

FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC., PETITIONER, VS. AUGUSTO GATMAYTAN, RESPONDENT.

G.R. No. 163196. July 04, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

From the January 7, 2004 Order[1] of the Regional Trial Court (RTC), Pasay City, denying the request of First Marbella Condominium Association, Inc. (petitioner) for extrajudicial foreclosure against Augusto Gatmaytan (respondent); and the March 31, 2004 RTC Order,[2] denying petitioner's Motion for Reconsideration, the latter filed directly with this Court a Petition for Review on Certiorari under Rule 45 of the Rules of Court on this sole ground:

The Executive Judge of the Regional Trial Court of Pasay City gravely erred in dismissing the petition in view of the fact that:

(A) Section. 20 of Rep. Act No. 4726, as amended, otherwise known as the "Condominium Act", expressly grant the petitioner, being the acknowledged association of unit owners at Marbella I Condominium, the right to enforce its liens of unpaid dues and other assessments in the same manner provided for by law for judicial or extra-judicial foreclosure of mortgage of real property; and

(B) Such practice of auctioning the delinquent condominium unit through a petition for extra-judicial foreclosure of mortgage, as aforesaid is permitted in other jurisdictions, such as in the City of Manila.[3]

The factual antecedents are as follows.

Respondent is the registered owner of Fontavilla No. 501 (condominium unit), Marbella I Condominium, Roxas Boulevard, Pasay City, under Condominium Certificate of Title No. 1972 (CCT No. 1972).[4] Inscribed on his title is a Declaration of Restrictions, to wit:

Entry No. 65370/T-20065 - DECLARATIONS OF RESTRICTIONS - executed by the herein registered owner, is hereon annotated restrictions shall be deemed to run with the land, the bldg. other improvements making up the project, shall constitute lien upon the project, and each unit and shall inure to the benefit of, and be binding upon all units owners, purchasers, interchangeably or sometimes referred to in this Master of Deed with Dec. of Restrictions as occupant, [sic] or holding any w/o [sic] or any right or interest therein or in the project, pursuant to the prov. of the condominium act or other pertinent laws. See restrictions and conditions imposed on Doc. No. 114, Page 24, Bk. I, s. of 1974 of the Not. Pub. for Rizal, M. Perez, Cardenas among w/c are those dealing on scope coverage; Management Body; repair, alteration et [sic] assessment real property of restrictions bldg. rules waivers rights and assignee, tenants occupants of unit validity,[sic] amendment of declaration dated March 19, 1974.

Date of inscription May 9, 1979 - 3:02 p.m.[5] (Emphasis supplied.)

Also inscribed is a Notice of Assessment, which states:

Entry No. 96-2466/CCT No. 1972 -NOTICE OF ASSESSMENT - Executed by MILAGROS D. CUBACUB in her capacity as Vice-President/ Administrator of FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC. (FMCAI) [herein petitioner], stating among other things that the condominium unit, described herein has an outstanding dues with the FMCAI in the sum of P775,786.17, inclusive of interests, penalties and attorney's fees, which aforementioned liabilities constitute as first lien against this condominium unit pursuant to the Master Deed of Restrictions. (Doc. No. 34; Page No. 7; Book No. III; Series of 1996 before Notary Public Jose A. Suing, Notary Public for Quezon City).

Date of Instrument - March 27, 1996.

Date of Inscription - May 3, 1996 - 2:10 p.m.[6]

On November 11, 2003, petitioner filed with the RTC, through the Office of the Clerk of Court Ex-Oficio Sheriff, a Petition[7]for extrajudicial foreclosure of the condominium unit of respondent, alleging that it (petitioner) is a duly organized association of the tenants and homeowners of Marbella I Condominium; that respondent is a member thereof but has unpaid association dues amounting to P3,229,104.89, as of June 30, 2003; and that the latter refused to pay his dues despite demand. The petition is docketed as File Case No. 03-033. Attached to it are the June 30, 2003 Statement of Account[8] and July 22, 2000 demand letter[9] issued to respondent.

In a letter dated November 21, 2003, the Clerk of Court, as Ex-Oficio Sheriff, recommended to the RTC Executive Judge that the petition be dismissed for the following reasons:

Under the facts given, no mortgage exists between the petitioner and respondent. Evidently, it is not one of those contemplated under Act 3135 as amended by Act 4118. The allegation simply does not show a mortgagor-mortgagee relationship since respondent liability arises from his failure to pay dues, assessments and charges due to the petitioner.

As clearly stated, the authority of the Executive Judge under Administrative Matter No. 99-10-05-0, as amended dated March 1, 2001, covers extra-judicial foreclosure of real estate mortgages under R.A. No. 3135 and chattel mortgages under P.D. No. 1508. There is nothing in the above mentioned Circular which authorizes the Executive Judge and/or the Ex-Oficio Sheriff to extra judicially foreclose properties covered by obligations other than the said mortgages. Hence, the subject petition is not proper for extra-judicial foreclosure under the supervision of the Executive Judge. Dismissal of the subject petition is recommended.[10]

Agreeing with the Clerk of Court, the RTC Executive Judge issued on January 7, 2004 the following Order:

Upon perusal of the pertinent laws and Supreme Court Resolutions, this Court concurs with the position taken by the Ex-Oficio Sheriff that herein petition is not within the coverage of Administrative Matter No. 99-10-05-0 as amended, dated March 1, 2001 re: Procedure in Extra Judicial Foreclosure of Mortgage, paragraph 1 thereof is hereby quoted as follows:

"1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff."

Hence, it is not within the authority of the Executive Judge to supervise and approve extra judicial foreclosures of mortgages.

WHEREFORE, the request for extra-judicial foreclosure of the subject condominium unit is DENIED. Consequently, the petition is DISMISSED.

SO ORDERED.[11] (Emphasis added.)

Petitioner filed a Motion for Reconsideration,[12] but the RTC Executive Judge denied it in an Order[13] dated

March 31, 2004.

Hence, the present petition.

Petitioner asserts that it is expressly provided under Section 20 of Republic Act (R.A.) No. 4726 that it has the right to cause the extrajudicial foreclosure of its annotated lien on the condominium unit. Its petition then is cognizable by the RTC under Administrative Matter No. 99-10-05.[14]

In his Comment,[15] Supplemental Comment[16] and Memorandum,[17] respondent objects to petitioner's direct appeal to this Court from an Order issued by the RTC on a mere administrative matter.[18] Respondent also impugns petitioner's right to file the petition for extra-judicial foreclosure, pointing out that the latter does not hold a real estate mortgage on the condominium unit or a special power of attorney to cause the extra-judicial foreclosure sale of said unit.[19] Respondent claims that there is even a pending litigation regarding the validity of petitioner's constitution as a homeowners association and its authority to assess association dues, annotate unpaid assessments on condominium titles and enforce the same through extrajudicial foreclosure sale.[20] In sum, respondent contends that petitioner has no factual or legal basis to file the petition for extrajudicial foreclosure.

The petition lacks merit.

Only a judgment, final order or resolution rendered by a court in the exercise of its judicial functions relative to an actual controversy is subject to an appeal to this Court by way of a Petition for Review on Certiorari under Rule 45 of the Rules of Court.[21] The January 7, 2004 Order and March 21, 2004 Order assailed herein were issued by the RTC Executive Judge in the exercise of his administrative function to supervise the ministerial duty of the Clerk of Court as Ex-Oficio Sheriff in the conduct of an extrajudicial foreclosure sale; hence, said orders are not appealable under Rule 45. Rather, the correct mode of appeal is by petition for mandamus[22] under Section 3, Rule 65 of the Rules of Court, to wit:

Sec. 3. Petition for mandamus -- When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Although under Section 5,[23] Rule 56, an erroneous appeal may be dismissed outright, this Court shall not exercise such option; but instead, shall treat the present petition as a petition for mandamus to obviate further litigation between the parties.[24]

Yet, in order to avail itself of a writ of mandamus, petitioner must establish that it has a clear right to the extrajudicial foreclosure sale of the condominium unit of respondent.[25] Under Circular No. 7-2002,[26] implementing Supreme Court Administrative Matter No. 99-10-05-0,[27] it is mandatory that a petition for extrajudicial foreclosure be supported by evidence that petitioner holds a special power or authority to foreclose, thus:

Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Oficio Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).

Sec. 2. Upon receipt of the application, the Clerk of Court shall:

a. Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage (Act No. 3135, Sec. 1, as amended) x x x.

Without proof of petitioner's special authority to foreclose, the Clerk of Court as Ex-Oficio Sheriff is precluded from acting on the application for extrajudicial foreclosure.[28]

In the present case, the only basis of petitioner for causing the extrajudicial foreclosure of the condominium unit of respondent is a notice of assessment annotated on CCT No. 1972 in accordance with Section 20 of R.A. No. 4726. However, neither annotation nor law vests it with sufficient authority to foreclose on the property.

The notice of assessment contains no provision for the extrajudicial foreclosure of the condominium unit. All that it states is that the assessment of petitioner against respondent for unpaid association dues constitutes a "first lien against [the] condominium unit." [29]

Neither does Section 20 of R.A. No. 4726[30] grant petitioner special authority to foreclose. All that the law provides is the following:

Sec. 20. The 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 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 condominium unit against which 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 the 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. (Emphasis supplied.)

Clearly, Section 20 merely prescribes the procedure by which petitioner's claim may be treated as a superior lien - i.e., through the annotation thereof on the title of the condominium unit.[31] While the law also grants petitioner the option to enforce said lien through either the judicial or extrajudicial foreclosure sale of the condominium unit, Section 20 does not by itself, ipso facto, authorize judicial as extra-judicial foreclosure of the condominium unit. Petitioner may avail itself of either option only in the manner provided for by the governing law and rules. As already pointed out, A.M. No. No. 99-10-05-0, as implemented under Circular No. 7-2002, requires that petitioner furnish evidence of its special authority to cause the extrajudicial foreclosure of the condominium unit.

There being no evidence of such special authority, petitioner failed to establish a clear right to a writ of mandamus to compel the RTC to act on its petition for extrajudicial foreclosure.

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

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

[1] Rollo, p. 22.

[2] Id. at 23.

[3] Rollo, p. 13.

[4] Id. at 34.

[5] Id. (dorsal side).

[6] Rollo, pp. 35, 38.

[7] Id. at 24.

[8] Id. at 29.

[9] Id. at 36.

[10] Records, p. 26.

[11] Records, p. 27.

[12] Id. at 37.

[13] Id. at 74.

[14] Petition, rollo, pp. 13-16; Memorandum, pp. 99-101.

[15] Id. at 46

[16] Id. at 48.

[17] Id. at 103.

[18] Id. at 105.

[19] Id.

[20] Id. at 104.

[21] Yee v. Bernabe, G.R. No. 141393, April 19, 2006, 487 SCRA 385, 391.

[22] Quelnan v. VHF Philippines, Inc., G.R. No. 145911, July 7, 2004, 433 SCRA 631, 635.

[23] Sec. 5. Grounds for dismissal of appeal. - The appeal may be dismissed motu proprio or on motion of the respondent on the following grounds: x x x (f) Error in the choice or mode of appeal x x x.

[24] Chua v. Santos, G.R. No. 132467, October 18, 2004, 440 SCRA 365, 372.

[25] Philippine Coconut Authority v. Primex Coco Products, Inc., G.R. No. 163088, July 20, 2006, 495 SCRA 763, 777.

[26] Guidelines for the Enforcement of the Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0, as Amended by the Resolutions dated January 30, 2001 and August 7, 2001; effective

April 22, 2002.

[27] Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgage; effective January 15, 2000.

[28] Office of the Court Administrator v. Pardo, RTJ-08-2109, April 30, 2008; Casano v. Magat, 425 Phil. 356, 360-361 (2002); Paguyo v. Gatbunton, A.M. No. P-06-2135, May 25, 2007, 523 SCRA 156, 161.[29] Supra at 7.

[30] An Act to Define Condominium, Establish Requirements for Its Creation and Government of Its Incidents; approved June 18, 1966.

[31] Cardinal Building Owners Association, Inc. v. Asset Recovery and Management Corporation, G.R. No. 149696, July 14, 2006, 495 SCRA 103, 109-110.

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