

SPOUSES RUBEN AND VIOLETA SAGUAN, PETITIONERS, VS. PHILIPPINE BANK OF COMMUNICATIONS AND COURT OF APPEALS (SECOND DIVISION), RESPONDENTS.

G.R. NO. 159882. November 23, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari[1] of the Decision[2] dated January 24, 2003 and of the Resolution[3] dated August 21, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71775. The Decision affirmed the Orders[4] of the Regional Trial Court (RTC) of Branch 31, Tagum City, Davao: (1) dated November 5, 2001 admitting respondent Philippine Bank of Communications' Exhibits "A" to "P"; (2) dated March 19, 2002 denying petitioners', spouses Ruben and Violeta Saguan's, Motion to Present Evidence, and granting private respondent's petition for issuance of a writ of possession; and (3) dated May 6, 2002 denying petitioners' Motion for Reconsideration of the second order.

The facts, as found by the CA, are not in dispute:

[Petitioners] spouses Ruben Saguan and Violeta Saguan obtained a loan of P3 Million from [respondent] Philippine Bank of Communications. To secure the obligation, they mortgaged five parcels of land covered by TCT Nos. 24274, 38894, 37455, 66339 and 19365, all of the Register of Deeds of the Province of Davao, and improvements therein.

Because [petitioners] defaulted in the payment of their mortgage indebtedness, [respondent] extra-judicially foreclosed the mortgage. In the auction sale on 05 January 1998, [respondent] was the only and highest bidder for P6,008,026.74. Sheriff's certificate of sale dated 12 January 1998 was executed and annotated at the back of [petitioners'] titles on 18 February 1998. As [petitioners] failed to redeem the properties within the one-year period ending on 18 February 1999, TCT Nos. T-154065, T-154066, T-154067, T-154068 and T-154069 were issued in the name of [respondent] in lieu of the old ones. Thus, [respondent] consolidated ownership of the properties in its favor. Since the parcels of land were in physical possession of [petitioners] and other persons [co-petitioners in the petition before the CA], [respondent], after due demand, filed a petition for writ of possession with Branch 31, Regional Trial Court, Tagum City. x x x.[5]

Petitioners filed an Opposition[6] to the petition for writ of possession to which respondent filed a Comment.[7] Petitioners likewise filed a Reply[8] to the Comment.

In their Opposition and Reply, petitioners argued that a writ of possession should not issue considering respondent's failure to return the excess or surplus proceeds[9] of the extrajudicial foreclosure sale based on our ruling in *Sulit v. Court of Appeals*. [10] In refutation, respondent points to petitioners' remaining unsecured obligations with the former to which the excess or surplus proceeds were applied.

After the hearing on respondent's evidence, the RTC issued two (2) separate orders requiring respondent to file a Formal Offer of Evidence. Respondent failed to comply with the aforesaid orders within the time frame

prescribed, thus prompting petitioners to file a motion to dismiss grounded on Section 3,[11] Rule 17 of the Rules of Court.

Thereafter, respondent belatedly filed its Formal Offer of Evidence. Consequently, the RTC issued the first assailed Order[12] admitting respondent's offer of exhibits thereby rendering petitioners' motion to dismiss moot and academic. The RTC then issued the Order[13] denying petitioners' Motion to Present Evidence and granted the petition for writ of possession. The last Order[14] of the RTC denied petitioners' Motion for Reconsideration.

Upon petition for certiorari and mandamus, the CA rejected petitioners' allegations of grave abuse of discretion in the lower court's issuance of the foregoing Orders. The CA affirmed respondent's entitlement to a writ of possession as a matter of right, the latter having consolidated its ownership over the parcels of land upon expiration of the redemption period. It emphasized that the issue on the failure to return the excess or surplus proceeds of the auction sale had been squarely met by the respondent, and therefore, the case was distinguishable from *Sulit v. Court of Appeals*. In all, the CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court.

Hence, this recourse.

In this appeal, the issues for our resolution are:

- Whether the RTC should have issued a writ of possession considering respondent's failure to remit the excess or surplus proceeds of the extrajudicial foreclosure sale.
- Corollary thereto, whether respondent may unilaterally apply the excess or surplus proceeds of the extrajudicial foreclosure sale to petitioner's remaining unsecured obligations.
- Whether the RTC should have granted petitioners' motion to dismiss the petition for writ of possession based on respondent's failure to comply with the RTC's Orders on the filing of a formal offer of evidence.

A writ of possession is an order enforcing a judgment to allow a person's recovery of possession of real or personal property. An instance when a writ of possession may issue is under Act No. 3135,[15] as amended by Act No. 4118, on extrajudicial foreclosure of real estate mortgage.[16] Sections 6 and 7 provide, to wit:

Section 6. Redemption. – In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at anytime within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Section 7. Possession during redemption period. – In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 [the] form of an ex-parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in case of property registered under the Mortgage Law or under section one hundred and ninety-four 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 eleven of section one hundred and fourteen of Act Number Four

hundred and ninety-six, 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.

From the foregoing provisions, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.[17]

Within the redemption period the purchaser in a foreclosure sale may apply for a writ of possession by filing for that purpose an ex-parte motion under oath, in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of an ex-parte motion and the approval of the corresponding bond, the court is expressly directed to issue the order for a writ of possession.[18]

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property.[19] Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[20] In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[21] Effectively, the court cannot exercise its discretion.

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment.[22] The propriety of the issuance of the writ was heightened in this case where the respondent's right to possession of the properties extended after the expiration of the redemption period, and became absolute upon the petitioners' failure to redeem the mortgaged properties.

Notwithstanding the foregoing, the petitioners insist that respondent's failure to return the excess or surplus proceeds of the extrajudicial foreclosure sale converted the issuance of a writ of possession from a ministerial to a discretionary function of the trial court pursuant to our holding in *Sulit v. Court of Appeals*. [23]

We are not persuaded.

A careful reading of *Sulit* will readily show that it was decided under a different factual milieu. In *Sulit*, the plea for a writ of possession was made during the redemption period and title to the property had not, as yet, been consolidated in favor of the purchaser in the foreclosure sale. In stark contrast, the herein petitioners failed to exercise their right of redemption within the one-year reglementary period provided under Section 6 of Act No. 3135, as amended, and ownership over the properties was consolidated in, and corresponding titles issued in favor of, the respondent.

We emphasize that the proceeding in a petition for a writ of possession is ex-parte and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even without giving the person against whom the relief is sought an opportunity to be heard.[24] By its very nature, an ex-parte petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended.

Be that as it may, the debtor or mortgagor is not without recourse. Section 8 of Act No. 3135, as amended, provides:

Section 8. Setting aside of sale and writ of possession. – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

Thus, a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested. However, in this case, petitioners do not challenge the validity of the foreclosure nor do they wish to set aside the foreclosure sale. It appears that the only remaining bone of contention is the disposition of the excess or surplus proceeds of the foreclosure sale. In short, petitioners do not question the consolidation of ownership in favor of the respondent, but simply demand the payment of the sum of money supposedly still owing them from the latter.

Article 427,[25] in relation to Article 428,[26] of the Civil Code provides that ownership may be exercised over things or rights, and grants the owner of property a right of action for recovery against the holder and possessor thereof.

Thus, even as we rule that the writ of possession was properly issued in favor of respondent as a consequence of its confirmed ownership, we are not unmindful of the fact that the issue of the excess or surplus proceeds of the foreclosure sale remains unsettled.

Respondent's stance, as sustained by the CA, is that petitioners have remaining unsecured obligations with respondent and the excess or surplus proceeds of the foreclosure sale were validly, albeit unilaterally, applied thereto.

This argument is unacceptable.

We have elucidated on the import of surplus proceeds in the case of *Sulit*, viz.:

In case of a surplus in the purchase price, however, there is jurisprudence to the effect that while the mortgagee ordinarily is liable only for such surplus as actually comes into his hands, but he sells on credit instead of for cash, he must still account for the proceeds as if the price were paid in cash, and in an action against the mortgagee to recover the surplus, the latter cannot raise the defense that no actual cash was received.

We cannot simply ignore the importance of surplus proceeds because by their very nature, surplus money arising from a sale of land under a decree of foreclosure stands in the place of the land itself with respect to liens thereon or vested rights therein. They are constructively, at least, real property and belong to the mortgagor or his assigns. Inevitably, the right of a mortgagor to the surplus proceeds is a substantial right which must prevail over rules of technicality.

Surplus money, in case of a foreclosure sale, gains much significance where there are junior encumbrancers on the mortgaged property. Jurisprudence has it that when there are several liens upon the premises, the surplus money must be applied to their discharge in the order of their priority. A junior mortgagee may have his rights protected by an appropriate decree as to the application of the surplus, if there be any, after satisfying the prior mortgage. His lien on the land is transferred to the surplus fund. And a senior mortgagee, realizing more than the amount of his debt on a foreclosure sale, is regarded as a trustee for the benefit of junior encumbrancers.[27]

Given the foregoing pronouncement in *Sulit*, we cannot countenance respondent's cavalier attitude towards petitioners' right to the surplus proceeds. To begin with, the foreclosure of petitioners' properties was meant to answer only the obligation secured by the mortgage. Article 2126 of the Civil Code unequivocally states:

Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

We need not expound on the obvious. Simply put, even if petitioners have remaining obligations with respondent, these obligations, as conceded by respondent itself, were not collateralized by the foreclosed properties.

Furthermore, under Section 1[28] of Act No. 3135 as amended, the special power of attorney authorizing the extrajudicial foreclosure of the real estate mortgage must be either (1) inserted or stated in the mortgage deed itself; or (2) the authority is attached thereto. Thus, petitioners' supposed remaining obligations which were not secured by the mortgage cannot be made subject, or even susceptible, to the extrajudicial foreclosure of mortgage.

However, petitioners' remedy lies in a separate civil action for collection of a sum of money.[29] We have previously held that where the mortgagee retains more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply give the mortgagor a cause of action to recover such surplus.[30] In the same case, both parties can establish their respective rights and obligations to one another, after a proper liquidation of the expenses of the foreclosure sale, and other interests and claims chargeable to the purchase price of the foreclosed property. The court can then determine the proper application of compensation with respect to respondent's claim on petitioners' remaining unsecured obligations.[31] In this regard, respondent is not precluded from itself filing a case to collect on petitioners' remaining debt.

Anent the third issue, we agree with the CA that there was no grave abuse of discretion in the trial court's liberality in giving ample time and opportunity for respondent to complete the presentation of its evidence. It was a liberality that carried no taint of partiality. Despite the ex-parte nature of the proceedings, the RTC also allowed petitioners to file pleadings to oppose the petition for the issuance of the writ of possession. Clearly, petitioners were not denied due process, and the trial judge acted accordingly in admitting respondent's uncontroverted evidence.

Finally, we note petitioners' incorrect remedy of certiorari before the CA, which the latter and both parties have apparently overlooked. A special civil action for certiorari may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[32]

Ineluctably, the RTC issued the writ of possession in compliance with the express provisions of Act No. 3135. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for certiorari. The soundness of the order granting the writ of possession is a matter of judgment with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by certiorari.[33]

Nonetheless, we have allowed this procedural lapse to pass without incident, and have resolved the issues raised.

WHEREFORE, the Petition is DENIED. The writ of possession in favor of respondent Philippine Bank of Communications is hereby AFFIRMED without prejudice to petitioners' separate remedy for recovery of the excess or surplus proceeds of the extrajudicial foreclosure sale. Costs against the petitioner.

SO ORDERED.

Ynares-Santiago,(Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Rollo, pp. 3-14.

[2] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Teodoro P. Regino and Mariano C. del Castillo, concurring; id. at 15-19.

[3] Id. at 20.

[4] Penned by Judge Erasto D. Salcedo

[5] Rollo, p. 16.

[6] Id. at 44-48.

[7] Id. at 129-132.

[8] Id. at 67-68.

[9] Petitioners' loan obligation is P4,498,390.20 inclusive of interests, while the mortgaged properties were sold to respondent for P6,008,026.74 resulting in a surplus of P1,509,636.20.

[10] G.R. No. 119247, February, 17, 1997, 268 SCRA 441.

[11] Sec. 3. Dismissal due to fault of plaintiff.— If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant, or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counter-claim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[12] Dated November 5, 2001, rollo, p. 87.

[13] Dated March 19, 2002, id. at 88.

[14] Dated May 6, 2002, id. at 89-90.

[15] Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed To Real Estate Mortgages."

[16] Other instances when a writ of possession may issue include: (1) land registration proceedings under Section 17 of Act 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) execution sales (last paragraph of Section 33, Rule 39 of the Rules of Court). (Spouses Oliveros v. Metropolitan Bank and Trust Company, Inc., G.R. No. 165963, September 3, 2007; Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 299-300)

[17] Philippine National Bank v. Sanao Marketing Corporation and Trust Company, id. at 300.

[18] Id. at 301; Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 767-768.

[19] Yulienco v. Court of Appeals, 441 Phil. 397, 406 (2002).

[20] Samson v. Rivera, supra note 18, at 771.

[21] De Vera v. Agloro, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 213-314.

[22] Spouses Oliveros v. Metrobank and Trust Company, Inc., supra note 16; Samson v. Rivera, supra note 18, at 768; China Banking Corporation v. Ordinario, 447 Phil. 557, 562 (2003); Spouses Ong v. Court of Appeals, 388 Phil. 857, 864 (2000).

[23] Supra note 10.

[24] , G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

[25] Art. 427. Ownership may be exercised over things or rights.

[26] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[27] Supra note 10, at 455-456.

[28] SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

[29] Petitioners' cause of action prescribes in ten (10) years from the time of the auction sale in January 5, 1998 when the excess or surplus proceeds thereof should have been returned to them. See Article 1144 of the Civil Code.

[30] Sulit v. Court of Appeals, supra note 10, at 457, citing Kleinman v. Neubert, 172 NW 315.

[31] Compensation is a mode of extinguishing obligations. See Articles 1278 and 1279 of the Civil Code.

[32] RULES OF COURT, Rule 65, Sec. 1.

[33] Philippine National Bank v. Sanao Marketing Corporation, supra note 17, at 306; Samson v. Rivera, supra note 18, at 770.

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