

EDUARDO L. RAYO, PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY AND BRANCH 223 OF THE REGIONAL TRIAL COURT OF QUEZON CITY, RESPONDENTS.

G.R. NO. 165142. December 10, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review assailing the Resolutions dated June 15, 2004[1] and August 23, 2004[2] of the Court of Appeals in CA-G.R. SP No. 83895 for annulment of judgment.

The pertinent facts are undisputed.

Midas Diversified Export Corp. (Midas), thru its president, Mr. Samuel U. Lee, obtained six (6) loans from private respondent Metropolitan Bank and Trust Company (Metrobank), amounting to P588,870,000 as evidenced by promissory notes. To secure the payment of an P8,000,000 loan, Louisville Realty & Development Corporation (Louisville), thru its president, Mr. Samuel U. Lee, executed in favor of Metrobank, a real estate mortgage over three parcels of land situated at No. 40 Timog Ave., Brgy. Laging Handa, Quezon City, with all the buildings and improvements thereon. The properties are covered by Transfer Certificates of Title (TCT) Nos. N-163455, N-166349 and N-166350 issued by the Registry of Deeds of Quezon City.

When the debtor-mortgagor failed to pay, Metrobank extra-judicially foreclosed the real estate mortgage in accordance with Act No. 3135,[3] as amended. Thereafter, in a public auction, Metrobank was the highest bidder. A Certificate of Sale[4] dated December 11, 2000 was duly registered with the Registry of Deeds of Quezon City on December 13, 2000. When Louisville refused to turn over the real properties, on March 17, 2001, Metrobank filed before the Regional Trial Court (RTC), Branch 223, Quezon City, an ex parte petition[5] for the issuance of a writ of possession docketed as LRC Case No. Q-13915(01). After presentation of evidence ex parte, the RTC granted the petition in an Order[6] dated July 5, 2001, the dispositive portion of which reads as follows:

WHEREFORE, in consideration of the foregoing premises, the instant petition is hereby GRANTED. Upon the filing of a bond in the amount of ONE HUNDRED THOUSAND PESOS ([P]100,000.00), let a Writ of Possession over the properties covered by Transfer Certificates of Title Nos. N-163455, N-166349 & N-166350 issue in favor of the petitioner METROPOLITAN BANK & TRUST COMPANY to be implemented by the Deputy Sheriff of Branch 223, Regional Trial Court of Quezon City by placing the petitioner in possession over the parcels of land with all its improvements.

SO ORDERED.[7]

On September 24, 2001, Metrobank posted the required bond. Consequently, a writ of possession was issued on October 9, 2001. This was partially implemented as to TCT No. N-163455, as evidenced by the Turn-Over Receipt[8] dated December 13, 2002. The writ over the two remaining properties, under TCT Nos. N-166349 and N-166350, were subsequently implemented as evidenced by the Turn-Over Receipt[9] dated December 3, 2003.

Meanwhile, on April 3, 2002, petitioner Eduardo L. Rayo filed a complaint[10] docketed as Civil Case No. Q02-46514 against Metrobank for Nullification of Real Estate Mortgage Contract(s) and Extrajudicial Foreclosure Sale, in the RTC, Branch 99, Quezon City.

On May 13, 2004, petitioner Rayo filed with the Court of Appeals a Petition[11] for Annulment of Judgment on the ground of “absolute lack of due process.” Petitioner alleged that his predecessor, Louisville, was not notified of the proceedings and that Section 7[12] (ex parte motion or petition for the issuance of a writ of possession) of Act No. 3135 is unconstitutional.

On June 15, 2004, the Court of Appeals denied the petition for lack of merit. The Court of Appeals ruled that petitioner is neither the registered owner nor the successor-in-interest of the registered owner; hence, not a real party-in-interest. It also ruled that there is no basis to challenge the constitutionality of Section 7 of Act No. 3135, as amended as it constitutes a collateral attack against said provision. Further, petitioner availed of the wrong remedy in filing Civil Case No. Q02-46514. Petitioner sought reconsideration, but was likewise denied.

Petitioner now comes before us raising the following as primary issue:

WHETHER OR NOT SECTION 7 OF ACT NO. 3135 IS CONTRARY TO THE DUE PROCESS PROVISION OF THE PHILIPPINE CONSTITUTION CONSIDERING THAT SUCH SECTION 7 OF THE LAW PROVIDES OR ALLOWS, ACCORDING TO THIS HONORABLE COURT, FOR AN EX-PARTE PROCEEDING WHICH IS A “JUDICIAL PROCEEDING BROUGHT FOR THE BENEFIT OF ONE PARTY ONLY, AND WITHOUT NOTICE TO, OR CONSENT BY ANY PERSON ADVERSELY INTERESTED” “OR A PROCEEDING WHEREIN RELIEF IS GRANTED WITHOUT AN OPPORTUNITY FOR THE PERSON AGAINST WHOM THE RELIEF IS SOUGHT TO BE HEARD,” AS HELD IN THE CASE OF GOVERNMENT SERVICE INSURANCE SYSTEM VS. COURT OF APPEALS, 169 SCRA 244 @ 255, JANUARY 20, 1989.[13]

He also raises the following as secondary issues:

I.

WHETHER OR NOT THE PETITIONER HAS THE LEGAL PERSONALITY TO SEEK THE ANNULMENT OF JUDGMENT IN [THE] SUBJECT LRC CASE NO. Q-13915(01).

II.

WHETHER OR NOT PRIVATE RESPONDENT VIOLATED THE RULE AGAINST FORUM-SHOPPING WHEN IT DID NOT INFORM THE HONORABLE BRANCH 223 OF THE REGIONAL TRIAL COURT OF QUEZON CITY REGARDING THE FILING OF CIVIL CASE NO. Q-02-46514 FOR NULLIFICATION OF REAL ESTATE MORTGAGE CONTRACT AND THE EXTRA-JUDICIAL FORECLOSURE SALE OF THE SAME SUBJECT REAL PROPERTIES AND THE PENDENCY OF THE SAME BEFORE THE HONORABLE BRANCH 99 OF THE SAME REGIONAL TRIAL COURT.[14]

Stated simply, the issues raised are: (1) Does petitioner have the legal personality in the annulment of judgment proceedings? (2) Is Section 7 of Act No. 3135, as amended, unconstitutional? (3) Is respondent guilty of forum-shopping?

Petitioner insists that contrary to the ruling of the Court of Appeals, he has the legal personality to institute the annulment of judgment case against Metrobank, considering that the March 25, 2002 deed of assignment he entered into with Louisville and Winston Linwy L. Chua makes him a co-assignee over the subject real properties.

For its part, Metrobank claims that it was not a party to the deed of assignment among Louisville, Chua and petitioner, hence, it has no privity of contract with petitioner Rayo. Moreover, Metrobank points out that the real

properties had already been extrajudicially foreclosed when petitioner and his assignors executed the deed of assignment.

Under Section 2,[15] Rule 3 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, or one “who stands to be benefited or injured by the judgment in the suit.”[16] A real party-in-interest is one with “a present substantial interest” which means such interest of a party in the subject matter of the action as will entitle him, under the substantive law, to recover if the evidence is sufficient, or that he has the legal title to demand.[17]

Now, is petitioner Rayo a real party-in-interest? Initially, we recognized herein petitioner as the co-assignee of the subject real properties as shown in the March 25, 2002 deed of assignment. However, while petitioner would be injured by the judgment in this suit, we find that petitioner has no present substantial interest to institute the annulment of judgment proceedings and nullify the order granting the writ of possession.

First, there was no violation of petitioner’s right to constitutional due process. In a long line of cases,[18] we have consistently ruled that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property under Section 7 of Act No. 3135, as amended is a ministerial duty of the court. The purchaser of the foreclosed property, upon ex parte application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period and with more reason, after the expiration of the redemption period.

An ex parte petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a “judicial process” as contemplated in Article 433[19] of the Civil Code. It is a judicial proceeding for the enforcement of one’s right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party “sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.” It is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended, and is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard. No notice is needed to be served upon persons interested in the subject property.[20]

Second, in the deed of assignment, petitioner also acknowledged that the subject real properties were already sold at various extrajudicial foreclosure sales and bought by Metrobank. Clearly, petitioner recognized the prior existing right of Metrobank as the mortgagee-purchaser over the subject real properties.[21] Actual knowledge of a prior mortgage with Metrobank is equivalent to notice of registration[22] in accordance with Article 2125[23] of the Civil Code. Conformably with Articles 1312[24] and 2126[25] of the Civil Code, a real right or lien in favor of Metrobank had already been established, subsisting over the properties until the discharge of the principal obligation, whoever the possessor(s) of the land might be.[26] As petitioner is not a party whose interest is adverse to that of Louisville, there was no bar to the issuance of a writ of possession to Metrobank. It does not matter that petitioner was not specifically named in the writ of possession nor notified of such proceedings.

Third, we also note that petitioner availed of the wrong remedy in filing Civil Case No. Q02-46514, for nullification of real estate mortgage and extrajudicial foreclosure sale, more than six (6) months after the issuance of the writ of possession considering the mandate of Section 8[27] of Act No. 3135, as amended. Hence, even petitioner’s action for annulment of judgment cannot prosper as it cannot be a substitute for a lost remedy.

Now, petitioner is challenging the constitutionality of Section 7 of Act No. 3135, as amended. He avers that Section 7 violates the due process clause because, by the mere filing of an ex parte motion in the proper cadastral court, the purchaser in a foreclosure sale is allowed to obtain possession of the foreclosed property during the

redemption period.

The Court of Appeals ruled that petitioner's attempt to challenge the constitutionality of Section 7 of Act No. 3135, as amended, constitutes a collateral attack that is not allowed. We fully agree with the appellate court's ruling. For reasons of public policy, the constitutionality of a law cannot be attacked collaterally.[28]

With regard to forum-shopping; forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.[29] The issuance of the writ of possession being a ministerial function, and summary in nature, it cannot be said to be a judgment on the merits. It is only an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by *litis pendentia* or *res judicata*. [30] Clearly, insofar as LRC Case No. Q-13915(01) and Civil Case No. Q02-46514 are concerned, Metrobank is not guilty of forum-shopping.

WHEREFORE, the petition is DENIED for lack of merit. The assailed Resolutions dated June 15, 2004 and August 23, 2004 of the Court of Appeals in CA-G.R. SP No. 83895 are hereby AFFIRMED. Costs against the petitioner.

SO ORDERED.

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

[1] Rollo, pp. 24-31. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Josefina Guevara-Salonga and Juan Q. Enriquez, Jr. concurring.

[2] *Id.* at 38.

[3] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on March 6, 1924.

[4] Rollo, pp. 106-107.

[5] *Id.* at 70-75.

[6] *Id.* at 66-69.

[7] *Id.* at 68.

[8] *Id.* at 259.

[9] *Id.* at 260.

[10] *Id.* at 116-130.

[11] *Id.* at 39-65.

[12] Sec. 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 form of an *ex parte* motion in the registration or cadastral proceedings if the

property is registered, or in special proceedings in the 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 the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-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.

[13] Rollo, pp. 227-228.

[14] *Id.* at 228.

[15] SEC. 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[16] *Caro v. Sucaldito*, G.R. No. 157536, May 16, 2005, 458 SCRA 595, 605.

[17] See *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 564-565.

[18] *Ancheta v. Metropolitan Bank & Trust Company, Inc.*, G.R. No. 163410, September 16, 2005, 470 SCRA 157; *Paderes v. Court of Appeals*, G.R. Nos. 147074 and 147075, July 15, 2005, 463 SCRA 504; *Arquiza v. Court of Appeals*, G.R. No. 160479, June 8, 2005, 459 SCRA 753; *Development Bank of the Philippines v. Gatal*, G.R. No. 138567, March 4, 2005, 452 SCRA 697; *Idolor v. Court of Appeals*, G.R. No. 161028, January 31, 2005, 450 SCRA 396; *De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203; *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189; *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759.

[19] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

[20] *De Vera v. Agloro*, *supra* at 215.

[21] Rollo, p. 142.

[22] See *Rehabilitation Finance Corp. v. Javillonar, et al.*, 107 Phil 664, 668 (1960).

[23] Art. 2125. In addition to the requisites stated in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

The persons in whose favor the law establishes a mortgage have no other right than to demand the execution and the recording of the document in which the mortgage is formalized.

[24] Art. 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws.

[25] 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.

[26] See *Paderes v. Court of Appeals*, *supra* at 512.

[27] 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 ours.)

[28] Philippine National Bank v. Palma, G.R. No. 157279, August 9, 2005, 466 SCRA 307, 322-323.

[29] Melo v. Court of Appeals, G.R. No. 123686, November 16, 1999, 318 SCRA 94, 100.

[30] Arquiza v. Court of Appeals, *supra* note 18, at 765.

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