

**GREEN ASIA CONSTRUCTION AND DEVELOPMENT CORPORATION
AND SPS. RENATO AND DELIA LEGASPI, PETITIONERS, VS. THE
HONORABLE COURT OF APPEALS AND PCI LEASING AND FINANCE,
INC., RESPOND...**

G.R. NO. 163735. November 24, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This special civil action for certiorari impugns the Decision[1] and Resolution[2] of the Court of Appeals, dated March 18, 2004 and May 26, 2004, respectively, in CA-G.R. CV No. 78117, for alleged grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed the Orders[3] of the Regional Trial Court of Angeles City, Branch 57 in LRC Case No. A-124-1088.

The facts are as follows:

On June 8, 1995, petitioner Green Asia Construction and Development Corporation (GACDC), represented by its president, petitioner Renato Legaspi, obtained a loan of P2,600,000[4] from private respondent PCI Leasing and Finance, Inc. (PCILFI).

As security, GACDC, represented by petitioner spouses Renato and Delia Legaspi, executed a real estate mortgage[5] for P450,000 in favor of PCILFI. The mortgage covered three parcels of land located in Barrio Balibago, Angeles City, under TCT Nos. 100362, 100363, and 100364.[6]

When GACDC failed to pay the loan on maturity, the mortgage was foreclosed extrajudicially. PCILFI was the highest bidder at the foreclosure sale. A certificate of sale[7] dated February 3, 1998 was accordingly issued to PCILFI and duly registered with the Registry of Deeds of Angeles City.

On April 12, 2000, PCILFI filed a petition for the issuance of a writ of possession[8] with the Regional Trial Court of Angeles City, Branch 57, docketed as LRC Case No. A-124-1088.

The trial court granted PCILFI's petition, thus:

WHEREFORE, let a writ of possession be issued in favor of petitioner PCI Leasing and Finance, Inc. directing the Sheriff of this Court to eject the Green Asia Construction and Development Corporation and all persons presently staying therein and claiming rights over the premises previously covered by TCT Nos. 100362, 100363, and 100364 of the Registry of Deeds of Angeles City, and to place the petitioner in possession thereof.

SO ORDERED.[9]

On May 8 and May 30, 2002, GACDC filed an urgent omnibus motion[10] and a supplement to the urgent omnibus motion,[11] respectively, praying for the setting aside of the certificate of sale, cancellation of the writ of possession, and the suspension of the implementation of the said writ of possession.

On September 2, 2002, the trial court issued the first assailed order denying for lack of merit the aforesaid motion. GACDC's motion for reconsideration was denied in the second assailed order of October 14, 2002.

GACDC elevated the case to the Court of Appeals, which affirmed the assailed orders of the trial court, to wit:

WHEREFORE, finding no cogent reason to disturb the assailed Orders, the instant appeal is DENIED. The assailed orders dated September 2, 2002 and October 14, 2002 of the Regional Trial Court (RTC) of Angeles City, Branch 57 in LRC Case No. A-124-1088 are AFFIRMED.

SO ORDERED.[12]

Hence, the instant petition raising the following as issues:

- WHETHER OR NOT THE PETITION IN LRC CASE NO. A-124-1088 IS PROPER IN FORM AND IN SUBSTANCE CONSIDERING THAT THE SIGNATORY OF THE VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, FLORECITA R. GONZALES, IS NOT DULY AUTHORIZED AS SUCH BY PCI LEASING AND/OR THERE WAS A FAILURE TO SHOW PROOF OF SUCH AUTHORITY.

- WHETHER APPEAL IS AN APPROPRIATE REMEDY IN ACTIONS FOR THE ISSUANCE OF WRIT OF POSSESSION PURSUANT TO THE PROVISIONS OF ACT 3135, AS AMENDED.[13]

Petitioners contend that the petition for the issuance of writ of possession is not proper in form and substance because the verification and certification on non-forum shopping was not signed by PCILFI or its duly authorized representative. Further, petitioners argue that Section 8 of Act No. 3135[14] clearly provides that appeal in the proceedings in which possession was requested is the appropriate remedy.

Private respondent, however, counters that the finding of the trial court that the questioned petition was sufficient in form and substance is binding on this Court. It stresses that there is no specific requirement in the Rules of Court to include the Secretary's Certificate in the certification on non-forum shopping. Private respondent also argues that the assailed Orders of the trial court are not appealable since they are not in the nature of a judgment on the merits.

After serious consideration of the arguments raised by the parties, we find the petition without merit.

Anent the first issue, it bears stressing that a certification on non-forum shopping is required only in a complaint or a petition which is an initiatory pleading. In this case, the subject petition for the issuance of a writ of possession filed by private respondent is not an initiatory pleading. Although private respondent denominated its pleading as a petition, it is more properly a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but its purpose. The purpose of a motion is not to initiate litigation, but to bring up a matter arising in the progress of the case where the motion is filed.[15]

Indeed, an original action is not necessary to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property. The right to possession is based simply on the purchaser's ownership of the property. Thus, the mere filing of an ex parte motion for the issuance of a writ of possession would suffice. No verification and certification on non-forum shopping need be attached to the motion at all.

Hence, it is immaterial that the verification and certification on non-forum shopping in private respondent's questioned petition was signed by its lawyer. Such insignificant lapse does not render the said petition defective in form.

As to the second issue, Section 8 of Act No. 3135 states:

SEC. 8. 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. (Emphasis supplied.)

Clearly, the remedy of petitioners from the assailed Orders of the trial court was to file a petition to set aside the sale and cancel the writ of possession. Under the aforequoted provision, the aggrieved party may thereafter appeal from any disposition by the court on the matter.[16]

We note, however, that what petitioners filed with the trial court were an urgent omnibus motion and a supplement to the urgent omnibus motion to set aside the sale and cancel the writ of possession. In the said motions, petitioners alleged there was no basis for the extrajudicial foreclosure because the mortgage was void.

Note that the nullity of the mortgage is not covered by the remedy outlined under Section 8 of Act No. 3135. The said provision specifically lists the following exclusive grounds for a petition to set aside the sale and cancel the writ of possession: (1) that the mortgage was not violated; and (2) that the sale was not made in accordance with the provisions of Act No. 3135.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Indeed, regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession.[17]

Petitioners should have filed a separate and independent action for annulment of the mortgage or the foreclosure. The remedy under Section 8 of Act No. 3135 is inapplicable in this case. The trial court thus correctly denied petitioners' motions to set aside the sale and cancel the writ of possession on the ground of nullity of the mortgage.

Hence, in our view, the Court of Appeals did not err, nor did it commit grave abuse of discretion amounting to lack or excess of jurisdiction, in affirming the assailed Orders of the trial court.

WHEREFORE, the petition is DISMISSED. The impugned Decision dated March 18, 2004 and Resolution dated May 26, 2004, of the Court of Appeals in CA-G.R. CV No. 78117 are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 19-32.

[2] Id. at 34.

[3] Id. at 77-82.

[4] Records, p. 5.

[5] Id. at 6-7.

[6] Id. at 12-18.

[7] Id. at 19-22.

[8] Id. at 1-4.

[9] Rollo, p. 76.

[10] Records, pp. 91-98.

[11] Id. at 100-102.

[12] Rollo, pp. 31-32.

[13] Id. at 112.

[14] Act No. 3135 – AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

SEC. 8. 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.

[15] *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005, 459 SCRA 753, 762-763.

[16] *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, March 18, 2005, 453 SCRA 756, 762.

[17] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 198.

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