

HOME DEVELOPMENT MUTUAL FUND (HDMF), PETITIONER, VS. SPOUSES FIDEL AND FLORINDA R. SEE AND SHERIFF MANUEL L. ARIMADO, RESPONDENTS.

G.R. No. 170292. June 22, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

A party that loses its right to appeal by its own negligence cannot seek refuge in the remedy of a writ of certiorari.

This is a Petition for Review on Certiorari [1] under Rule 45 of the Rules of Court assailing the August 31, 2005 Decision, [2] as well as the October 26, 2005 Resolution, [3] of the Court of Appeals (CA) in CA-G.R. SP No. 70828. The dispositive portion of the assailed CA Decision reads thus:

WHEREFORE, premises considered, the instant petition is DENIED DUE COURSE and is accordingly DISMISSED. The assailed Decision of the Regional Trial Court, Branch 6, Legazpi City dated February 21, 2002 and its Order dated March 15, 2002 are AFFIRMED.

SO ORDERED.[4]

Factual Antecedents

Respondent-spouses Fidel and Florinda See (respondent-spouses) were the highest bidders in the extrajudicial foreclosure sale of a property [5] that was mortgaged to petitioner Home Development Mutual Fund or Pag-ibig Fund (Pag-ibig). They paid the bid price of P272,000.00 in cash to respondent Sheriff Manuel L. Arimado (Sheriff Arimado). In turn, respondent-spouses received a Certificate of Sale wherein Sheriff Arimado acknowledged receipt of the purchase price, and an Official Receipt No. 11496038 dated January 28, 2000 from Atty. Jaime S. Narvaez, the clerk of court with whom Sheriff Arimado deposited the respondent-spouses' payment. [6]

Despite the expiration of the redemption period, Pag-ibig refused to surrender its certificate of title to the respondent-spouses because it had yet to receive the respondent-spouses' payment from Sheriff Arimado [7] who failed to remit the same despite repeated demands. [8] It turned out that Sheriff Arimado withdrew from the clerk of court the P272,000.00 paid by respondent-spouses, on the pretense that he was going to deliver the same to Pag-ibig. The money never reached Pag-ibig and was spent by Sheriff Arimado for his personal use. [9]

Considering Pag-ibig's refusal to recognize their payment, respondent-spouses filed a complaint for specific performance with damages against Pag-ibig and Sheriff Arimado before Branch 3 of the Regional Trial Court (RTC) of Legazpi City. The complaint alleged that the law on foreclosure authorized Sheriff Arimado to receive, on behalf of Pag-ibig, the respondent-spouses' payment. Accordingly, the payment made by respondent-spouses to Pag-ibig's authorized agent should be deemed as payment to Pag-ibig. [10] It was prayed that Sheriff Arimado be ordered to remit the amount of P 272,000.00 to Pag-ibig and that the latter be ordered to release the title to the auctioned property to respondent-spouses. [11]

Pag-ibig admitted the factual allegations of the complaint (i.e., the bid of respondent-spouses, [12] their full payment in cash to Sheriff Arimado, [13] and the fact that Sheriff Arimado misappropriated the money [14]) but maintained that respondent-spouses had no cause of action against it. Pag-ibig insisted that it has no duty to deliver the certificate of title to respondent-spouses unless Pag-ibig actually receives the bid price. Pag-ibig denied that the absconding sheriff was its agent for purposes of the foreclosure proceedings. [15]

When the case was called for pre-trial conference, the parties submitted their Compromise Agreement for the court's approval. The Compromise Agreement reads:

Undersigned parties, through their respective counsels[,] to this Honorable Court respectfully submit this Compromise Agreement for their mutual interest and benefit that this case be amicably settled, the terms and conditions of which are as follows:

1. [Respondent] Manuel L. Arimado, Sheriff IV RTC, Legazpi acknowledges his obligation to the Home Development Mutual Fund (PAG-IBIG), Regional Office V, Legazpi City and/or to [respondent-spouses] the amount of P300,000.00, representing payment for the bid price and other necessary expenses incurred by the [respondent-spouses], the latter being the sole bidder of the property subject matter of the Extrajudicial Foreclosure Sale conducted by Sheriff Arimado on January 14, 2000, at the Office of the Clerk of Court, RTC, Legazpi;

x x x x

3. Respondent Manuel L. Arimado due to urgent financial need acknowledge[s] that he personally used the money paid to him by [respondent-spouses] which represents the bid price of the above[-]mentioned property subject of the foreclosure sale. The [money] should have been delivered/paid by Respondent Arimado to Home Development Mutual Fund (PAG-IBIG) as payment and in satisfaction of its mortgage claim.

4. Respondent Manuel L. Arimado obligates himself to pay in cash to [petitioner] Home Development Mutual Fund (PAG-IBIG) the amount of P272,000.00 representing full payment of its claim on or before October 31, 2001 [so] that the title to the property [could] be released by PAG-IBIG to [respondent-spouses]. An additional amount of P28,000.00 shall likewise be paid by [respondent] Arimado to the [respondent-spouses] as reimbursement for litigation expenses;

5. [Petitioner] Home Development Mutual Fund (PAG-IBIG) shall upon receipt of the P272,000.00 from [respondent] Manuel L. Arimado release immediately within a period of three (3) days the certificate of title of the property above-mentioned to [respondent-spouses] being the rightful buyer or owner of the property;

6. In the event [respondent] Manuel L. Arimado fails to pay [petitioner] Home Development Mutual Fund (PAG-IBIG), or, [respondent-spouses] the amount of P272,000.00 on or before October 31, 2001, the [respondent-spouses] shall be entitled to an immediate writ of execution without further notice to respondent Manuel L. Arimado and the issue as to whether [petitioner] Home Development Mutual Fund (PAG-IBIG) shall be liable for the release of the title to [respondent spouses] under the circumstances or allegations narrated in the complaint shall continue to be litigated upon in order that the Honorable Court may resolve the legality of said issue;

7. In the event [respondent] Manuel L. Arimado complies with the payment as above-stated, the parties mutually agree to withdraw all claims and counterclaim[s] they may have against each other arising out of the above-entitled case. [16]

The trial court approved the compromise agreement and incorporated it in its Decision dated October 31, 2001. The trial court stressed the implication of paragraph 6 of the approved compromise agreement:

Accordingly, the parties are enjoined to comply strictly with the terms and conditions of their Compromise

Agreement.

In the event that [respondent] Manuel L. Arimado fails to pay [petitioner] HDMF (Pag-ibig), or [respondent-spouses] the amount of P272,000.00 on October 31, 2001, the Court, upon motion of [respondent-spouses], may issue the necessary writ of execution.

In this connection, with respect to the issue as to whether or not [petitioner] HDMF (Pag-ibig) shall be liable for the release of the title of the [respondent-spouses] under the circumstances narrated in the Complaint which necessitates further litigation in court, let the hearing of the same be set on December 14, 2001 at 9:00 o'clock in the morning.

SO ORDERED. [17]

None of the parties sought a reconsideration of the aforequoted Decision.

When Sheriff Arimado failed to meet his undertaking to pay on or before October 31, 2001, the trial court proceeded to rule on the issue of whether Pag-ibig is liable to release the title to respondent-spouses despite non-receipt of their payment. [18]

Ruling of the Regional Trial Court [19]

The trial court rendered its Decision dated February 21, 2002 in favor of respondent-spouses, reasoning as follows: Under Article 1240 of the Civil Code, payment is valid when it is made to a person authorized by law to receive the same. In foreclosure proceedings, the sheriff is authorized by Act No. 3135 and the Rules of Court to receive payment of the bid price from the winning bidder. When Pag-ibig invoked the provisions of these laws by applying for extrajudicial foreclosure, it likewise constituted the sheriff as its agent in conducting the foreclosure and receiving the proceeds of the auction. Thus, when the respondent-spouses paid the purchase price to Sheriff Arimado, a legally authorized representative of Pag-ibig, this payment effected a discharge of their obligation to Pag-ibig.

The trial court thus ordered Pag-ibig to deliver the documents of ownership to the respondent-spouses. The dispositive portion reads thus:

WHEREFORE, premises considered, decision is hereby rendered in favor of the [respondent-spouses] and against the [petitioner] HDMF, ordering said [petitioner] to execute a Release and/or Discharge of Mortgage, and to deliver the same to the [respondent-spouses] together with the documents of ownership and the owner's copy of Certificate of Title No. T-78070 covering the property sold [to respondent-spouses] in the auction sale within ten (10) days from the finality of this decision.

Should [petitioner] HDMF fail to execute the Release and/or Discharge of Mortgage and to deliver the same together with the documents of ownership and TCT No. T-78070 within ten (10) days from the finality of this decision, the court shall order the Clerk of Court to execute the said Release and/or Discharge of Mortgage and shall order the cancellation of TCT No. T-78070 and the issuance of a second owner's copy thereof.

SO ORDERED. [20]

Pag-ibig filed a motion for reconsideration on the sole ground that "[Pag-ibig] should not be compelled to release the title to x x x [respondent-spouses] See because Manuel Arimado [has] yet to deliver to [Pag-ibig] the sum of P272,000.00." [21]

The trial court denied the motion on March 15, 2002. It explained that the parties' compromise agreement duly authorized the court to rule on Pag-ibig's liability to respondent-spouses despite Sheriff Arimado's non-remittance of the proceeds of the auction. [22]

Pag-ibig received the denial of its motion for reconsideration on March 22, 2002 [23] but took no further action. Hence, on April 23, 2002, the trial court issued a writ of execution of its February 21, 2002 Decision. [24]

On May 24, 2002, [25] Pag-ibig filed before the CA a Petition for Certiorari under Rule 65 in order to annul and set aside the February 21, 2002 Decision of the trial court. Pag-ibig argued that the February 21, 2002 Decision, which ordered Pag-ibig to deliver the title to respondent-spouses despite its non-receipt of the proceeds of the auction, is void because it modified the final and executory Decision dated October 31, 2001. [26] It maintained that the October 31, 2001 Decision already held that Pag-ibig will deliver its title to respondent-spouses only upon receipt of the proceeds of the auction from Sheriff Arimado. Since Sheriff Arimado did not remit the said amount to Pag-ibig, the latter has no obligation to deliver the title to the auctioned property to respondent-spouses. [27]

Further, Pag-ibig contended that the February 21, 2002 Decision was null and void because it was issued without affording petitioner the right to trial. [28]

Ruling of the Court of Appeals [29]

The CA denied the petition due course. The CA noted that petitioner's remedy was to appeal the February 21, 2002 Decision of the trial court and not a petition for certiorari under Rule 65. At the time the petition was filed, the Decision of the trial court had already attained finality. The CA then held that the remedy of certiorari was not a substitute for a lost appeal. [30]

The CA also ruled that petitioner's case fails even on the merits. It held that the February 21, 2002 Decision did not modify the October 31, 2001 Decision of the trial court. The latter Decision of the trial court expressly declared that in case Sheriff Arimado fails to pay the P272,000.00 to Pag-ibig, the court will resolve the remaining issue regarding Pag-ibig's obligation to deliver the title to the respondent-spouses. [31]

As to the contention that petitioner was denied due process when no trial

was conducted for the reception of evidence, the CA held that there was no need for the trial court to conduct a full-blown trial given that the facts of the case were already admitted by Pag-ibig and what was decided in the February 21, 2002 Decision was only a legal issue. [32]

Petitioner filed a motion for reconsideration [33] which was denied for lack of merit in the Resolution dated October 26, 2005. [34]

Issues

Petitioner then raises the following issues for the Court's consideration:

- Whether certiorari was the proper remedy;
- Whether the February 21, 2002 Decision of the trial court modified its October 31, 2001 Decision based on the compromise agreement;
- Whether petitioner was entitled to a trial prior to the rendition of the February 21, 2002 Decision.

Our Ruling

Petitioner argues that the CA erred in denying due course to its petition for certiorari and maintains that the remedy of certiorari is proper for two reasons: first, the trial court rendered its February 21, 2002 Decision without the benefit of a trial; and second, the February 21, 2002 Decision modified the October 31, 2001 Decision, which has already attained finality. These are allegedly two recognized instances where certiorari lies to annul the trial court's Decision because of grave abuse of discretion amounting to lack of jurisdiction. [35]

The argument does not impress.

"[C]ertiorari is a limited form of review and is a remedy of last recourse." [36] It is proper only when appeal is not available to the aggrieved party. [37] In the case at bar, the February 21, 2002 Decision of the trial court was appealable under Rule 41 of the Rules of Court because it completely disposed of respondent-spouses' case against Pag-ibig. Pag-ibig does not explain why it did not resort to an appeal and allowed the trial court's decision to attain finality. In fact, the February 21, 2002 Decision was already at the stage of execution when Pag-ibig belatedly resorted to a Rule 65 Petition for Certiorari. Clearly, Pag-ibig lost its right to appeal and tried to remedy the situation by resorting to certiorari. It is settled, however, that certiorari is not a substitute for a lost appeal, "especially if the [party's] own negligence or error in [the] choice of remedy occasioned such loss or lapse." [38]

Moreover, even assuming *arguendo* that a Rule 65 certiorari could still be resorted to, Pag-ibig's petition would still have to be dismissed for having been filed beyond the reglementary period of 60 days from notice of the denial of the motion for reconsideration. [39] Pag-ibig admitted receiving the trial court's Order denying its Motion for Reconsideration on March 22, 2002; [40] it thus had until May 21, 2002 to file its petition for certiorari. However, Pag-ibig filed its petition only on May 24, 2002, [41] which was the 63rd day from its receipt of the trial court's order and obviously beyond the reglementary 60-day period.

Pag-ibig stated that its petition for certiorari was filed "within sixty (60) days from receipt of the copy of the writ of execution by petitioner [Pag-ibig] on 07 May 2002," which writ sought to enforce the Decision assailed in the petition. [42] This submission is beside the point. Rule 65, Section 4 is very clear that the reglementary 60-day period is counted "from notice of the judgment, order or resolution" being assailed, or "from notice of the denial of the motion [for reconsideration]," and not from receipt of the writ of execution which seeks to enforce the assailed judgment, order or resolution. The date of Pag-ibig's receipt of the copy of the writ of execution is therefore immaterial for purposes of computing the timeliness of the filing of the petition for certiorari.

Since Pag-ibig's petition for certiorari before the CA was an improper remedy and was filed late, it is not even necessary to look into the other issues raised by Pag-ibig in assailing the February 21, 2002 Decision of the trial court and the CA's rulings sustaining the same. At any rate, Pag-ibig's arguments on these other issues are devoid of merit.

As to Pag-ibig's argument that the February 21, 2002 Decision of the RTC is null and void for having been issued without a trial, it is a mere afterthought which deserves scant consideration. The Court notes that Pag-ibig did not object to the absence of a trial when it sought a reconsideration of the February 21, 2002 Decision. Instead, Pag-ibig raised the following lone argument in their motion:

3. Consequently, [Pag-ibig] should not be compelled to release the title to other [respondent-spouses] See because Manuel Arimado [has] yet to deliver to [Pag-ibig] the sum of P 272,000.00. [43]

Under the Omnibus Motion Rule embodied in Section 8 of Rule 15 of the Rules of Court, all available objections that are not included in a party's motion shall be deemed waived.

Pag-ibig next argues that the February 21, 2002 Decision of the trial court, in ordering Pag-ibig to release the title despite Sheriff Arimado's failure to remit the P272,000.00 to Pag-ibig, "modified" the October 31, 2001 Decision. According to Pag-ibig, the October 31, 2001 Decision allegedly decreed that Pag-ibig would deliver the title to respondent-spouses only after Sheriff Arimado has paid the P272,000.00. [44] In other words, under its theory, Pag-ibig cannot be ordered to release the title if Sheriff Arimado fails to pay the said amount.

The Court finds no merit in this argument. The October 31, 2001 Decision (as well as the Compromise Agreement on which it is based) does not provide that Pag-ibig cannot be ordered to release the title if Sheriff Arimado fails

to pay. On the contrary, what the Order provides is that if Sheriff Arimado fails to pay, the trial court shall litigate (and, necessarily, resolve) the issue of whether Pag-ibig is obliged to release the title. This is based on paragraph 6 of the Compromise Agreement which states that in the event Sheriff Arimado fails to pay, "the [respondent-spouses] shall be entitled to an immediate writ of execution without further notice to [Sheriff] Arimado and the issue as to whether [Pag-ibig] shall be liable for the release of the title to [respondent spouses] under the circumstances or allegations narrated in the complaint shall continue to be litigated upon in order that the Honorable Court may resolve the legality of said issue." In fact, the trial court, in its October 31, 2001 Decision, already set the hearing of the same "on December 14, 2001 at 9:00 o'clock in the morning." [45]

It is thus clear from both the October 31, 2001 Decision and the Compromise Agreement that the trial court was authorized to litigate and resolve the issue of whether Pag-ibig should release the title upon Sheriff Arimado's failure to pay the P272,000.00. As it turned out, the trial court eventually resolved the issue against Pag-ibig, i.e., it ruled that Pag-ibig is obliged to release the title. In so doing, the trial court simply exercised the authority provided in the October 31, 2001 Decision (and stipulated in the Compromise Agreement). The trial court did not thereby "modify" the October 31, 2001 Decision.

WHEREFORE, premises considered, the petition is DENIED. The assailed August 31, 2005 Decision, as well as the October 26, 2005 Resolution, of the Court of Appeals in CA-G.R. SP No. 70828 are AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Perez, and Mendoza, JJ., concur.

[*] Per Special Order No. 1022 dated June 10, 2011.

[1] Rollo, pp. 9-29.

[2] Id. at 30-35; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid.

[3] Id. at 36.

[4] CA Decision, p. 5; id. at 34.

[5] The mortgaged property was covered by Transfer Certificate of Title No. 78070 and more particularly described as follows:

A parcel of land (Lot 2583-C of the subdivision plan) situated in the barrio of Tagas, Municipality of Daraga, Albay; bounded on the E., by Calle Sto. Domingo; on the S., by Lot 2583-B; on the W., by Lot 2583-D and on the N., by Lot 2583-E x x x containing an area of Two Hundred Fifty Three (253) sq. m. (RTC Decision dated October 31, 2001, p. 2; CA rollo, p. 16.)

[6] Complaint, pp. 1-2; rollo, pp. 37 and 42.

[7] Id. at 3; id. at 38.

[8] Answer, pp. 2-3; id. at 44-45.

[9] RTC Decision dated February 21, 2002, p. 1; CA rollo, p. 19.

[10] Complaint, pp. 3-5; rollo, pp. 38-40.

[11] Id. at 5-6; id. at 40-41.

- [12] Paragraph 3 of the Answer, p. 1; id. at 43.
- [13] Paragraphs 4 and 5 of the Answer, pp. 1-2; id. at 43-44.
- [14] Paragraph 8 of the Answer, p. 2; id. at 44.
- [15] Answer, pp. 2-3; id. at 44-45.
- [16] RTC Decision dated October 31, 2001, pp. 1-2; CA rollo, pp. 15-16.
- [17] Id. at 3-4; id. at 17-18; penned by Judge Wenceslao R. Villanueva, Jr.
- [18] Order dated February 21, 2002, id. at 55.
- [19] RTC Decision dated February 21, 2002, id. at 19-22; penned by Judge Vladimir B. Brusola.
- [20] Id. at 22.
- [21] Motion for Reconsideration, id. at 23-24.
- [22] Order dated March 15, 2002, id. at 27.
- [23] CA Petition, p. 3; id. at 35.
- [24] Id. at 13-14.
- [25] Petitioner's Memorandum p. 7; rollo, p. 158.
- [26] CA Petition, p. 7; CA rollo, p. 39.
- [27] Id. at 5-7; id. at 37-39.
- [28] Id. at 8; id. at 40.
- [29] Rollo, pp. 30-35.
- [30] CA Decision, pp. 4-5; id. at 33-34.
- [31] Id. at 5; id. at 34.
- [32] Id.; id.
- [33] CA rollo, pp. 366-384.
- [34] Rollo, p. 36.
- [35] Petitioner's Memorandum, pp. 15-17; id. at 166-168.
- [36] *Heirs of Lourdes Padilla v. Court of Appeals*, 469 Phil. 196, 204 (2004).
- [37] RULES OF COURT, Rule 41, Section 1, in relation to Rule 65, Section 1.
- [38] *David v. Cordova*, 502 Phil. 626, 638 (2005).
- [39] RULES OF COURT, Rule 65, Section 4.
- [40] Petition in CA-G.R. SP No. 70828, p. 3; CA rollo, p. 35.
- [41] Petitioner's Memorandum, p. 7; rollo, p. 158.
- [42] Petition in CA-G.R. SP No. 70828, p. 4; CA rollo, p. 36.

[43] Id. at 23-24.

[44] Petition in CA-G.R. SP No. 70828, p. 8; id. at 40.

[45] Id. at 17.

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