decision[27] denying the petition of PPGI for lack of merit. The appellate court declared that the records of the case reflected the address of PPGI as "No. 21/F Multinational BanCorporation Centre, 6805 Ayala Avenue, Makati City," and that it was never changed by PPGI; it remained as PPGI's address on record. Thus, when Aguilar sent a copy of her motion at the said address, PPGI was deemed to have been notified. On its claim that its new address was known to the HLURB as shown in the writ of execution it issued, the CA declared that the address "Rm. 2807, Makati Prime Citadel Condominium, No. 5007 P. Burgos Street, Makati City," merely cropped-up because it was where the levied condominium unit was located. The CA further ruled that the assailed order and resolution were legally issued. After all, the respondent had already been issued CCT No. 74777 over the condominium unit; hence, she was entitled to the possession thereof.

The appellate court denied the petitioner's motion for reconsideration of the decision for lack of merit.[28]

The PPGI, now the petitioner, filed a petition for review on certiorari alleging that:

> I.
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> THE COURT OF APPEALS ERRED IN AFFIRMING THE HOUSING AND LAND USE REGULATORY BOARD'S ACTION IN ORDERING THE WRIT OF POSSESSION WHEN PETITIONER PRIMETOWN WAS NOT INFORMED NOR DULY NOTIFIED OF THE HEARING ON THE MOTION FOR ISSUANCE OF WRIT OF POSSESSION THEREBY DEPRIVING PETITIONER PRIMETOWN OF ITS CONSTITUTIONAL RIGHT TO DUE PROCESS.[29]
>
> II.
>
> THE COURT OF APPEALS ERRED IN CONFERRING POSSESSION IN FAVOR OF RESPONDENT

AGUILAR OVER THE SUBJECT CONDOMINIUM UNIT DESPITE THE FACT THAT TITLE OR OWNERSHIP THERETO HAD BEEN WRONGLY TRANSFERRED IN FAVOR OF RESPONDENT AGUILAR AS IT HAD BEEN SOLD ALREADY TO ANOTHER BUYER PRIOR TO THE PUBLIC AUCTION HELD.[30]

On the first issue, the petitioner avers that under Sections 4 and 5, Rule 15 of the Rules of Court, respondent Aguilar was mandated to serve on it a copy of her motion for the issuance of a writ of possession at least three days before the date of its scheduled hearing. However, the respondent failed to do so because she served a copy of the said motion at its old principal office at No. 21/F Multinational BanCorporation Centre, No. 6805 Ayala Avenue, Makati City, and not at its new principal office address. The petitioner avers that the HLURB and respondent Aguilar were aware of its new principal office address because the writ of execution issued by the HLURB specifically stated that its principal office was located at the "Penthouse, Century Citadel Inn, No. 5007 P. Burgos Street, Bel-Air, Makati City."

The petitioner posits that the HLURB acted with grave abuse of its discretion amounting to excess of jurisdiction in taking cognizance of and granting the respondent's motion for a writ of possession. As such, the petitioner posits, the motion of respondent Aguilar was a mere scrap of paper. Worse, the HLURB dilly-dallied in resolving its motion for reconsideration, thus allowing the Sheriff to place respondent Aguilar in possession of the unit and thereafter denying the said motion solely on the ground that it had become moot and academic. Patently, the petitioner argues, it was deprived of its property without due process of law.

On the second issue, the petitioner avers that respondent Aguilar bought the property at public auction in bad faith because, before she secured CCT No. 74777, on October 30, 2001, she was already aware that the condominium unit had been sold by the petitioner on March 20, 1995 in favor of Poblete and Villanueva, and that they assigned their right to O'Pallick, who, in turn, executed his affidavit of third-party claim on March 17, 2000 and filed the same with the office of the ex-officio Sheriff. Hence, respondent Aguilar was not entitled to the possession of the condominium unit.

In her comment on the petition, respondent Aguilar avers that the petitioner failed to notify her and the HLURB of any change or transfer of its principal office. Hence, she cannot be blamed for serving a copy of her motion on the petitioner at its original principal office, and the HLURB for serving a copy of its order at the said address. On the second issue, the respondent avers that she was entitled to the possession of the unit following the issuance of CCT No. 74777 in her favor. The respondent pointed out that O'Pallick had filed a complaint for quieting of title against her with the RTC of Makati City on April 2, 2001 with a plea for injunctive relief, but that the RTC denied his plea for injunctive relief and his motion for reconsideration thereof. Besides, the respondent argues, her title cannot be the subject of a collateral attack.

The petition is bereft of merit.

First. The petitioner was mandated to notify the HLURB and the respondent herein of the transfer of its principal office from the Multinational BanCorporation Centre to the Prime Citadel Condominium at No. 5007 P. Burgos Street, Makati City. However, the petitioner failed to do so. Based on the records of the HLURB and those of the respondent's, the principal office of the petitioner remained at the Multinational BanCorporation Centre. While it may be true that in the writ of execution issued by the HLURB and the Sheriff's notice of sale the address of the petitioner appears to be at the Prime Citadel Condominium at No. 5007 P. Burgos Street, Makati City, the said address had reference to the location of the condominium unit levied upon and sought to be sold at public auction, not to the petitioner's principal office. That the petitioner retained its principal office at the Multinational BanCorporation Centre is shown by the fact that its employee, Ramon Reyes, Jr., received a copy of the motion for the issuance of a writ of possession filed by the respondent on November 23, 2001. The petitioner has not

disputed the authority of Reyes, Jr. to receive such copy of the respondent's motion.

Second. The petitioner's reliance on Sections 4, 5 and 6, Rule 15 of the Rules of Court, quoted, infra, is misplaced:

> Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> ...
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> Sec. 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
>
> ...
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> Sec. 6. Proof of service necessary. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

This is so because the aforecited provisions apply only to a litigated motion and not to an ex parte motion.

The said rules do not apply to a motion which is merely a mode by which the respondent herein informed the Court that the writ of execution had not been implemented, and that she had not been placed in possession of the property. There is no need for a hearing of such motion because it is not a litigated motion, and the court may act thereon without prejudice to the rights of the petitioner as the adverse party. The prejudice caused to the petitioner as the adverse party from the HLURB order directing it and its officers and employees to vacate the condominium unit would not have been greater than that caused by the issuance of the writ of execution itself. The writ of possession was but an implementation of the writ of execution.[31]

Third. The procedure in a motion for the issuance of a writ of possession is ex parte and summary in nature. It is a proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard.[32] The issuance of a writ of possession is not a judgment on the merits.[33] Thus, the HLURB may grant the motion even in the absence of the judgment obligor, herein petitioner.

Fourth. 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.[34] The issuance of the writ of possession had become ministerial duty on the part of HLURB since the respondent had sufficiently shown her proof of title over the subject condominium. Being the registered owner of the condominium unit, she is entitled to its possession. The case at bar is akin to foreclosure proceedings where the issuance of a writ of possession becomes a ministerial act of the court after title on the property has been consolidated in the mortgage.[35]

It must be stressed that the Register of Deeds had already cancelled CCT No. 25156 and issued CCT No. 74777 in the name of the respondent. Thus, the argument of the petitioner that the title or ownership had been wrongfully vested with the respondent is a collateral attack on the latter's title which is more appropriate in a direct proceeding.[36]

IN LIGHT OF ALL THE FOREGOING, the petition is hereby DENIED for lack of merit. Costs against the petitioner.

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SO ORDERED.

Austria-Martinez, Acting chairman, Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

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[1] Penned by Associate Justice Eliezer R. De los Santos, with Associate Justices Oswaldo D. Agcaoili (retired) and Regalado E. Maambong, concurring.

[2] CA Rollo, p. 40.

[3] Id. at 24.

[4] Penned by Housing and Land Use Arbiter Lyndon D. Juntilla.

[5] CA Rollo, pp. 46-47.

[6] Rollo, pp. 126-127.

[7] Id. at 53.

[8] Rollo, p. 53.

[9] Id. at 55.

[10] Id. at 57.

[11] Id. at 116-125.

[12] Id. at 58.

[13] Id.

[14] Id. at 66.

[15] Id. at 61.

[16] Id. at 59.

[17] Rollo, p. 60.

[18] Id. at 63.

[19] CA Rollo, p. 80.

[20] Id. at 80-83.

[21] Id. at 83.

[22] Id. at 84.

[23] Rollo, p. 65.

[24] Id. at 67.

[25] Id.

[26] CA Rollo, p. 15.

[27] Rollo, p. 32.

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[28] Rollo, p. 38.

[29] Id. at 17.

[30] Id. at 21.

[31] Bajet v. Baclig, Adm. Matter No. RTJ-00-1598, 30 July 2002, 385 SCRA 343.

[32] Spouses Ruben Santiago and Inocencia Santiago v. Merchants Rural Bank of Talavera, Inc., G.R. No. 147820, 18 March 2005.

[33] A.G. Development Corporation v. Court of Appeals, G.R. No. 111662, 23 October 1997, 281 SCRA 155.

[34] Joven v. Court of Appeals, G.R. No. 80739, 2 August 1992, 212 SCRA 700.

[35] See Vaca v. Court of Appeals, G.R. No. 109672, 14 July 1994, 234 SCRA 146.

[36] Section 48 of the Presidential Decree No. 1529 provides:

SEC. 48. Certificate not subject to collateral attack. – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

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