

**SPOUSES JEANETTE MALIWAT AND RUFINO MALIWAT,
PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY,
RESPONDENT.**

G.R. NO. 165971. September 03, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] of the Court of Appeals (Fourteenth Division) dated March 22, 2004 in CA-G.R. SP No. 77344.

The facts of the case as found by the Court of Appeals are:

Spouses Rufino and Jeanette Maliwat, petitioners, obtained a loan from the Metropolitan Bank & Trust Company, respondent, in the amount of P23,850,000.00 as evidenced by a promissory note dated August 13, 1997.

To secure the loan, petitioners executed three (3) real estate mortgages over their land located in Malinta, Valenzuela City covered by Transfer Certificate of Title No. (T-226742) 9827.

Petitioners failed to pay their loan, prompting respondent to institute extra-judicial foreclosure proceedings. On October 14, 1999, the lot was sold at public auction. Respondent was the highest bidder. Eventually, a Certificate of Sale was issued in its favor.

Despite demand by respondent, petitioners refused to turn over to it the property. Thus, on July 20, 2000, respondent filed with the Regional Trial Court (RTC), Branch 75, Valenzuela City a petition for issuance of a writ of possession, docketed as AD Case No. 55-V-00. After the bank had presented its evidence, the trial court granted its petition and issued a writ of possession in its favor.

Meanwhile, on October 19, 2001, petitioners filed with the RTC, Branch 172, Valenzuela City, a complaint for annulment of mortgages, foreclosure proceedings and auction sale with prayer for a temporary restraining order and preliminary injunction against respondent, docketed as Civil Case No. 262-V-01. Upon their motion, this case was consolidated with AD Case No. 55-V-00 for issuance of a writ of possession pending before Branch 75.

On September 11, 2002, the RTC, Branch 75 issued an Order directing the issuance of a writ of preliminary injunction enjoining respondent and its representatives or any person acting for and its behalf from enforcing the writ of possession issued on September 6, 2001 against petitioners.

Respondent filed a motion for reconsideration but this was denied by the trial court in its Order of March 21, 2003. Hence, petitioners filed with the Court of Appeals a petition for certiorari alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in enjoining the enforcement of the writ of possession.

On March 22, 2004, the Court of Appeals rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing the petition is GRANTED. The assailed Orders dated September 11, 2002 and March 21, 2003 of Branch 75, Regional Trial Court of Valenzuela City, in Civil Case No. 262-V-01, are ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of preliminary injunction is hereby lifted for lack of basis both in fact and in law.

SO ORDERED.

Petitioners filed a motion for reconsideration but it was denied by the appellate court.

Hence, this petition.

The core issue for our resolution is whether the issuance of a writ of possession by the trial court may be enjoined by a writ of preliminary injunction also issued by the same court.

Section 7 of Act No. 3135,[2] as amended by Act No. 4118, provides:

SEC. 7. 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 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 such cases the clerk of court shall, upon the filing of such petition, collect the fees specified in the 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.

A writ of possession is a writ of execution commanding the sheriff to enter the land and give possession thereof to the person entitled under the judgment.[3] It issues under the following circumstances: (1) land registration proceedings under Sec. 17 of Act No. 496; (2) judicial foreclosure provided the debtor is in possession of the mortgaged property and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135, as amended. The case at bar falls under the second cited instance.

In *De Gracia v. San Jose*,[4] we held that under Section 7 of Act No. 3135, as amended,[5] the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.

In *Navarra v. Court of Appeals*,[6] we ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year period of redemption provided that he files an indemnity bond. After the lapse of said period with no redemption having been made, the right becomes absolute and may be demanded without the posting of a bond. Then in *Vaca v. Court of Appeals*,[7] we reaffirmed our ruling in *Navarra*.

It is thus clear that during and after the period of redemption, the purchaser at a foreclosure sale is entitled as of

right to a writ of possession. Thus, in *Kho v. Court of Appeals*,^[8] we ruled that an injunction to prohibit the issuance of a writ of possession is utterly out of place. And once the writ of possession has been issued, the court has no alternative but to enforce the said writ without delay.^[9] Verily, we find that the Court of Appeals did not err in holding that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in enjoining the implementation of the writ of possession issued in respondent's favor.

WHEREFORE, we DENY the petition. The Decision of the Court of Appeals (Fourteenth Division) dated March 22, 2004 in CA-G.R. SP No. 77344 is AFFIRMED in toto. Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1]Rollo, pp. 28-33. Penned by Associate Justice Sergio L. Pestaño with Associate Justice Marina L. Buzon and Associate Justice Aurora Santiago-Lagman concurring.

[2]Entitled "An Act To Regulate The Sale Of Property Under Special Powers Inserted In or Annexed To Real Estate Mortgages."

[3]MORENO, PHIL. LAW DICTIONARY (3rd Ed. 1988) 1014.

[4]94 Phil. 623 (1954), cited in *Ong v. Court of Appeals*, 333 SCRA 189 (2000).

[5] *Supra*, footnote 2.

[6]G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[7]G.R. No. 109672, July 14, 1994, 234 SCRA 146.

[8]G.R. No. 83498, October 22, 1991, 203 SCRA 160.

[9]*Philippine National Bank v. Adil*, G.R. No. 52823, November 2, 1982, 118 SCRA 110.

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