

## **EQUITABLE PCI BANK, INC., PETITIONER, VS. DNG REALTY AND DEVELOPMENT CORPORATION, RESPONDENT.**

*G.R. No. 168672. August 08, 2010*

Ponente: PERALTA, J.

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### **PERALTA, J.:**

Before us is a petition for review on certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by petitioner Equitable PCI Bank, Inc., seeking to set aside the June 23, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 86950.

The undisputed facts, as found by the CA, are as follows:

(Respondent) DNG Realty and Development Corporation (DNG) obtained a loan of P20M from x x x Equitable PCI Bank (EPCIB) secured by a real estate mortgage over the 63,380 sq. meter land of the former situated in Cabanatuan City. Due to the Asian Economic Crisis, DNG experienced liquidity problems disenabling DNG from paying its loan on time. For this reason, EPCIB sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on 30 June 2003 before the Office of the Ex-Officio Sheriff. On 4 September 2003, the mortgage property was sold at public auction, which was eventually awarded to EPCIB as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of EPCIB.

On October 21, 2003, DNG filed a petition for rehabilitation under Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation before the Regional Trial Court, Branch 28, docketed as Special Proceeding No. 125. Pursuant to this, a Stay Order was issued by RTC Branch 28 on 27 October 2003. The petition for rehabilitation was then published in a newspaper of general circulation on 19 and 26 November 2003.

On the other hand, EPCIB caused the recording of the Sheriff's Certificate of Sale on 3 December 2003 with the Registry of Deeds of Cabanatuan City. EPCIB executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of DNG (TCT No. 57143). Consequently, the Register of Deeds cancelled DNG's title and issued TCT No. T-109482 in the name of EPCIB on 10 December 2003. This prompted DNG to file Civil Case No. 4631 with RTC-Br. 28 for annulment of the foreclosure proceeding before the Office of the Ex-Officio Sheriff. This case was dismissed for failure to prosecute.

In order to gain possession of the foreclosed property, EPCIB on 17 March 2004 filed an Ex-Parte Petition for Issuance of Writ of Possession docketed as Cadastral Case No. 2414-AF before RTC Br. 23 in Cabanatuan City. After hearing, RTC-Br. 23 on 6 September 2004 issued an order directing the issuance of a writ of possession. On 4 October 2004, RTC-Br. 23 issued the Writ of Possession. Consequently, the Office of the Ex-Officio Sheriff issued the Notice to Vacate dated 6 October 2004.[2]

On October 15, 2004, respondent filed with the CA a petition for certiorari, prohibition and mandamus with prayer for the issuance of temporary restraining order/ preliminary injunction entitled DNG Realty and Development Corporation v. Hon. LYDIA BAUTO HIPOLITO, in her capacity as the Presiding Judge of Branch 23, Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE EX-OFFICIO SHERIFF of the Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE REGISTER OF

DEEDS OF CABANATUAN CITY; and EQUITABLE PCIBANK, INC. The petition for certiorari sought to nullify (1) the affidavit of consolidation of ownership dated December 2, 2003; (2) the cancellation of DNG's TCT No. T-57143 covering the mortgaged property and the issuance of TCT No. T-109482 in favor of petitioner EPCIB by the Register of Deeds of Cabanatuan City; (3) the Order dated September 6, 2004 issued by the RTC, Branch 23, directing the issuance of the writ of possession and the writ of possession issued pursuant thereto; and (4) the sheriff's Notice to Vacate dated October 6, 2004, while the petition for prohibition sought to enjoin petitioner EPCIB, their agents and representatives from enforcing and implementing the above-mentioned actions. And the petition for mandamus sought to require petitioner EPCIB to cease and desist from taking further action both in the foreclosure proceedings as well as in Cadastral Case No. 2414-AF, where the writ of possession was issued until the petition for rehabilitation pending before Branch 28 of the Regional Trial Court (RTC) of Cabanatuan City has been terminated or dismissed.

On October 22, 2004, the CA issued a temporary restraining order (TRO).[3]

After the parties filed their respective pleadings, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the instant petition is GRANTED. The Order of 6 September 2004 directing the issuance of a writ of possession; the Writ of Possession issued pursuant thereto; and the Notice to Vacate are all REVERSED and SET ASIDE for being premature and untimely issued. Lastly, the Transfer Certificate of Title No. T-109482 under the name of Equitable PCI Bank is hereby ordered CANCELLED for equally being issued prematurely and untimely, and in lieu thereof the Transfer Certificate of Title No. 57143 is ordered REINSTATED. [4]

In finding the petition meritorious, the CA stated that under A.M. No. 00-8-10-SC adopting the Interim Rules of Procedure on Corporate Rehabilitation, all petitions for rehabilitation by corporations, partnerships and associations under Presidential Decree (PD) 902-A, as amended by Republic Act (RA) 8799, were directed to be transferred from the Securities and Exchange Commission (SEC) to the RTCs, and allowed the RTCs to issue a stay order, i.e., staying enforcements of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the debtor. And under Section 6 (c) of PD 902-A, the Commission (now the RTC) upon appointment of a management committee, rehabilitation receiver, board or body, all actions or claims against the corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. The CA, relying in *Bank of the Philippine Islands v. Court of Appeals (BPI v. CA)*[5] found no merit to petitioner EPCIB's claim that the foreclosure sale of the property was made prior to the issuance of the Stay Order and was, therefore, fait accompli; and that with the consummation of the extrajudicial foreclosure sale, all the valid and legal consequences of such could no longer be stayed. The CA ruled that after the issuance of the Stay Order, effective from the date of its issuance, all subsequent actions pertaining to respondent DNG's Cabanatuan property should have been held in abeyance. Petitioner EPCIB should have refrained from executing its Affidavit of Consolidation of ownership or filing its ex-parte petition for issuance of a writ of possession before the RTC Branch 23; respondent Office of the Register of Deeds of Cabanatuan City should not have cancelled respondent DNG's title and issued a new one in petitioner EPCIB's name; and that respondent Judge and the Ex-Officio Sheriff should have abstained from issuing the writ of possession and the notice to vacate, respectively.

The CA found no forum shopping committed by respondent DNG as Civil Case No. 4631 filed before Branch 28 sought to annul the foreclosure sale and the certificate of sale over respondent DNG's property, while Cadastral Case No. 2414-AF instituted by petitioner EPCIB, was an ex-parte petition to wrest possession of the same property from respondent DNG. On the other hand, the present petition sought only to stay all proceedings on

respondent DNG's property after the Stay Order was issued. Thus, the causes of action and the reliefs sought in each of those proceedings were not identical.

The CA also found that, despite the Stay Order issued, petitioner EPCIB's over-zealousness in consolidating its title and taking possession of the respondent's property left the latter without any plain, speedy and adequate remedy but to file the petition.

Dissatisfied, petitioner EPCIB filed the instant petition where it raises the errors committed by the CA as follows:

THE COURT OF APPEALS COMMITTED GRAVE, PALPABLE, AND REVERSIBLE ERRORS IN TAKING COGNIZANCE OF AN ORIGINAL PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS, AND IN ISSUING A TEMPORARY RESTRAINING ORDER, AGAINST THE MINISTERIAL IMPLEMENTATION OF A WRIT OF POSSESSION.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE 1994 CASE OF BPI VS. CA IS SQUARELY IN POINT IN THE PRESENT CONTROVERSY.

THE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN HOLDING THAT SINCE THE CONSOLIDATION OF TITLE, THE APPLICATION FOR THE ISSUANCE OF A WRIT OF POSSESSION, THE CANCELLATION OF RESPONDENT'S TITLE AND THE ISSUANCE OF A NEW ONE UNDER EPCIBANKS'S NAME, THE ISSUANCE OF THE WRIT OF POSSESSION, AND THE SERVICE OF A NOTICE TO VACATE HAVE BEEN MADE AFTER THE ISSUANCE OF THE STAY ORDER, THE SAME WERE UNTIMELY AND PREMATURE.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE RESPONDENT HAD NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY.[6]

Petitioner contends that upon failure to redeem the foreclosed property, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds; that the issuance and implementation of a writ of possession are both ministerial in character, thus, a writ of certiorari, prohibition and mandamus which respondent DNG filed with the CA and which were all directed to address the abuse of discretion allegedly committed by the cadastral court and the sheriff will not lie; and that the CA erred in finding grave abuse of discretion or excess of jurisdiction upon the cadastral court which issued the writ of possession and the sheriff who implemented the same, as they acted in compliance with the express provision of Act 3135 as amended.

Petitioner claims that the CA's reliance in BPI v. CA in ruling that all subsequent actions pertaining to respondent DNG's Cabanatuan property, i.e., consolidation of ownership, cancellation of respondent's title and the issuance of a new title in petitioner's name and the issuance of a writ of possession by Branch 23 of the RTC in Cadastral Case No. 2414-F, and the notice to vacate, which were all made after the issuance of the Stay Order by the rehabilitation court, should have been held in abeyance is erroneous. Petitioner EPCIB cites the case of Rizal Commercial Banking Corporation v. Intermediate Appellate Court (RCBC v. IAC)[7] as the applicable jurisprudence in this case. Petitioner argues that since the extrajudicial foreclosure sale of respondent DNG's property was conducted on September 4, 2003, or prior to the filing of the petition for rehabilitation on October 21, 2003 and the issuance of the Stay Order on October 27, 2003, the enforcement of a creditor claim via an extrajudicial foreclosure sale conducted on September 4, 2003 could no longer be stayed for having been fully consummated prior to the issuance of the Stay Order.

Petitioner argues that the CA erred in its finding that there was no other plain, speedy and adequate remedy

available to respondent but to file the petition for certiorari, prohibition and mandamus with the CA, since Section 8 of Act 3135 provides for the proper remedy against an order granting the issuance of a writ of possession.

In its Comment, respondent echoed the findings made by the CA. Petitioner filed its Reply.

The issues for resolution are (1) whether respondent DNG's petition for certiorari, prohibition and mandamus filed in the CA was a proper remedy; (2) whether the CA correctly held that all subsequent actions pertaining to respondent DNG's Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court.

We answer both issues in the negative.

Anent the first issue, respondent DNG filed before the CA a petition for certiorari, prohibition and mandamus with prayer for the issuance of a TRO and a writ of preliminary injunction seeking to annul the RTC Order dated September 6, 2004 issued in Cadastral Case No. 2414-AF, i.e., in re ex-parte petition filed by petitioner EPCIB for the issuance of a writ of possession, which ordered the issuance of the writ of possession in petitioner EPCIB's favor as the new registered owner of the property covered by TCT No. T-109482. We find that the CA erred in acting on the petition. Act 3135, as amended by Act 4118, which regulates the methods of effecting an extrajudicial foreclosure of mortgage explicitly authorizes the issuance of such writ of possession.[8] Section 7 of Act 3135 as amended provides:

Section 7. Possession during redemption period. - In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 the 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 court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of 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.

Section 7 of Act 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the redemption period. Upon the purchaser's filing of the ex parte petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.[9] But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.[10] Thus, if under Section 7 of Act 3135 as amended, the RTC has the power during the period of redemption to issue a writ of possession on the ex parte application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser.[11] Thus, after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and the issuance of such writ of possession to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[12] The basis of this right to possession is the purchaser's ownership of the property.[13]

Respondent's petition for certiorari, prohibition and mandamus filed with the CA was not the proper remedy. A

special civil action for certiorari and prohibition could be availed of only if a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[14]

In this case, respondent DNG failed to redeem the foreclosed property within the reglementary period; thus, petitioner EPCIB consolidated its ownership over the property in its favor and annotated the same in respondent's title. Thus, respondent DNG's title was cancelled and a new title was issued in petitioner EPCIB's name. The RTC's issuance of a writ of possession in favor of petitioner EPCIB as the new registered owner of the subject property was in compliance with the express provisions of Act 3135 as amended. It cannot, therefore, be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction.[15]

In *Santiago v. Merchants Rural Bank of Talavera, Inc.*,[16] we said that:

Case law has it that after the consolidation of title in the name of the respondent as the buyer of the property, upon failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to the purchaser is merely a ministerial function. As such, the court neither exercises its discretion nor judgment. Indeed, in an avuncular case, we held that:

The right of the petitioner to the possession of the property is clearly unassailable. It is founded on its right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, petitioner's right over the property has become absolute, vesting upon him the right of possession over an enjoyment of the property which the Court must aid in effecting its delivery. After such delivery, the purchaser becomes the absolute owner of the property. As We said in *Tan Soo Huat vs. Ongwico*, the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the Sheriff's inescapable duty to place him in such possession.[17]

Thus, in *Philippine National Bank v. Sanao Marketing Corporation*,[18] we ruled that:

x x x The judge issuing the order following these express provisions of [Act 3135] cannot be charged with having acted without jurisdiction or with grave abuse of discretion. If only to stress the writ's ministerial character, we have, in previous cases, disallowed injunction to prohibit its issuance, just as we have held that the issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[19]

Moreover, a writ of certiorari, prohibition and mandamus will only be issued if there is neither appeal nor any plain, speedy or adequate relief in the ordinary course of law. However, Section 8 of Act 3135 provides the plain, speedy, and adequate remedy in opposing the issuance of a writ of possession.[20] The provision reads:

Section 8. Setting aside of sale and writ of possession.  $\hat{1}^{\circ}$  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.

Clearly, a party may file a petition to set aside the foreclosure sale and to cancel the writ of possession in the same proceedings where the writ of possession was requested.[21] The aggrieved party may thereafter appeal from any disposition by the court on the matter.[22]

In this case, respondent DNG had the right to file a petition to set aside the sale and writ of possession issued by the RTC and to file an appeal in case of an adverse ruling. However, respondent DNG did not file such petition and, instead, filed the petition for certiorari, prohibition and mandamus with the CA. Hence, they were barred from filing such petition from the RTC Order and the writ of possession issued by it.[23] Respondent's recourse to the CA via Rule 65 was inappropriate even though the Sheriff had demanded that they vacate the property.[24] Section 8 of Act No. 3135 mandates that even if an appeal is interposed from an order granting a petition for a writ of possession, such order shall continue to be in effect during the pendency of an appeal.[25]

As to the second issue of whether the CA correctly held that after the issuance of the Stay Order by the rehabilitation court, all subsequent actions in this case pertaining to respondent's Cabanatuan property should have been held in abeyance is devoid of merit.

Respondent DNG's petition for rehabilitation filed in Branch 28 of the RTC of Cabanatuan City on October 21, 2003 was made pursuant to the 2000 Interim Rules of Procedure on Corporate Rehabilitation, which was the applicable law on rehabilitation petitions filed by corporations, partnerships or associations, including rehabilitation cases transferred from the SEC to the RTCs pursuant to RA 8799 or the Securities Regulation Code.[26]

Section 6 of the Interim Rules of Procedure on Corporate Rehabilitation[27] provides:

SEC. 6. Stay Order. -- If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The suspension of the enforcement of all claims against the corporation is subject to the rule that it shall commence only from the time the Rehabilitation Receiver is appointed.[28]

The CA annulled the RTC Order dated September 6, 2004 directing the issuance of a writ of possession, as well as the writ of possession issued pursuant thereto on October 4, 2004, and the notice to vacate issued by the Sheriff for being premature and untimely and ordered the cancellation of TCT No. T-109482 in the name of petitioner EPCIB as they were all done after the Stay Order was issued on October 27, 2003 by the rehabilitation court. In so

ruling, the CA relied on BPI v. CA.[29]

In BPI v. CA, BPI filed with the RTC a complaint for foreclosure of real estate mortgage against Ruby Industrial Corporation (RUBY). After RUBY filed its Answer with Counterclaim, it submitted a motion for suspension of proceedings, since the SEC had earlier issued an Order placing RUBY under a rehabilitation plan, pursuant to Section 6 par. (c) of PD 902-A which also declared that with the creation of the Management Committee, all actions or claims against RUBY pending before any court, tribunal, branch or body were suspended. Thus, the RTC suspended the proceedings. BPI moved for the reopening of the proceedings; however, the RTC denied it, citing the case of Alemar's Sibal and Sons, Inc v. Elbinias where we held that suspension of payments applied to all creditors, whether secured or unsecured, in order to place them on equal footing. As BPI's motion for reconsideration was denied, it went to the CA in a petition for certiorari and mandamus alleging grave abuse of discretion on the RTC in refusing to reopen the case, which was dismissed by the CA. BPI filed its appeal with Us wherein the issue presented was whether BPI, a secured creditor of RUBY, may still judicially enforce its claim against RUBY which had already been placed by the SEC under Rehabilitation. We denied the petition and found that BPI's action for foreclosure of real estate mortgage had been filed against RUBY and was pending with the RTC when RUBY was placed by the SEC under rehabilitation through the creation of a management committee. Thus, with the SEC order, which directed that all actions or claims against RUBY pending before any court, tribunal, branch or body be deemed suspended, the RTC's jurisdiction over the foreclosure case was also considered suspended; and that SEC had acquired jurisdiction with the appointment of a rehabilitation receiver for the distressed corporation and had directed all proceedings or claims against Ruby suspended. We then ruled that:

x x x whenever a distressed corporation asks [the] SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but x x x stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation. If this has already been done, no transfer certificate of title shall likewise be effected within the period of rehabilitation. The rationale behind PD 902-A, as amended, is to effect a feasible and viable rehabilitation. This cannot be achieved if one creditor is preferred over the others.[30]

BPI case is not in all fours with the instant case. Notably, in BPI, the action for judicial foreclosure of the real estate mortgage was still pending with the RTC when the stay order was issued; thus, there was no judgment on the foreclosure for payment and the sale of the mortgaged property at a public auction. In contrast to this case, herein respondent's mortgaged property had already been extrajudicially foreclosed and sold to petitioner as the highest bidder and a Certificate of Sale was issued on September 4, 2003, which was prior to the issuance of the Stay Order on October 27, 2003.

We find merit in petitioner EPCIB's argument on the applicability of RCBC v. IAC,[31] an en banc case decided in 1999, to the instant case. There, we ruled that RCBC can rightfully move for the extrajudicial foreclosure of the mortgage on the BF Home properties on October 16, 1984, because a management committee was not appointed by the SEC until March 18, 1985. Such ruling was a reversal of our earlier decision in the same case where we found that the prohibition against foreclosure attaches as soon as a petition for rehabilitation was filed.

In RCBC v. IAC, BF Homes filed a petition for rehabilitation and for suspension of payments with the SEC on September 28, 1984. On October 26, 1984, RCBC requested the Provincial Sheriff to extrajudicially foreclose its real estate mortgage on some of BF Homes' properties; thus, notices were sent to the parties. BF Homes filed a motion with the SEC for the issuance of a TRO to enjoin RCBC and the sheriff from proceeding with the auction sale, which the SEC granted by issuing a TRO for twenty days. The sale was rescheduled to January 29, 1985. On January 25, 1985, the SEC ordered the issuance of a writ of preliminary injunction conditioned upon BF Homes'

filing of a bond which the latter failed to do not until January 29, the day of the auction sale. As the sheriff was not aware of the filing of the bond, he proceeded with the auction on January 29, wherein RCBC emerged as the highest bidder.

On February 5, 1985, BF Homes filed with the SEC a consolidated motion to annul the auction sale and to cite RCBC and the sheriff for contempt. The sheriff then withheld the delivery of a certificate of sale to the RCBC due to the SEC proceedings. On March 13, 1985, RCBC filed with the RTC of Rizal, Branch 140, an action for mandamus against the Provincial Sheriff of Rizal and his deputy to compel them to execute in its favor a certificate of sale of the auctioned properties. The sheriffs filed their answer saying that they proceeded with the sale since no writ of preliminary injunction was issued as of the auction sale, but they informed the SEC that they would suspend the issuance of the certificate of sale.

On March 18, 1985, the SEC appointed a management committee for BF Homes.

On May 8, 1985, the RTC, Branch 140, rendered a judgment on the pleading in the mandamus case filed by RCBC which ordered the sheriff to execute and deliver to RCBC the certificate of sale of January 29, 1984. BF Homes filed with the IAC an original complaint for annulment of the RTC judgment. The IAC set aside the RTC decision by dismissing the mandamus case and ordered the suspension of the issuance to RCBC of new land titles<sup>[32]</sup> until the SEC had resolved the petition for rehabilitation.

RCBC filed an appeal with us. During the pendency of the appeal, RCBC filed a manifestation informing us that the SEC issued an Order on October 16, 1986 denying the motion to annul the auction sale and to cite RCBC and the sheriff for contempt. Thus, by virtue of the said SEC Order, the Register of Deeds of Pasay effected transfer of titles over the auctioned properties to RCBC and the issuance of new titles in its name. Thereafter, RCBC presented with us a motion for the dismissal of its petition, since the issuance of new titles in its name rendered the petition moot and academic. In our original decision dated September 14, 1992, we denied petitioner's motion to dismiss, finding basis for nullifying and setting aside the TCTs in the name of RCBC. We dismissed the RCBC petition and upheld the IAC decision dismissing the mandamus case filed by RCBC. We ordered the nullification of the new titles already issued in RCBC's name and reinstated the old titles in the name of BF Homes. In setting aside RCBC's acquisition of title and nullifying the TCTs issued to it, we held that prohibition against foreclosure attaches as soon as a petition for rehabilitation was filed.

However, as we have said earlier, upon RCBC's motion for reconsideration, we reversed our previous decision and granted reconsideration for the cogent reason that suspension of actions for claims commenced only from the time a management committee or receiver was appointed by the SEC. We said that RCBC, therefore, could have rightfully, as it did, move for the extrajudicial foreclosure of its mortgage on October 26, 1984, because a management committee was not appointed by the SEC until March 18, 1985.

In RCBC, we upheld the extrajudicial foreclosure sale of the mortgage properties of BF Homes wherein RCBC emerged as the highest bidder as it was done before the appointment of the management committee. Noteworthy to mention was the fact that the issuance of the certificate of sale in RCBC's favor, the consolidation of title, and the issuance of the new titles in RCBC's name had also been upheld notwithstanding that the same were all done after the management committee had already been appointed and there was already a suspension of claims. Thus, applying RCBC v. IAC in this case, since the foreclosure of respondent DNG's mortgage and the issuance of the certificate of sale in petitioner EPCIB's favor were done prior to the appointment of a Rehabilitation Receiver and the Stay Order, all the actions taken with respect to the foreclosed mortgage property which were subsequent to the issuance of the Stay Order were not affected by the Stay Order. Thus, after the redemption period expired without respondent redeeming the foreclosed property, petitioner becomes the absolute owner of the property and

it was within its right to ask for the consolidation of title and the issuance of new title in its name as a consequence of ownership; thus, it is entitled to the possession and enjoyment of the property.

WHEREFORE, the petition is GRANTED. The Decision dated June 23, 2005 of the Court of Appeals in CA-G.R. SP No. 86950 is hereby REVERSED and SET ASIDE.

**SO ORDERED.**

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ. concur.

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa, concurring; rollo, pp. 39-47

[2] Id. at 40-42.

[3] CA rollo, pp. 89-90.

[4] Rollo, p. 47.

[5] G.R. No. 97178, January 10, 1994, 229 SCRA 223.

[6] Rollo pp. 13-14.

[7] 378 Phil. 10 (1999).

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

[9] Top Art Shirt Manufacturing, Inc. v. Metropolitan Bank and Trust Co., G.R. No. 184005, August 4, 2009, 595 SCRA 323, 334.

[10] Id. at 335, citing Sps. Ong v. CA, 388 Phil. 857, 866-866 (2000).

[11] Id., citing IFC Service Leasing and Acceptance Corporation v. Nera, 125 Phil. 595 (1967).

[12] Arquiza v. CA, G.R. No. 160479, 459 SCRA 753, 765 (2005).

[13] Id.

[14] Rules of Court, Rule 65, Secs. 1, 2, 3.

[15] Saguan v. Philippine Bank of Communications, G.R. 159882, November 23, 2007, 538 SCRA 390, 402.

[16] G.R. No. 147820, March 18, 2005, 453 SCRA 756.

[17] Id. at 767-768.

[18] G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[19] Id. at 303.

[20] Samson v. Rivera, supra note 8, at 770.

[21] Saguan v. Philippine Bank of Communications, supra note 15, at 399.

[22] Santiago v. Merchants Rural Bank of Talavera, Inc., supra note 16, at 762, citing Government Service Insurance System v. CA, 169 SCRA 244 (1989).

[23] Id. at 763.

[24] Id. at 762.

[25] Id.

[26] New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, G.R. No. 165001, January 31, 2007, 513 SCRA 601, 605.

[27] A.M. No. 00-8-10-SC which took effect on December 15, 2000.

[28] New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, supra note 26, at 607.

[29] Supra note 5.

[30] Id. at 227-228.

[31] Supra note 7.

[32] RCBC admitted that the Sheriff's Certificate of Sale had been registered on BF Homes' TCTs.

**ABOUT BATAS.ORG**

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