

LZK HOLDINGS AND DEVELOPMENT CORP., PETITIONER, VS. PLANTERS DEVELOPMENT BANK, RESPONDENT.

G.R. NO. 167998. April 27, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review assailing the Decision[1] dated March 15, 2005 of the Court of Appeals in CA-G.R. SP No. 60944 and its Resolution[2] dated May 5, 2005 denying the motion for reconsideration. The appellate court had reversed the Order[3] dated May 11, 2000 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 66 which held in abeyance the resolution of the ex parte petition for issuance of a writ of possession.

The antecedent facts in this case are as follows.

Petitioner LZK Holdings and Development Corporation (LZK) obtained a loan of P40,000,000 from respondent Planters Development Bank (Planters Bank), secured by a mortgage on a land situated in Catbangan, San Fernando City, La Union, with Transfer Certificate of Title No. T-45337.

When LZK failed to pay the loan, extrajudicial foreclosure proceedings against the mortgaged property were initiated by Planters Bank. At the auction sale of September 21, 1998, Planters Bank was the highest bidder of the foreclosed property. The sale was registered on March 16, 1999.

Thereafter, LZK filed a complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory notes and damages, docketed as Civil Case No. 6215 with the RTC of San Fernando City, La Union, Branch 29. But in an Order dated June 23, 1998, it was dismissed for improper venue. On December 27, 1999, Planters Bank filed an ex parte petition for the issuance of a writ of possession with the RTC of San Fernando City, La Union, Branch 66.

In the meantime, LZK filed another complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory notes, and damages, this time docketed as Civil Case No. 99-741 with the RTC of Makati City, Branch 150. LZK also filed an urgent motion for the issuance of a writ of preliminary injunction. Three days before the one-year redemption period expired, the Makati RTC issued a temporary restraining order dated March 13, 2000, effective for twenty days from said date, enjoining Planters Bank from consolidating title over the property. On April 3, 2000, the trial court ordered the issuance of the writ of preliminary injunction upon posting of a bond of P40,000,000, and suspended the consolidation of title. However, LZK failed to post the required bond. Planters Bank filed a petition for certiorari docketed as CA-G.R. SP No. 59327 with the Court of Appeals assailing the said order. The Court of Appeals affirmed the order of the Makati RTC. Planters Bank thereafter filed a petition for review docketed as G.R. No. 164536 with the Supreme Court but was denied for failure to show reversible error. It became final and executory on January 19, 2005.

Meanwhile, Planters Bank, through its authorized officers, executed a final deed of sale[4] and an affidavit of

consolidation of ownership[5] on April 24, 2000. On May 11, 2000, the San Fernando RTC held in abeyance the resolution of the ex parte petition for the issuance of the writ of possession in view of the order of the Makati RTC suspending the consolidation of title. Planters Bank moved for reconsideration but it was denied in an order dated September 1, 2000.

In an Order dated June 20, 2000, the Makati RTC issued the writ of preliminary injunction upon LZK's posting of a bond.

Planters Bank filed a petition for certiorari before the Court of Appeals assailing the order of the San Fernando RTC. The appellate court granted the petition and annulled and set aside said orders. It ratiocinated that the writ of possession issues as a matter of course upon motion and approval of the corresponding bond. It also ruled that the order of the Makati RTC was not directed to the San Fernando RTC and merely enjoined the consolidation of title.[6]

Hence the instant petition where petitioner assigns the following as errors:

- THE COMPLAINT FOR ANNULMENT OF THE MORTGAGE CONTRACT, PROMISSORY NOTES AND EXTRAJUDICIAL FORECLOSURE WAS FILED WAY AHEAD OF THE EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION.
- THE WRIT OF PRELIMINARY INJUNCTION ENJOINING THE BANK FROM EFFECTING THE CONSOLIDATION OF TITLE TO THE FORECLOSED PROPERTY WAS ISSUED BY THE RTC-MAKATI CITY, BEFORE THE RTC-[SAN FERNANDO CITY] COULD ACT ON THE APPLICATION FOR A WRIT OF POSSESSION.
- THE APPELLATE COURT...MISAPPLIED THE DOCTRINE OF NON-INTERFERENCE WITH THE ORDERS, DECREES OR JUDGMENTS OF COURTS OF COORDINATE AND CONCURRENT JURISDICTION.
- THE HONORABLE [COURT OF APPEALS] FAILED TO TAKE INTO ACCOUNT THE PREVIOUS STAND OF THE BANK AS TO THE PROPER VENUE OF ANY DISPUTE BETWEEN THE PARTIES.
- THE APPELLATE COURT LIKEWISE FAILED TO CONSIDER THE FINAL AND EXECUTORY RULING OF THE TRIAL COURT DECLARING THE CONSOLIDATED TITLE OF THE BANK TO BE NULL AND VOID, AND CONSEQUENTLY, THE BANK IS NOT ENTITLED TO A WRIT OF POSSESSION.
- THE BANK AND ITS LAWYERS HAVE GLARINGLY VIOLATED THE RULE AGAINST FORUM-SHOPPING, WHEN IT RAISED IDENTICAL OR CLOSELY RELATED ISSUES IN SEPARATE PETITIONS FILED WITH THE APPELLATE COURT.[7]

Simply stated, the issue in this case is whether respondent bank is entitled to the possession of the foreclosed property?

Petitioner contends that the appellate court's decision was in error when it disregarded the writ of preliminary injunction issued by the Makati RTC which was already upheld by the Supreme Court.[8] Moreover, said petitioner, in issuing the writ of preliminary injunction, the Makati RTC did not interfere with the judgments or decrees of a court of concurrent jurisdiction considering that the San Fernando RTC had yet to resolve the ex parte petition for the issuance of the writ of possession.[9]

Petitioner also contends that the ministerial duty of the court to issue the writ of possession only arises when title to the property has been consolidated in the name of the applicant. It adds that the consolidated title of respondent bank had been declared null and void since the consolidation was in violation of the order of injunction previously

issued by the Makati RTC. Consequently, according to petitioner, respondent bank has no right to seek the issuance of the writ of possession.[10]

Further, petitioner claims that the various petitions for certiorari filed with the Court of Appeals, docketed as CA-G.R. SP No. 59327,[11] CA-G.R. SP No. 61262,[12] CA-G.R. SP No. 67410,[13] and CA-G.R. SP No. 60944, constitute forum shopping.

Respondent bank for its part maintains that the appellate court did not commit reversible error. It argues that: (1) the earlier filing and pendency of an action for annulment of extrajudicial foreclosure, mortgage contract, promissory notes, and damages will not affect the right to possess an extra-judicially foreclosed property;[14] (2) it is the ministerial duty of the court to grant the petition for the issuance of writ of possession based on Act No. 3135, as amended;[15] (3) petitioner lost its right over the mortgaged property when it failed to redeem the same within one year from registration of the sale;[16] (4) the writ of injunction issued by the Makati RTC cannot be used to interfere in or suspend the proceedings in the San Fernando RTC;[17] (5) the filing of the four petitions before the Court of Appeals did not constitute forum shopping considering the main case has not yet reached the pre-trial stage and only the preliminary matters had been resolved;[18] and (6) it can still take possession of the subject property even if title to it was not yet consolidated.[19]

Essential to note, the injunction granted by the Makati RTC and upheld by this Court mainly enjoined respondent from consolidating its title over the foreclosed property. It is not correct for petitioner to assume that the injunction also prohibits respondent from taking possession of the property.

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.[20] It may be issued in case of an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118.[21]

Under said provision, the writ of possession may be issued to the purchaser in a foreclosure sale either within the one-year redemption period upon the filing of a bond, or after the lapse of the redemption period, without need of a bond.[22]

We have consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ 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 trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8[23] of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.[24]

To emphasize the writ's ministerial character, we have in previous cases disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[25]

A writ of possession may also be issued after consolidation of ownership of the property in the name of the purchaser. It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. Hence, he is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. In such a case, the bond required in Section 7 of Act No. 3135 is no longer necessary. Possession of the land then becomes an absolute right of the purchaser as

confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[26]

Inasmuch as respondent was enjoined to consolidate its title over the foreclosed property, possession thereof did not become an absolute right of respondent. The temporary restraining order issued on March 13, 2000 and the writ of injunction that followed effectively halted the tolling of the redemption period three days short of its expiration.[27]

Nonetheless, respondent, as the purchaser in the foreclosure sale, may apply for a writ of possession during the redemption period. In fact, it did apply for a writ on December 27, 1999, well within the redemption period. The San Fernando RTC, given its ministerial duty to issue the writ, therefore, should have acted on the ex parte petition. The injunction order is of no moment because it should be understood to have merely stayed the consolidation of title. As previously stated, an injunction is not allowed to prohibit the issuance of a writ of possession. Neither does the pending case for annulment of foreclosure sale, mortgage contract, promissory notes and damages stay the issuance of said writ.

Lastly, the trial on the merits has not even started. Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, petitioner is bereft of valid title and of the right to prevent the issuance of a writ of possession to respondent. Until then, it is the trial court's ministerial function to grant the possessory writ to respondent.[28]

WHEREFORE, the petition is hereby DENIED for lack of merit. The Decision dated March 15, 2005 of the Court of Appeals in CA-G.R. SP No. 60944 and its Resolution dated May 5, 2005 denying the motion for reconsideration are AFFIRMED.

Costs against petitioner.

SO ORDERED.

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

[1] Rollo, pp. 29-34. Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid concurring.

[2] Id. at 35.

[3] CA rollo, p. 14.

[4] Rollo, pp. 101-102.

[5] Id. at 103-104.

[6] Id. at 33.

[7] Id. at 13.

[8] Id. at 129-130.

[9] Id. at 132.

[10] Id. at 133-135.

[11] Id. at 120. Respondent assailed the orders dated April 3, 2000 and June 2, 2000 of the Makati RTC, granting

the issuance of the writ of preliminary injunction and declaring the consolidated title null and void, respectively.

[12]Id. at 121. Respondent assailed the orders dated July 27, 2000 and September 25, 2000 of the Makati RTC, admitting the Supplemental Complaint of LZK and denying the motion for reconsideration thereof, respectively.

[13] Id. Respondent assailed the orders dated April 19, 2001 and October 11, 2001 of the Makati RTC, directing it to surrender the original copies of certain documents for examination by a handwriting expert and reiterating the order of June 2, 2000, respectively.

[14] Id. at 150.

[15] Id. at 153.

[16] Id. at 153-154.

[17] Id. at 156.

[18] Id. at 157-158.

[19] Id. at 159-160.

[20]Ong v. Court of Appeals, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 195.

[21] AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES."

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 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 Number 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.

[22] Supra note 18.

[23] 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.

[24] Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[25] Chailease Finance Corporation v. Ma, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253.

[26]Id. at 253-254.

[27]See Unionbank of the Philippines v. Court of Appeals, G.R. No. 133366, August 5, 1999, 311 SCRA 795, 803.

[28] Yulienco v. Court of Appeals, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 154.

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